



UNODC

United Nations Office on Drugs and Crime

COMBATING
WILDLIFE AND FOREST CRIME

UNITED NATIONS OFFICE ON DRUGS AND CRIME



Criminal justice response to wildlife crime in Malaysia

A rapid assessment





Copyright © United Nations Office on Drugs and Crime, October 2017.

Cover photo: Seizures of pangolin scales in Malaysia, August 2017, Reuters. ©Ahmad Yusni / EFE

This activity was designed, organized and implemented by the UNODC Global Programme (GP) for Combating Wildlife and Forest Crime. It is a four-year programme aiming to link existing regional efforts in a global system, enhancing capacity building and wildlife law enforcement networks at regional and sub-regional levels. The GP is working for and with the wildlife law enforcement community to ensure that wildlife crime, illegal logging, and related crimes are treated as serious transnational organized crime. This activity is also part of ongoing activities undertaken by UNODC Regional Office for Southeast Asia and the Pacific (ROSEAP) sub-programme on transnational organized crime and illicit trafficking to inform the development and management of its programme assistance.



This study has been financed with the assistance of the European Union in the framework of the UNODC-CITES Asia Wildlife Enforcement and Demand management Project. The contents of this publication are the sole responsibility of the United Nations Office in Drugs and Crime, and can in no way be taken to reflect the views of the European Union.

Disclaimer: The designations employed and the presentation of material in this publication do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries.

TABLE OF CONTENTS

ACKNOWLEDGEMENTS.....	4
INTRODUCTION.....	5
1. THE ILLEGAL WILDLIFE TRADE IN MALAYSIA	8
2. LEGAL FRAMEWORK	11
I. National legislation – applying to all territories and regions in Malaysia.....	11
II. Legislation of Peninsular Malaysia.....	15
III. Legislation of Sabah	16
IV. Legislation of Sarawak	17
3. COMPETENT LAW ENFORCEMENT AUTHORITIES.....	20
Mapping of agency responsibilities for wildlife and forest crimes in Malaysia.....	20
Department of Wildlife and National Parks – Perhilitan (Peninsular Malaysia).....	21
Sabah Wildlife Department.....	25
Forests Department of Sarawak	27
Royal Malaysian Customs Department.....	28
Financial Intelligence Unit – Bank Negara Malaysia	30
Attorney General’s Chambers.....	32
Malaysian Anti-Corruption Commission	33
Royal Malaysian Police.....	36
Malaysia Timber Industry Board.....	37
4. ENVIRONMENTAL COURTS IN MALAYSIA	38
5. INTERAGENCY COOPERATION	43
6. INTERNATIONAL COOPERATION	45
7. ADVANCED INVESTIGATION CAPABILITIES	46
8. STRENGTHS AND WEAKNESSES OF ENVIRONMENTAL LAW ENFORCEMENT AGENCIES	47
9. CORRUPTION.....	51
10. CONCLUSIONS AND RECOMMENDATIONS.....	52
Recommendations	53
Annex I – Selected provisions from key wildlife legislation.....	55
Annex II – Selected provisions from other laws.....	65

ACRONYMS

AGC	Attorney General’s Chambers
AMLA	Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act
ASEAN	Association of Southeast Asian Nations
CHIS	Covert human intelligence source (informant)
CID	Criminal Investigation Department
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CMS	Convention on the Conservation of Migratory Species of Wild Animals
CTR	Cash threshold report
FDS	Forests Department of Sarawak
FIU	Financial Intelligence Unit
IGO	International governmental organization
INTERPOL	International Criminal Police Organization
JITU	Integrity and Governance Committee (<i>Jawatankuasa Integriti dan Tadbir Urus</i>)
KLIA	Kuala Lumpur International Airport
MACC	Malaysian Anti-Corruption Commission
MAQIS	Malaysian Quarantine and Inspection Services
MLA	Mutual legal assistance
MTIB	Malaysian Timber Industry Board
MY-WEN	Malaysian Wildlife Enforcement Network
NCC	National Coordination Committee to Counter Money Laundering
NGO	Non-governmental organization
NRRET	National Revenue Recovery Enforcement Team
Perhilitan	Department of Wildlife and National Parks
RMP	Royal Malaysian Police
RMCD	Royal Malaysian Customs Department
SOMTC	ASEAN Senior Officials Meeting on Transnational Crime
STR	Suspicious Transaction Report
SWD	Sabah Wildlife Department
UNODC	United Nations Office on Drugs and Crime
WCCB	Wildlife Crime Control Bureau (India)
WCO	World Customs Organization
WJC	Wildlife Justice Commission
WWF	World Wide Fund for Nature

ACKNOWLEDGEMENTS

This assessment would not have been possible without the generous participation of several institutions of the Government of Malaysia, which have shared knowledge, statistics, concerns and time. Special gratitude goes to the Ministry of Natural Resources and Environment for co-hosting a meeting with all relevant Government authorities – from Sabah, Sarawak and Peninsular Malaysia – to review this report and to increase the accuracy of its information.

The drafting of the report was led by Stephen Carmody, UNODC Senior Law Enforcement Advisor, with the support of Jenny Feltham, UNODC Wildlife and Forest Crime Advisor, and under the supervision of Giovanni Broussard, Regional Coordinator of the UNODC Global Programme for Combating Wildlife and Forest Crime.

The report was edited by Chris Dickson.

INTRODUCTION

Wildlife and timber crime is estimated to earn transnational organized crime groups between USD 8 – 10 billion annually, placing it as the fourth most lucrative money earner for organized crime¹. Given its unique wildlife and strategic geographical location, Malaysia finds itself combating both domestic and international wildlife traffickers who seek to collect their share of this profitable criminal activity.

In combating these dual threats, Malaysian authorities have shown themselves to be very successful at interdicting shipments of trafficked wildlife products. Local and international media frequently display images of Malaysian law enforcement officers sitting behind seizures of pangolin, ivory, rhino horn or testudines (turtles, tortoises and terrapins) with accompanying headlines hailing another success in the war against wildlife trafficking.²

Whilst these images paint a picture of law enforcement success, they also raise an alarm for Malaysian authorities for three very important reasons. Firstly, the sheer quantity of these seizures is enormous; not only that of those wildlife products seized in Malaysia, but also the quantity of those seized en-route to, or re-exported from Malaysia. Between 2003 and 2014, nearly 20 percent of the world's total ivory seizures had a Malaysian nexus – amounting to more than 63 tonnes of ivory which was either seized in Malaysia, or was seized elsewhere but was heading to the country or had already transited through it.³

Secondly, not all of these shipments are merely transiting through Malaysia. Some appear to be entering, being consolidated in-country, and then forwarded onto their destination in a consignment listing Malaysia as its point of origin. This implies the presence of organized crime groups that feel confident enough to smuggle wildlife products not only into Malaysia, but out of it as well. It also implies complicity of some officials in the supply chain.

Thirdly and perhaps most importantly, is the absence of arrests of high-level individuals in connection with these seizures. Whilst a small number of offenders - usually couriers - have been arrested and convicted, in most cases they played minor roles in the echelons of the criminal networks, while controllers are rarely brought to justice. Seizures in the absence of arrests do little to address transnational wildlife crime or stop the killing of the world's endangered species.

A recent seizure in Hong Kong illustrates the role played by Malaysia in the illegal ivory trade. On 4 July 2017, Hong Kong Customs seized 7.2 tonnes of ivory from a container purporting to contain

¹ UNODC, Wildlife Crime worth USD 8-10 billion annually, ranking it alongside human trafficking, arms and drug dealing in terms of profits: UNODC chief at <https://www.unodc.org/unodc/en/frontpage/2014/May/wildlife-crime-worth-8-10-billion-annually.html> accessed on 12 September 2017.

² For the purposes of this report, "Wildlife Crime" refers to the taking, trading (supplying, selling or trafficking), importing, exporting, processing, possessing, obtaining and consumption of wild fauna in contravention of national or international law. This study has placed significant importance on the analysis of the domestic legal framework.

³ Kanitha Krishnasamy 2016, Malaysia's Invisible Ivory Channel, for TRAFFIC, South East Asia Regional Office

frozen sardines. It was Hong Kong's largest ivory seizure in over 30 years⁴ and comes despite an upcoming ban in the commercial sale of ivory in mainland China by the end of 2017. Whilst the ivory was apparently of African origin, the container used in the importation originated from the port of Klang, Malaysia.

Port Klang is Malaysia's largest port and the 12th-busiest container port in the world, with nearly 12 million container movements annually.⁵ Port Klang also figures prominently in the seizures of large quantities of wildlife products. Between 2011 and 2014 the port was the subject of two Malaysian Anti-Corruption Commission (MACC) investigations into corruption. (These investigations were not specifically related to wildlife or forest crime cases, but do indicate the presence of some officials complicit in illicit activities).

Unlike many illicit shipments of wildlife products, the Hong Kong seizure had identifiable consignor and consignee information. Hong Kong authorities moved quickly and arrested three people, and indicated that further arrests are likely.⁶ The Department of Wildlife and National Parks (Perhilitan) and the Royal Malaysian Police (RMP) were investigating at the time of writing (August 2017).

On the domestic front, Malaysian efforts to combat wildlife crime show many strengths, but there is also room for improvement, notably with regards to coordination. In Malaysia, wildlife crime enforcement is divided among three regional wildlife agencies: Perhilitan, the Forests Department of Sarawak (FDS) and the Sabah Wildlife Department (SWD). These agencies operate with different legislation, using different case management and intelligence systems, and with a lack of access to advanced investigation methods such as telephone interception. They have little official means of intelligence coordination and operate generally in the absence of investigative assistance from the RMP.

Arrests are made despite these many restrictions, and these arrests are often translated into convictions and prison terms. This is particularly the case in Peninsular Malaysia, where numerous transnational organized crime networks have been identified and disrupted. There are several reasons for the success of local authorities, notably: effective domestic legislation that also incorporates the species protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); the use of proactive intelligence-led investigations; dedicated prosecutors from the wildlife agencies; dedicated Environmental Courts; strong sentencing guidelines; a willingness to work with international counterparts; domestic wildlife agencies that see international governmental organizations (IGOs) and non-governmental organizations (NGOs) as a

⁴ Customs and Excise Department, Hong Kong Customs makes record seizure of ivory tusks, at http://www.customs.gov.hk/en/publication_press/press/index_id_1909.html accessed on 12 July 2017

⁵ World Shipping Council, Top 50 World Container Ports at <http://www.worldshipping.org/about-the-industry/global-trade/top-50-world-container-ports> accessed on 28 July 2017

⁶ Three arrested after Hong Kong customs seizes 7.2 tonnes of ivory from 'frozen fish' container in record HK\$72 million bust, published 6 July 2017, <http://www.scmp.com/news/hong-kong/law-crime/article/2101523/record-ivory-haul-worth-hk72-million-seized-hong-kong>, accessed on 31 July 2017

force multiplier rather than a hindrance; and, most importantly, dedicated staff. In many aspects, Malaysia's response to investigating and prosecuting wildlife crime represents international best practice.

A table reflecting the wildlife cases investigated by Perhilitan, the FDS and the SWD between 2012 and 2016 is shown in Figure 1.

Agency	Region	2012	2013	2014	2015	2016	Total
Perhilitan	Peninsular	45	31	54	30	75	235
FDS	Sarawak	0	12	13	15	5	45
SWD	Sabah	3	3	4	30	2	42
RMCD	All	9	14	5	11	22	61

Figure 1: Cases investigated between 2012 - 2016

However, to build on this effectiveness there are several areas that could be improved, including: providing greater access to advanced investigation methods, specialized equipment, and training in their use; the centralization and standardization of intelligence systems; and most importantly the engagement of the RMP to address the transnational organized crime aspect of wildlife trafficking, especially in relation to money laundering.

With these comments in mind, the objective of this study is to determine the relevance of the criminal justice system response to wildlife crime, given the role of Malaysia as a source and transit country for CITES-listed flora and fauna. The research is based on a field visit to Malaysia, a review of the available primary and secondary data, as well as interviews with key interlocutors from the government agencies. Interviews were mainly conducted with key players of the criminal justice systems such as prosecutors, customs officials, and environment/forestry officials involved in law enforcement. Unfortunately, the team of the United Nations Office on Drugs and Crime (UNODC) was unable to interview representatives of the judiciary; however, those representatives provided a comprehensive response to a questionnaire sent by UNODC, and which is incorporated in Section 4 on the role of the courts. Wherever possible, interviews were conducted at the level of head or deputy head of department. The first draft of the report by UNODC was subsequently circulated among all government agencies, and a workshop was then convened in Kuala Lumpur to collect comments, inputs and recommendations for improvement.

While criminal justice systems are designed in theory to respond to all crimes, the purpose of this report is to map out as far as possible the processes by which wildlife crimes are investigated and prosecuted – and by whom. The latter question is critical: Wildlife crimes fall under the purview of multiple departments in Peninsular Malaysia⁷, Sarawak and Sabah, and effective coordination and information sharing between them is crucial for success. The recommendations of this report are aimed at national policy makers, but also at generating a wider discussion as to how criminal justice interventions could play a more effective role in tackling transnational organized wildlife crime.

⁷ Peninsular Malaysia consists of 11 states and the two Federal Territories of Kuala Lumpur and Putrajaya

1. THE ILLEGAL WILDLIFE TRADE IN MALAYSIA

Malaysia is a source and transit country for internationally trafficked wildlife products including ivory, rhino horn, pangolin, tigers and tiger parts, birds, reptiles and testudines.

As a source country Malaysia has several iconic species that are traded both domestically and internationally, including the Malayan tiger, clouded leopard, Sunda pangolin and sun bear. This dual market demand places additional pressure on these species and requires a multi-faceted law enforcement approach, including anti-poaching and anti-trafficking initiatives.

Domestically, wildlife crime is driven by the demands of an internal market seeking wildlife products for traditional medicine, pets, and bush meat spread throughout the three regions of Peninsular Malaysia, Sabah and Sarawak.

The targeted species that feed this market include the iconic native species listed above, as well as more common species that cater to the pet trade such as the white-rumped shama, a small bird prized for its song. There is also a devastating trade in aquatic bush meat in Malaysia that has seen a massive reduction in the number of sea turtle egg nests.⁸

Of particular concern is the poaching of tigers. The forests of Malaysia contain the remnants of a once-considerable population of *Panthera tigris jacksoni*, a sub-species unique to Malaysia. In the 1950s it was estimated that there were about 3,000 Malayan tigers. Whilst the total remaining population in Peninsular Malaysia is not known, it is estimated there are between 250-340 individuals in the three priority areas of Taman-Negara National Park, Belum-Temengor Forest Complex, and Endau-Rompin Forest Complex.⁹ These animals are already under severe pressure from habitat reduction through human encroachment, a reduction in numbers of prey species such as the Samba deer, and deaths caused by infighting or territorial disputes.

The exact number of tigers that are poached each year is not known. However, given the paucity of numbers, any instance of poaching represents a serious threat to the species' survival. Despite the efforts of wildlife enforcement agencies, the size of the protected areas that need patrolling and insufficient number of staff restrict the effectiveness of measures to combat the poaching of tigers.

International NGOs such as the Wildlife Conservation Society, Panthera, the Zoological Society of London and the World Wide Fund for Nature (WWF), as well as several local NGOs including MYCAT, have all provided support to local authorities in conservation initiatives, but further work is still needed, particularly in the area of anti-trafficking.

Numerically the most seized wildlife species in Malaysia is the white-rumped shama.¹⁰ This songbird has a very large range extending from northern India, Nepal, and southern China, to Sri Lanka and

⁸ Convention on Migratory Species 2016, Aquatic Bushmeat, presented to the 1st Meeting of the Sessional Committee of the CMS Scientific Council, Bonn Germany, 18-21 April 2016

⁹ WWF website, [The Malayan Tiger](http://www.wwf.org.my/about_wwf/what_we_do/species_main/tiger/) at http://www.wwf.org.my/about_wwf/what_we_do/species_main/tiger/ accessed on 28 July 2017

¹⁰ Figures provided by Perhilitan, see Figure 5 on page 17

throughout much of Southeast Asia.¹¹ It is popular in the local pet trade, and the trafficking of this bird is a problem in all three Malaysian regions. Despite the fact that this species is not threatened, its popularity in the pet trade makes it highly sought after and requires a significant response from local authorities.

As a transit country, Malaysia plays a pivotal role in the international trafficking of ivory, testudines and pangolins. Malaysia is one of eight countries identified by CITES as being of “primary concern” and heavily implicated in the illegal trade in ivory.

In a study undertaken by TRAFFIC between January 2003 and May 2014, Malaysia was linked to 66 ivory shipments totalling 63,419 kilograms. Of these 66 shipments, 47 seizures totalling 48,471 kg were made in other countries but were either on their way to or from Malaysia. The remaining 19 seizures totalling 14,949 kg were made in Malaysia.¹² Although this study only covers up to 2014, the trend has continued with several large seizures of ivory with a Malaysian nexus made since then, including the 7.2 tonnes seized in Hong Kong in July 2017, as mentioned above.

Importantly, several of these shipments entering Malaysia originate from Africa in containers that list Malaysia as their final destination, not as a country of re-export. Once these containers arrive the paperwork is falsified and they continue on to destination countries such as China or Hong Kong, but using new bills of lading indicating Malaysia as the point of origin.

In other cases, the ivory is transferred out of the containers it arrived in and into a new container, and then re-exported with new paperwork, again indicating Malaysia as the point of origin. Sometimes the ivory from several containers arriving in Malaysia is consolidated, and later exported under the guise of originating from a Malaysian company.

Malaysia has also joined Thailand as a main transit and consolidation country for testudines originating from India, Sri Lanka, Bangladesh and Madagascar.¹³ This has been highlighted by an increase in seizures of Hamilton’s (black pond) turtles and Indian star tortoises between 2015 and 2017, and a recent seizure of radiated tortoises from Madagascar in May 2017. In many of these seizures, Perhilitan has been able to arrest several key traffickers and develop a strong intelligence picture of how these trafficking networks operate.

The seriousness with which law enforcement agencies view the trafficking of testudines was illustrated by the creation of the CITES Tortoises and Freshwater Turtles Task Force, which identified that between 2000 and 2015 over 300,000 testudines were seized globally. This task force met in

¹¹ IUCN website, *Kittacincla malabarica* at <http://www.iucnredlist.org/details/103894856/0> accessed on 28 July 2017

¹² Kanitha Krishnasamy 2016, Malaysia’s Invisible Ivory Channel, for TRAFFIC, South East Asia Regional Office

¹³ Al-Jazeera 2013, Malaysia top destination for wildlife traffickers, says Al-Jazeera reporter at <http://english.astroawani.com/malaysia-news/malaysia-top-destination-wildlife-traffickers-says-al-jazeera-reporter-25859> accessed on 28 July 2017

April 2017 and agreed to prepare a comprehensive report for presentation to the CITES Standing Committee in November 2017.¹⁴

The attractiveness of testudines to wildlife traffickers can be explained by the value attached to some of these species. For example, the May 2017 seizure of 330 radiated and ploughshare tortoises at Kuala Lumpur International Airport (KLIA) was estimated to have a value of 1.2 million ringgit on the black market.¹⁵ Malaysia is now one of the countries at the centre of that trade in Southeast Asia.

¹⁴ CITES, CITES Task Force agrees on strategies to combat illegal trade in tortoise and freshwater turtles at https://cites.org/eng/news/pr/cites-task-force-agrees-on-strategies-to-combat-illegal-trade-in-tortoises-and-freshwater-turtles_28042017 accessed on 28 July 2017

¹⁵ Sky News, Critically Endangered Tortoises worth £200,000 seized at Malaysia Airport at <http://news.sky.com/story/critically-endangered-tortoises-worth-200k-seized-at-malaysia-airport-10878453> accessed on 29 July 2017

2. LEGAL FRAMEWORK

Malaysia is unique within the Association of Southeast Asian Nations (ASEAN) in that three different regions have responsibility for enforcing wildlife legislation within their own jurisdiction, and there is no overarching Federal law that supersedes this regional legislation.

Besides the domestic wildlife legislation, there are several other laws that are relevant to the investigation and prosecution of transnational wildlife crime in Malaysia, which will be briefly touched upon in this section.

I. National legislation – applying to all territories and regions in Malaysia

International Trade in Endangered Species Act 2008 (Act 686)

- The main activities covered by this Act include the import, export, re-export, introduction from the sea, transit, and captive breeding and artificial propagation of any scheduled species.
- This Act applies to all CITES-listed species. All species listed in CITES Appendices are listed under Schedule 3 of this Act.
- It is applicable to both individuals and legal entities. Maximum penalties under this Act are 10 years prison or 1 million ringgit fine for individuals, and 2 million ringgit for legal entities. Penalties are imposed based on the quantity/volume of wildlife involved in offences. In cases where a legal entity commits an offence under this Act, the director/manager/secretary may also be charged.
- There are seven designated CITES Management Authorities throughout Malaysia: Perhilitan, the Department of Agriculture, the Department of Fisheries, the Malaysian Timber Industry Board (MTIB), SWD, Sabah Fisheries Department, and the FDS.
- Enforcement officers for this Act include police officers of inspector rank or higher, customs officers, and authorized officers of the seven CITES Management Authorities. Enforcement officers have the power to search, investigate, arrest, seize and prosecute offences under this Act (although they must have written authorization from the Public Prosecutor in order to prosecute).
- This Act (under Section 20) empowers all enforcement officers to exercise all or any of the special powers of investigation that are afforded to police under the Criminal Procedure Code, including the power to require attendance of witnesses for questioning/examination, search and seizure without warrant, access to computerized data, and interception of communications (with authorization from Public Prosecutor, and information may be admissible as evidence in court).

Malaysian Timber Industry Board (Incorporation) Act 1973 (Act 105)

- This Act regulates and controls the trade, marketing and distribution of timber. It applies throughout Malaysia, although only Parts I and II apply in Sarawak.
- It applies to individuals and to legal entities. In cases where a legal entity commits an offence under this Act, the director/manager/secretary may also be charged.

- The main offence under this law is operating as an exporter, importer, supplier, grader, processor, trader, operator or jetty operator without registration/licence. The maximum penalty for such acts is three years prison and a 250,000 ringgit fine (Section 13).
- The Act empowers all enforcement officers with full police investigation powers as prescribed in the Criminal Procedure Code. This includes ability to search, seize and arrest with or without a warrant, the power to enter any timber premises at any time to conduct an inspection, and access to computerized data. Prosecution of an offence under this Act requires written consent of the Public Prosecutor, and the Public Prosecutor may authorize any officer of the Board to conduct the prosecution.
- Section 26M allows for the sale and disposal of seized timber at any time, as decided by the Director General of MTIB, in cases where: the timber easily deteriorates in quality; the custody involves unreasonable expense or inconvenience; there is a lack of adequate storage facilities; or the timber is believed to cause an obstruction/hazard for the public. In cases of prosecution (Section 26Q), the court will issue directions on the disposal of the forfeited timber/proceeds.

Penal Code (Act 574)

- As offences and penalties are contained within most pieces of legislation in the Malaysian legal framework, the Penal Code refers to offences that are cross-cutting or not captured within individual pieces of legislation.
- Under the Penal Code, relevant offences in the context of this report include those relating to organized crime (Sections 130U to 130 ZC) and corruption by public officers (Sections 161 to 164).

Criminal Procedure Code (Act 593)

- Sections 109-116c contain provisions on police powers for investigation relating to “seizable” offences (offences/cases where a police officer may arrest without a warrant).
- These provisions include the power to require attendance of witnesses for questioning/examination, search and seizure without warrant, access to computerized data, and interception of communications (with authorization from Public Prosecutor, and information may be admissible as evidence in court).

Customs Act 1967 (Act 235)

- The Customs Act provides customs officers with full powers of inspection, investigation, search, seizure and arrest, and of prosecution with approval from the Public Prosecutor.
- Customs officers are able to conduct searches without warrants (Section 108).
- To support the investigation of offences, they may have access to any recorded information or computerized data, whether stored in a computer or otherwise (Section 111B).
- The burden of proof lies with the defendant in cases of prosecution (Section 119).
- Imprisonment is allowed for non-payment of fines under this Act, up to six years (Section 123).

- Chapter XIV contains provisions relating to offences and penalties (Sections 133 to 141) – including penalties for falsifying documents, various smuggling offences, and offering or receiving bribes.
- For a first offence, penalties for smuggling of prohibited goods start from 10 times the value of the goods or 50,000 ringgit (whichever is the lesser amount), up to a maximum of not more than 20 times the value of the goods or 100,000 ringgit (whichever is the greater amount), or imprisonment for a term not exceeding three years, or both.

Customs (Prohibition of Imports) Order 2017

- This legislation is divided into four Schedules which enable customs officers to restrict the entry/exit and prevent the smuggling of any prohibited items, or items which require import permits or licences from the relevant parties.
- Schedule 1 – Goods that are absolutely prohibited from import. Included in this list are logs, wood in the rough, roughly squared wood, and baulks from Indonesia.
- Schedule 2, Part 1 – Goods that are prohibited from import to Malaysia except under licence. Included in this list are logs, wood in the rough, roughly squared wood, baulks, sawn timber, plywood, veneered panels, and Bakau poles/piles from all countries (other than Indonesia).
- Schedule 3, Part 1 – Goods that are prohibited from import into Malaysia except in the manner provided. Items 2 to 6 in this list refer to wildlife (animal and plant) species, parts, and products, and the manner required to legally import these items into Peninsular Malaysia, Sarawak and Sabah.

Malaysian Anti-Corruption Commission Act (Act 694)

- This Act enables MACC officers to: receive and consider complaints and reports of offences committed under this Act; and detect and investigate any suspected offence, attempted offence, or conspiracy to commit an offence.
- With a written order from the Public Prosecutor or a MACC officer of the rank of Chief Senior Assistant Commissioner or above, as authorized by the Public Prosecutor, MACC officers have the power to search property (section 31). Power to seize movable property is conferred to a MACC officer of the rank of Assistant Superintendent or above (section 33). Power to seize immovable property shall be effected by the issue of a Notice of Seizure by the Public Prosecutor (section 38). MACC officers have the power to inspect and obtain documents from any bank with a written order from the Public Prosecutor or a MACC officer of the rank of Commissioner or above (section 35). MACC officers have the power to intercept communications with the authorization of the Public Prosecutor or a MACC officer of the rank of Commissioner or above (section 43). With a written notice from the Public Prosecutor or a MACC officer of the rank of Commissioner or above, MACC officers have the power to order the surrender of travel documents (section 44). With an order of the court, any property can be forfeit upon prosecution for an offence under this Act (section 40). The Act also allows a Public Prosecutor to apply to a Sessions Court Judge for the forfeiture of property where there is no prosecution for an offence (Section 41).
- Offences of passive and active bribery are covered by Sections 16, 17, 21, and 23. Section 18 covers the act of giving false documents with the intent to mislead or deceive the principal.

This is a unique offence because it is not direct corruption, but implies underlying corruption for self-gratification. The burden of proof for offences under the MACC Act lies with prosecution to prove that gratifications were corruptly given or obtained.

- Penalties for corruption offences are prescribed in Section 24, and allow for a maximum of 20 years' prison, and fines of not less than five times the sum or value of the gratification, or 10,000 ringgit (whichever is the higher).
- Section 36 covers illicit enrichment, but this is not considered a standalone offence. The MACC cannot investigate an officer based only on the suspicion of him living beyond his means – there must be another underlying offence to investigate, and then this Section can be invoked.
- Additional corruption offences are contained in the Penal Code (Sections 161-164) on corruption involving public servants.
- The MACC Act is not applicable to legal entities, but is being amended to introduce corporate liability under the Act.

Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act (AMLA) - (Act 613)

- The Second Schedule of AMLA contains a list of 398 predicate offences, which are captured from 48 pieces of legislation. A total of 47 of the listed predicate offences could be relevant to wildlife and forest crimes, including the money laundering offence from AMLA, offences under the Customs Act (Sections 133, 135, and 137), CITES Act (Sections 10, 11, 12, 13, and 14), MACC Act (Sections 16, 17, 18, 19, 20, 21, 22, 23, 26, and 28), MTIB Act (Section 13), Penal Code (Sections 161, 162, 163, and 164), and 23 various offences under the Wildlife Conservation Act.
- The maximum penalty for a money laundering offence is 15 years' imprisonment and a fine of five times the sum or value of the proceeds/instrumentalities of the offence, or 5,000,000 ringgit, whichever is the higher.
- According to Section 29, where a serious offence is committed (as listed in the Second Schedule of AMLA), and in the event that the relevant law enforcement agency overseeing investigations into a predicate offence has reason to suspect a money laundering offence under the provisions of AMLA has been committed, the law enforcement agency can open a parallel money laundering investigation pursuant to the investigation powers provided under Section 31 of the AMLA.
- Where an investigating officer has reason to suspect that a person has committed an offence under the AMLA, the investigating officer has the power to enter, inspect and search any property or premise, or inspect and search any person, for any document or information he deems to be relevant to investigations, without a search warrant. With the authorization of a Public Prosecutor, investigating officers may also exercise full investigation powers in relation to financial institutions.
- AMLA also allows for the freezing, seizing and forfeiture of the subject matter/evidence of the crime, instrumentalities of the offence, and the proceeds of crime – both on prosecution of the offence, and under certain conditions when there is no prosecution.
- All offences under AMLA require authorization of the Public Prosecutor to institute a prosecution.

Malaysia Quarantine and Inspection Services Act (Act 728)

- The Malaysia Quarantine and Inspection Services (MAQIS) Act provides the requirements for permits, licences and certificates to import or export any plant, animal, carcass, fish, agricultural produce, soil or micro-organism.
- It empowers enforcement officers of the MAQIS to search, investigate, seize and prosecute (with approval of the Public Prosecutor) offences under this Act. No powers are conferred to customs officers under this Act, but the MRCB works together with the MAQIS at the entry/exit points to control imports and exports.
- Offences under this Act include importing/exporting products without the appropriate permit/licence; having a false permit/licence; not complying with the import/export conditions of the permit/licence; and importing products contaminated or believed to be contaminated with pests/disease.
- Maximum penalty for a first offence under this Act is a fine of 100,000 ringgit, or six years' imprisonment, or both. For a second offence it is a fine of 150,000 ringgit, or seven years' prison, or both.

II. Legislation of Peninsular Malaysia

Wildlife Conservation Act 2010 (Act 716)

- There are two levels of wildlife protection under this Act: The First Schedule is a list of protected wildlife (includes CITES Appendix II species); and the Second Schedule is a list of totally protected wildlife (includes CITES Appendix I species).
- For protected wildlife, unless a licence is held it is prohibited to: hunt or keep any wildlife; take or keep any part or derivative; collect birds' nests; conduct trade or taxidermy business; or import, export or re-export any wildlife, part or derivative.
- For totally protected wildlife, unless a special permit is held it is prohibited to: hunt or keep any wildlife; take or keep any part or derivative; import, export or re-export any wildlife, part or derivative; hunt during the closed season; conduct research; or use in commercial operation (zoo, circus, captive breeding, etc.).
- Schedule 6 identifies 10 protected species that are permitted to be hunted by Aborigines for sustenance purposes (but may not be sold, exchanged for food or other gain).
- Provisions for presumption (sections 56-59) – a person found to be in possession of a snare or with wildlife on their premises will be presumed to be hunting or in possession of wildlife unless proven otherwise.
- Sections 60-88 describe an extensive range of offences and penalties for both protected and totally protected wildlife, applicable to individuals and legal entities.
- This Act provides minimum sentences including fines and imprisonment for certain hunting offences, such as using snares, hunting specific species or quantities, and others. [Sections 29(2b), 60(2), 68(2a, b, c), 69(2) and 70(2)].
- The highest maximum prison sentence under this Act is 10 years' imprisonment for hunting or keeping female totally protected wildlife species without a special permit, under section 70(1). The highest maximum fine is 500,000 ringgit which can be applied for several offences

relating to hunting or keeping specific species of totally protected wildlife without a special permit [Sections 68(2c), 69(2), and 70(2)].

- Enforcement officers under this Act have full powers of police investigation as provided under the Criminal Procedure Code, including arrest, search and seizure with/without warrant, and access to computerized data. They may also enter any licensed/permitted wildlife premises at any time to conduct an inspection. Prosecution requires written consent of the Public Prosecutor.
- Section 105 provides for the disposal of seized wildlife by order of the Magistrate. Although a secondary provision at Section 121 enables wildlife in certain cases to be sold or disposed of as the Director sees fit, there is a separate written policy that discourages this method of disposal in general.

National Forestry Act 1984 (Act 313)

- This law provides for the administration, management, and conservation of forests and forestry development, and applies throughout all states in Peninsular Malaysia, and the Federal Territories of Kuala Lumpur and Labuan. It is applicable to individuals and to legal entities (section 109).
- All forest products (timber, plants, soil, etc.) within or originating from a permanent reserved forest or State land is the property of the State. The State authority may grant a licence to take forest products, or a permit to occupy or conduct activities on the land. The maximum penalty for offences related to conducting such acts without licence/permit is 20 years in prison and a 500,000-ringgit fine.
- Other offences include: contravening licence/permit conditions; prohibited acts such as illegally removing forest products, land clearing, hunting, shooting, trapping, snaring; unlawful possession of forest products; counterfeiting tree/timber marks or altering boundary marks.
- The law provides powers of search and arrest with or without a warrant, as well as the powers of investigation, seizure and forfeiture for officers of the police or forestry departments. In seizable offences (offences/cases where an officer may arrest without a warrant), Assistant District Forest Officers or Police Sergeants or officers of higher rank may exercise special powers for police as allocated under the Criminal Procedure Code.

III. Legislation of Sabah

Wildlife Conservation Enactment 1997 and Wildlife Conservation (Amendment) Enactment 2016

- This Enactment provides for the administration of protected areas, the protection of plants and animals, and the regulation of the possession, trade and utilization of wildlife. Plants and animals are divided into three categories of protection: Schedule 1 refers to totally protected species; Schedule 2 refers to protected species for which limited hunting and collection may occur with a licence; and Schedule 3 refers to protected animals for which a hunting licence is required. The Enactment also applies to CITES species listed in Appendices I, II and III within particular offences, such as possession of protected species, and control of movement of protected species into or out of the state.

- Section 7 provides for Honorary Wildlife Wardens to assist in implementing the Enactment. Wardens may be appointed for a renewable term of three years, and may be paid an honorarium.
- Minimum penalties are provided for certain offences; and the highest maximum penalty is a 250,000 ringgit fine and five year prison sentence, which may be applied to offences under Sections 25(3a), 41(4a), 53(2a), 62(2a), 63(2a), and 87(4). Legal entities are also liable for some offences under the Enactment, with the highest maximum penalty for a corporate body being a fine of 500,000 ringgit for environmental offences in wildlife sanctuaries (Section 18) and environmental offences in Wildlife Hunting Areas (Section 73). Aggravating circumstances are provided under Section 96, including repeat offences, use of firearm, or acting as part of a group with two or more accomplices. Offences committed in these circumstances shall be liable to double the normal penalty for that offence.
- Powers of search, seize, demolition, and arrest with or without a warrant, are provided (Section 89), and an authorized officer may exercise all or any of the police powers and special investigation powers provided under the Criminal Procedure Code. According to Section 117, cases may be prosecuted by any Wildlife Officer, any legal officer of the Wildlife Department, any legally qualified member of the State Legal Service, or by the State Attorney General. The burden of proof for acts of possession is on the defendant (Section 98).

Forest Enactment 1968

- This Enactment provides for the management of forest reserves, forest products on State and alienated land, and the issuance of licences to access and harvest timber or forest products.
- It provides for strong penalties – up to a maximum of 20 years’ imprisonment and a 500,000 ringgit fine for general offences (Section 30). Additional possible penalties include cancellation of licences, payment of damages, and royalties.
- Section 36 provides forestry and police officers with the power to arrest, search, and seize without warrant. Any Forest Ranger, Police Sergeant, or higher-ranked officer may exercise the special powers of police investigation as prescribed in the Criminal Procedure Code in any seizable case. The Director of the Forest Department has the power to prosecute any offence under this Enactment, and may appear personally or be represented by the State Attorney General, a legal officer of the State Attorney General’s Chambers or the Forestry Department, or any authorized officer.
- All forfeited items shall be delivered to the Director to be sold (Section 37(10)).
- The burden of proof for forest offences is on the defendant (Section 38(1)).

IV. Legislation of Sarawak

Wild Life Protection Ordinance 1998

- The Ordinance contains provisions for the management of wildlife sanctuaries and wild animals and plants. Both plants and animals are divided into three categories of protection. The First Schedule identifies totally protected animals, protected animals, and animals which

may be imported or exported under licence. The Second Schedule identifies totally protected plants, protected plants, and plants which may be imported or exported under licence. All CITES Appendix I and II species are classified as protected animals/plants (but are not totally protected), excluding those native species already listed as totally protected species.

- The Ordinance covers a range of offences including possession, hunting, killing, capturing, selling, importing, exporting, breeding, rearing, and keeping. The maximum penalty for wildlife offences under this Ordinance is five years in prison and a 50,000 ringgit fine. Section 51 of this law provides the ability to double the penalty for any offence committed between sunset and sunrise, or any repeat offence.
- For offences where a person is caught in possession of wildlife, the onus is on that person to prove that the wildlife was acquired lawfully (section 38).
- The Ordinance provides enforcement officers with the powers to search, arrest, and seize, with or without a warrant. Chief Wild Life Wardens have the power to require the attendance of any person for the purposes of investigation. Prosecution is conducted by the Public Prosecutor or any officer authorized by the Public Prosecutor.

The Wild Life Protection Rules 1998

- These rules support the implementation of the Wild Life Protection Ordinance, and contain provisions for the conditions and licensing/permitting procedures to keep animals in captivity, commercial wildlife farms, and importing/exporting.
- It outlines the role of the Honorary Wild Life Ranger, which includes reporting to Wildlife Officers or police on any contravention of the wildlife regulations, educating the local community, and assisting Wildlife Officers in the discharge of their duties.
- Penalties for offences are to follow those provided in the Ordinance, but a general penalty is provided for any offences not covered by the Ordinance, of a 3,000 ringgit fine, and a further 500 ringgit fine for each day that the offence continues.

Forests Ordinance 2015

- Provides for the protection and management of forests in Sarawak, and regulates the taking of forest products.
- Section 60 allows any resident of Sarawak to remove any forest product from State land (which is not a forest reserve or protected forest) for domestic use without a licence, but not for sale, barter, or profit. It also allows the removal of timber for domestic use with written authorization of the Director of the Forest Department or any authorized officer. Licences are required for all other removal of forest products and timber.
- Some relevant offences under this ordinance include the illegal export of logs, exceeding production limits, altering hammer marks or boundary marks, unlawful possession of forest products, and falsifying documents.
- The maximum penalty is 10 years in prison and a 500,000 ringgit fine. This Ordinance is applicable to both individuals and legal entities. Section 97 provides the ability to double the penalty for any offence committed between sunset and sunrise, or any repeat offence (except certain identified offences).

- The Ordinance provides enforcement officers with the powers to search, arrest and seize with or without a warrant. The Director of the Forest Department or any officer authorized by him, or a Police Sergeant or higher ranked police officer, may exercise the special powers of police investigation as prescribed in the Criminal Procedure Code in any seizable case. Prosecution is conducted by the Public Prosecutor or any officer authorized by the Public Prosecutor.

3. COMPETENT LAW ENFORCEMENT AUTHORITIES

Malaysia has several law enforcement agencies responsible for the enforcement of wildlife and forestry laws. Given their jurisdiction over environmental crimes, the regions of Sabah and Sarawak have their own law enforcement authorities, listed among the following:

- Department of Wildlife and National Parks (Perhilitan)
- Sabah Wildlife Department (SWD)
- Forests Department of Sarawak (FDS)
- Royal Malaysian Customs Department (RMCD)
- Attorney General’s Chambers (AGC)
- Financial Intelligence Unit (FIU) - Bank Negara Malaysia
- Royal Malaysian Police (RMP)
- Malaysian Anti-Corruption Commission (MACC)
- Malaysian Timber Industry Board (MTIB)

Mapping of agency responsibilities for wildlife and forest crimes in Malaysia

	Supply chain phase	Management agency	Region of responsibility	Main legislation
Wildlife crimes	All	Department of Wildlife and National Parks (Perhilitan)	Peninsular Malaysia and Labuan Federal Territory	Wildlife Conservation Act 2010 (Act 716)
				International Trade in Endangered Species Act 2008 (Act 686)
	All	Forests Department of Sarawak	Sarawak	Wild Life Protection Ordinance 1998
				International Trade in Endangered Species Act 2008 (Act 686)
	All	Sabah Wildlife Department	Sabah	Wildlife Conservation Enactment 1997
	Import, export	Royal Malaysian Customs Department	All regions	Customs Act 1967 (Act 235)
Malaysian Quarantine and Inspection Services (<i>food-related wildlife/ products only</i>)		All regions	Malaysia Quarantine and Inspection Services Act (Act 728)	
Forest crimes	Harvesting	Forestry Department	Peninsular Malaysia and Labuan Federal Territory	National Forestry Act 1984 (Act 313) and State Forestry Enactment
		Forests Department of Sarawak	Sarawak	Forests Ordinance 2015
	All	Sabah Forestry Department	Sabah	Forest Enactment 1968 and Forest (Timber) Enactment 2015
	Processing, trade	Malaysian Timber Industry Board	Peninsular Malaysia and Labuan Federal	Malaysian Timber Industry Board Act 1973 (Act 105)

			Territory	
		Sarawak Timber Industry Development Corporation	Sarawak	Sarawak Timber Industry Development Corporation Ordinance 1973
	Import, export	Malaysian Timber Industry Board	Peninsular Malaysia and Labuan Federal Territory	Malaysian Timber Industry Board Act 1973 (Act 105)
				International Trade in Endangered Species Act 2008 (Act 686)
		Royal Malaysian Customs Department	All regions	Customs Act 1967 (Act 235)
Malaysian Quarantine and Inspection Services <i>(food-related forest/ products only)</i>	All regions	Malaysia Quarantine and Inspection Services Act (Act 728)		

Figure 2 – Mapping of agency responsibilities for wildlife and forest crime in Malaysia

Department of Wildlife and National Parks – Perhilitan (Peninsular Malaysia)

Malaysia has a long history of conservation, gazetted the Chior Wildlife Reserve in 1902 as its first wildlife reserve, and establishing its first national park, the King George V National Park in the 1930s. At that time it also established the Game Department, the forerunner to the current Perhilitan.

Perhilitan is responsible for managing Peninsular Malaysia’s protected areas and its native wildlife. It has a staff of approximately 1,500, of which around 35 percent are engaged in law enforcement functions. It has offices in every state, and rangers at 14 entry points including airports and land borders. At KLIA, Perhilitan officers are permitted to operate airside and have effected several arrests of traffickers.

Perhilitan officers undertake investigations and have similar powers of arrest to police. They have powers of search and seizure, and utilize advanced investigative methods including electronic and physical surveillance, and undercover operations.

Perhilitan has a dedicated investigation unit and an intelligence unit that performs proactive intelligence-led investigations. Perhilitan officers recruit and manage covert human intelligence sources (CHIS) and have a central database of informants. Officers receive some limited formal training in the management of informants, and informants receive rewards in case of success (within budgetary constraints).

From 2012 to 2016, Perhilitan investigated 235 wildlife cases arising from seizures, prosecuted 320 individuals, and convicted 254. A breakdown of these figures is shown in Figure 3.

Year	No. of seizure cases	No. of prosecutions	Prosecution in progress/ on hold	No. of convictions
2012	45	10	3	7
2013	31	45	7	38
2014	54	101	18	83
2015	30	90	16	74
2016	75	74	22	52
Total	235	320	66	254

Figure 3 – Perhilitan cases 2012-2016

It is likely that these conviction rates are more representative of a reliance on prosecuting cases that are based upon evidence collected *in flagrante delicto*, rather than being the result of protracted, complex investigations. This is by no means a criticism of Perhilitan, but a reflection of the level of training their staff receive and their background in wildlife conservation rather than criminal investigation. Perhilitan investigators receive basic investigations training, and then undertake additional training in specialist skills as required.

The 235 cases investigated by Perhilitan represent a combination of domestic and international trafficking, and this is reflected in both the specimens seized and the breakdown of nationalities of offenders prosecuted.

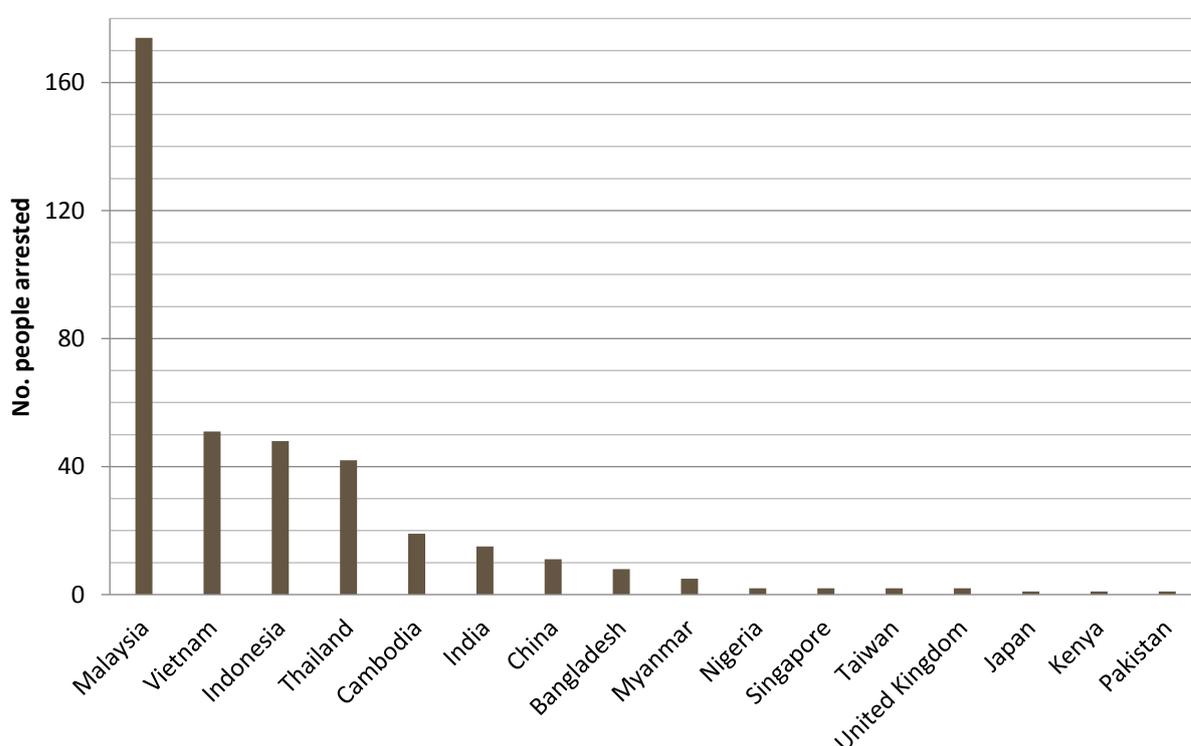


Figure 4: Nationality of suspects arrested by Perhilitan, from 2012 to 2016

Domestically, Perhilitan has been effective at disrupting networks killing or trading in iconic species such as elephants, tigers and orang-utans within Peninsular Malaysia. This includes: the February 2017 arrest of members of a major poaching network targeting elephants in Kelantan;¹⁶ the August 2016 arrest of 12 individuals trafficking tiger skins, helmeted hornbills, testudines, tiger products and

¹⁶ The Star Online, [Major poaching ring crippled](http://www.thestar.com.my/news/nation/2017/02/14/major-poaching-ring-crippled-perhilitan-seven-held-numerous-weapons-and-animal-parts-seized) at <http://www.thestar.com.my/news/nation/2017/02/14/major-poaching-ring-crippled-perhilitan-seven-held-numerous-weapons-and-animal-parts-seized>, accessed 11 July 2017

approximately 400 kg of ivory in Kuala Lumpur;¹⁷ and the arrest of four suspects trafficking Sumatran orang-utans in July 2015.¹⁸

As seen in Figure 4, Malaysians represent the largest number by nationality of people prosecuted by Perhilitan, with Vietnamese, Cambodians and Thais also figuring prominently.

Whilst these major arrests attract a lot of media attention, numerically the species most seized by Perhilitan is the white-rumped shama, a songbird popular in the pet trade. The red-eared slider, an exotic testudine popular in the pet trade, follows closely in second place. In fact, four testudines are in the top 10 most seized species by Perhilitan. Pangolins, claimed to be the most poached mammal in the world, are the fifth most seized species. These figures are illustrated in Figure 5.

	Species	No. individuals seized
1	White-rumped Shama	5,146
2	Red-eared slider	4,982
3	Baya weaver	3,278
4	Malayan box turtle	2,726
5	Pangolin	2,230
6	Black pond turtle	1,764
7	Clouded monitor	1,655
8	Indian star tortoise	1,112
9	Monocellate cobra	436
10	African grey parrot	288

Figure 5: Species seized by Perhilitan, from 2012 to 2016

The reliance on catching suspects *in flagrante delicto* is indicated by the breakdown of offence types as shown in Figure 6, with 74 percent of convictions resulting from cases prosecuted during this period by Perhilitan pertaining to the possession or keeping of wildlife; whilst only 14 percent of the convictions were for wildlife smuggling.

¹⁷ Traffic, [Malaysia nabs 12 with over 200 parts of threatened species](http://www.traffic.org/home/2016/9/2/malaysia-nabs-12-with-over-200-parts-of-threatened-species.html) at <http://www.traffic.org/home/2016/9/2/malaysia-nabs-12-with-over-200-parts-of-threatened-species.html> accessed on 11 July 2017

¹⁸ Traffic, [Malaysia clamps down on illegal wildlife trade using social media](http://www.traffic.org/home/2015/7/27/malaysia-clamps-down-on-illegal-wildlife-trade-using-social.html) at <http://www.traffic.org/home/2015/7/27/malaysia-clamps-down-on-illegal-wildlife-trade-using-social.html> accessed on 11 July 2017

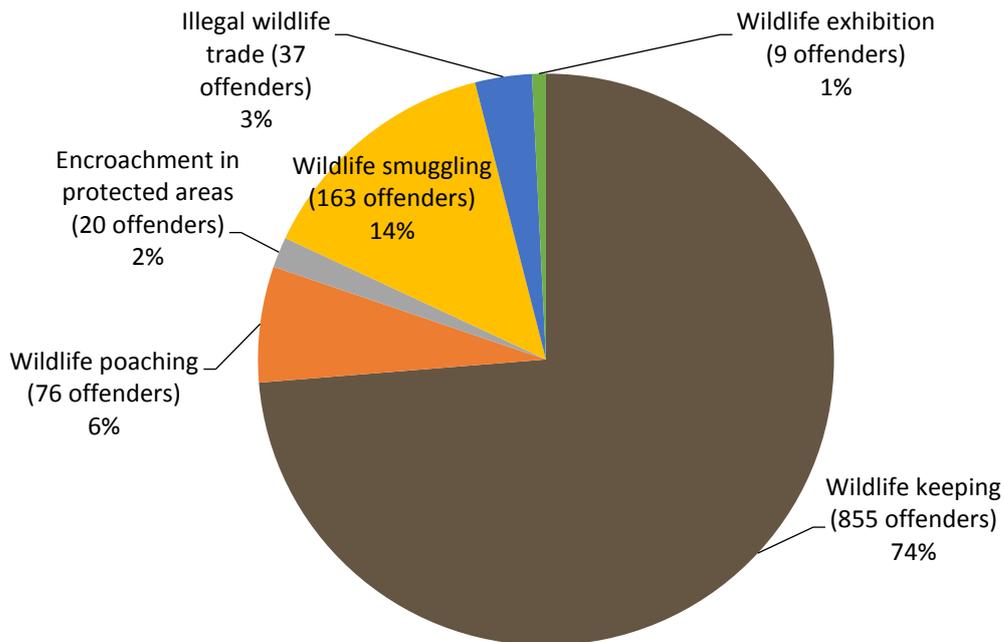


Figure 6: Number and type of convictions from 2012 to 2016

When it comes to combating transnational organized wildlife crime, the successes of Perhilitan have been limited by its role and domestic focus. The majority of major shipments of wildlife products seized entering or leaving Malaysia, particularly ivory and rhino horn, have been seized by the RMCD as it has this mandate. The RMP only get involved in some wildlife crime cases upon request by Perhilitan or customs, leaving the majority of cases to those agencies to handle.

Despite this, Perhilitan has been very effective at disrupting the trafficking of testudines between India and Thailand or Hong Kong. To do this, Perhilitan utilizes an intelligence-led strategy to target and disrupt Indian-based networks and cooperate closely with their counterparts, the Wildlife Crime Control Bureau (WCCB) in India and INTERPOL in Singapore, a cooperation promoted by a recent UNODC Wildlife Inter-Regional Wildlife Enforcement (WIRE) meeting in Bangkok. These agencies also work very closely with NGOs in this space, such as the Wildlife Justice Commission (WJC) and TRAFFIC.

A recent example of this successful cooperation is an operation in May 2017 involving Perhilitan, the WCCB and the WJC, investigating a network supplying Hamilton's or black pond turtles from India to Malaysia. This operation culminated in the arrest of a suspect in a hotel room in Kuala Lumpur and the mapping of a network in India, which is currently being investigated by the WCCB. This offender was subsequently convicted and sentenced to two years' imprisonment.

Perhilitan has its own forensic unit with a staff of five officers; however, their capabilities and expertise are limited. They have no fingerprint or ballistics capability, and lack the training, equipment and expertise of a police crime scene unit. Police are rarely if ever called to process a crime scene. Perhilitan does have its own DNA laboratory, but this is more focussed on species identification than linking suspects to crime scenes.

When it comes to prosecuting cases, Perhilitan utilizes two seconded prosecutors from the AGC, as well as about 20 officers of its own staff. Whilst these officers are not qualified lawyers or crown prosecutors, they receive basic training at Perhilitan's own training academy and represent the agency in criminal matters. There is a trade-off in using qualified legal officers compared with those that are trained internally, as the specific legal skills of an internally trained Perhilitan official may not be the same, but his or her experience with wildlife crime enables Perhilitan to have a legal representative who understands the landscape and can provide an insight into these crimes that a regular prosecutor may lack. This system is working well to date, but it remains to be seen how well it will handle the prosecution of cases with more of a transnational crime focus that rely upon evidence collected through covert means, rather than cases that rely upon evidence collected *in flagrante delicto*.

Perhilitan lacks a centralized database for recording seizures, arrests, or intelligence that would be accessible across all three Malaysian regions. It has developed its own internal database and is in the process of receiving analytical software to enhance its intelligence capability.

Perhilitan actively monitors online trading sites and some social media accounts/groups, and has arrested several suspects as a result. However, this monitoring is *ad hoc* as there is no unit dedicated to this emerging crime trend, and Perhilitan officers have not received any formal training in online criminal investigations.

The Wildlife Conservation Act 2010 (Act 716) is currently being revised and penalties are set to be increased to align them more closely with the Penal Code. There is also an intention to address the breeding and trafficking of hybrid species and the online trade in wildlife.

Within Peninsular Malaysia an online licensing system allows the possession of protected species for commercial and non-commercial use. Any individual keeping protected wildlife must maintain a logbook of transactions, including sales, breeding, and deaths. These records are received annually by Perhilitan and manually entered into a central database. Enforcement officers may inspect the facilities of licence holders at any time without a search warrant.

Sabah Wildlife Department

The SWD operates under Sabah's regional Ministry of Tourism, Culture and Environment, and is responsible for managing approximately 70,000 hectares of wildlife, bird and marine sanctuaries.¹⁹

The Enforcement Division of the SWD is responsible for investigating violations of the Wildlife Conservation Enactment 1997, and undertakes duties such as performing patrols, roadblocks, conducting inspections and investigations into breaches of the Act. The Enforcement Unit of the SWD has a complement of about 70 staff members who undertake investigations. The primary focus of their investigations is the trafficking in sea turtles and sea turtle eggs, Asian box turtles, pangolins and bears. Intelligence suggests that some of the sea turtle eggs seized in Sabah are probably smuggled from the Philippines.

¹⁹ Sabah Wildlife Department website at <http://www.wildlife.sabah.gov.my/?q=en/content/protected-areas> accessed on 21 July 2017

The SWD averages around three wildlife cases a year, with a spike in 2015 to 30 cases reportedly due to an increased focus during this period on cases involving sea turtle eggs in cooperation with the Sabah Marine Police. This number then dropped to just two cases in 2016.

Like other conservation agencies in Malaysia, SWD enforcement officers generally have a science background and receive only basic level law enforcement training.

The SWD does not have an intelligence unit, nor does it have a formal mechanism for recruiting and managing CHISs. It currently does not officially use informants, but requests have been submitted for a budgetary increase to allow for the recruitment and management of CHISs. The SWD does not use advanced investigation methods, instead relying on local police for this.

The SWD does not have a central database for convicted offenders or suspects, nor does it have a facility to share this information with agencies in Sarawak or Peninsular Malaysia.

The SWD does not have any forensic capacity, and relies upon rangers to process crime scenes. It has no capacity to collect human fingerprints or DNA, nor does it have any ballistics capacity. If necessary, SWD can call in the police to assist in processing a crime scene, but this happens very rarely. It does have the capacity to undertake DNA analysis of local species, but there is no capacity in Sabah to conduct DNA tests for non-native species. If this is needed, SWD sends the specimens to the National Wildlife Forensic Laboratory in Kuala Lumpur.

The SWD is facing increasing pressure from the establishment of new roads traversing protected forest reserves and wildlife sanctuaries that are leading to an increase in poaching numbers. Criminals are then using forums on Facebook and other online platforms such as WhatsApp to sell the poached wildlife.²⁰

To address this online trade, the SWD is developing its capacity to undertake investigations. However, it has not received any training in conducting or managing such investigations. At the moment the SWD is reliant on the help of NGOs to monitor the online trade in wildlife and provide them with intelligence in relation to suspected criminality.

Such intelligence led to the arrest of two traffickers selling sun bear paws and gall bladders in 2016. This followed on the heels of the arrest of two traffickers two weeks earlier for trying to sell eight sun bear paws and two gall bladders.²¹ In another case, a trafficker was handed a 50,000 ringgit fine after being arrested with a live clouded leopard after the SWD monitored his online activities.²²

²⁰ The Star Online, [Online ads lead to arrest of illegal wildlife trader in Sabah](http://www.thestar.com.my/news/nation/2016/08/21/illegal-wildlife-trade-arrests-sabah-sunbear/#UggAC74gsxmZituX.99n) at <http://www.thestar.com.my/news/nation/2016/08/21/illegal-wildlife-trade-arrests-sabah-sunbear/#UggAC74gsxmZituX.99n> accessed 21 July 2017

²¹ The Star Online, [Online ads lead to arrest of illegal wildlife trader in Sabah](http://www.thestar.com.my/news/nation/2016/08/21/illegal-wildlife-trade-arrests-sabah-sunbear/#UggAC74gsxmZituX.99n) at <http://www.thestar.com.my/news/nation/2016/08/21/illegal-wildlife-trade-arrests-sabah-sunbear/#UggAC74gsxmZituX.99n> accessed 21 July 2017

²² WWF Malaysia, [Joining Forces Against Wildlife Crime in Sabah](http://www.wwf.org.my/?21066/Joining-Forces-Against-Wildlife-Crimes-in-Sabah) at <http://www.wwf.org.my/?21066/Joining-Forces-Against-Wildlife-Crimes-in-Sabah> accessed on 21 July 2017

The SWD also works closely with international and local NGOs who provide valuable support in assisting in anti-poaching and anti-trafficking operations. These efforts led to the formation of successful anti-poaching task forces in the Lahad Datu and Tawau Districts in 2014 and 2015.

The SWD has three officers who undertake prosecutions on behalf of the agency, but like Perhilitan, this role is performed by Wildlife Officers who have received specific training, not by qualified lawyers or crown prosecutors.

The SWD manages a paper-based licensing system that allows the possession of protected species for commercial and non-commercial use. Any individual keeping protected wildlife must maintain a logbook of transactions, including sales, breeding, and deaths. These records are received annually by the SWD. Enforcement officers may inspect the facilities of licence holders at any time; however they need a search warrant to enter a residence.

Forests Department of Sarawak

The FDS has a long history dating back to 1919, when it was founded with a handful of staff and J.P. Mead as its first Conservator of Forests. From those humble beginnings, the organization has grown to about 2,000 staff, of whom about 500 are focused on law enforcement. The FDS is responsible for managing over 4 million hectares of permanent forest estate and around 942,000 of totally protected areas. The latter are made up of 37 national parks, five wildlife sanctuaries and 14 nature reserves.²³

In Sarawak, all wildlife and forestry investigations are undertaken by the FDS since 2012, occasionally with the support of the RMP and RMCD, for example during operations targeting illegal loggers or poachers. Rangers engaged in enforcement activities receive basic law enforcement training, but like their counterparts in Perhilitan and Sabah, they come from a conservation background.

The FDS has an intelligence unit but does not possess any analytical software, and its analysts receive only basic training. The FDS does not use advanced undercover officers or undertake electronic surveillance. It does have basic physical surveillance capability; however, its officers have not been trained in surveillance. When the FDS needs to utilize advanced investigation methods, it relies almost completely on the police.

In Sarawak, the FDS utilizes Honorary Wildlife Rangers, who provide timely and reliable enforcement information from the field. These Honorary Rangers are generally recruited as volunteers from the local communities in certain areas, and through their employment the FDS has access to good local intelligence and CHIS. Apart from the Honorary Rangers, the FDS does not have a formal mechanism for recruiting and managing CHIS.

In 2013, 2014 and 2015, the FDS investigated a total of 12, 13 and 15 cases respectively. In 2016 the number of cases dropped to five. The cases investigated generally relate to domestic matters,

²³ Forest Department Sarawak website, at

http://www.forestry.sarawak.gov.my/modules/web/pages.php?mod=webpage&sub=page&id=1170&menu_id=0&sub_id=140 accessed on 21 July 2017; and verbal update from FDS representative.

although the FDS has investigated cases of trafficking of redback spiders from Australia and white-rumped shamas from Indonesia.

In instances where Customs seize wildlife, the cases together with the exhibit and any evidence are handed over to the FDS for further investigation and disposal or retention of the exhibit.

The FDS does not have a central database for convicted offenders or suspects, nor does it have a facility to share this information with agencies in Sabah or Peninsular Malaysia.

The FDS does not have any forensic capacity and relies upon rangers to process crime scenes. It has no capacity to collect human fingerprints or DNA, nor does it have any ballistics capacity. If necessary, FDS can call in the police to assist in processing a crime scene but this very rarely happens. It does have the capacity to undertake DNA analysis of local species, but there is no capacity to DNA test non-native species in Sarawak. If this is needed, FDS officers send these specimens to the National Wildlife Laboratory in Kuala Lumpur.

Like Perhilitan and the SWD, the FDS is developing its capacity to undertake online investigations, however its officers have not received any training in conducting or managing such investigations. At the moment the FDS is reliant upon NGOs for help with monitoring the online trade in wildlife and to provide intelligence in relation to suspected criminality. If necessary the FDS can seek the assistance of the RMP to identify the users associated with telephone and internet protocol numbers yielded in these online investigations.

When it comes to prosecuting cases, the FDS relies upon local prosecutors from the State Prosecutor's Office. These prosecutors are all qualified lawyers, but they may or may not have knowledge and expertise in prosecuting wildlife and forestry cases.

In Sarawak, trading of wildlife is permitted only if the specimens concerned were sourced from a licensed breeding facility, or if they were taken from the wild with the required permit.

Royal Malaysian Customs Department

Malaysia is a source and transit country for trafficked wildlife and timber products, and the RMCD plays a crucial role in interdicting these goods and stemming the flow. To fulfil this role, the Customs Department has 709 officers working in the Enforcement Division posted throughout the country, handling all tasks relating to law enforcement. Customs officers are well trained and educated, with senior officers requiring a Bachelor's Degree as a minimum requirement for employment.

The main pieces of legislation used by the RMCD are the Customs Act 1967 (Act 235), the International Trade in Endangered Species Act 2008 (Act 686) and the Customs (Prohibition of Imports) Order 2017.

Part XII of the Customs Act empowers Customs Officers to undertake inspections, conduct investigations, perform searches, seizure contraband and arrest suspects. The RMCD has the authority to commence prosecutions with its own prosecutors.

As mentioned above, the RMCD has repeatedly demonstrated its capability with regards to identifying and seizing trafficked wildlife products. The RMCD displays a high level of proficiency and expertise in this regard and deserves to be congratulated on this achievement. Statistics on wildlife seizures by Customs from 2012 to July 2017 are shown in Figure 7.

Commodity	Year						Total
	2012	2013	2014	2015	2016	2017	
Ivory	2	3	2	6	9	4	26
Pangolin scales			1			4	5
Geckos					1	1	2
Tortoises				1	6	2	9
Pangolins (live)	1						1
Gaharu wood	2	1					3
Red sander wood	4	7	1	4	4		20
Turtles		3					3
Snakes					2	1	3
Arowana (fish)						1	1
Rhino horn						1	1
Antelope horn						1	1
Frogs						1	1
Banded leaf monkey						1	1
Piranha (fish)			1				1
Total	9	14	5	11	22	17	78

Figure 7 - Wildlife seizures by Customs from January 2012 to August 2017

Unfortunately, this high seizure rate does not correspond with a high conviction rate of major traffickers. Whilst the RMCD has been successful in arresting low-level couriers, it has not been as successful at arresting the major players in the wildlife trade who use Malaysia as a source or transit country.

The RCMD utilizes some advanced investigation methods and this is primarily undertaken by the Enforcement Division. They also utilize undercover operatives and physical and electronic surveillance methods. However, they do not have a dedicated unit for criminal intelligence analysis.

The RMCD recruits CHISs and operates a central register for informants. Information received by informants is codified and registered, and access is restricted. Information can only be accessed by two officers (head of division and the investigating officer). The RMCD uses a rewards system and there are regulations to calculate the size of the reward, with the Director General having the final decision on this.

For drug cases, the RMCD undertakes controlled deliveries in cooperation with Police. To undertake a controlled delivery requires authorization from senior management and the practice is uncommon. So far, the RMCD has never performed a controlled delivery on wildlife products, despite several apparent opportunities to do so. According to the RMCD, fake consignee names and addresses present a problem for conducting controlled deliveries, however, it should be acknowledged that at some stage criminals would still need to pick up or arrange delivery of these products.

RCMD has a dedicated Risk Assessment Unit operating at headquarters level, which undertakes risk assessments of all goods and passengers entering and leaving Malaysia. This unit develops profiling and targeting for goods and passengers based on data analysed from the Customs Information System, port system and airport system. Container Control Units are located at all seaports and conduct profiling and targeting on the movement of containers. A comprehensive risk assessment is conducted for new customers, and the level of risk is based upon a number of factors including the country of origin and the destination country. All goods are governed by legislation enforced by RMCD, including the Customs Act and the CITES Act.

The RMCD scans air cargo based on targeting and profiling conducted by the Risk Assessment Unit. In relation to air passengers, customs officers utilize risk profiling and luggage scanning/searches for suspect passengers.

When it comes to seaborne freight, the RMCD is faced with the same challenge as other customs agencies: the huge quantities of containers entering and exiting the port every day. For example, Port Klang has 12 million container movements every year.

All seized wildlife and timber products are handled in accordance with the provisions of relevant legislation and the Enforcement Standing Instructions. Any timber seized in Malaysia is measured, marked, recorded and photographed, and put into secure storage that only the investigating officer can access. A similar system exists for wildlife seizures. Even though capacity-building programmes have been conducted to identify CITES-listed timber species, customs officers still need to contact the MTIB to conduct joint inspections of timber cases.

The RMCD maintains possession of all exhibits until a prosecution is completed. After a court case is finalized the RMCD hands over wildlife exhibits to the relevant regional wildlife agencies (Perhilitan, FDS, or SWD) and timber exhibits to the MTIB.

Corruption has plagued the RMCD over the last several years and is something that the Department has shown it is committed to addressing. All customs officers take an oath and sign a pledge committing to integrity, as all government agencies are required to do. All civil servants (including customs officers and their spouses) must also declare personal assets every five years as well as any trip abroad. At the start of every shift, customs officers must declare how much money is being carried on their person, and it is checked again at the end of the shift. Supervisors can also make spot checks during a shift to ensure compliance.

There is an RMCD Internal Disciplinary Board that conducts an initial assessment of any allegations made against customs officers. Cases can also be started by MACC, and the RMCD supports these investigations. There are also integrity officers from the MACC that are seconded within the Customs Department.

Internationally, RMCD requests for assistance and information sharing are conducted under the Regional Intelligence Liaison Office of the World Customs Organization (WCO) with other countries (for example the United States, Korea, or Turkey). CENcomm is used as a secure communications platform for the sharing of intelligence.

Domestically, Customs has good cooperation with domestic wildlife agencies, notably Perhilitan, FDS, and SWD, and with other agencies such as the MACC, RMP and MTIB. Intelligence on environmental crime is disseminated to other agencies on a case-by-case or ad-hoc basis.

Financial Intelligence Unit – Bank Negara Malaysia

The Financial Intelligence Unit (FIU) is established across three divisions of the Financial Intelligence and Enforcement Department within the Central Bank of Malaysia (Bank Negara Malaysia). The core function of the FIU is to receive suspicious transaction reports (STRs) and cash threshold reports (CTRs), analyse these reports together with information from databases maintained by other law

enforcement agencies, and disseminate financial intelligence to support the investigations of all law enforcement agencies in Malaysia.²⁴ The Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA) is the relevant legislation that deals with money laundering in Malaysia.

In Malaysia all reporting institutions are required by law to undertake measures to prevent themselves from being used as a conduit for money laundering. Reporting institutions include those from the following sectors: banking; insurance; money services; electronic money issuers; capital markets; development finance; other financial institutions such as money lenders, leasing and factoring, and pawnbrokers; and designated non-financial businesses and professions such as casino and gaming, real estate, and lawyers. All reporting institutions are required to report on transactions deemed to be suspicious, regardless of the amount, while designated reporting institutions such as banks are also required to submit CTRs for any physical transactions of 50,000 ringgit or more on aggregate per day. From January 2012 to May 2017, over 100 STRs submitted were related to suspected wildlife crime, and more than 2000 STRs were related to clients suspected of involvement in timber trafficking.

Since May 2017, the FIU has increased from a staff force of 67 to 118, and expanded from four divisions to five, with three divisions dedicated to FIU-related functions. The FIU works closely with and disseminates financial intelligence to all law enforcement agencies in Malaysia.

The National Coordination Committee to Counter Money Laundering (NCC) is made up of 16 ministries, supervisory authorities and law enforcement agencies involved in combating crime, with Bank Negara Malaysia serving as its chair and secretariat. The NCC oversees the coordinated development and implementation of national strategies and policies to effectively counter the risks arising from money laundering, terrorism financing, and financing related to the proliferation of weapons of mass destruction. While the Ministry of Natural Resources and Environment is not currently a member of NCC, there are future plans to expand the membership of NCC to include it and the relevant law enforcement agencies responsible for combating wildlife and forest crimes. At present, the Ministry's Department of Environmental Crime is included as an invited participant in relevant NCC sub-committees involving other law enforcement agencies.

As per Figure 8 below, the FIU receives and analyses STRs and CTRs submitted by reporting institutions, and combines this with other data sources such as information on directors and shareholders of legal persons from the Companies Commission of Malaysia, information from the Immigration Department where relevant, and open source searches. The financial intelligence from this analysis is then disseminated to the relevant law enforcement agency based on the type of suspected offence. Upon receipt of this intelligence, the agency may open Enquiry Papers or Investigation Papers. Conversely, the law enforcement agency can also contact the FIU to assist with financial intelligence assessments on suspects they are already investigating. In addition, the FIU also works with the relevant law enforcement agencies to produce typology and red flag reports for the benefit of reporting institutions. These reports are intended to assist reporting institutions in

²⁴ Bank Negara Malaysia website at <http://amlcft.bnm.gov.my/AMLCFT02biii.html> accessed on 21 July 2017

developing more comprehensive internal red-flag indicators to facilitate prompt detection of suspected offences and improved quality in the reporting of suspicious transactions.

The FIU is very effective at identifying money-laundering trends for high-risk crimes, and has identified five priority crime types as a result of the 2013 National Money Laundering and Terrorism Financing Risk Assessment exercise, namely: fraud; corruption; tax evasion; smuggling of controlled goods; and drugs trafficking. Currently, this does not include environmental crime, although at the time of writing a new national risk assessment exercise was ongoing and the list of high-risks crime may change.

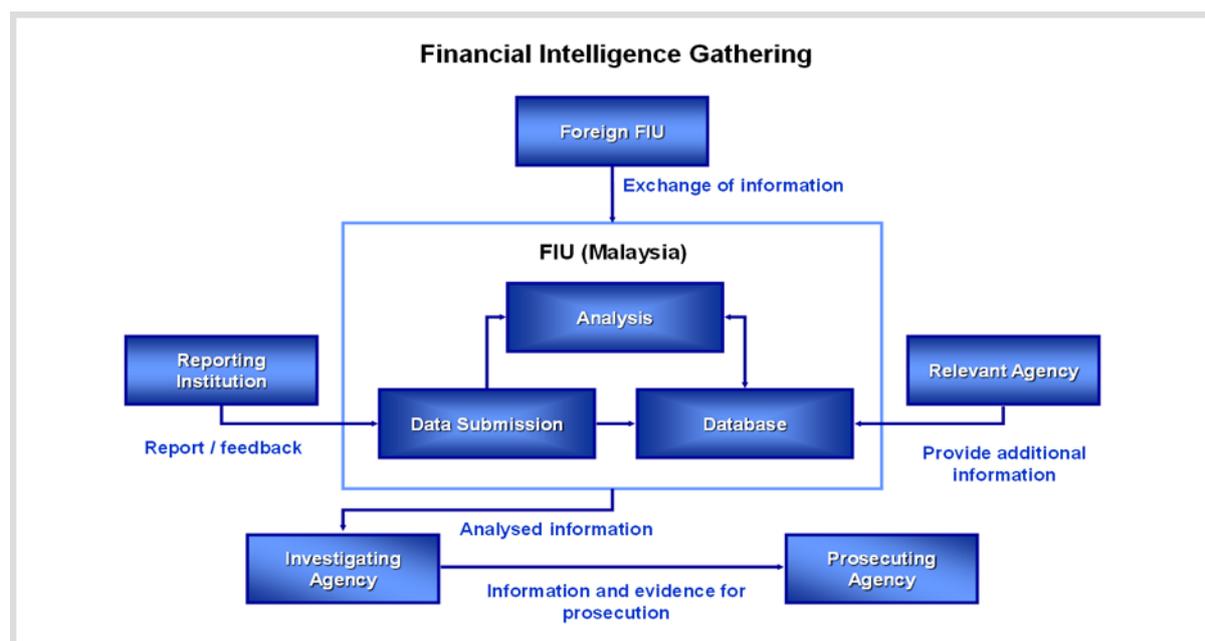


Figure 8 – Financial Intelligence gathering – Source: Bank Negara Malaysia

Attorney General's Chambers

Responsibility for the prosecution of environmental crimes within Peninsular Malaysia ultimately rests with the AGC, although the role is currently shared between the AGC and Perhilitan.

There are approximately 400 prosecutors from the AGC working in courts throughout Malaysia, responsible for trying cases brought by the RMP, Perhilitan, RMCD and the MACC. There are two dedicated prosecutors from AGC seconded to Perhilitan who provide legal advice and conduct prosecutions of serious wildlife crime cases. Wildlife and forest crime cases are tried in one of Malaysia's 39 Sessions Environmental Courts or its 17 Magistrates' Environmental Courts.

In relation to requests for international mutual legal assistance (MLA) and extraditions there appears to be little cooperation with other countries. In 2015-2016 one request was received from Kenya and two from Vietnam relating to the smuggling of ivory, rhino horn and pangolin scales. The request from Kenya was executed and the response provided to Kenyan authorities; however, the two

requests from Vietnam are still pending a response from the relevant Malaysian law enforcement authorities. Malaysia has no record of an outgoing request for MLA in relation to wildlife crime.²⁵

In relation to other crime types, Malaysia has made some requests for MLA from other countries on the basis of the United Nations Convention against Transnational Organized Crime. It has requested MLA from China regarding a case of alleged cheating and fraud, asked for MLA and extradition from the Philippines over an alleged murder, and extradition from Bangladesh over a suspected case of migrant smuggling.

Clarification was obtained from the AGC on the use of undercover operatives and controlled deliveries. In discussions with the AGC representative, UNODC was informed that the use of undercover operatives, including agents provocateurs, is permitted under Malaysian law. However, any evidence collected using these methods must be corroborated by evidence obtained from other sources.

In relation to controlled deliveries, the advice provided was that this investigation technique does not require the approval of AGC, and is permissible under the law.

Although the AGC does not have a unit dedicated to wildlife and forest crimes, it does have two seconded prosecutors in Perhilitan, and there are dedicated Environmental Courts. It is recommended that consideration be given to increasing the number of seconded prosecutors that deal exclusively with environmental crime cases in order to strengthen the rate of successful prosecutions.

Malaysian Anti-Corruption Commission

In 2008 the Parliament and Government of Malaysia unanimously approved the formation of an independent anti-corruption commission. On 1 January 2009 the MACC Act came into effect, mandating the MACC to investigate and prevent corruption across all three regions in Malaysia.

MACC has a complement of about 2,600 staff, of whom about 600 are focussed on investigations and 400 on intelligence, and has shown itself capable of investigating serious corruption within Malaysia. These investigations can be activated in four ways. On a reactive basis, they can be initiated by a complaint, information from informants, or agency referrals. They can also be proactive and based on an investigating officer's own initiative. The MACC operates a dedicated intelligence unit with about 20 trained criminal intelligence analysts equipped with the latest analytical software.

Section 10 of the MACC Act grants all MACC officers the same powers and immunities as a police officer as appointed under the Police Act 1967, as well as the powers of police in the Criminal Procedure Code 1999 and the Registration of Criminals and Undesirable Persons Act 1969.²⁶

²⁵ Malaysian presentation to the UNODC WIRE Meeting for Prosecutors, Bangkok, February 2017.

²⁶ MACC Act, 2009 at http://wgfacml.asa.gov.sg/en/Laws_of_Countries/Malaysia/SPRM_act_BI.pdf accessed on 11 July 2017

Section 47 of the MACC Act compels any such person as required to give information to Commission Officers or to police, and Section 48 criminalizes the failure to do so.

In its current form, the MACC Act is not applicable to legal persons. However, steps are under way to include corporate liability provisions, whereby legal persons will be able to be convicted for any offence under the MACC Act.

The MACC can and does use advanced investigations techniques including telephone intercepts, physical and electronic surveillance, the use of CHIS, and the deployment of undercover officers.

The MACC is the sole agency tasked with the enforcement of anti-corruption law in Malaysia, and is at the forefront of anti-corruption initiatives nationwide. The MACC has been very active and successful in investigating cases, and in particular, of cases involving law enforcement officers engaged in corrupt practices. For example, in 2017, the MACC targeted several networks of corrupt police that resulted in 16 police officers being arrested in March 2017,²⁷ whilst an additional 12 individuals including two district police chiefs were arrested in Malacca in May.²⁸ The MACC also undertook several major investigations from 2011 to 2014 targeting corrupt practices among Customs officials in Port Klang, including senior officers up to the level of State Director. In 2011, over 60 officers were arrested for soliciting bribes²⁹ and a 2014 investigation into revenue leakages led to the arrest of 30 officers including two State Directors.³⁰

The MACC has shown itself capable of running long-term, intelligence-led, covert investigations. These investigations require the cohesive interaction of intelligence analysts, investigators and prosecutors to achieve a successful outcome. It is these skill sets that are required to investigate transnational wildlife crime, and it is these skill sets that, while demonstrated by the MACC, are currently absent in Malaysia's broader effort to address this problem.

It is therefore recommended to conduct, under the framework of the Malaysia Wildlife Enforcement Network (MY-WEN), a review of all major ivory and rhino horn seizures that have a Malaysian nexus to determine what role, if any, corrupt officials have played in their trafficking.

²⁷ News Singapore, [MACC puts 16 cops in the dock for graft charges](https://1newssingapore.com/macc-puts-16-cops-in-the-dock-for-graft-charges/) at <https://1newssingapore.com/macc-puts-16-cops-in-the-dock-for-graft-charges/> accessed on 16 July 2017

²⁸ The Sun, [MACC detains another police officer in Malacca](http://www.thesundaily.my/news/2017/05/25/macc-detains-another-police-officer-malacca) at <http://www.thesundaily.my/news/2017/05/25/macc-detains-another-police-officer-malacca> accessed on 16 July 2017

²⁹ Malaysia Today, [Over 60 Customs Officers Arrested By MACC](http://www.malaysia-today.net/over-60-customs-officers-arrested-by-macc/) at <http://www.malaysia-today.net/over-60-customs-officers-arrested-by-macc/> accessed on 16 July 2017

³⁰ The Star Online, [Datuk among 16 custom officers nabbed in MACC's widening probe on unpaid excise duties](http://www.thestar.com.my/news/nation/2014/09/20/second-customs-state-director-held-datuk-among-16-officers-nabbed-in-maccs-widening-probe-on-unpaid-excise-duties) at <http://www.thestar.com.my/news/nation/2014/09/20/second-customs-state-director-held-datuk-among-16-officers-nabbed-in-maccs-widening-probe-on-unpaid-excise-duties> accessed on 16 July 2017

There is also no current national policy on the transparent management of such high-value exhibits, like rhino horn, ivory or timber, with exhibit security and management left to the relevant agencies. However, efforts to develop such a policy are under way, under the NCC. While the MACC has not heard of any cases of leakages from the relevant agencies, it would still be pertinent to introduce a system of random checks to mitigate this high corruption risk. MACC has participated in similar activities when it was part of a committee responsible for planning the destruction of 9.5 tonnes of Malaysia's ivory holdings in 2016.³¹

From January 2012 to May 2017, the MACC prosecuted a total of 26 individuals for corruption offences related to environmental crimes, largely related to logging. Of those, 70 percent were cases of passive bribery, whereby suspects had given bribes, often to police officers. In relation to wildlife crimes, the MACC have initiated three investigations, one of which involves three Customs Officers who are still being investigated.

The MACC has access to a division of the AGC that deals specifically with corruption. These 35 deputy public prosecutors are based at the MACC and cooperate closely with investigators during corruption enquiries. All MACC hearings are conducted within the normal court processes, which promotes transparency and accountability.

The corruption preventive functions of the MACC are provided under sections 7(c) to (g) of the MACC Act, and many preventive initiatives have involved MACC and other government departments and agencies, for example:

- a. Following a decision at the Cabinet meeting on 14 March 2014 and the Prime Minister's Directive No.1 of 2014, the Integrity and Governance Committee (*Jawatankuasa Integriti dan Tadbir Urus*, or JITU) was established to strengthen the integrity management system of the Malaysian government administration. Under this Directive, it is required that all Ministries are to set up a JITU. The activities of the JITU are being coordinated by the Minister in charge of Integrity and Governance of the Prime Minister's Department.
- b. The Service Circular No. 6 of 2013 established Integrity Units. All government agencies (inclusive of Government Linked Companies) under the Federal Services Commissions, Ministries, State, District, Statutory Bodies and Local Government are to set up Integrity Units which have been categorized by the MACC according to their level of corruption risk. The Integrity Unit is to be headed by a Certified Integrity Officer who has undergone a certification programme organized and administered by the Corporate Integrity Development Centre of the Malaysian Anti-Corruption Academy. A total of 887 Integrity Units have been established in all ministries and agencies, both at federal level and state level, and MACC officers are seconded to 40 government agencies and 13 Government Linked Companies as of 1 July 2017.

³¹ TRAFFIC and WWF, Malaysia destroys huge ivory stockpile, posted at <http://wwf.panda.org/?265650/Malaysia-destroys-huge-ivory-stockpile> and accessed on 12 September 2017.

In April 2017 a partnership called Environment Protection Against Corruption Caucus was established together with civil society and academia. Whilst in its infancy, this partnership shows promise as a model to address corruption issues that impact on the environment.

Royal Malaysian Police

The RMP plays a very minor role in investigating wildlife and forestry offences in Peninsular Malaysia, and only a support role in Sabah and Sarawak. This is very surprising given Malaysia's identified role as a key source, transit and consolidation country in transnational wildlife crimes, and given the importance placed on environmental crimes by the legislators and courts in Malaysia.

The RMP is able to provide experienced investigators capable of utilizing advanced investigation methods that are routinely used in the investigation of other crimes. The RMP has a force of 102,000 officers divided amongst 10 specialized commands:

- Criminal Investigation Department (CID)
- Narcotics Criminal Investigation Department
- Internal Security and Public Order Department
- Special Branch
- Commercial Crime Investigation Department
- Administration Department
- Strategic Resources and Technology Department
- Integrity and Standard Compliance Department
- Department of Crime Prevention and Community Safety
- Traffic Investigation and Enforcement Department

The INTERPOL National Central Bureau (NCB) of Malaysia is directly under the command of the Inspector General of Police, and is an integral part of the RMP's CID.³² The NCB is an important focal point in facilitating and coordinating the investigation of transnational wildlife crimes, as it is this unit that investigates serious transnational crime cases that meet certain criteria. These include cases that involve a physical security risk, cases where there is or believed to be overlapping jurisdiction with another agency, or investigations that require specialized investigation techniques. The RMP also plays a role in preventing smuggling along Malaysian borders.

However, the absence of a dedicated police unit to address serious transnational wildlife crime is a shortcoming that should be rectified by Malaysian authorities. The police bring valuable expertise and capacity to this crime area, and their increased involvement would go a long way to addressing the lack of arrests arising from major seizures made by the RMCD.

It is suggested that a contingent of police be assigned to a Peninsular Malaysia Wildlife Task Force headed by a senior police officer, with significant support from Perhilitan and additional support from other relevant agencies.

³² INTERPOL Website, Royal Malaysia Police at <https://www.interpol.int/Member-countries/Asia-South-Pacific/Malaysia> accessed on 28 July 2017

Malaysia Timber Industry Board

The MTIB is a statutory body operating under the Ministry of Plantation Industries and Commodities. The MTIB was established by the Malaysian Timber Industry Board (Incorporation) Act of 1973 (Act 105), and its main objective is to promote and coordinate the overall development of the timber industry. The MTIB is the management authority for all CITES-listed timber species.

The MTIB was initially responsible for the management of the timber industry in both Peninsular Malaysia and Sabah. In Sabah, the regulation and law enforcement of activities involving exporters, importers, suppliers and jetty operators, was taken over by the Sabah Forestry Department on 1st June 2017. In Sarawak, the timber industry is under the control of the Sarawak Timber Industry Development Corporation.

The MTIB is responsible for the registration of individuals who wish to perform any of the following activities or functions in the timber industry: exporters; importers; suppliers; graders; processors; traders; operators; or jetty operators. Should an individual perform any of these activities without being registered with the MTIB, they risk imprisonment for up to three years or a fine not exceeding 250,000 Malaysian ringgit, or both.

The MTIB also has the power to refuse registration, as well as suspend, cancel or refuse to renew any previous registration. Any person who wishes to export timber is required to declare their intentions before the exportation occurs. Failing to do so may incur a penalty of imprisonment of up to two years or a fine not exceeding 100,000 Malaysian ringgit, or both.

The MTIB has about 130 personnel engaged in a law enforcement capacity who enjoy powers similar to police. The extent of these powers is found in Part IVA of the Malaysian Timber Industry Board (Incorporation) Act of 1973 (Act 105), and include arrest, search and seizure and the power to enter premises with or without a warrant. The MTIB does not have an intelligence unit, nor does it use any advanced investigative methods. Its current role and focus is more geared towards compliance with the MTIB Act rather than the investigation of transnational organized crime.

Most of the identified illegal trade cases undertaken by the MTIB relate to trans-shipments and imports of timber. From 2012 to 2017, the MTIB investigated 34 cases related to prohibited imports, of which 22 cases related to the illegal imports/trans-shipments of CITES-listed timber species. Despite having the necessary provisions within the Act, none of these investigations resulted in a period of imprisonment, with all being resolved by way of administrative sanction.

According to the MTIB, the majority of timber imported into or exported from Malaysia is in the form of furniture, and to a lesser extent, whole logs. Primary export destinations include the US, EU, Japan and to a lesser extent China. Most of the timber imported into Malaysia is from China and Indonesia.

4. ENVIRONMENTAL COURTS IN MALAYSIA

In Malaysia, the Federal Constitution is the supreme law of the land.³³ Malaysia follows the Westminster model of government owing to its history of colonization by the British at the beginning of the 19th Century.

The Malaysian judiciary is established under Part IX of the Federal Constitution (Articles 121-131A), which provides for the hierarchical structure of courts, the appointment of Judges, and the jurisdiction of the superior courts, among others. It exists side by side with other organs of the government including the Legislature and the Executive, pursuant to the provisions found in the Federal Constitution. Such provisions of the Federal Constitution lay down the principle of separation of powers, which gives the judiciary the power to provide for checks and balances to ensure adherence to the rule of law by its political counterparts.

Malaysia has a single hierarchy of courts, which enforces both Federal and State laws. The hierarchy of the courts is shown in Figure 9:

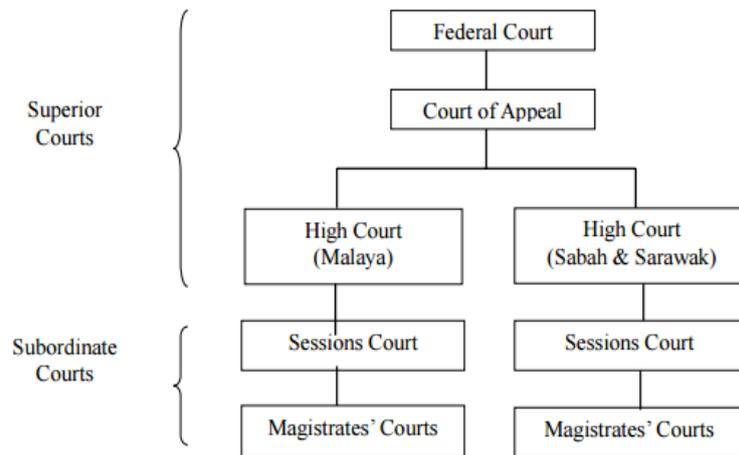


Figure 9: Malaysian Court System

The number of courts at all levels depends on the composition of the court as stipulated under the law and the number of appointed judges. Sections 38 and 74 of the Courts of Judicature Act 1964 specify that every proceeding in the Federal Court and Court of Appeal, respectively, shall be heard and disposed of by a panel of three judges or a greater uneven number, commonly five or seven, depending on the complexity of the subject matter. In the High Court, Sessions Court and Magistrates' Court, only one judge will preside.

³³ Article 4(1) of the Federal Constitution: -“This Constitution is the supreme law of the Federation and any law passed after Merdeka Day which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void.”

The following is the current number of judges nationwide, as of 7 June 2017:

- Chief Justice:	1
- President of the Court of Appeal:	1
- Chief Justice of Malaya:	1
- Chief Justice of Sabah & Sarawak:	1
- Federal Court Judge:	11
- Court of Appeal Judge:	25
- High Court Judge:	P. Malaysia 54; Sabah & Sarawak 9
- Judicial Commissioner:	P. Malaysia 32; Sabah & Sarawak 6
- Sessions Court:	130
- Magistrate's Court:	142

Judges are supported by an additional 671 judicial officers and 4,310 supporting officers and other staff in the court system.

Malaysia is one of the few countries within ASEAN that utilizes Environmental or Green Courts, and is to be congratulated on having had the foresight to implement them. Launched on 3 September 2012, Environmental Courts:

- provide an expeditious disposal of environment-related cases;
- harness expertise relevant to the specialized field;
- monitor environmental cases closely and ensure that environmental cases are not taken lightly;
- ensure uniformity of decision-making in environmental cases;
- increase public participation and confidence; and
- expand and improve access to environmental justice.

In Malaysia there are 39 Sessions Environmental Courts and 17 Magistrates Environmental Courts. Practice Direction Number 3/2012 determines whether a matter is heard in an Environmental Court. This Direction stipulates the Acts that fall under the purview of the Environmental Courts. If a charge is made under any Acts falling under the purview of Practice Direction Number 3/2012, then the case must be filed and heard in an Environmental Court.

The determination of whether a matter is heard in the Magistrates Court or the Sessions Court relates to the seriousness of the offences and the maximum penalty that can be imposed by the Courts. Sections 85 and 87 of the Subordinate Courts Act 1948 [Act 92] and Section 11 of the Subordinate Courts (Amendment) Act 2010 [Act A1382] provide that a First Class Magistrate has the jurisdiction to try all offences which:

- carry a maximum term of imprisonment not in excess of 10 years; or
- are punishable with a fine only.

However, the maximum sentences passed by the First Class Magistrate in these cases must not exceed:

- five years' imprisonment;
- a fine of up to 100,000 ringgit; and/or
- up to 12 strokes of the cane.

Under Sections 63 and 64 of the Subordinate Courts Act 1948 [Act 92] a Sessions Court Judge is precluded from imposing the death sentence, but can otherwise pass any sentence including natural life sentence and a fine up to 1 million ringgit.

In determining sentencing, any penalty must be within what is provided in the relevant Acts. However, all Magistrates and Sessions Environmental Court Judges must observe the decision made in the case *Public Prosecutor v. Nguyen Thi Huong [2015] 2 CLJ 102*, which calls upon the courts to address the manifestly inadequate sentences imposed in environmental crime matters and to refute the perception that Malaysia has become a hub for wildlife crime.

Members of the judiciary do not receive any specific training in relation to environmental crimes. However, officials attend seminars, workshops and symposiums that address this issue. It is recommended that members of the judiciary receive specialized wildlife and forestry crime training with a focus on transnational organized crime and the issue of money laundering.

From 2013 to 2017, there were a total of 518 wildlife cases heard in Malaysian courts. A breakdown of these figures is illustrated in Figure 10.

Years	Session Court	Magistrate Court
2013	35	4
2014	82	17
2015	122	27
2016	147	28
Up to April 2017	4	7
Total	435	83

Figure 10: Wildlife Crime Cases heard in Malaysian Courts 2013-2017

An analysis of wildlife crime cases heard at the Magistrates Court reveals that the majority of convicted offenders (58 percent) receive prison sentences. Those that make it to the Sessions Court and are convicted were only imprisoned on 21 percent of occasions. A breakdown of sentences for wildlife crime offences in the Magistrates Court is shown in Figure 11 whilst the Sessions Court is shown in Figure 12.

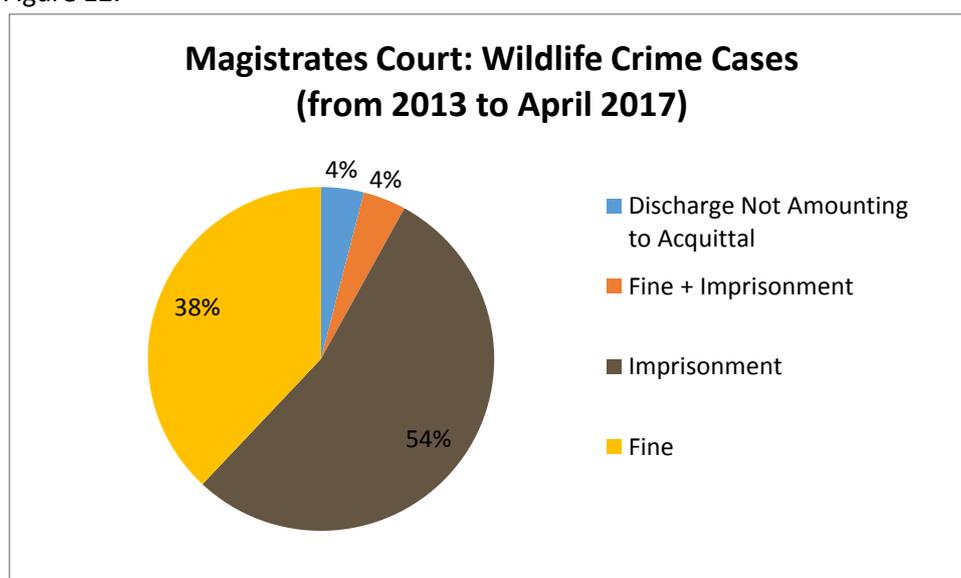


Figure 11: Magistrates Court - Wildlife Crime Cases from 2013 to April 2017

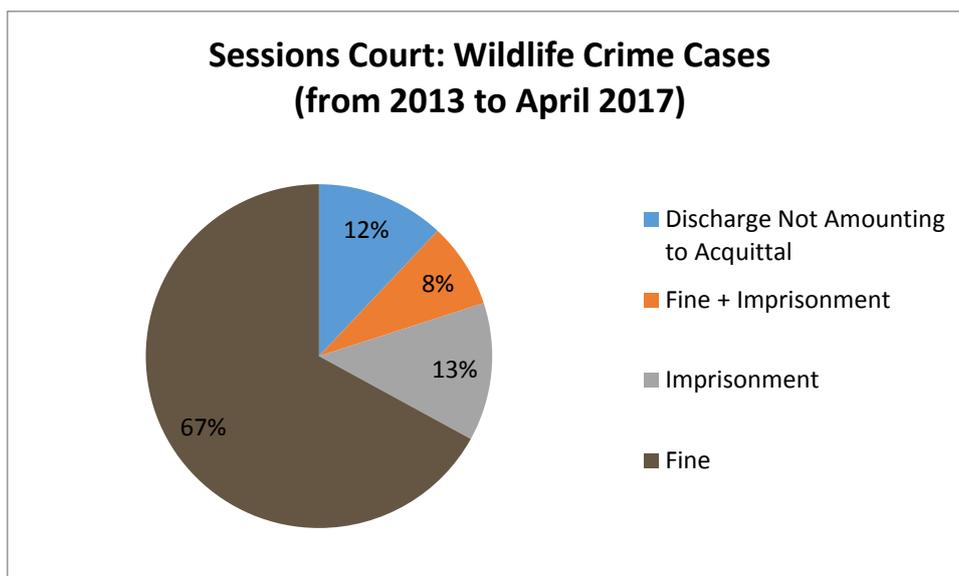


Figure 12: Sessions Court - Wildlife Crime Cases from 2013 to April 2017

Between 2013 and 2017 there were a total of 215 forestry cases heard in Malaysian courts. A breakdown of these figures is illustrated in Figure 13.

Years	Sessions Court	Magistrates Court
2013	37	5
2014	27	3
2015	36	9
2016	71	6
Up to April 2017	21	0
Total	192	23

Figure 13: Forestry Crime Cases heard in Malaysian Courts 2013-2017

An analysis of forestry crime cases heard at the Magistrates Court also reveals that the majority (58 percent) of offenders are dealt with by way of imprisonment, which is the same statistic for wildlife. Whereas those that make it to the Sessions Court and are convicted are only imprisoned on 32 percent of occasions. A breakdown of sentences for forestry crime offences in the Magistrates Court is shown in Figure 14, whilst the Sessions Court is shown in Figure 15.

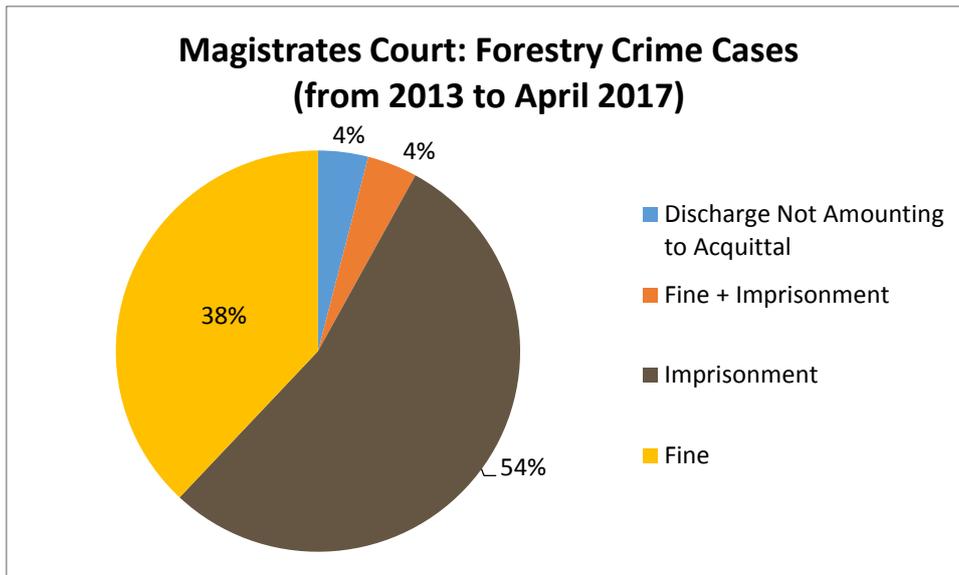


Figure 14: Magistrates Court - Forestry Crime Cases from 2013 to April 2017

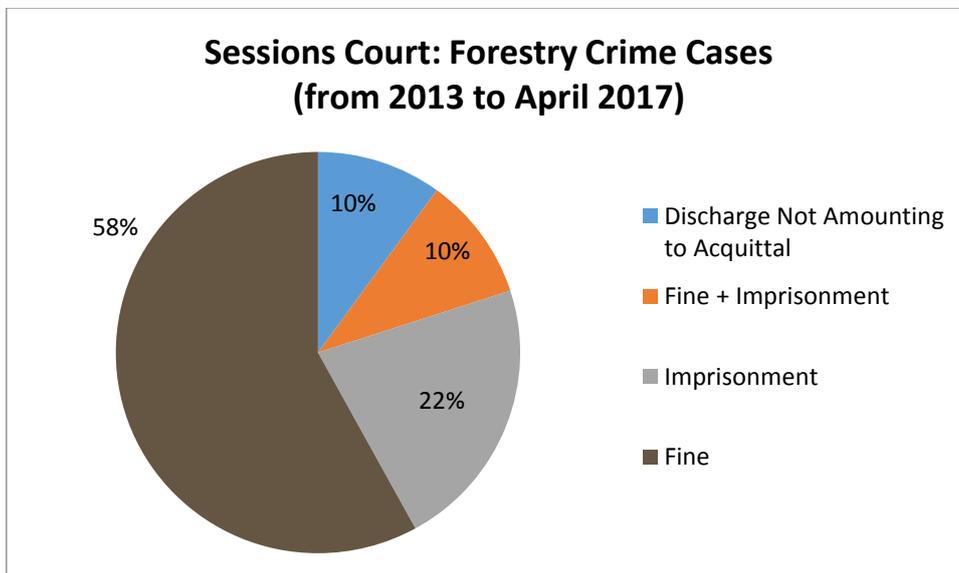


Figure 15: Sessions Court – Forestry Crime Cases from 2013 to April 2017

What is surprising is that in Malaysia there are more wildlife cases before the courts than forestry cases. From UNODC perspective this is very unusual, particularly in the ASEAN context where those numbers are generally reversed.³⁴ This could be because the MTIB has not yet commenced any prosecutions that resulted in court action for timber cases. It will be interesting to see if these numbers change now that Sabah and Sarawak will be taking over the role of the MTIB within their jurisdictions. The Malaysian Legislators and Courts have shown themselves to be innovative and in touch with the needs of the environment. They are to be congratulated for the strength of judgement that sees those engaged on transnational and domestic wildlife crime feeling the full weight of the law.

³⁴ See UNODC rapid assessment reports for Cambodia, Lao PDR, Myanmar, Thailand and Vietnam at <http://www.unodc.org/southeastasiaandpacific/en/resources/toc/wildlife.html>

5. INTERAGENCY COOPERATION

Interagency cooperation in Malaysia is good, and the agencies engaged in the detection, investigation and suppression of wildlife crime have very clear policies and procedures outlining their respective roles and responsibilities. This is illustrated in Figure 16.

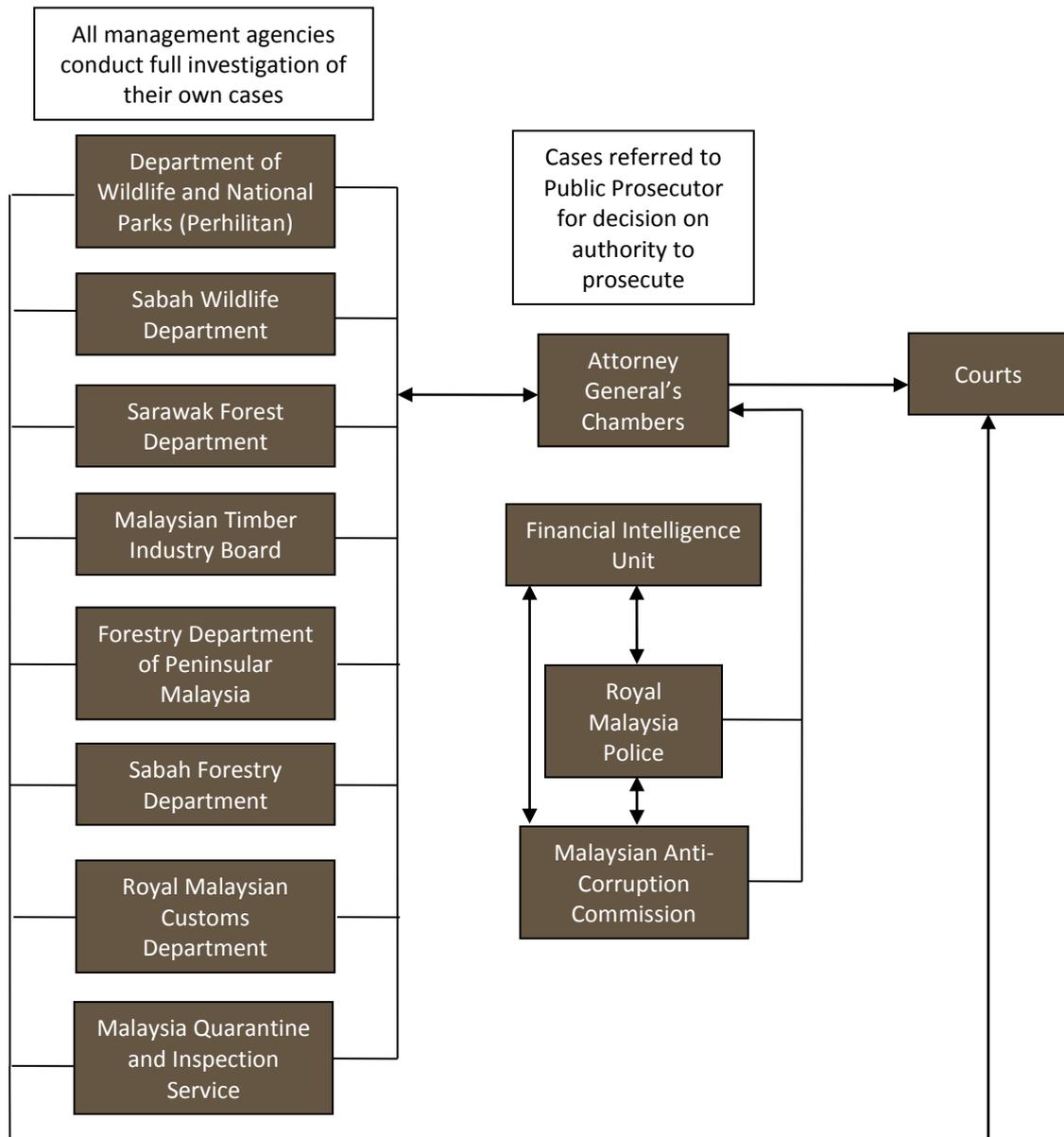


Figure 16: Malaysian interagency cooperation

In 2014 Malaysia adopted the National Blue Ocean Strategy, which takes a multi-agency approach to strategic planning and public policy across a range of topics. It includes a joint policing strategy involving RMP, RMCD, Perhilitan and armed forces working together to handle cases and share resources. This is a general multi-agency strategy and not specifically for dealing with wildlife or forestry-related matters.

An important operational level cooperation mechanism that is already established for multi-agency investigations is the National Revenue Recovery Enforcement Team (NRRET), which assists the Government in dealing with the evasion of customs duties and tax by individuals and corporate bodies, as well as with smuggling activities, misuse of subsidized goods, illegal outflow of funds, and acts of corruption which result in the aforementioned evasion. It was originally established in 2011 as the Special Taskforce, but was rebranded in August 2015. The NRRET is made up of eight agencies, and led by the AGC. The other member agencies are the RMP, MACC, Bank Negara Malaysia, Inland Revenue Department, RMCD, Ministry of Domestic Trade, Cooperatives and Consumerism, and the Companies Commission of Malaysia.³⁵ This mechanism could provide a suitable model for a specialized Wildlife Crime Task Force.

Other interagency cooperation platforms include the National Task Force on CITES, which mainly deals with management and scientific issues, and MY-WEN, which focuses on enforcement matters. However, room for improvement remains at the operational level, particularly in the areas of intelligence collection, analysis and dissemination, and during enforcement operations.

Given the role that Malaysia, and particularly Peninsular Malaysia, plays as a transit and consolidation point for trafficked wildlife products, a coordinated law enforcement approach is essential to address the transnational nature of these crimes. A Peninsular Malaysia Wildlife Crime Task Force made up of representatives of relevant agencies and operating under MY-WEN could offer several advantages over the current system, and would be a good test case before considering a country-wide task force. These advantages include the capacity to:

- bring the agencies together to investigate major suspects;
- develop closer relationships between agencies and promote trust;
- reduce corrupt practices;
- allow full utilization of each agency's investigative strengths;
- promote operational awareness;
- allow the leveraging of resources; and
- promote a unified message of the issues of wildlife crime.

³⁵ The Star, [AGC: NRRET a rebranding of existing task force, not involved in 1MDB investigation](http://www.thestar.com.my/news/nation/2015/08/25/nrret-rebranded-task-force/), accessed on 21 August 2017

6. INTERNATIONAL COOPERATION

Transnational organized criminal networks are small and flexible and can operate across multiple countries and jurisdictions. They react very quickly to disruption from law enforcement and are constantly seeking new concealment methods and more secure trafficking routes. They move in and out of alliances of convenience and between legitimate and illegitimate businesses.

In contrast, law enforcement processes are slow and complex, because unlike criminal groups, law enforcement is restricted by the need for MLA treaties, information exchange procedures and platforms, and a nationalistic approach to enforcement. This is a global problem and not unique to Malaysia, or to the investigation of transnational wildlife crime in general, but it highlights the need for stronger inter-agency and international cooperation processes in this area.

In the ASEAN context there is some degree of cooperation, but it is yet to translate into an effective regional approach to intelligence sharing and joint operations. Intelligence sharing with counterparts in African countries is developing, but is still a long way away from being able to effectively facilitate the detection, suppression or deterrence of transnational wildlife trafficking.

Based on the interviews with the different agencies, it seems that Malaysian authorities generally have good working relationships with their counterparts from India, Thailand, Singapore, Indonesia and the Philippines, while further work is needed to develop stronger relationships with their counterparts from China and Vietnam. An analysis of Malaysian relations with African partners paints a very different picture. Despite numerous attempts by IGOs, NGOs and other governments to bring nations together, international cooperation between Asian and African nations remains more a vision than a reality. It is still very much based upon relationships between individual officers rather than institutions.

This highlights the issue of what to do with wildlife seized in transit. Ideally these items would be the subject of a controlled delivery that would promote international cooperation. However, when a controlled delivery is not possible and there are no suspects under investigation in the country where the seizure has been made, it stands to reason that the exhibits should be returned – at least partially – to where they came from, particularly if those exhibits are the subject of legal proceedings in the country of origin.

In 2015, the Foreign Affairs Division of the Royal Thai Police succeeded in bringing the issue of wildlife and timber trafficking within the purview of the ASEAN Senior Officials Meeting on Transnational Crime (SOMTC), after three unsuccessful attempts. SOMTC and the related Ministerial Meeting on Transnational Crime effectively represent the only ASEAN platform solely focused on transnational criminal threats. Within this regional structure, 10 transnational crime threats are on the agenda of the proceedings. The area of wildlife and timber trafficking is the latest addition to the list of threats and Thailand has been appointed to be the lead in the development of a work programme. It is highly likely that these recent developments under SOMTC will play an important role to create incentives – if not obligations – for police authorities to step-up their efforts to investigate wildlife criminal syndicates and therefore to cooperate more efficiently with other agencies too. This is particularly relevant to Malaysia where the RMP currently plays very little role in addressing transnational organized wildlife crime.

To combat organized wildlife crime requires skill sets and tactics that are beyond conservation agencies, and are within the domains of the police as a fully fledged enforcement agency. Nonetheless, the expertise of regulatory agencies such as CITES Management Authorities is crucial to improve compliance with international regulations and to reduce the risk of illegalities. Therefore, it is important that the ASEAN Working Group on CITES and Wildlife Enforcement and the SOMTC group on wildlife and timber trafficking cooperate to avoid duplication, overlaps or even competition among their respective programmes.

7. ADVANCED INVESTIGATION CAPABILITIES

Many advanced investigative techniques, including controlled deliveries, the interception of communications devices such as telephones or computers, the use of tracking devices and covert recording devices are standard practices when investigating organized crime throughout the world.

These methods offer several benefits to law enforcement agencies including real-time monitoring of a suspect’s conversations and movements. The ability for Malaysian law enforcement agencies to use advanced investigative techniques is shown in Figure 17.

	P'TAN	FDS	SWD	MTIB	RMCD	MACC	RMP
Use of controlled deliveries	No	No	No	No	Yes^	Yes	Yes^
Forensic capacity including telephone or computer	Yes*	No	No	No	Yes	Yes	Yes
Availability of CHIS database	No	No	No	No	Yes	Yes	Yes
Availability of linked case database	No	No	No	No	Yes	Yes	Yes
Intelligence database	Yes	No	No	No	Yes	Yes	Yes
Surveillance capacity	Yes	Yes	Yes	No	Yes	Yes	Yes
Undercover operation capacity	Yes	No	No	No	No	Yes	Yes
Telephone intercept capability	No	No	No	No	No	Yes	Yes
Tracking or listening devices	Yes	No	No	No	No	Yes	Yes

*INTERPOL and Cyber Security Malaysia ^Usually applied for narcotics cases only

Figure 17: Advanced Investigations Capabilities

8. STRENGTHS AND WEAKNESSES OF ENVIRONMENTAL LAW ENFORCEMENT AGENCIES

Agency	Strengths	Weaknesses	Recommendations
Perhilitan	<ol style="list-style-type: none"> 1. Strong mandate as lead agency for wildlife investigations in Peninsular Malaysia 2. Good presence at border checkpoints and KLIA 3. Dedicated investigations unit 4. Dedicated intelligence unit 5. Some undercover capacity 6. Uses some advanced investigative techniques 7. Own prosecutors 8. Online investigative capacity 9. Expertise in wildlife identification 	<ol style="list-style-type: none"> 1. Lack of training and experience in advanced investigative techniques 2. No centralized CHIS system 3. Lack of experience with advanced investigative methods 4. No advanced analytical software 5. No independent cell phone analytical capability 6. Poor informant reward provisions 	<ol style="list-style-type: none"> 1. Improve law enforcement capabilities to support the development of major case investigations 2. Increase training including joint training with other agencies on a wide range of basic and advanced investigative techniques including undercover, CHIS management, physical surveillance and online investigations 3. Provide equipment including cell phone analytical tools to increase investigative capacity and capabilities 4. Provide analytical software and the recruitment and training of criminal intelligence analysts 5. Create a wildlife crime database to be accessible to all three agencies with a wildlife crime mandate (Perhilitan, FDS and SWD) 6. Contribute to the formation of a joint task force operating under MY-WEN to address serious wildlife and forestry crimes
FDS	<ol style="list-style-type: none"> 1. Good presence in the territory and at border checkpoints 2. Expertise in timber identification including CITES species 3. Very strong relationship with villagers and local environments 4. Good cooperation with other agencies 	<ol style="list-style-type: none"> 1. Lack of training and experience in advanced investigative techniques 2. No centralized CHIS system 3. Lack of experience with advanced investigative methods 4. No advanced analytical software 5. No independent cell phone analytical capability 6. Poor informant reward provisions 7. High reliance on temporary staff and rangers 8. Poor crime scene capabilities 	<ol style="list-style-type: none"> 1. Improve law enforcement capabilities to support the development of major case investigations 2. Increase training including joint training with other agencies on a wide range of basic and advanced investigative techniques including undercover, CHIS management, physical surveillance, and online investigations 3. Provide equipment including cell phone analytical tools to increase investigative capacity and capabilities 4. Provide analytical software and the recruitment and training of criminal intelligence analysts 5. Create a wildlife crime database to be accessible to all three agencies with a wildlife crime mandate (Perhilitan, FDS and SWD)
SWD	<ol style="list-style-type: none"> 1. Good presence in the 	<ol style="list-style-type: none"> 1. Lack of training and 	<ol style="list-style-type: none"> 1. Improve law enforcement

Agency	Strengths	Weaknesses	Recommendations
	<ul style="list-style-type: none"> territory and at border checkpoints 2. Very strong relationship with villagers and local environments 3. Good cooperation with other agencies 	<ul style="list-style-type: none"> experience in advanced investigative techniques 2. No centralized CHIS system 3. Lack of experience with advanced investigative methods 4. No advanced analytical software 5. No independent cell phone analytical capability 6. Poor informant reward provisions 7. Poor crime scene capabilities 	<ul style="list-style-type: none"> capabilities to support the development of major case investigations 2. Increase training including joint training with other agencies on a wide range of basic and advanced investigative techniques including undercover, CHIS management, physical surveillance, and online investigations 3. Provide equipment including cell phone analytical tools to increase investigative capacity and capabilities 4. Provide analytical software and the recruitment and training of criminal intelligence analysts 5. Create a wildlife crime database to be accessible to all three agencies with a wildlife crime mandate (Perhilitan, FDS and SWD)
AGC	<ul style="list-style-type: none"> 1. Well trained staff on legal matters 2. Retains option of prosecuting environmental crimes 3. Use of dedicated Environmental Courts 	<ul style="list-style-type: none"> 1. Lack of a dedicated wildlife crime prosecutions section (although it is acknowledged that 2 prosecutors are seconded to Perhilitan) 	<ul style="list-style-type: none"> 1. Contribute to the formation of a joint task force to address serious wildlife and forestry crimes operating under MY-WEN 2. Create a dedicated wildlife crime prosecutions section 3. Provide training to improve cooperation between prosecution authorities on wildlife crime
RMCD	<ul style="list-style-type: none"> 1. Dedicated regulatory agency with managers who possess a law enforcement mindset 2. Specialist investigations unit 3. Experience with controlled deliveries 4. Central CHIS register 5. Access to international law enforcement agencies i.e. WCO 6. Well resourced 7. Electronic data collection capability 8. Whistleblower legislation (along with other agencies) 9. Witness protection legislation (along with other agencies) 	<ul style="list-style-type: none"> 1. No dedicated intelligence unit 2. Its mandate is not limited to environmental crimes, so it will constantly need to balance priorities 3. Species identification 	<ul style="list-style-type: none"> 1. Contribute to the formation of a joint task force operating under MY-WEN to address serious wildlife and forestry crimes 2. Create a dedicated intelligence unit
MTIB	<ul style="list-style-type: none"> 1. Mandated agency for registration of companies, licences and trade permits 	<ul style="list-style-type: none"> 1. Prison terms for forestry offences are not applied 2. Regulatory agency 	<ul style="list-style-type: none"> 1. Improve law enforcement capabilities to support the development of major case investigations

Agency	Strengths	Weaknesses	Recommendations
	.	<ul style="list-style-type: none"> with little law enforcement experience 3. No intelligence unit 4. No formal law enforcement training 5. No central CHIS system 6. Does not use advanced investigative methodologies 7. Challenges with identification of non-native CITES-listed species 	<ul style="list-style-type: none"> 2. Increase training including joint training with other agencies on a wide range of basic and advanced investigative techniques including undercover, CHIS management, physical surveillance, and online investigations 3. Provide equipment including cell phone analytical tools to increase investigative capacity and capabilities 4. Provide analytical software and the recruitment and training of criminal intelligence analysts
MACC	<ul style="list-style-type: none"> 1. Strong mandate to investigate corruption 2. Strong legislation 3. Dedicated intelligence unit 4. Utilizes advanced investigative techniques 5. Dedicated central CHIS system 6. Well-staffed and resourced 7. Ability to compel testimony 8. Officers placed within other government departments 9. Own training academy 10. Whistleblower legislation (along with other law enforcement agencies) 11. Witness protection legislation (along with other law enforcement agencies) 	<ul style="list-style-type: none"> 1. Current legislation does not address legal persons 	<ul style="list-style-type: none"> 1. MACC to lead the development of an anti-corruption strategy to prevent and suppress environmental crime through the identification of risk indicators across the supply chain, including the issuance of licences, permits, concessions and the performance of inspections, border controls and market controls 2. Contribute to the formation of a joint task force operating under MY-WEN to investigate serious wildlife and forestry crimes
FIU - Bank Negara Malaysia	<ul style="list-style-type: none"> 1. Strong mandate to address money laundering 2. Strong legislation 3. Superior financial data collection capability 4. Dedicated intelligence teams 5. National committee made up of relevant agencies 	<ul style="list-style-type: none"> 1. Its mandate is not limited to environmental crimes, which currently is not one of the 5 high-risk crimes. It will therefore constantly need to balance priorities 2. Environmental agencies are not members of the NCC 	<ul style="list-style-type: none"> 1. Contribute to the formation of a joint task force operating under MY-WEN to investigate serious wildlife and forestry crimes 2. NCC to consider expanding its membership to include relevant ministries and wildlife enforcement agencies

Agency	Strengths	Weaknesses	Recommendations
RMP	<ol style="list-style-type: none"> 1. The major law enforcement agency in Malaysia 2. Specialist CID with experience in major transnational investigations 3. Dedicated intelligence unit 4. Utilises advanced investigation techniques 5. Central CHIS registry 6. Well staffed 7. Access to international law enforcement agencies 8. Whistleblower legislation (along with other agencies) 9. Witness protection legislation (along with other agencies) 	<ol style="list-style-type: none"> 1. Plays a minimal role in the investigation of wildlife or forestry crimes in Peninsular Malaysia 2. Plays only a support role in the investigation of wildlife or forestry crimes in Sabah and Sarawak 	<ol style="list-style-type: none"> 1. Explore the possibility of forming a unit/department/team of specialized investigators for the most serious wildlife crimes 2. Contribute to the formation of a joint task force operating under MY-WEN to investigate serious wildlife and forestry crimes

Figure 18: Relative strengths and weaknesses of Malaysian law enforcement and prosecution agencies

9. CORRUPTION

Corruption is a major facilitator of all types of transnational organized crime. However, compared to other crime types, wildlife crime represents a much lower-risk and higher-reward opportunity for criminals. The very high profits generated also enable traffickers to bribe lowly paid public officials to reduce their risks even more.

Malaysia is currently rated equal 55th out of 176 countries on Transparency International's Corruption Perception Index, where the first is perceived as the cleanest,³⁶ and has recently been rocked by several major corruption scandals. Despite these scandals, Malaysia is performing much better than other ASEAN countries, ranked third within ASEAN, behind only Singapore (seventh overall) and Brunei (41st overall)³⁷ on the corruption index. It has an effective anti-corruption agency with the MACC, and strong primary and supporting legislation. From a legislative and enforcement perspective, many systems of checks and balances are in place, but there is still room for significant improvement.

The MACC has recently arrested and prosecuted corrupt law enforcement officers, and it employs a proactive and reactive investigations model. It has officers embedded within high-risk organizations. However, it is clear that the MACC cannot combat corruption alone. Key law enforcement agencies need to implement strategies to weed out corruption within their own ranks and be transparent and decisive when corruption is identified. These agencies need to increase the number of staff that investigate corrupt practices and undertake their own proactive investigations to identify and remove corrupt cells within their organizations.

In many instances, Port Klang has been identified as the destination or point of origin for large, highly valuable wildlife shipments, such as the Hong Kong seizure of 7.2 tonnes of ivory in July 2017 which originated from Port Klang. The question of why Port Klang is so relevant in these cases remains. Is it due to the large numbers of containers that are moved to and from the port, is it inadequate risk profiling procedures, a combination of several of these factors, or perhaps others not yet identified?

At this stage, the available information is inconclusive with regards to this question. It stands to reason that some of the corrupt customs officials previously investigated by the MACC in relation to other offences (between 2011 and 2014), or others working at the port at that time, may have played a role in facilitating the importation and re-export of wildlife products into and from Malaysia during that period. The MACC is currently the only organization with the intelligence capacity, awareness of the landscape and the mandate to investigate whether corrupt officers were involved in the trafficking of ivory and rhino horn during that period.

³⁶ Transparency International, Corruption Perception Index at http://www.transparency.org/news/feature/corruption_perceptions_index_2016 accessed on 16 July 2017

³⁷ Transparency International, Corruption Perception Index at http://www.transparency.org/news/feature/corruption_perceptions_index_2016 accessed on 16 July 2017

10. CONCLUSIONS AND RECOMMENDATIONS

Malaysia is a major transit point used by international organized crime networks to move wildlife products such as ivory, rhino horn, testudines, and pangolins from source countries to destination countries such as China, Vietnam, and Thailand. While many of the CITES-listed species trafficked are not endemic to Malaysia, the country plays a crucial role in addressing this trafficking given that criminal networks have chosen it as a transit and consolidation point.

On the domestic front Malaysia is faced with similar issues to those confronting other ASEAN countries, trying with scarce economic and human resources to protect the remaining populations of iconic species such as tigers, elephants and orang-utans in fragmented protected areas that are under increasing pressure from human encroachment and poaching.

At this moment, the overall effectiveness of Malaysia's effort to address the international aspect is questionable. Despite many seizures there is very little to show in the way of arrests, prosecutions and convictions. There has also never been a controlled delivery of any of the shipments seized by the RMCD. Seizures of a finite wildlife resource will not prevent or stop wildlife trafficking. In the absence of arrests, seizures alone may in fact do more harm than good.

The two agencies best placed to address transnational wildlife crime investigations in Malaysia are the RMCD and the RMP. The RMCD has shown itself to be good at seizing products, but less effective at converting those seizures into arrests. However, RMP has very little or no involvement at all in addressing this issue, and given the significant profits generated by this crime, such an approach seems outdated.

The one agency that has shown to be effective is Perhilitan, which has managed to disrupt transnational crime groups involved in the trafficking of tigers, testudines and ivory. This is despite a lack of training and access to many of the advanced investigation methods readily available to the RMP and RMCD.

Nationally the cooperation between law enforcement agencies has been good, but this cooperation has not necessarily reflected an enhanced capability to address the problem. The formation of a time-bound multi-agency task force made up of RMP, RMCD, Perhilitan, AGC and the MACC would go a long way to alleviating this issue and could be a game changer in Malaysia.

This task force could combine the criminal investigations expertise from the RMP and MACC, with the understanding of the landscape provided by Perhilitan. It would also bring together the expertise of the RMCD when it comes to detecting shipments of wildlife products and understanding the supply chain model. Finally, the AGC would ensure the cases compiled by this Task Force are of a standard that is high enough to ensure convictions.

There is a reliance on arrests based upon evidence collected *in flagrante delicto* rather than from protracted complex investigations. This is something that can be addressed through increased awareness, training and mentorship from experienced detectives.

There is a lack of systems to enable and enhance the collection, analysis and dissemination of intelligence. Whilst this is being addressed in Peninsular Malaysia, in Sabah and Sarawak this is still a problem. There is also a lack of expertise and equipment to manage and process crime scenes.

There is a deficiency in the way that wildlife law enforcement agencies manage and recruit CHIS. This is a high-risk area for corruption and requires central oversight and management to ensure that these agencies protect themselves, the officers, and the CHIS. This would also enable improved tasking and information collection management.

Finally, there is a lack of advanced equipment and training for basic and advanced investigations as well as physical and electronic surveillance.

Sufficient resourcing of these agencies is also a major issue that needs to be addressed before they can become effective at deterring, investigating, and prosecuting wildlife crime. This problem is not unique to Malaysia, as wildlife agencies globally struggle for financing as governments address competing responsibilities with scarce resources.

There are several actions that the Malaysian government could undertake that would immediately improve the investigation and prosecution of wildlife crimes. These are outlined in the following recommendations.

Recommendations

Strengthening interagency cooperation

- Review the current legal and procedural framework to attribute a bigger role to the RMP in the investigation of the most serious forms of wildlife trafficking, possibly through the establishment of a dedicated team.
- Create a new specialized task force operating under MY-WEN with strong involvement of the RMP Force and Perhilitan, but also made up of a limited number of representatives of the Attorney General's Chambers, RMCD, and the MACC, to address the trafficking of ivory, rhino horn, tiger, pangolin, and testudines within and through Peninsular Malaysia.
- Promote the systematic use of controlled deliveries for illicit wildlife shipments arriving in Peninsular Malaysia through intensified cooperation among Police, Perhilitan, and Customs, and with the support of other agencies.
- Engage the relevant ministries and regional wildlife agencies as members of the NCC to Counter Money Laundering.

Focusing on international cooperation

- Increase the use of international information sharing mechanisms with foreign law enforcement agencies especially at regional level, through the use of INTERPOL channels and through the various specialized fora provided by the international aid and technical assistance providers (INTERPOL, UNODC, USAID, CITES, etc.).
- For the investigation and prosecution of transnational wildlife crime cases – especially for those involving African countries – consider the use of the UN Convention against Transnational Organized Crime as the principal legal basis for MLA, extradition and law enforcement cooperation with the 186 Member States that are parties to the Convention.
- Promote regional coordination among the SOMTC Work Programme, the newly established SOMTC Working Group and the ASEAN Working Group on CITES and Wildlife Enforcement, especially through the work of the respective national lead agencies, i.e. the RMP and Perhilitan.

Building national capacities

- Strengthen data collection to measure law enforcement performance, with a focus on advanced investigative techniques such as financial investigations, cross-border operations and controlled deliveries.
- Develop an intelligence-sharing mechanism for Perhilitan, SWD and FDS to enable real-time sharing of intelligence.
- Provide advanced investigations training to officers from Perhilitan, SWD, FDS, and MTIB.
- Provide training on the recruitment and management of CHIS to officers from Perhilitan, SWD, FDS and MTIB staff.
- Provide intelligence analysis training to officers from Perhilitan, SWD, FDS, and MTIB.
- Provide training on undercover operations to officers from Perhilitan, SWD, FDS, and MTIB staff.
- Provide training in managing and conducting online investigations to Perhilitan, SWD and FDS staff.
- Provide Perhilitan, SWD, FDS, and MTIB with the necessary equipment to undertake forensic analysis of cell phones.
- Provide training to prosecutors and members of the judiciary on anti-money laundering and wildlife trafficking.
- Provide mentorship from experienced detectives and analysts.

Addressing corruption

- MACC to lead the development of an anti-corruption strategy to prevent and suppress environmental crime through the identification of risk indicators across the supply chain, including the issuance of licences, permits, concessions and the performance of inspections, border controls, and market controls.
- Sub-Committee on Exhibit Management to undertake an independent audit of all seized wildlife and timber products (CITES Appendix I and II) currently in the custody of the RMCD and Perhilitan.
- Under the framework of MY-WEN, conduct a review of all major ivory and rhino horn seizures that have a Malaysian nexus to determine what role, if any, corrupt officials have played to facilitate the trafficking of these products.

Addressing the legal framework

- Amend the Sarawak Wildlife Protection Ordinance of 1998 so that all CITES Appendix I and II species are classified as totally protected animals/plants instead of their current status of protected animals/plants.

Annex I – Selected provisions from key wildlife legislation

International Trade in Endangered Species Act 2008 (Act 686)	
Section No.	Provisions
10	<p>Import and export</p> <p>Any person who imports or exports any scheduled species without a permit commits an offence and shall, on conviction, be liable:</p> <p>(a) Where such person is an individual, to a fine not exceeding 100,000 ringgit for each animal, plant, or readily recognizable part or derivative of the animal or plant, of the scheduled species but such fine shall not exceed in the aggregate of 1,000,000 ringgit, or to imprisonment for a term not exceeding 7 years, or to both;</p> <p>(b) Where such person is a body corporate, to a fine not exceeding 200,000 ringgit for each animal, plant, or readily recognizable part or derivative of the animal or plant, of the scheduled species but such fine shall not exceed in the aggregate of 2,000,000 ringgit.</p>
11	<p>Re-export and introduction from the sea</p> <p>Any person who re-exports or introduces from the sea any scheduled species without a certificate commits an offence and shall, on conviction, be liable:</p> <p>(a) Where such person is an individual, to a fine not exceeding 100,000 ringgit for each animal, plant, or readily recognizable part or derivative of the animal or plant, of the scheduled species but such fine shall not exceed in the aggregate of 1,000,000 ringgit, or to imprisonment for a term not exceeding 7 years or to both;</p> <p>(b) Where such person is a body corporate, to a fine not exceeding 200,000 ringgit for each animal, plant, or readily recognizable part or derivative of the animal or plant, of the scheduled species but such fine shall not exceed in the aggregate of 2,000,000 ringgit.</p>
12	<p>Possession of scheduled species</p> <p>Any person who:</p> <p>(a) has in his possession or under his control;</p> <p>(b) sells, offers or exposes or advertises for sale; or</p> <p>(c) displays to the public,</p> <p>any scheduled species which has been imported or introduced from the sea in contravention of section 10 or 11 commits an offence and shall, on conviction, be liable:</p> <p>(aa) Where such person is an individual, to a fine not exceeding 100,000 ringgit for each animal, plant, or readily recognizable part or derivative of the animal or plant, of the scheduled species but such fine shall not exceed in the aggregate of 1,000,000 ringgit, or to imprisonment for a term not exceeding 7 years or to both;</p> <p>(bb) Where such person is a body corporate, to a fine not exceeding 200,000 ringgit for each animal, plant, or readily recognizable part or derivative of the animal or plant, of the scheduled species but such fine shall not exceed in the aggregate of 2,000,000 ringgit.</p>
13	<p>Scheduled species in transit</p> <p>(1) Every scheduled species in transit in Malaysia shall be accompanied by:</p> <p>(a) A valid export or re-export permit, licence, certificate or written permission, in accordance with the Convention, issued by the competent authority of the country of export or re-export, as the case may be, of the scheduled species; and</p> <p>(b) Where required by the country of import or final destination of the scheduled species, a valid import permit, licence, certificate or written permission, in accordance with the Convention, issued by the competent authority of that country or destination.</p> <p>(2) Any owner, importer, exporter or re-exporter who contravenes subsection (1) commits an offence and shall, on conviction, be liable:</p> <p>(a) Where such person is an individual, to a fine not exceeding 100,000 ringgit for each animal, plant, or readily recognizable part or derivative of the animal or plant, of the scheduled species but such fine shall not exceed in the aggregate of 1,000,000 ringgit, or to imprisonment for a term not exceeding 7 years, or to both;</p> <p>(b) Where such person is a body corporate, to a fine not exceeding 200,000 ringgit for each animal, plant, or readily recognizable part or derivative of the animal or plant, of the scheduled</p>

species but such fine shall not exceed in the aggregate of 2,000,000 ringgit.

14 Breeding or propagation of scheduled species

(1) Any person who produces captive bred animal or artificially propagated plant or animal of any scheduled species for commercial trade purposes without being registered with a Management Authority commits an offence and shall, on conviction, be liable:

(a) Where such person is an individual, to a fine not exceeding 100,000 ringgit for each animal, plant, or readily recognizable part or derivative of the animal or plant, of the scheduled species but such fine shall not exceed in the aggregate of 1,000,000 ringgit, or to imprisonment for a term not exceeding 7 years, or to both;

(b) Where such person is a body corporate, to a fine not exceeding 200,000 ringgit for each animal, plant, or readily recognizable part or derivative of the animal or plant, of the scheduled species but such fine shall not exceed in the aggregate of 2,000,000 ringgit.

(2) Any person who:

(a) has in his possession or under his control;

(b) sells, offers or exposes or advertises for sale; or

(c) displays to the public,

any scheduled species which has been produced in contravention of subsection (1) commits an offence and shall, on conviction, be liable:

(aa) Where such person is an individual, to a fine not exceeding 100,000 ringgit for each animal, plant, or readily recognizable part or derivative of the animal or plant, of the scheduled species but such fine shall not exceed in the aggregate of 1,000,000 ringgit, or to imprisonment for a term not exceeding 7 years, or to both;

(bb) Where such person is a body corporate, to a fine not exceeding 200,000 ringgit for each animal, plant, or readily recognizable part or derivative of the animal or plant, of the scheduled species but such fine shall not exceed in the aggregate of 2,000,000 ringgit.

15 Power to require scheduled species to be marked

(1) A Management Authority may require any owner, importer, exporter or re-exporter of scheduled species to brand, label or otherwise mark such scheduled species to the satisfaction of the Management Authority.

(2) Notwithstanding subsection (1), the Management Authority may brand, label or mark any such scheduled species.

(3) Any person who contravenes any requirement of the Management Authority under subsection (1) commits an offence and shall, on conviction, be liable:

(a) Where such person is an individual, to a fine not exceeding 50,000 ringgit or to imprisonment for a term not exceeding 3 years, or to both;

(b) Where such person is a body corporate, to a fine not exceeding 100,000 ringgit.

(4) Any person who alters, counterfeits, defaces, destroys, erases, removes or in any manner tampers with any brand, label or mark referred to in subsection (1) or (2) without the prior approval of the Management Authority commits an offence and shall, on conviction, be liable:

(a) Where such person is an individual, to a fine not exceeding 100,000 ringgit or to imprisonment for a term not exceeding 7 years or to both;

(b) Where such person is a body corporate, to a fine not exceeding 200,000 ringgit.

(5) In this section, a reference to the labeling or marking of scheduled species includes a reference to the following:

(a) In the case of a plant:

(i) The labeling or marking of a container in which the plant is kept or in which the plant is growing; or

(ii) The placement of a label or tag on the plant; and

(b) In the case of an animal:

(i) The implantation of a scannable device in the animal;

(ii) The placement of a band on any part of the animal;

(iii) The placement (whether by piercing or otherwise) of a tag, tattoo or ring on any part of the animal; or

(iv) The labeling or marking of a container in which the animal is kept.

16	<p>Permit, certificate and registration</p> <p>(3) If a Management Authority decides to issue a permit or certificate, or allow the registration under subsection (2) [to allow import, export, re-export, introduction from the sea, or registration for captive breeding/artificial propagation of any scheduled species], the Management Authority may impose such conditions as it thinks fit.</p> <p>(4) Any person who fails to comply with or contravenes any of the conditions imposed under subsection (3) commits an offence and shall, on conviction, be liable:</p> <p>(a) Where such person is an individual, to a fine not exceeding 200,000 ringgit or to imprisonment for a term not exceeding 10 years, or to both;</p> <p>(b) Where such person is a body corporate, to a fine not exceeding 400,000 ringgit.</p>
17	<p>Cancellation of permit, certificate or registration</p> <p>(3) Where a Management Authority has notified the holder of the permit, certificate or registration of the cancellation of his permit, certificate or registration, the holder of the permit, certificate or registration shall immediately surrender the permit, certificate or documents pertaining to the registration to the Management Authority;</p> <p>(4) Any holder of a permit, certificate or the registration who, without reasonable excuse, contravenes subsection (3) commits an offence and shall, on conviction, be liable:</p> <p>(a) Where such person is an individual, to a fine not exceeding 50,000 ringgit or to imprisonment for a term not exceeding 3 years, or to both;</p> <p>(b) Where such person is a body corporate, to a fine not exceeding 100,000 ringgit.</p>
18	<p>Captive breeding or artificial propagation</p> <p>(1) Any person who is registered with a Management Authority to produce captive bred animal or artificially propagated plant or animal of any scheduled species shall keep and maintain records of their stocks and transactions.</p> <p>(2) A Management Authority may inspect, at any time, the premises and records of any person registered with the Management Authority.</p> <p>(3) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable:</p> <p>(a) Where such person is an individual, to a fine not exceeding 100,000 ringgit or to imprisonment for a term not exceeding 7 years, or to both;</p> <p>(b) Where such person is a body corporate, to a fine not exceeding 200,000 ringgit.</p>
20	<p>Power of investigation</p> <p>(1) An enforcement officer shall have all the powers necessary to carry out an investigation under this Act.</p> <p>(2) In any case relating to the commission of an offence under this Act, any enforcement officer carrying out an investigation may exercise all or any of the special powers in relation to police investigation in seizable cases given by the Criminal Procedure Code [Act 593].</p>
National Forestry Act 1984 (Act 313) [applicable in Peninsular Malaysia only]	
Section No.	Provisions
15	<p>Prohibition on taking of forest produce from permanent reserved forest or State land unless licensed, etc.</p> <p>(1) No person shall take any forest produce from a permanent reserved forest or a State land except— (a) under the authority of a licence, minor licence or use permit; or (b) in accordance with any other written law.</p> <p>(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding 500,000 ringgit and to imprisonment for a term, which shall not be less than one year but shall not exceed 20 years.</p> <p>(3) Any person convicted of an offence under this section may, in addition to any penalty imposed on the conviction, be ordered to pay, in respect of any forest produce unlawfully taken, to the State Authority— (a) a sum not exceeding 10 times the royalty, premium and cess; (b) a sum not exceeding ten times the value of such forest produce; and (c) any other charges payable, and any sum ordered to be so paid shall be recoverable as if it were a fine so imposed.</p>

84	<p>Unlawful possession of forest produce</p> <p>(1) Any person found in possession, custody or control of any forest produce on which royalty, premium, cess, or other charges in respect of such forest produce has not been paid shall be guilty of an offence and shall on conviction be liable to a fine not exceeding 50,000 ringgit, or to imprisonment for a term not exceeding 5 years, or to both such fine and imprisonment.</p> <p>(2) If in any prosecution in respect of any forest produce for the non-payment of any royalty, premium, cess, or other charges, any dispute arises whether the royalty, premium, cess, or other charges have been paid in respect of such forest produce, or whether any forest produce is exempt from any royalty, premium, cess, or other charges under this Act, then in every case the burden of proof shall be on the defendant in such prosecution.</p>
-----------	--

88	<p>Power of arrest, seizure and investigation</p> <p>(1) A forest officer not below the rank of Forester or a police officer may arrest without warrant any person whom he has reason to believe to have committed a forest offence, if the person refuses to furnish his name and address, or furnishes an address out of Malaysia, or there are reasonable grounds for believing that he has furnished a false name or address or that he is likely to abscond; and may seize any thing which he considers it necessary to seize in relation to the evidence necessary to establish the commission of any such offence.</p> <p>(2) When any person has been arrested under subsection (1) he shall thereafter be dealt with as provided by the Criminal Procedure Code.</p> <p>(3) Any forest officer not below the rank of Assistant District Forest Officer, any police officer not below the rank of Sergeant, and any officer in charge of a police station may, in relation to any investigation in respect of any forest offence, without order of the Public Prosecutor, exercise the special powers in relation to police investigations given by the Criminal Procedure Code in any seizable case.</p>
-----------	--

Wildlife Conservation Act 2010 (Act 716) [applicable in Peninsular Malaysia only]

Section No.	Provisions
60	<p>Hunting, etc. protected wildlife without a licence</p> <p>(1) Subject to subsection (2), any person who— (a) hunts or keeps any protected wildlife (other than immature protected wildlife or the female of a protected wildlife); or (b) takes or keeps any part or derivative of any protected wildlife, without a licence commits an offence and shall, on conviction, be liable to a fine not exceeding 50,000 ringgit or to imprisonment for a term not exceeding two years, or to both.</p> <p>(2) Any person who commits an offence under subsection (1) and which offence involves Common Shama (<i>Copsychus malabaricus</i>), Oriental White Eye (<i>Zosterops palpebrosa</i>) or Hill Myna (<i>Gracula religiosa</i>), exceeding 20 heads, shall, on conviction, be punished with a fine of not less than 20,000 ringgit and not more than 50,000 ringgit, or with imprisonment for a term not exceeding three years, or to both.</p>
63	<p>Carrying out business of dealing, etc. without a licence</p> <p>Any person who carries out business of dealing or taxidermy business without a licence commits an offence and shall, on conviction, be liable to a fine not exceeding 50,000 ringgit, or to imprisonment for a term not exceeding two years, or to both.</p>
65	<p>Importing, etc. protected wildlife without a licence</p> <p>Any person who imports, exports or re-exports any protected wildlife or any part or derivative of a protected wildlife without a licence commits an offence and shall, on conviction, be liable to a fine of not less than 20,000 ringgit and not more than 50,000 ringgit, and to imprisonment for a term not exceeding one year.</p>
66	<p>Operating zoo, etc. without a permit</p> <p>Any person who operates a zoo, commercial captive breeding, circus or wildlife exhibition without a permit commits an offence and shall, on conviction, be liable to a fine not exceeding 70,000 ringgit, or to imprisonment for a term not exceeding three years, or to both.</p>
68	<p>Hunting, etc. totally protected wildlife without special permit</p> <p>(1) Subject to subsection (2), any person who— (a) hunts or keeps any totally protected wildlife (other than an immature totally protected wildlife or the female of a totally protected wildlife); or (b) takes or keeps any part or derivative of a totally protected wildlife, without a special</p>

	<p>permit commits an offence and shall, on conviction, be liable to a fine not exceeding 100,000 ringgit, or to imprisonment for a term not exceeding three years, or to both.</p> <p>(2) Any person who commits an offence under subsection (1) and which offence involves—</p> <p>(a) Pangolin (<i>Manis javanica</i>), Blood Python (<i>Python brongersmai</i>), Harlequin Monitor (<i>Varanus rudicollis</i>), Dumeril's Monitor (<i>Varanus dumerilli</i>) or Clouded Monitor (<i>Varanus bengalensis</i>), exceeding 20 heads, shall, on conviction, be punished with a fine of not less than 50,000 ringgit and not more than 100,000 ringgit, or with imprisonment for a term not exceeding three years, or to both; (b) Crested Argus (<i>Rheinardia ocellata</i>), Mountain Peacock Pheasant (<i>Polyplectron inopinatum</i>), Great Argus (<i>Argusianus argus</i>), Green Peafowl (<i>Pavo muticus</i>), Straw-headed Bulbul (<i>Pycnonotus zeylanicus</i>), Rhinoceros Hornbill (<i>Buceros rhinoceros</i>), Great Hornbill (<i>Buceros bicornis</i>), Plain-pouched Hornbill (<i>Aceros subruficollis</i>) or Helmeted Hornbill (<i>Rhinoplax vigil</i>) shall, on conviction, be punished with a fine of not less than 30,000 ringgit and not more than 100,000 ringgit, and with imprisonment for a term not exceeding two years; or (c) Serow (<i>Capricornis sumatrensis</i>), Gaur (<i>Bos gaurus</i>), Javan Rhinoceros (<i>Rhinoceros sondaicus</i>), Sumatran Rhinoceros (<i>Dicerorhinus sumatrensis</i>), Tiger (<i>Panthera tigris</i>), Leopard (<i>Panthera pardus</i>), Clouded Leopard (<i>Neofelis nebulosa</i>) or False Gharial (<i>Tomistoma schlegelii</i>) shall, on conviction, be punished with a fine of not less than 100,000 ringgit and not more than 500,000 ringgit, and with imprisonment for a term not exceeding five years.</p>
71	<p>Importing, etc. totally protected wildlife without special permit</p> <p>Any person who imports, exports or re-exports any totally protected wildlife or any part or derivative of a totally protected wildlife without a special permit commits an offence and shall, on conviction, be liable to a fine of not less than 30,000 ringgit and not more than 100,000 ringgit, and to imprisonment for a term not exceeding three years.</p>
72	<p>Using, etc. totally protected wildlife without special permit</p> <p>(1) Subject to subsections (2) and (3), any person who— (a) uses any totally protected wildlife for his zoo, circus or wildlife exhibition operation; or (b) uses any totally protected wildlife for his commercial captive breeding operation, without a special permit commits an offence and shall, on conviction, be liable to a fine not exceeding 100,000 ringgit, or to imprisonment for a term not exceeding three years, or to both.</p> <p>(2) Any person who commits an offence under subsection (1), and which offence involves wildlife specified in paragraph 68(2)(b), shall, on conviction, be punished with a fine of not less than 30,000 ringgit and not more than 100,000 ringgit and with imprisonment for a term not exceeding two years.</p> <p>(3) Any person who commits an offence under subsection (1) and which offence involves wildlife specified in paragraph 68(2)(c), shall, on conviction, be punished with a fine of not less than 100,000 and not more than 500,000 ringgit, and with imprisonment for a term not exceeding five years.</p>
Malaysian Timber Industry Board (Incorporation) Act 1973 (Act 105)	
Section No.	Provisions
13	<p>Prohibition against carrying out activities without registration</p> <p>(1) No person shall carry on any activity as— (a) an exporter; (b) an importer; (c) a supplier; (d) a grader; (e) a processor; (f) a trader; (g) an operator; or (h) a jetty operator, unless he is registered in accordance with this Act.</p> <p>(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding 250,000 ringgit, or to imprisonment for a term not exceeding three years, or to both.</p>
18A	<p>Duty to declare</p> <p>(1) An exporter or importer shall make a declaration to the Board in respect of timber to be exported or imported, before the exportation or importation of such timber.</p> <p>(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding 100,000 ringgit, or to imprisonment for a term not exceeding two years, or to both.</p>
Sabah Wildlife Conservation Enactment 1997 and Wildlife Conservation (Amendment) Enactment 2016	
Section No.	Provisions

25	<p>Animals that shall not be hunted</p> <p>(1) No person shall hunt any animal listed in Part I of Schedule 1.</p> <p>(2) No person shall hunt: (a) an animal of a species listed in Part I of Schedule 2 or Schedule 3 without a licence; (b) more than the quota of that species of animal included in a licence.</p> <p>(3) Any person who contravenes subsection (1) or (2) commits an offence and shall, on conviction, be liable – (a) in respect of an offence relating to an animal of a species listed in Part I of Schedule 1, to a fine of not less than 50,000 ringgit and not more than 250,000 ringgit, and with imprisonment for a term of not less than 1 year and not more than 5 years; or (b) in respect of an offence relating to an animal of a species listed in Part 1 of Schedule 2 or Schedule 3, to a fine of not less than 50,000 ringgit or to imprisonment for a term not less than 6 months and not more than 5 years, or to both.</p>
41	<p>Possession of protected animals and animal products</p> <p>(1) No person shall possess any animal of a species listed in Part 1 of Schedule 1 or an animal product of an animal listed in Part 1 of Schedule 1 unless authorized in writing by the Minister acting on the advice of the Director.</p> <p>(3) The burden of proving lawful possession of any animal or animal product shall be upon the person possessing such animal or animal product.</p> <p>(4) Any person who contravenes subsection (1) or (2) commits an offence and shall, on conviction, be liable, in the case of an offence relating to – (a) an animal or an animal product of a species listed in Appendix I or Part 1 of Schedule 1, to a fine of not less than 50,000 ringgit and not more than 250,000 ringgit, and with imprisonment for a term of not less than 1 year and not more than 5 years;...</p>
53	<p>Control of movement of protected animals into or out of the State</p> <p>(1) No person shall – (a) bring or cause to be brought into the State; or (b) take or cause to be taken out of the State; by land, sea, or air any live protected animal or animal product of a protected animal except under the authority of permit granted by the Director upon such conditions as may be specified therein and subject to the payment of such fee as may be prescribed.</p> <p>(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable, in the case of an offence relating to – (a) an animal or an animal product of a species listed in Appendix I or Part 1 of Schedule 1, to a fine of not less than 50,000 ringgit and not more than 250,000 ringgit, and with imprisonment for a term of not less than 1 year and not more than 5 years;...,</p>
62	<p>Possession of protected plants</p> <p>(1) No person shall possess a protected plant that has been removed from its habitat or other place of propagation, except – (a) under the authority of a valid licence or permit granted under this Enactment; (b) by way of purchase pursuant to section 60(2); or (c) by way of inheritance or gift or other form of transfer pursuant to a temporary plant sale or transfer permit granted pursuant to section 60(3).</p> <p>(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable in respect of – (a) a plant listed in Appendix I or Part II of Schedule 1, to a fine of not less than 50,000 ringgit and not more than 250,000 ringgit and with imprisonment for a term of not less than 1 year and not more than 5 years;...</p>
63	<p>Control of movement of protected plants into or out of the State</p> <p>(1) No person shall - (a) bring or cause to be brought into the State; or (b) take or cause to be taken out of the State; by land, sea, or air any live protected plant except under the authority of permit granted by the Director upon such conditions as may be specified therein and subject to the payment of such fee as may be prescribed.</p> <p>(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable in respect of – (a) a plant listed in Appendix I or Part II of Schedule 1, to a fine of not less than 50,000 ringgit and not more than 250,000 ringgit and with imprisonment for a term of not less than 1 year and not more than 5 years;...</p>

87 Declaration of turtle egg traditional collection area

(1) Notwithstanding section 84, the Director may declare, by notice in the Gazette, an area as a turtle egg traditional collection area.

(2) Where an area is declared to be a turtle egg traditional collection area, it shall be reserved exclusively for the collection of turtle eggs without permit in accordance with the traditional rights of the people who dwell reasonably adjacent to such area and whose rights have been recognized by the Government prior to this Enactment.

(3) The rights of collection referred to in subsection (2) shall not entitle the person exercising such rights to sell any turtle egg.

(4) Any person who – (a) collects or has in his possession any turtle egg other than pursuant to a right referred to in subsection (2); or (b) sells any turtle egg; commits an offence and shall, on conviction, be liable to a fine of not less than 50,000 ringgit and not more than 250,000 ringgit and with imprisonment for a term of not less than 1 year and not more than 5 years;...

Sabah Forest Enactment 1968

Section No. Provisions

30 General offences

(1) Any person who, without lawful authority or legal right - (a) makes upon or fixes to any forest produce any property mark, or any mark authorized by the rules for use by any forest officer; (b) alters, defaces or destroys any such mark or has in his possession any instrument or implement for making, counterfeiting or altering any such mark; (c) issues or purports to issue any licence; (d) alters, defaces or counterfeits any licence or other document lawfully issued or made under the provisions of this Enactment or of any rule or order made thereunder; (e) in any Forest Reserve or on State land covers any tree stump or any evidence of the extraction of forest produce with brushwood or earth or by any other means whatsoever conceals, destroys or removes, or attempts to conceal, destroy or remove, such stump or evidence or any part thereof; (f) alters, removes or destroys or defaces or otherwise injures any boundary mark or survey beacon appertaining to a Forest Reserve or to any land specified in a notice of intention; (g) keeps or has in his possession, custody or control any forest produce which bears any property mark or in respect of which a forest offence has been committed or upon which the royalty or other payment due in respect thereof has not been paid or made; (h) wears, otherwise than for the purpose of a bona fide theatrical performance, any uniform or part of a uniform, or any badge or other identifying mark which has been issued by the Forests Department for the use of forest officers or other employees of that Department, or which so resembles such uniform, badge or mark as to make it appear that such person is a forest officer or other employee of the Forests Department, shall be guilty of an offence.

(2) Any person guilty of an offence under subsection (1) shall on conviction be liable -

(a) if the offence is under paragraph (a), (b), (c), (d), (e), or (f) of subsection (1), to a fine not exceeding 500,000 ringgit and to imprisonment for a term which shall not be less than one year but shall not exceed 20 years;

(b) if the offence is under paragraph (g) of subsection (1), to a fine not exceeding 50,000 ringgit, or to imprisonment for a term not exceeding 5 years, or to both such fine and imprisonment; and

(c) if the offence is under paragraph (h) of subsection (1), to a fine not exceeding 10,000 ringgit, or to imprisonment for a term not exceeding 3 years, or to both such fine and imprisonment.

Sarawak Wild Life Protection Ordinance 1998

Section No. Provisions

29 Totally protected animals and protected animals

(1) Any person who hunts, kills, captures, sells, offers for sale or claims to be offering for sale, imports, exports, or is in possession of, any totally protected animal or any recognizable part or derivative thereof, or any nest thereof, except in accordance with the permission in writing of the Controller for scientific or educational purposes or for the protection and conservation of such totally protected animal, shall be guilty of an offence: Penalty—

(a) if the animal concerned is a rhinoceros, imprisonment for 5 years and a fine of 50,000 ringgit; (b) if the animal concerned is an orangutan or proboscis monkey, imprisonment for 2

	<p>years and a fine of 30,000 ringgit; (c) in the case of other totally protected animals not mentioned in paragraph (a) or (b), imprisonment for 2 years and a fine of 25,000 ringgit.</p> <p>(2) Any person who hunts, kills, captures, sells, offers for sale or claims to be offering for sale, imports, exports, or is in possession of, any protected animal or any recognizable part or derivative thereof, or any nest thereof, except under and in accordance with the terms and conditions of a licence issued under this Ordinance, shall be guilty of an offence: Penalty, imprisonment for 1 year and a fine of 10,000 ringgit.</p>
30	<p>Totally protected plants and protected plants</p> <p>(1) Without prejudice to section 24(4), any person who collects, cultivates, cuts, trims, removes, burns, poisons, injures, sells, offers for sale, imports, exports or is in possession of, any totally protected plant or any recognizable part or derivative thereof, except in accordance with the permission in writing of the Controller for scientific or educational purposes or for the protection and conservation of such totally protected plant, shall be guilty of an offence: Penalty, imprisonment for 2 years and a fine of 25,000 ringgit.</p> <p>(2) Any person who collects, cultivates, cuts, trims, removes, burns, poisons, in any way injures, sells, offers for sale, imports, exports or is in possession of, any protected plant or any recognizable part or derivative thereof, except under and in accordance with the terms and conditions of a licence issued under this Ordinance, shall be guilty of an offence: Penalty, imprisonment for 1 year and a fine of 10,000 ringgit.</p>
31	<p>Licence to import and export wild animals and wild plants</p> <p>Any person who imports into or exports out of the State any wild animal specified in Part III of the First Schedule or any wild plant specified in Part III of the Second Schedule, except under and in accordance with the terms and conditions of a licence issued by the Controller, shall be guilty of an offence: Penalty, imprisonment for one year and a fine of 2,000 ringgit or five times the sum which appears to the court to be the value of any wild animal or wild plant imported or exported, whichever is the greater.</p>
35	<p>Licence for breeding of wild animals</p> <p>(1) No person shall breed, rear or keep any wild mammal, bird, reptile or amphibian for the purpose of trade, sale or commercial usage without a licence from the Controller.</p> <p>(2) The sale or offer for sale of any wild mammal, bird, reptile or amphibian which is bred, reared or kept pursuant to subsection (1) shall be regulated— (a) by conditions imposed in the licence issued thereunder; or (b) where the sale or offer for sale is not carried out by the holder of a licence issued under subsection (1), in accordance with a licence for the sale thereof issued by the Controller.</p> <p>(3) Any person who contravenes subsection (1) or any condition of a licence issued for the purpose stipulated thereunder shall be guilty of an offence: Penalty, imprisonment for one year and a fine of 10,000 ringgit.</p>
37	<p>Possession of wild animals</p> <p>(1) No person shall, unless licensed under this Ordinance, have in his possession any species of wild mammal, bird, reptile or amphibian: Provided that— (a) a native residing within a Native Area Land or Native Customary Land may have in his possession, for his own consumption or use, any wild mammal, bird, reptile or amphibian or other recognizable part or derivative thereof; and (b) any other person may have, for his own consumption, not more than five kilograms of wild mammal, bird, reptile or amphibian.</p> <p>(2) Any person who contravenes subsection (1) shall be guilty of an offence: Penalty— (a) if the animal concerned is a totally protected species, the penalty shall follow those specified in subsection (1) of section 29 per individual animal and animal part in his possession; (b) if the animal concerned is a protected species, the penalty shall follow those specified in subsection (2) of section 29 per individual animal and animal part in his possession; (c) for all other species, the penalty shall be imprisonment for one year and a fine of 2,000 ringgit per individual animal and animal part found in his possession.</p> <p>(3) Any person having in possession any wild mammal, bird, reptile or amphibian exceeding the quantities stipulated in paragraph (b) of the proviso to subsection (1) shall be deemed to have intended to sell or offer for sale such wild mammal, bird, reptile or amphibian, and be guilty of an offence under section 33(1).</p>
51	<p>Double penalty in certain cases</p> <p>Any person who commits an offence against this Ordinance or any rule made thereunder—</p>

(a) after sunset and before sunrise; or (b) after a previous conviction for a like offence, shall be liable to double the penalty prescribed for such offence.

Sarawak Forests Ordinance 2015

Section No. Provisions

- 93 Penalty for illegal export of logs and excess production limit**
(1) Any person who – (a) exports or causes to be removed from Sarawak any timber in contravention of section 63 without a Certificate of Inspection and section 64(7)(a) without an Export Clearance Certificate; (b) knowingly assists in the transportation for export or removal from Sarawak any timber without an Export Clearance Certificate and the Certificate of Inspection; or (c) attempts to export or remove from Sarawak any timber in excess of the volume or quantity stipulated in either a Certificate of Inspection issued under section 64 or an export clearance certificate issued under section 64(7)(a), shall be guilty of an offence and shall, upon conviction, be punished with a fine of not less than 100,000 ringgit and not exceeding 500,000 ringgit and imprisonment not exceeding five years; and for a subsequent offence, shall be punished with a fine of not less than 500,000 ringgit and not exceeding 1,000,000 million ringgit, and imprisonment not exceeding ten years.
(3) Any person who knowingly fells, extracts or removes from any area, timber in excess of the production limit imposed under section 64(1)(a) or under section 64(4), shall be guilty of an offence and shall, upon conviction, be punished with a fine of not less than 100,000 ringgit and not exceeding 500,000 ringgit, or imprisonment not exceeding 7 years, or to both.
(4) When a person is convicted of an offence under this section, the court shall, in addition to any penalty which it may impose, order such person to pay to the Government – (a) a sum of not less than 10 times the royalty, premium and cess chargeable on the timber exported or removed from the State without an Export Clearance Certificate; (b) a sum of not less than 10 times the value (as assessed by the Director or any forest officer authorized by the Director) of the timber felled, extracted or removed in excess of the production limit; and (c) any fees payable in accordance with this Ordinance, and any sum ordered to be so paid shall be recoverable by the Government as a civil debt.
- 94 Penalty for offence concerning marks and property marks**
(1) Whoever, without the authority of the Director – (a) alters, moves, defaces or destroys any boundary marks; (b) knowingly counterfeits on any tree or timber, or has in his possession any instrument for counterfeiting, any hammer mark; or (c) alters, defaces or destroys any property mark registered with the Director, shall be guilty of an offence and shall, upon conviction, be punished with a fine of not less than 25,000 ringgit and not exceeding 150,000 ringgit, or imprisonment not exceeding 5 years, or to both.
- 96 Penalty for unlawful possession of forest produce**
(1) Any person found in unlawful possession of any forest produce shall be guilty of an offence and shall, upon conviction, be punished with a fine of not less than 25,000 ringgit and not exceeding 150,000 ringgit, or imprisonment not exceeding 5 years or to both; and for a subsequent offence shall be punished with a fine of not less than 150,000 ringgit and not exceeding 500,000 ringgit, or imprisonment not exceeding 10 years, or to both.
(2) The person shall be deemed to be in unlawful possession of any forest produce unless proven otherwise if – (a) the forest produce does not bear his own registered property mark; or (b) the forest produce does not bear any other mark as may be determined by the Director to denote that the person is entitled to the lawful possession thereof.
(3) When a person is convicted of an offence under this section, the court shall, in addition to any penalty which it may impose, order the person convicted of the offence to pay to the Government a sum of not less than ten times the value (as assessed by the Director or any forest officer authorized by him) of the forest produce in respect of which the offence has been committed, and any sum ordered to be so paid shall be recoverable by the Government as a civil debt.
- 97 Double penalty in certain cases**
Any person who contravenes this Ordinance or any rules made thereunder – (a) after sunset and before sunrise; or (b) after a previous conviction of the offender for a like offence, except as provided under sections 37(4), 60(2), 62(5)(a)(ii), 93(1), 95(1) and 102(1)(b),

shall be liable to double the penalty provided for such offence.

105

False declaration

(1) Any person who makes, orally or in writing, signs or furnishes any declaration, return, certificate or other documents or information required under this Ordinance which is untrue, inaccurate or misleading in any particular, shall be guilty of an offence and shall, upon conviction, be punished with – (a) where such person is an individual, a fine of not less than 25,000 ringgit and not exceeding 150,000 ringgit, or to imprisonment not exceeding 7 years, or to both; or (b) where such person is a body corporate, a fine of not less than 250,000 ringgit and not exceeding 1,000,000 ringgit.

(2) Any person who – (a) without lawful authority alters, forges, mutilates or defaces any certificate or registration; or (b) knowingly makes use of any certificate or registration which has been so altered, forged, mutilated or defaced, shall be guilty of an offence and shall, upon conviction, be punished with – (i) where such person is an individual, a fine of not less than 25,000 ringgit and not exceeding 150,000 ringgit, or to imprisonment not exceeding 7 years, or to both; or (ii) where such person is a body corporate, a fine of not less than 250,000 ringgit and not exceeding 1,000,000 ringgit.

Annex II – Selected provisions from other laws

Penal Code (Act 574)	
Section No.	Provisions
130U	In this Chapter, “organized criminal group” means a group of two or more persons, acting in concert with the aim of committing one or more serious offences, in order to obtain, directly or indirectly, a material benefit, power or influence.
130V	Member of an organized criminal group (1) Whoever is a member of an organized criminal group shall be punished with imprisonment for a term of not less than five years and not more than twenty years. (2) Until the contrary is proved, a person shall be presumed to be a member of an organized criminal group where: (a) Such person can be identified as belonging to an organized criminal group; or (b) Such person is found with a scheduled weapon as specified under the Corrosive and Explosive Substances and Offensive Weapons Act 1958 [Act 357].
130W	Assisting an organized criminal group Whoever assists an organized criminal group to further the interest of that group shall be punished with imprisonment for a term which may extend to ten years.
130X	Harbouring a member of an organized criminal group Whoever harbours, or prevents, hinders or interferes with the arrest of a member of an organized criminal group shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine.
130Y	Consorting with an organized criminal group Whoever without reasonable excuse, consorts with a member of an organized criminal group shall be punished with imprisonment for a term of not less than five years and not more than twenty years, and shall also be liable to fine.
130Z	Recruiting persons to be members of an organized criminal group Whoever knowingly recruits, or agrees to recruit, another person to be a member of an organized criminal group shall be punished with imprisonment for a term which may extend to ten years, and shall also be liable to fine.
130ZA	Participation in an organized criminal group Whoever participates in an organized criminal group— (a) knowing or having reason to believe that it is an organized criminal group; and (b) knowing, or having reason to believe that, or being reckless as to whether, his participation in that group contributes to the occurrence of any criminal activity, shall be punished with imprisonment for a term which may extend to ten years, and shall be liable to fine.
130ZB	Accepting gratification to facilitate or enable organized criminal activity Whoever accepts gratification to facilitate or enable any organized criminal activity shall be punished— (a) if the act results in death, with death; and (b) in any other case, with imprisonment for a term of not less than seven years but not exceeding thirty years, and shall also be liable to fine.
130ZC	Enhanced penalties for offences committed by an organized criminal group or member of an organized criminal group (1) Any organized criminal group or a member of an organized criminal group convicted of any serious offence under this Code or under any written law shall be punished with imprisonment for a term of twice as long as the maximum term for which he would have been liable on conviction for that offence, and shall also be liable to whipping. (2) Any organized criminal group or a member of an organized criminal group convicted of any non-serious offence under this Code or under any written law shall be punished with imprisonment for a term of not less than two years and not more than twice as long as the maximum term for which he would have been liable on conviction for that offence, and shall also be liable to whipping.
161	Public servant taking a gratification, other than legal remuneration, in respect of an official act

Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act, or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, with the Government, or with any member of the Cabinet or of Parliament or of a State Executive Council or Legislative Assembly, or with any public servant, as such, shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

162 Taking a gratification in order, by corrupt or illegal means, to influence a public servant
Whoever accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by corrupt or illegal means, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Government, or with any member of the Cabinet or of Parliament or of a State Executive Council or Legislative Assembly, or with any public servant, as such, shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

163 Taking a gratification, for the exercise of personal influence with a public servant
Whoever accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Government, or with any member of the Cabinet or of Parliament or of a State Executive Council or Legislative Assembly, or with any public servant, as such, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.

164 Punishment for abetment by public servant of the offences above defined
Whoever, being a public servant, in respect of whom either of the offences defined in sections 162 and 163 is committed, abets the offence, shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

Criminal Procedure Code (Act 593)

<i>Section No.</i>	<i>Provisions</i>
--------------------	-------------------

109	<p>Investigation in seizable cases</p> <p>(1) Any police officer not below the rank of Sergeant or any officer in charge of a police station may without the order of the Public Prosecutor exercise all or any of the special powers in relation to police investigations given by this Chapter in any seizable case.</p> <p>(2) No proceedings of a police officer in any such case shall at any stage be called in question on the ground that the case was one in which that officer was not empowered under this section to exercise the special powers of police investigations given by this Chapter.</p>
------------	---

111	<p>Police officer's power to require attendance of witnesses</p> <p>(1) A police officer making an investigation under this Chapter may by order in writing require the attendance before himself of any person who from the information given or otherwise appears to be acquainted with the circumstances of the case, and that person shall attend as so required.</p> <p>(2) If any such person refuses to attend as so required that police officer may report such refusal to a Magistrate who may thereupon in his discretion issue a warrant to secure the attendance of that person as required by such order.</p>
------------	--

116A	<p>Search and seizure without warrant</p> <p>(1) Whenever it appears to any police officer not below the rank of Inspector that there is reasonable cause to suspect that there is concealed or deposited in any place any evidence of the commission of a security offence or any offence relating to an organized crime and such police officer has reasonable grounds for believing that, by reason of delay in obtaining a search warrant, the object of the search is likely to be frustrated, he may—</p> <p>(a) enter any premises and there search for, seize and take possession of, any book, document, record, account or data, or other article;</p>
-------------	---

- (b) inspect, make copies of, or take extracts from, any book, document, record, account or data;
 - (c) search any person who is in or on such premises, and for the purpose of such search detain such person and remove him to such place as may be necessary to facilitate such search, and seize and detain such article, container or receptacle;
 - (d) break open, examine, and search any article, container or receptacle; or
 - (e) stop, search, and seize any conveyance.
- (2) Whenever it is necessary so to do, a police officer conducting a search under subsection (1) may—
- (a) break open any outer or inner door or window of any premises and enter into, or otherwise forcibly enter the premises and every part thereof;
 - (b) remove by force any obstruction to such entry, search, seizure or removal; or
 - (c) detain any person found in or on any premises or in any conveyance searched under subsection (1) until such premises or conveyance has been searched.

116B Access to computerized data

- (1) A police officer not below the rank of Inspector conducting a search under this Code shall be given access to computerized data whether stored in a computer or otherwise.
- (2) Any information obtained under subsection (1) shall be admissible in evidence notwithstanding any other provisions in any written law to the contrary.
- (3) For the purpose of this section, “access” includes being provided with the necessary password, encryption code, decryption code, software or hardware and any other means required to enable comprehension of the computerized data.

116C Interception of communication and admissibility of intercepted communications

- (1) Notwithstanding any written law to the contrary, the Public Prosecutor, if he considers that it is likely to contain any information relating to the commission of an offence, may authorize a police officer—
- (a) to intercept, detain and open any postal article in the course of transmission by post;
 - (b) to intercept any message transmitted or received by any communication; or
 - (c) to intercept, listen to or record any conversation by communication.
- (2) The Public Prosecutor, if he considers that any communication is likely to contain any information relating to the commission of an offence, may—
- (a) require a communications service provider to intercept and retain a specified communication or communications of a specified description received or transmitted, or about to be received or transmitted by that communications service provider; or
 - (b) authorize a police officer to enter any premises and to install on such premises, any device for the interception and retention of a specified communication or communications of a specified description and to remove and retain such device.
- (3) Where any person is charged with an offence, any information obtained under subsection (1) or (2), whether before or after such person is charged, shall be admissible in evidence at his trial.

Customs Act (Act 235)

Section No. Provisions

123 Imprisonment for non-payment of fine

Notwithstanding the provisions of the Criminal Procedure Code [Act 593] the period of imprisonment imposed by any court in respect of the non-payment of any fine under this Act, or in respect of the default of a sufficient distress to satisfy any such fine, shall be such period of such description, as in the opinion of the court will satisfy the justice of the case, but shall not exceed in any case the maximum fixed by the following scale: with two additional months for every 100 ringgit after the first 200 ringgit of the fine until a maximum period of six years is reached.

133 Penalty on making incorrect declarations and on falsifying documents

- (1) Whoever—
- (a) makes, orally or in writing, or signs any declaration, certificate or other document required by this Act which is untrue or incorrect in any particular;
 - (c) counterfeits or falsifies, or uses, when counterfeited or falsified, any document which is or may be required under this Act or any document used in the transaction of any business or matter relating to customs;

shall, on conviction, be liable to a fine not exceeding 500,000 ringgit or to imprisonment for a term not exceeding 5 years, or to both.

135 Penalties for various smuggling offences

(1) Whoever— (a) is concerned in importing or exporting any uncustomed goods or any prohibited goods contrary to such prohibition whether such uncustomed or prohibited goods be shipped, unshipped, delivered or not; (b) ships, unships, delivers or assists or is concerned in the shipping, unshipping or delivery of any uncustomed goods or any prohibited goods contrary to such prohibition; (c) illegally removes or withdraws or in any way assists or is concerned in the illegal removal or withdrawal of any goods from any customs control; (d) knowingly harbours, keeps, conceals, or is in possession of, or permits, suffers, causes or procures to be harboured, kept or concealed, any uncustomed or prohibited goods; (e) is in any way knowingly concerned in conveying, removing, depositing or dealing with any dutiable, uncustomed or prohibited goods with intent to defraud the Government of any duties thereon, or to evade any of the provisions of this Act or to evade any prohibition applicable to such goods; (f) being a passenger or other person, is found to have in his baggage or upon his person or otherwise in his possession, after having denied that he has any dutiable or prohibited goods in his baggage or upon his person or otherwise in his possession, any dutiable or prohibited goods; or (g) is in any way knowingly concerned in any fraudulent evasion or attempt at fraudulent evasion of any customs duty, or in evasion or attempt at evasion of any prohibition of import or export; shall be guilty of an offence and shall, on conviction—

(iii) in the case of prohibited goods: (aa) be liable for the first offence to a fine of not less than 10 times the value of the goods or 50,000 ringgit, whichever is the lesser amount, and of not more than 20 times the value of the goods or 100,000 ringgit, whichever is the greater amount, or to imprisonment for a term not exceeding 3 years, or to both; and

(bb) be liable for a second or any subsequent offence to a fine of not less than 10 times the value of the goods or 100,000 ringgit, whichever is the lesser amount, and of not more than 40 times the value of the goods or 500,000 ringgit, whichever is the greater amount, or to imprisonment for a term not exceeding 5 years, or to both. Provided that where the value of the goods cannot be ascertained, the penalty may amount to a fine not exceeding 500,000 ringgit or to imprisonment for a term not exceeding 5 years, or to both.

137 Penalty for offering or receiving bribes

(1) If any officer of customs or other person duly employed for the prevention of smuggling—

(a) makes any collusive seizure or delivers up or makes any agreement to deliver up or not to seize any vessel or aircraft or other means of conveyance, or any goods liable to seizure;

(b) accepts, agrees to accept, or attempts to obtain, any bribe, gratuity, recompense or reward for the neglect or nonperformance of his duty; or

(c) conspires or connives with any person to import or export or is in any way concerned in the importation or exportation of any goods liable to customs duties or any goods prohibited to be imported or exported for the purpose of seizing any vessel, aircraft or conveyance or any goods and obtaining any reward for such seizure or otherwise;

every such officer so offending shall be guilty of an offence against this Act and shall, on conviction, be liable to imprisonment for a term not exceeding 5 years, or to a fine not exceeding 10,000 ringgit, or to both such imprisonment and fine, and shall be interdicted from holding office in the public service of the Federal Government or the Government of any State, and every person who gives or offers or promises to give or procures to be given any bribes, gratuity, recompense or reward to, or makes any collusive agreement with, any such officer or person as aforesaid to induce him in any way to neglect his duty or to do, conceal or connive at any act whereby any of the provisions of any other law relating to imports or to exports may be evaded, shall be guilty as an abettor and so punishable under this Act.

(2) Any officer of customs who is found when on duty to have in his possession any monies in contravention of any departmental regulations issued in writing shall be presumed, until the contrary is proved, to have received the same in contravention of paragraph (1)(b).

(3) If an officer of customs has reasonable suspicion that another officer of customs junior in rank to him has in his possession any money received in contravention of paragraph(1)(b) he may search such other officer.

Section No.	Provisions
16	Offence of accepting gratification Any person who by himself, or by or in conjunction with any other person – (a) corruptly solicits or receives or agrees to receive for himself or for any other person; or (b) corruptly gives, promises, or offers to any person whether for the benefit of that person or of another person; any gratification as an inducement to or reward for, or otherwise on account of – (A) any person doing or forbearing to do anything in respect of any matter or transaction, actual or proposed or likely to take place; or (B) any officer of a public body doing or forbearing to do anything in respect of any matter or transaction, actual or proposed or likely to take place, in which the public body is concerned; commits an offence.
17	Offence of giving or accepting gratification by agent A person commits an offence if – (a) being an agent, he corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification as an inducement or a reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavor to any person in relation to his principal's affairs or business; or (b) he corruptly gives or agrees to give or offers any gratification to any agent as an inducement or a reward for doing or forbearing to do, or for having done or forborne to do any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavor to any person in relation to his principal's affairs or business.
18	Offence of intending to deceive principal by agent A person commits an offence if he gives to an agent, or being an agent he uses with intent to deceive his principal, any receipt, account or other document in respect of which the principal is interested, and which he has reason to believe contains any statement which is false or erroneous or defective in any material in particular, and is intended to mislead the principal.
21	Bribery of officer of public body Any person who offers to an officer of any public body, or being an officer of any public body solicits or accepts, any gratification as an inducement or a reward for – (a) the officer voting or abstaining from voting at any meeting of the public body in favour of or against any measure, resolution or question submitted to the public body; (b) the officer performing or abstaining from performing or aiding in procuring, expediting, delaying, hindering or preventing the performance of any official act; (c) the officer aiding in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person; or (d) the officer showing or forbearing to show any favour or disfavor in his capacity as such officer; commits an offence, notwithstanding that the officer did not have the power, right or opportunity to do so, show or forbear, or accepted the gratification without intending to do so, show or forbear, or that the inducement or reward was not in relation to the affairs of the public body.
23	Offence of using office or position for gratification (1) Any officer of a public body who uses his office or position for any gratification, whether for himself, his relative or associate, commits an offence. (2) For the purposes of subsection (1), an officer of a public body shall be presumed, until the contrary is proved, to use his office or position for any gratification, whether for himself, his relative or associate, when he makes any decision, or takes any action, in relation to any matter in which such officer, or any relative or associate of his, has an interest, whether directly or indirectly.
24	Penalty for offences under sections 16, 17, 18, 20, 21, 22 and 23 (1) Any person who commits an offence under sections 16, 17, 18, 20, 21, 22 and 23 shall on conviction be liable to – (a) imprisonment for a term not exceeding 20 years; and (b) a fine of not less than 5 times the sum or value of the gratification which is the subject of the offence, where such gratification is capable of being valued or is of a pecuniary nature, or 10,000 ringgit, whichever is higher. (2) Any person who commits an offence under section 18 shall on conviction be liable to – (a) imprisonment for a term not exceeding 20 years; and (b) a fine of not less than 5 times the sum or value of the false or erroneous or defective material particular, where such false or erroneous or defective material particular is capable of being valued, or of a pecuniary nature, or 10,000 ringgit, whichever is the higher.

Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act (Act 613)

Section No. Provisions

4 Offence of money laundering

(1) Any person who— (a) engages, directly or indirectly, in a transaction that involves proceeds of an unlawful activity or instrumentalities of an offence; (b) acquires, receives, possesses, disguises, transfers, converts, exchanges, carries, disposes of or uses proceeds of an unlawful activity or instrumentalities of an offence; (c) removes from or brings into Malaysia, proceeds of an unlawful activity or instrumentalities of an offence; or (d) conceals, disguises or impedes the establishment of the true nature, origin, location, movement, disposition, title of, rights with respect to, or ownership of, proceeds of an unlawful activity or instrumentalities of an offence, commits a money laundering offence and shall on conviction be liable to imprisonment for a term not exceeding 15 years and shall also be liable to a fine of not less than 5 times the sum or value of the proceeds of an unlawful activity or instrumentalities of an offence at the time the offence was committed or 5,000,000 ringgit, whichever is the higher.

(2) For the purposes of subsection (1), it may be inferred from any objective factual circumstances that— (a) the person knows, has reason to believe or has reasonable suspicion that the property is the proceeds of an unlawful activity or instrumentalities of an offence; or (b) the person without reasonable excuse fails to take reasonable steps to ascertain whether or not the property is the proceeds of an unlawful activity or instrumentalities of an offence.

(3) For the purposes of any proceedings under this Act, where the proceeds of an unlawful activity are derived from one or more unlawful activities, such proceeds need not be proven to be from any specific unlawful activity.

(4) A person may be convicted of an offence under subsection (1) irrespective of whether there is a conviction in respect of a serious offence or foreign serious offence or that a prosecution has been initiated for the commission of a serious offence or foreign serious offence.



UNODC

United Nations Office on Drugs and Crime