

Research Paper

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Illegal Logging and Related Trade The Response in Malaysia

A Chatham House Assessment

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Summary

There has been limited progress in tackling illegal logging and related trade in Malaysia since 2010. Widespread problems remain, particularly in the state of Sarawak. There are high levels of deforestation throughout the country: expansion of timber, pulp and agricultural plantations (including oil palm and rubber) is the main driver of forest loss.

Forest policy-making in Malaysia involves both the federal and state governments, but the states have prerogative rights to develop their own policies on land and forests. This poses challenges, not least since governance of the forest sector varies quite significantly from one region of the country to another.

The government has been negotiating a Voluntary Partnership Agreement (VPA) with the EU since 2007. Negotiations stalled for a number of years but resumed in 2012 without the participation of Sarawak. Concerns remain among stakeholders about the limited recognition of indigenous peoples' rights by the government, as well as about corruption and the lack of transparency.

Awareness of illegal logging and related trade is increasing in the private sector, although the area of natural forest concessions certified as being under sustainable production remained virtually unchanged during the period 2008–12.

Asia is the major export market destination for Malaysia's timber products. However, both the US and the EU import significant volumes of wood-based products from Malaysia too.

The Malaysian Anti-Corruption Commission (MACC) has recently stepped up investigating corruption in the forest sector. In Sarawak, an intensified focus on combatting illegal logging could signal a turning point for the state's forest sector.

In order to build on its response to illegal logging and related trade to date, the Malaysian government should fully engage with the voluntary partnership agreement process and improve multi-stakeholder participation. Transparency in decisions about forest allocation needs to be significantly improved and greater recognition accorded to the rights of indigenous peoples.

More concerted efforts are required to tackle high-level corruption – for example, through strengthening the MACC. At the same time, the government should consider options for an independent monitor for the forest sector as a means of improving forest governance.

Introduction

Illegal logging is a global problem that is both a result of and a contributing factor to poor forest governance. It undermines efforts to manage forests sustainably and equitably, resulting in deforestation, social conflict and the loss of government revenues. This is not just an issue for forest-rich countries; countries that import and consume wood-based products¹ from countries with high levels of illegal logging contribute to the problem if they import products without ensuring that they are legally sourced.

Chatham House has been engaged in research since 2006 to assess illegality in the forest sector and the response by governments and the private sector to the problem. The aim of its work has been to monitor levels of illegal logging and the related trade and so enable an assessment of the effectiveness of efforts to tackle the problem in producer, consumer and processing countries.²

A methodology has been developed for this assessment based on a number of indicators. For producer countries, those indicators are derived from an examination of the national policy and legal framework and its implementation; analysis of enforcement and forest revenue data; a survey of experts; reviews of international and domestic media coverage; wood balance analyses (to estimate illegal harvest volumes); analysis of discrepancies between trade data for exporting and for importing countries; and analysis of data on voluntary verification and certification by timber companies. This approach, which draws on various data sources, provides the most rigorous means of assessing illicit practices, any estimate of which is inevitably challenging. Further details of the methodology can be found in Annex 2 of this assessment.

Twelve countries were assessed in 2008–09 (the findings were published in 2010³) and another six in 2013–14 (published in 2014⁴). In addition, Chatham House undertook a reassessment of the original 12 countries in 2013–14.

This assessment presents the latest findings for Malaysia, which are compared with the situation as reported in 2010. The analysis, undertaken in July 2014, is based on data collected during 2013. Trade statistics and media data were compiled up to the end of 2013 and 2012, respectively, and the policy assessment was made on the basis of the situation as of December 2013, but some more recent developments have been noted as well.

¹ The following terminology has been used in this report: 'Wood-based products' – encompasses all timber-sector and paper-sector products; 'timber-sector products' – includes logs, sawnwood, plywood, veneer, mouldings, joinery and furniture; 'paper-sector products' – includes wood chips, pulp and paper.

² There is considerable overlap between these three categories; all the countries studied are engaged in production, processing and consumption to varying degrees. The indicators for consumer and processing countries are very similar, however, while those for producer countries are quite different, including a range of indicators relating to domestic illegal logging.

³ Lawson, S. and MacFaul, L. (2010), *Illegal Logging and Related Trade: Indicators of the Global Response*. London: Chatham House. The countries assessed were: Brazil, Cameroon, Ghana, Indonesia and Malaysia (producers); China and Vietnam (processing countries); and France, Japan, the Netherlands, the UK and the US (consumers).

⁴ Lawson, S. (2014a), *Illegal Logging in Papua New Guinea*; Lawson, S. (2014b), *Illegal Logging in the Republic of Congo*; Lawson, S. (2014c), *Illegal Logging in the Democratic Republic of Congo*; and Lawson, S. (2014d), *Illegal Wood Import and Re-export: The Scale of the Problem and the Response in Thailand, South Korea and India*. London: Chatham House.

Background

The forest sector makes a significant contribution to Malaysia's economy: in 2011 it contributed \$5.7 billion – equivalent to 2 per cent of GDP – and employed an estimated 210,000 people.⁵ On both counts there has been a decrease since the turn of the century: in 2000 the forest sector contributed 4 per cent of GDP and directly employed 330,000 people.⁶

Malaysia is a federation of 13 states and three federal territories. Responsibilities for forestry are divided between the federal and state governments (for more details, see the section on the government's response). The forest sector varies quite significantly from one region of Malaysia to another. Nearly all timber production in Sarawak is from natural forests; that state accounted for nearly 60 per cent of total natural forest production in Malaysia in 2012, while Peninsular Malaysia accounted for 28 per cent and Sabah for 12 per cent.⁷ While Sabah relies heavily on natural forest production, plantations have become increasingly important there, accounting for just over one-third of log production in 2013, mainly for pulp.⁸ In Peninsular Malaysia, most production is from natural forest production and clearance of rubber plantations. The projected breakdown of average annual log production in this region for the period 2011–15 is just over half of production from natural forest, one-third from rubber plantations and the remainder from timber plantations.⁹

Asia is the major export market destination for Malaysia's timber products, notably Japan (plywood being the main product exported) but also India, Thailand, Singapore, Taiwan, South Korea and China (logs, sawnwood and plywood, and, in the case of Singapore, paper as well). The US and the EU, too, import significant volumes of wood-based products from Malaysia: mostly furniture and plywood in the case of the former, and plywood, sawnwood and furniture in the case of the latter. The US and EU markets are predominantly supplied by Peninsular Malaysia. Plywood and sawnwood account for the bulk of Malaysia's timber exports. The majority of plywood is produced in Sarawak (about 70 per cent), while 20 per cent comes from Sabah and the remaining 10 per cent from Peninsular Malaysia. Sawn timber is produced mainly in Peninsular Malaysia (nearly 70 per cent); 20 per cent comes from Sarawak and 10 per cent from Sabah.¹⁰

In 2013 the country exported 22 million cubic metres (m³, roundwood equivalent [RWE] volume) of wood-based products with an export value of \$7.2 billion. Since 2000 the volume of exports has declined while the value has increased. This is mainly because the export of logs and sawnwood has decreased while that of more highly processed goods (with a higher unit value) – such as plywood, mouldings and furniture – has remained stable and paper exports have increased. At the same time, the country imports significant volumes of wood-based products: in 2012 it imported some 9 million m³ of wood-based products with an import value of \$2.8 billion. China, Thailand, Indonesia

⁵ UN Food and Agriculture Organization (2014), *State of the World's Forests. Enhancing the Socioeconomic Benefits from Forests*.

⁶ Regional Community Forestry Training Center Bangkok (2009), 'Is there a future role for forests and forestry in reducing poverty?' Working Paper No. APFSOS II/WP/2009/24 (FAO).

⁷ Ng Kok Leong, E. (2012), 'Malaysian Timber Industry', presentation at the ATIBT Forum in Vietnam, 22–25 October 2012; Lawson, S. (2014e), *Consumer Goods and Deforestation. An Analysis of the Extent and Nature of Illegality in Forest Conversion for Agriculture and Timber Plantations*. Washington, DC: Forest Trends.

⁸ Sabah Forest Department (2013), *Annual Report 2013*.

⁹ Hashim, N. (2011), 'Sustainability of resources for wood-based industry', presentation available at: <http://cht.hm/1wPtDBV>.

¹⁰ Data for 2012 and 2011 taken from reports by the Peninsular Malaysia, Sarawak and Sabah forestry departments and Sarawak Timber Industry Development Corporation (STIDC) timber statistics (http://www.sarawaktimber.org.my/content.php?do=timber_statistics).

and Vietnam are the main suppliers of such products to Malaysia. Imports from China are mainly of furniture and veneer, while those from the latter three countries are mostly logs, sawn timber, mouldings and wood panels.

In 2010 the total area of forested land was 18.5 million ha, although that figure includes significant areas of timber and pulp plantations as well as some oil palm plantations.¹¹ Of the total, 2 million ha were classified as 'state or alienated land' (which includes plantations), 14.6 million ha as 'permanent reserved forests' and 1.8 million ha as national parks or wildlife and bird sanctuaries. Of the permanent reserved forests, 11.5 million ha were production forest (including plantations) and 3.2 million ha protected forest.¹²

Much of Malaysia's forests are degraded: for example, 80 per cent of forests in Sabah and Sarawak have been heavily impacted by logging.¹³ At the same time, there are high levels of deforestation in the country: satellite data indicate that the annual deforestation rate was 1.6 per cent between 2000 and 2012.¹⁴ Expansion of timber, pulp and agricultural plantations (which include oil palm and rubber) has been the main driver of forest loss in the country.¹⁵ There were nearly 700,000 ha of timber and pulp plantations in 2012,¹⁶ though not all are yet in production; the national timber industry policy (NATIP) predicts the total area is to more than double by 2020, much of this in Sarawak, where government policy is aimed at expanding plantations.¹⁷ Oil palm plantations covered 3.4 million ha in 2000 and 4.7 million ha in 2009: 53 per cent of the total area in 2009 was in Peninsular Malaysia, 30 per cent in Sabah and 18 per cent in Sarawak.¹⁸ The government aims to expand oil palm plantations to cover 5.6 million ha by 2020; most of the expansion is to take place in Sarawak.¹⁹ Rubber plantations (including timber latex clones) cover approximately 1 million ha, nearly all of which are in Peninsular Malaysia; however, the area devoted to this crop in Sabah is expanding.²⁰

Malaysia is currently developing a national REDD+²¹ strategy; and in Sabah, the EU is supporting a programme aimed at tackling climate change through sustainable forest management.²² While illegal logging has been identified as a driver of deforestation and forest degradation, the extent to which the REDD+ strategy will be linked with ongoing efforts to tackle illegal logging has yet to be defined.

The 2010 Chatham House assessment found that, though not as prevalent as in the other countries assessed, illegal activities were common in Malaysia's forest sector. While the government's response to illegal logging was considered relatively good, both a lack of transparency and weak systems for the allocation and management of rights to harvest were highlighted as problematic.

¹¹ Lim, T. W. (2013), *Malaysia: Illegalities in Forest Clearance for Large-Scale Commercial Plantations*. Washington DC: Forest Trends.

¹² Ng Kok Leong (2012).

¹³ Bryan, J. E., Shearman, P. L., Asner, G. P., Knapp, D. E., Aoro, G. and Lokes, B. (2013), 'Extreme Differences in Forest Degradation in Borneo: Comparing Practices in Sarawak, Sabah, and Brunei', *PLOS ONE*, 8(7) (at 10.1371/journal.pone.0069679).

¹⁴ See <http://www.wri.org/blog/2013/11/new-high-resolution-forest-maps-reveal-world-loses-50-soccer-fields-trees-minute>.

¹⁵ Lim (2013) and Lawson (2014a).

¹⁶ The 2012 annual reports of the Sabah, Sarawak and Peninsular Malaysia forestry departments.

¹⁷ For example, the National Timber Industry Policy (NATIP) for the period 2009–20, at http://www.mtib.gov.my/index.php?option=com_content&view=article&id=2106&Itemid=66&lang=en; see also Keong, C.H et al. (2012) *Malaysia: Scoping Baseline Information for Forest Law Enforcement, Governance and Trade*, prepared by TRAFFIC and EU FLEGT Facility, Kuala Lumpur: EU FLEGT Facility.

¹⁸ Rashid A.H., et al. (2013), 'Land use change in Malaysia', in Killeen, T. J. and Goon, J. (eds.), *Reports from the Technical Panels of the Second RSPO GHG Working Group*. Kuala Lumpur: Roundtable for Sustainable Palm Oil (RSPO).

¹⁹ Lim (2013).

²⁰ Ratnasingham, J et al. (2012), 'Production potential of rubberwood in Malaysia: its economic challenges', *Not. Bot. Horti Agrobi*, 40(2), pp. 317–22; and Sabah Forestry Department (2013), *Annual Report 2013*.

²¹ 'REDD+' stands for 'Reducing Emissions from Deforestation and Forest Degradation', the 'plus' referring to the role of conservation, sustainable management of forests and enhancement of forest carbon stocks, in developing countries.

²² See <http://thereddesk.org/countries/malaysia/>; <http://www.dailyexpress.com.my/news.cfm?NewsID=87297>.

The current assessment found that there has been little progress in subsequent years. Malaysia's negotiations over a Voluntary Partnership Agreement (VPA) with the EU, which began in 2007, have yet to be concluded. Recognition of native customary rights (NCRs) has been the most contentious issue in this process. Negotiations are currently under way with Peninsular Malaysia and Sabah, while the state of Sarawak has adopted what it has termed a 'phased approach' to signing the agreement. Governance problems remain, including corruption and a lack of transparency: both problems are prevalent throughout the country but particularly rife in the state of Sarawak.²³ In the last few months, however, illegal logging has received considerable attention in Sarawak: the state's new chief minister has highlighted the pervasiveness of corruption and illegal activities in Sarawak's forest sector and promised to clamp down on them.²⁴ This is an encouraging development that could mark a turnaround in the governance of the state's forests.

²³ See, for example, Global Witness (2014), *Two Worlds Collide. How Construction in Japan Is Driving Destruction in Malaysia's Last Rainforests. Will Japan change its ways ahead of the 2020 Tokyo Olympics?* London: Global Witness.

²⁴ See, for example: <http://www.themalaysianinsider.com/malaysia/article/sarawak-warns-timber-companies-over-illegal-logging-as-macc-probes-industry>; <http://www.nst.com.my/node/54485>, <http://www.themalaysianinsider.com/malaysia/article/rm5-million-seizure-as-sarawak-steps-up-war-on-illegal-logging> and <http://www.theborneopost.com/2014/10/24/illegal-logging-ring-hammered/>.

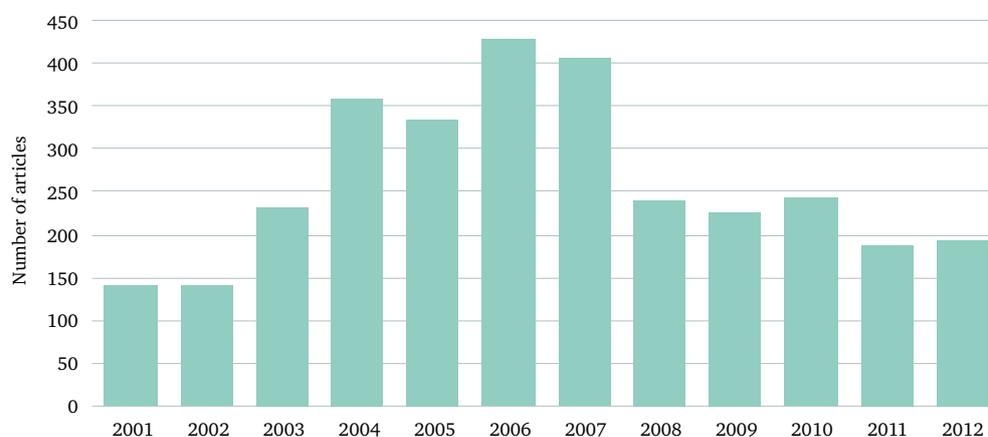
Media Attention

Media coverage provides an insight into levels of public awareness of illegal logging and related trade. While such awareness may not always lead to action, it is important for bringing about change and is therefore useful to monitor. An assessment of the media can also give an indication of the approaches being taken within a country to address the issue. As part of the research undertaken for this report, both domestic and international media sources were reviewed for the period 2009–12.

International media coverage was assessed through searching the online media database Factiva for English-language articles that referred to ‘illegal logging’ in Malaysia. Domestic media coverage was assessed through searching the online archives of seven English-language and four Malay-language news outlets,²⁵ as well as the archives of WWF-Malaysia, the Forest Research Institute of Malaysia library and newsletters of the Malaysian Timber Council (MTC).

International media coverage of illegal logging in Malaysia grew in the early 2000s, peaking in 2006–07 and declining thereafter (see Figure 1). The peak in international coverage coincided with the launch of the VPA negotiations between Malaysia and the EU in 2007.

Figure 1: International media coverage of illegal logging in Malaysia, 2001–12*



*Data for 2001–09 are taken from the 2010 Chatham House Assessment.
Source: Factiva.

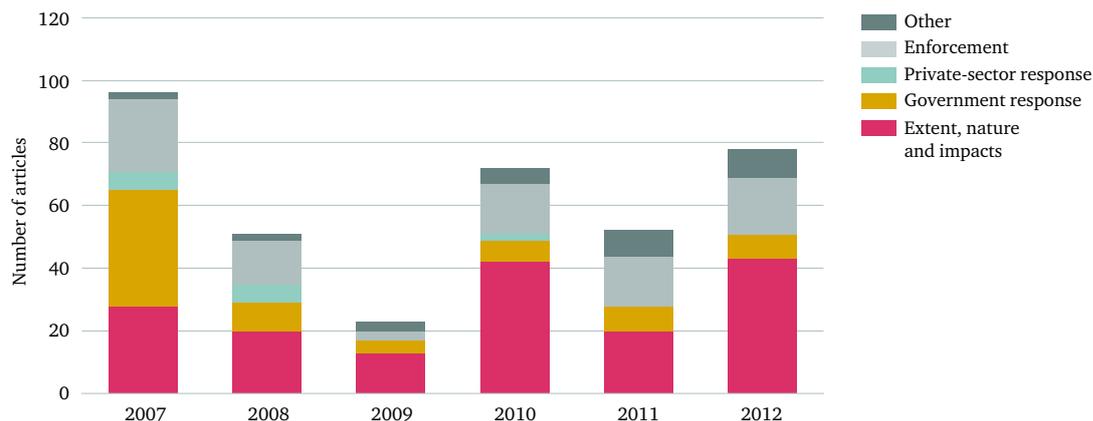
Domestic media coverage has fluctuated over the period surveyed (see Figure 2). The bulk of articles related to the impact of illegal logging, while enforcement received a lot of attention too.

The lowest number of domestic articles published was in 2009, there having been a decline in the number of articles published in Sabah and Sarawak since 2007. A report by the auditor-general on the conduct of a number of state forestry departments (including Sabah and Sarawak), published in 2009, received widespread media coverage the following year. That report prompted increased enforcement

²⁵ The English-language newspapers searched were: *Borneo Post* (Kota Kinabalu and Kuching), *Daily Express*, *Free Malaysia Today*, *The Malay Mail*, *New Straits Times*, *The Star* and *The Sun*. The Malay-language news outlets searched were: *Berita Harian*, *Bernama*, *Utusan Malaysia* and *Harian Metro*.

efforts by the government in the years that followed, which, in turn, received fairly wide coverage. In 2011 there was a slight increase in the number of articles related to the government’s response, many of which discussed a proposal to step up sanctions for illegal logging through a revision of the National Forestry Act (which, however, was not implemented).

Figure 2: National media coverage of illegal logging, 2007–12*



*Figures are for the year from 1 October to 30 September; data for 2007 and 2008 are taken from the 2010 assessment. Sources: WWF-Malaysia, Forest Research Institute of Malaysia library and newsletters of the MTC.

Government Response

A coherent and transparent policy framework that is effectively and consistently enforced is a prerequisite for tackling illegal logging and the trade in illegal timber. This section assesses the design and effectiveness of the Malaysian government's policies and regulations. The data are derived from an assessment of the policy framework that is based on a standard set of questions and scoring for the existence of policies, their design and the level of implementation. In addition, data on enforcement and revenue collection were compiled and a perceptions survey conducted among experts to gauge their views on the government's response.

Forestry policy-making in Malaysia involves both the federal and state governments. Under the federal constitution, land comes under the jurisdiction of the states, which have prerogative rights to develop their own policies on land and forests. However, in the states of Peninsular Malaysia, such policies must be in line with that formulated by the National Land Council (NLC);²⁶ Sabah and Sarawak are exempt from that stipulation.²⁷ The forestry departments of each state are responsible for regulating forest exploitation and management. The departments of the 11 states of Peninsular Malaysia come under the umbrella of the Forestry Department of Peninsular Malaysia, which is responsible for formulating forest policies and provides technical advice and assistance to the state departments.

At the federal level, matters related to the forest sector are dealt with by the Ministry of Natural Resources and Environment, and by the Ministry of Plantation Industries and Commodities. The federal government can introduce legislation related to forestry, but those laws can be enforced only after being approved by the state legislatures.²⁸

Where relevant, this assessment considers the three regions of Peninsular Malaysia, Sabah and Sarawak separately owing to their different situations and approaches.

Policy assessment

Table 1 summarizes the results of the assessments of the situation at the end of 2008 and at the end of 2013:²⁹ the score given in each policy area is a percentage of the maximum score. These results are discussed in more detail in the following sub-sections, while the detailed policy scores on which this table is based are included in Annex 1.

²⁶ The NLC is comprised of state representatives and is chaired by a federal minister. Its main function is to formulate national policy on the utilization of land, including for mining, agriculture and forestry.

²⁷ 'Subject to Clause 5 of Article 91 and under Article 95A, the state government is not required to follow policy formulated by either the NLC or the National Council for Local Government but the representative of the state is not entitled to vote on questions before the Council', see Chapter 8 'Application to States of Sabah and Sarawak of the Federal Constitution of Malaysia' of the Federal Constitution of Malaysia.

²⁸ See the FAQ on Malaysia's forestry and timber trade provided by the MTC in 2010 (<http://mtc.com.my/awareness-faq/>).

²⁹ The policy scores included in the 2010 report were based on an assessment of the situation at the end of 2008; and those for the current assessment on the situation at the end of 2013.

Table 1: Summary policy scores for 2008 and 2013 (as % of maximum score)*

	High-level policy	Legislative framework	Checks and balances	International trade cooperation	Regulating supply and demand	Tenure, use and rights
2008	Orange	Yellow	Yellow	Red	Red	Yellow
2013	Orange	Red	Orange	Red	Yellow	Yellow

	Timber tracking systems	Transparency	Resource allocation**	Law enforcement	Information management	Financial management
2008	Yellow	Yellow	Green	Orange	Orange	Green
2013	Orange	Orange	Orange	Yellow	Yellow	Orange

* To establish the percentage figures, existence, design and implementation have been weighted equally, as has each sub-question under each major heading. Those policy areas for which only a few questions were formulated (legislative framework; international trade cooperation) are more likely to show change than are the other areas. Shading has been allocated according to the total score under each major heading as a percentage of the possible maximum – scores below 25% are red, those between 25% and 50% orange, those between 51% and 75% yellow and those above 75% green.

** The full description of this policy category used in the survey is ‘Allocation and management of rights to harvest’.

High-level policy

There has been no official review to assess the scale, nature or impacts of illegal logging in Malaysia by either the federal or state governments. As regards an action plan, the Forestry Department of Peninsular Malaysia formulated a National Action Plan for Combating Illegal Logging for the period 2011–15.³⁰ At the same time, the country has been negotiating a VPA with the EU (see the sub-section on international trade cooperation). Within the framework of those negotiations, a multi-stakeholder process was established. NGO support and engagement in this process has been varied, however, largely owing to concerns among NGOs that the rights of indigenous peoples³¹ were not being adequately considered, including lack of clarity about the legality standard on requirements related to NCRs. As a result of such concerns, representatives of local communities and social NGOs left the dialogue process in 2008;³² they have yet to resume engagement in the negotiations.

Finally, with regard to inter-governmental coordination, the National Task Force on Illegal Logging (NATFIL) was established in 2009 to improve coordination across the various government bodies involved in enforcement (see the sub-section on law enforcement).

Legislative framework

The 2010 Chatham House assessment considered Malaysia’s legislative framework to be well designed, as did a report published by the International Tropical Timber Organization (ITTO) in 2004.³³ However, there have been differences at the federal and state level in the interpretation of forest legislation, which has resulted in policy varying from state to state. The National Forestry Council was established in 1971

³⁰ For more details, see http://www.pmo.gov.my/home.php?menu=newslist&news_id=13710&page=1731&news_cat=62.

³¹ For the purposes of this assessment report, ‘indigenous peoples’ include both the aborigines of Peninsular Malaysia (*orang asli*) and the natives of Sabah and Sarawak (*anak negeri*).

³² ‘Statement by the JOANGO Hutan & JOAS to EU Delegation’, March 2008, at <http://loggingoff.info/node/146>.

³³ Chen, H. K. (2004), *Forest Law Enforcement and Governance in Malaysia in the Context of Sustainable Forest Management* (prepared by TRAFFIC for the Government of Malaysia).

to facilitate a coordinated approach to forest policy and management between the federal and 11 state governments in Peninsular Malaysia as well as to reconcile policies on other sectors with that of the forestry sector.³⁴ In 2010 the council was incorporated into the National Land Council, although there have recently been calls for its reinstatement.³⁵

A State Ministerial Committee on Forest Policy was established in Sabah in 2009. Chaired by the state attorney-general, it meets every six months to review the state's forest legislation and its implementation, although it is not known what impact the committee has had.³⁶ In addition, a task force has been set up within the Sabah chief minister's department that is aimed at curbing forest crime in the state.³⁷

Checks and balances

In Malaysia some limited provisions are in place that enable the public to mount legal challenges to forest management decisions. The Forest Enactment of Sabah 1968 and the Forestry Ordinance of Sarawak 1958 allow decisions taken by the Forestry Department related to changing the status of state land to forest reserves to be legally challenged.³⁸ While these documents do not provide for legal challenges over the failure by the government to apply the forestry law, such a course of action can be taken through the civil courts (see the sub-section on tenure, use and rights).

Under the Anti-Corruption Act of 1997, bribery and corruption are punishable with imprisonment and fines; the act has been used to prosecute forestry officials. In addition, forestry legislation in all three regions provides wide-ranging discretionary powers to ministers and high-ranking officials. In Sarawak the conservator of forests has the power to exempt any person or licensee from the amended Forest Rules of 1973. These rules set out the procedures for the collection, removal and export of forest products as well as penalties for non-compliance.³⁹ In Sabah the conservator – or anyone authorized by his/her office – has the power to issue licences for all or any of the activities prohibited in sections 20 and 23 of the enactment, including removal of forests products from forest reserves, state land and alienated land.⁴⁰ Furthermore, the chief minister has the power to revoke or change the conditions of a licence at any time.⁴¹ In Peninsular Malaysia the National Forestry Act allows the state authority to amend or rescind any provision of a licence or use permit if compliance with that provision is impossible or difficult.⁴²

There is no parliamentary committee with formal oversight over the federal government's forest agencies. The National Forestry Council used to provide some oversight of forestry departments but was not an independent body: it could only recommend actions to be taken by government agencies, which were required to report back on how they had responded to those recommendations. Under the auspices of the National Audit Department of Malaysia, the auditor-general audits the federal and state administrations, including the state forestry departments (including both financial and non-

³⁴ The council consists of the chief ministers of all 13 Malaysian states (Sabah and Sarawak are observers only) as well as ministers of the relevant federal ministries and is chaired by the deputy prime minister.

³⁵ See <http://www.theborneopost.com/2014/11/13/give-prominence-to-improve-forest-governance-sam/>.

³⁶ Sabah Forestry Department (2009), *Annual Report 2009*.

³⁷ Sabah Forestry Department (2013), *Annual Report 2013* (see chapter 12 on enforcement).

³⁸ The Forests Ordinance of Sarawak, Part II on 'Forest Reserves', Sections 8(1) and 13(1); and the Forest Enactment of Sabah, Part II on 'Forest Reserves', Sections 8–10.

³⁹ The Forest Rules of 1973, Section 36.

⁴⁰ The Forest Enactment of Sabah, Part III, Section 24(1): 'Subject to the provisions of the Enactment the Conservator or any person authorized by him in that behalf may issue licences for the doing of all or any of the acts prohibited by sections 20 and 23 of this Enactment upon such conditions and subject to the payment of such fees or royalties (if any) as may be prescribed or as may be specified in such licence.'

⁴¹ The Forest Enactment of Sabah, Part III, Section 24a (1).

⁴² The National Forestry Act (1984), Part IV, Section 18(a) on the 'Power of State Authority to vary provisions or extend time'.

financial matters). Such audits are undertaken annually and focus on different sectors and agencies each year; the last audit of the states that included forestry was in 2008.

Since 2010 the Malaysian Anti-Corruption Commission (MACC) has focused in particular on corruption, including graft, in the forestry sector. In 2011 it set up a special task force whose members include the attorney-general and officials from the customs service, the Board of Inland Revenue and Bank Negara Malaysia (the central bank).⁴³ The task force has been very active in investigating cases of corruption in the forest sector, of which a large number have been reported in Sarawak in recent months.⁴⁴ In November 2014 the Sarawak Forestry Department, in cooperation with the Office of the State Secretary, and the MACC organized the signing of the Corporate Integrity Pledge by government agencies and the private sector to reduce corruption in the timber industry.⁴⁵ In the same year the MACC and the Forestry Department of Peninsular Malaysia signed a cooperation agreement to tackle illegality and corruption in the forest sector, for which a Forest Integrity Unit has been established within the department.⁴⁶

Malaysia does not have an independent forest monitoring system in place – that is, an organization with a formal government mandate to perform such a role. For its part, customs is mandated to check that timber consignments meet the country's export requirements, although its ability to do so is limited by resources and expertise. In addition, it checks imports of logs and rough sawn timber from Indonesia, on which there is an export ban. This is done in cooperation with the state forestry departments of Peninsular Malaysia and Sabah as well as the Sarawak Timber Industry Development Corporation (STIDC) in Sarawak. Customs in Sarawak, in cooperation with the STIDC, also checks compliance with the state's log export quota.⁴⁷

International trade cooperation

Negotiations with the EU over a VPA started in 2007 but have progressed slowly. The main obstacle has been Malaysian NGOs' concerns that the rights of indigenous communities are not being adequately taken into consideration in the negotiating process. Moreover, there are unresolved conflicts between communities and the government, as well as concerns that there is insufficient transparency within the government over the awarding of logging rights in particular.

In 2012 the Malaysian minister for plantation industries and commodities proposed to the EU that a VPA be signed with Peninsular Malaysia and Sabah only. However, the EU has expressed its preference to sign an agreement with the federal government of Malaysia and proposed that time-bound commitments for the involvement of Sarawak be explored.⁴⁸ Negotiations on the VPA with Malaysia continue. Sabah and Peninsular Malaysia are developing timber legality assurance systems, including defining the legality criteria and procedures for the verification of legality, and negotiating the scope of the forest sector information to be made available to the public, which will be set out in an annex to the agreement.⁴⁹

⁴³ See the MACC 2011 annual report, <http://www.sprm.gov.my/files/laporantahunan2011.pdf>.

⁴⁴ See, for example, <http://www.thestar.com.my/News/Nation/2012/01/08/MACC-seeks-help-in-forestry-officers-case/>; <http://www.sarawakreport.org/2012/04/malaysian-foreign-minister-named-in-macc-investigation-into-sabah-timber-corruption-national-expose/>; <http://www.thestar.com.my/News/Nation/2014/10/21/MACC-opens-investigation-into-illegal-logging-in-the-country/>.

⁴⁵ See http://www.forestry.sarawak.gov.my/modules/web/pages.php?mod=news&sub=news_view&menu_id=&sub_id=&nid=245&m=11&y=2014.

⁴⁶ For more details, see http://www.pmo.gov.my/home.php?menu=newslist&news_id=13710&page=1731&news_cat=62.

⁴⁷ See the Customs Act of 1967, the STIDC Ordinance of 1973 (regulating the log export quota), Section 14 of the Malaysian Timber Industry Board Incorporation Amendment of 1990 and the Customs Prohibition of Exports Order of 1998.

⁴⁸ See http://www.euflegt.efi.int/news/-/asset_publisher/VoA92AEdZlro/content/malaysia-and-eu-advance-vpa-process.

⁴⁹ Draft documents can be found on the website run by the Ministry of Plantation Industries and Commodities (<http://www.flegtvpamy/home>) and the Sabah Forestry Department website (<http://www.forest.sabah.gov.my/publication/flegt-documents>).

There is no formal system in place for the exchange of information between Malaysia and other countries on enforcement actions and intelligence, except in the case of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Regulating supply and demand

A potential driver of illegal logging is insufficient legal supply of timber to meet demand from the domestic processing industry. Governments can address this problem by restricting the issuance or renewal of licences to mills that cannot demonstrate they have sufficient supply of timber from legal sources. The licensing of mills in Malaysia does not require such evidence. Data for 2008 to 2012 indicate that mill capacity in Malaysia far exceeds the annual legal cut and that mills are operating below capacity: use of installed capacity for sawmills and for plywood/veneer mills varied from 19 per cent to 75 per cent in the three regions, with mills in Sabah tending to operate at the higher end of that range.⁵⁰

Tenure, use and rights

Malaysian law requires that property, use rights and tenure arrangements are mapped and demarcated on the ground. To some extent indigenous peoples' rights are recognized in the National Land Code and the forestry legislation of all three regions.⁵¹ In Sabah and Sarawak NCRs are recognized too, including tenure rights where there has been continuous occupation or cultivation of the land as well as access and use rights for communal purposes in other forest areas.

In both Sabah and Sarawak, land that is subject to NCRs and gazetted communal reserves are excluded from forest exploitation (as stipulated in forest licences). In Sabah, those rights must be incorporated into the management plans of forest licences;⁵² and in the case of Peninsular Malaysia, they must be included in management plans where aboriginal reserves overlap licensed areas. Most permanent reserved forests in Peninsular Malaysia are certified under the Malaysian Timber Certification Scheme (MTCS), under which forest management plans are audited. Auditing covers the recognition of aboriginal land where relevant. However, a significant problem is that many customary lands and aboriginal reserves are not gazetted and thus are not recognized by law; for this reason, they are not taken into account in the issuance of licences or subsequent management plans.

Despite legal recognition, there are numerous examples where the customary rights of indigenous peoples have been violated, with many cases filed in the civil courts. As a result, a number of judicial decisions have been taken to integrate customary law into the modern legal framework. However, the policy and legislative reforms necessary to implement those decisions have not been made.⁵³ This has implications for the legality of timber harvested from land where indigenous peoples claim their customary land rights – an issue that lies at the heart of the concerns of many NGOs about the VPA negotiations.

⁵⁰ Based on data from the Ministry of Plantation Industries and Commodities (2012), *Statistics on commodities 2009 – 2012*; and the annual reports of the forestry departments of Peninsular Malaysia, Sabah and Sarawak.

⁵¹ NCRs are recognized in the federal constitution and the National Land Code as well as in Peninsular Malaysia's Aboriginal Peoples Act of 1954, the Sarawak Land Code and Forests Ordinance of 1958, the Sabah Land Ordinance of 1930, the Sabah Forest Enactment of 1968, the Sustainable Forest Management Licence Agreement, the Long-Term Timber Licence Agreement, the State Cultural Heritage (Conservation) Enactment of 1997 and the Native Court Enactment of 1992.

⁵² Sarawak Forests Ordinance and Sabah Forest Enactment.

⁵³ Sahabat Alam Malaysia (SAM), (2013), 'Position Paper on landmark judicial decisions on the indigenous peoples' customary land rights/title in Malaysia 1991–2011: Legal implications of the failure in instituting policy and legislative reforms'.

Some mechanisms are in place for the resolution of disputes but these mostly deal with disputes between holders of customary rights. In Sabah and Sarawak, native courts are used to adjudicate conflicts between communities, including those related to NCRs. However, they do not have jurisdiction over land that is registered under the National Land Code, such as private or customary land, which is the subject of most conflicts over land.⁵⁴ In Peninsular Malaysia and Sabah, the village development and security committees provide a mechanism for resolving conflicts over property rights at the village level.

For disputes between communities and licence holders and/or the government, resolution can be sought through the courts. Such conflicts are widespread. For example, there were reported to be more than 200 such cases under way in Sarawak courts in 2012.⁵⁵ Owing to its concern about this issue, the Human Rights Commission of Malaysia (SUHAKAM) launched a national inquiry into the land rights of indigenous peoples, the findings of which were published in 2013.⁵⁶ The government has set up a task force to consider the findings and recommendations of the report, but that group has yet to reach its conclusions.

Timber tracking systems

Timber tracking systems are used only for logs harvested from permanent reserved forests. Both Sabah and Peninsular Malaysia have a paper-based tagging system and a removal pass system to trace logs from the forests to the mills. For its part, Sarawak has only a removal pass system (which means that logs can be traced back to the harvesting block but not to the stump).⁵⁷ In all three regions, the removal pass system is integrated into the states' revenue collection system.

On the basis of the removal passes, forest checking stations verify that domestic logs originate from designated licensed areas and that royalty payments have been made by the licensees. Removal passes are also issued for imported logs following inspection by customs to ensure those products are accompanied by the correct documentation. They are checked when logs arrive at processing mills, but there is no tracking system in place from the mill onwards in the three regions.

The removal passes are paper documents, which makes the process of tracking timber slow and cumbersome. Moreover, paper documents are at risk of forgery – although the same is true of electronic systems if they are not robust. All three regions have tested bar-coded and radio frequency identification systems, which, however, have not been implemented more broadly. In Sabah a computerized log tracking system using bar-coded tags is currently being piloted; and recently Sarawak announced that it will be piloting a computerized log tracking system.

The Malaysian Timber Legality Assurance System (MYTLAS) has been developed and is being implemented in Peninsular Malaysia, where it is managed by the Malaysian Timber Industry Board (MTIB).⁵⁸ It uses the same paper-based tagging and removal pass systems for the verification of origin and legality required for export licences.⁵⁹ The system has been operational since February 2013. It is not obligatory but is being presented to industry as a tool to help those exporting to

⁵⁴ Native courts come under the Sabah Native Courts Enactment of 1992 and the Sarawak Native Courts Ordinance of 1955.

⁵⁵ Lim (2013).

⁵⁶ See <http://www.suhakam.org.my/indigenous-people/>. The report is also available at <http://www.forestpeoples.org/topics/rights-land-natural-resources/publication/2013/malaysia-report-national-inquiry-land-rights-0>.

⁵⁷ For more information on the log tagging system, see http://www.numbersystem.com.my/products_solutions/tags02.asp.

⁵⁸ For details of the Malaysia–EU FLEGT VPA Timber Legality Assurance System, see <http://loggingoff.info/document/malaysia-eu-flegt-vpa-timber-legality-assurance-system>.

⁵⁹ See http://www.mtib.gov.my/index.php?option=com_content&view=article&id=2141%3AApplication-for-mytlas-licence-via-online&catid=1%3AHighlights&lang=en.

the EU meet the due diligence requirements of the EU Timber Regulation (EUTR).⁶⁰ At the same time, MYTLAS has been formally proposed as the basis for the legality assurance system that will be necessary for the issuance of Forest Law Enforcement, Governance and Trade (FLEGT) licences under the VPA.

Sabah has developed a legality assurance system in line with its legal framework. The system was originally managed by the MTIB, but the Sabah Forestry Department has been running it since 2013.⁶¹ That year a review of the system, carried out by the NGO NEPCon, highlighted gaps in the chain-of-custody (CoC) procedure. The system is still under development.⁶²

Transparency

The 2010 Chatham House assessment concluded that there was little transparency of information on the Malaysian forest sector, and the current assessment draws the same conclusion. Each of the forestry departments of the three regions produces annual reports, which include summary information on forest-sector planning, enforcement, revenues and expenditure – although (as of January 2015) the most recent such report published in Sarawak was from 2012.⁶³ The annual report on the Sabah forest sector provides detailed information on forest management, forest industries, forest management projects and enforcement activities, among other things. That on the Sarawak forest sector is less detailed and focuses mainly on organizational structure and financial statistics. Peninsular Malaysia's annual report, too, is less detailed than its Sabah counterpart, focusing on the organizational structure of the forest department and events; however, it does include summary statistics for each state. Moreover, several states within Peninsular Malaysia publish annual reports, including Penang, Pahang, Selangor, Kedah, Johor and Perak.

There is no requirement in any part of Malaysia to make concession maps or locations publicly available or to publish harvesting and forest management plans. In both Peninsular Malaysia and Sarawak, it is a legal requirement to make the results of resource allocation processes available on request; and requests to see concession maps are permitted too. However, such information is not always provided in response to such requests. In all parts of Malaysia, maps of certified concessions (for example, under the MTCS or the Forest Stewardship Council [FSC]) must be made publicly available.

The VPA negotiations include discussion on the information that the government should make available on the forest sector. Those requirements, as well as the procedures for meeting them, will be incorporated into an annex to the agreement.

⁶⁰ Timber Trade Federation (TTF), (2013), 'MYTLAS update from the Malaysian timber council', at <http://www.ttf.co.uk/article/mytlas-update-from-the-malaysian-timber-council-178.aspx>; and Sheam, S. (2014), 'An MTC perspective on the EUTR', *Environment Industry Magazine*, Issue No. 129, <http://www.environmentmagazine.co.uk/?p=2766>.

⁶¹ IHB, (2013), 'Launch of Malaysian timber legality assurance system (MYTLAS)', 5 April 2013, http://www.ihb.de/wood/news/softwood_panelmarkets_31978.html.

⁶² NEPCon (2013), 'Evaluation and revision of the Sabah TLAS standard and audit checklists', in *General observations and proposals on the Sabah TLAS*, Section 7.1.

⁶³ These are available from the websites of the respective forestry departments: <http://www.forest.sabah.gov.my> (Sabah); <http://www.forestry.sarawak.gov.my/> (Sarawak); and <http://www.forestry.gov.my/> (Peninsular Malaysia).

Allocation and management of rights to harvest

Since the 2010 Chatham House assessment, policy on the allocation and management of rights to harvest has not changed. While in all parts of Malaysia procedures are in place to exclude inappropriate bidders, there are no requirements for competitive award processes for allocating forestry licences.

Moreover, neither consultation with nor the prior informed consent of local communities is required to issue licences. In Peninsular Malaysia, however, most of the permanent reserved forest is certified under the MTCS, which does include a requirement for the prior informed consent of affected communities and provisions related to livelihood opportunities.⁶⁴ Furthermore, in Sabah sustainable forest management licence agreements require that land be set aside for local communities and community development projects established.

Law enforcement

Some progress has been made in law enforcement since the 2010 Chatham House assessment. This is partly due to a report by the auditor-general, published in 2009, that documented widespread failings by those state forest departments that had been audited (namely Pahang, Sabah and Sarawak). The failings included weak enforcement and control over forest management. In 2009, as mentioned above, NATFIL was set up to tackle illegal logging. Its members include representatives of the attorney-general's office, the MACC, the forestry departments, the police, customs and maritime enforcement agencies. Although coordination has improved, the effectiveness of its efforts is limited by a lack of resources.

The National Forestry Act was amended in 2010 to empower the relevant departments in Peninsular Malaysia to request the assistance of police and armed forces in combating illegal logging. At the same time, increased fines and imprisonment for those found guilty of illegal logging were incorporated into the act. In 2011 the NLC proposed that the penalties should be increased further; however, that proposal was not implemented.

Additional enforcement officers have been recruited by the Peninsular Malaysia Forestry Department,⁶⁵ and training for enforcement officials across the country has been provided under INTERPOL's Law Enforcement Assistance for Forests (LEAF) project.⁶⁶ However, the number of personnel remains insufficient, as do resources for effective enforcement. In 2011 a hotline was set up at the headquarters of the Peninsular Malaysia Forestry Department for the public to report cases of illegal logging and other offences.

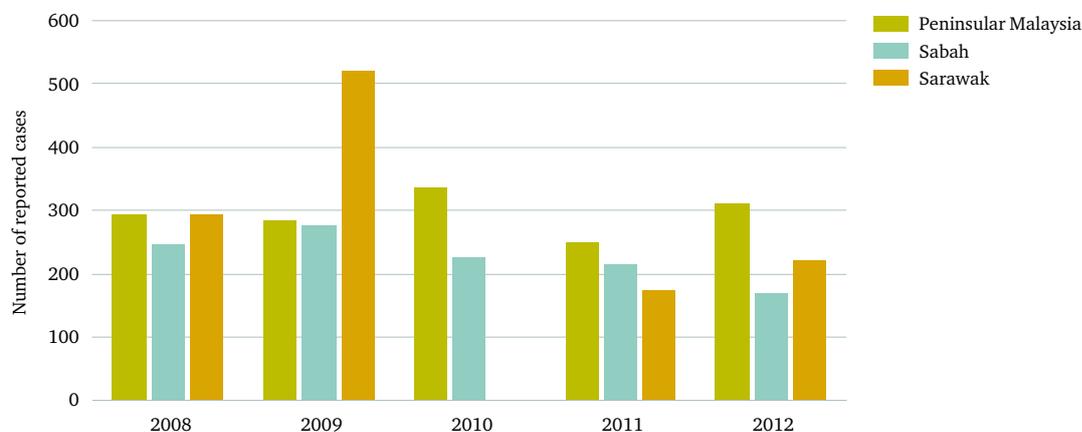
Over the period 2008–12 the number of reported cases of forestry offences across Malaysia stayed at roughly the same level, except in Sarawak, where it shot up in 2009 (see Figure 3). Compared with Peninsular Malaysia and Sabah, authorities in Sarawak seized much higher volumes of timber (see Figure 4).

⁶⁴ Malaysia Timber Certification Council (2012), 'Malaysian Criteria and Indicators for Forest Management Certification (Natural Forest)', Principles 3 (on indigenous peoples' rights) and 4 (on local community relations and workers' rights).

⁶⁵ National Report to the Tenth Session of the United Nations Forum on Forests: Malaysia, 2012, http://www.un.org/esa/forests/pdf/national_reports/unff10/Malaysia.pdf.

⁶⁶ See, for example, <http://www.interpol.int/News-and-media/News/2013/N20130503>.

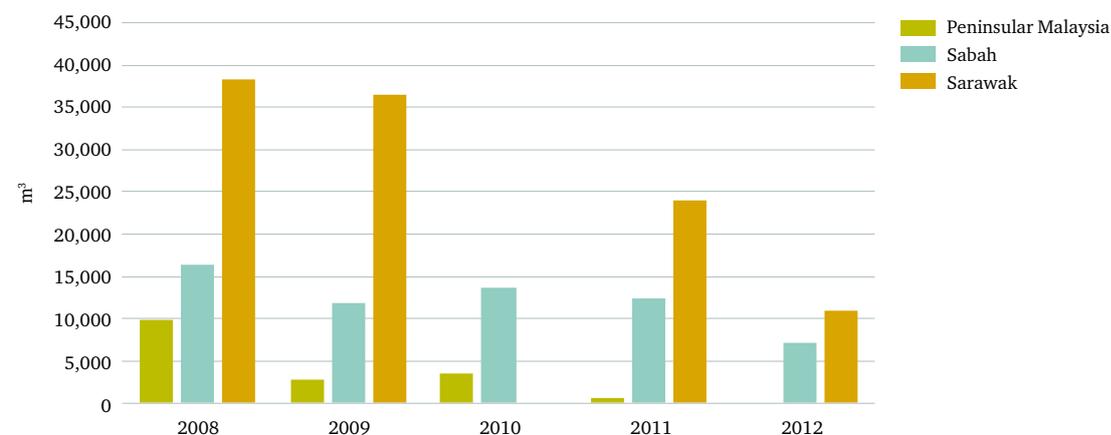
Figure 3: Forestry offences in Malaysia, 2008–12



Note: No data available for Sarawak in 2010.

Sources: Annual reports of Peninsular Malaysia, Sabah and Sarawak forestry department and the MACC.

Figure 4: Timber seizures in Malaysia, 2008–12



Note: No data available for Sarawak in 2010 and Peninsular Malaysia in 2012.

Sources: Annual reports of the Peninsular Malaysia, Sabah and Sarawak forestry department and the MACC.

Information management

Information management systems are managed by the state forestry departments, but there is little public information available on them. Sarawak has deployed the Forest Management Information System (FMIS), but the level of implementation and the robustness of the system are not known.⁶⁷

⁶⁷ See http://www.forestry.sarawak.gov.my/page.php?id=599&menu_id=0&sub_id=166.

Financial management

Responsibility for financial management lies with the states; and, as was the case in 2010, the financial management systems deployed are deemed well designed and well implemented. Before a logging licence is issued, potential licensees must pay a timber premium on the area to be harvested and deposit funds with the respective forestry department to offset future royalties. The royalties due are recorded by the forest checking stations. The computerized system to register payments and harvests is considered effective, although the level of payment of royalties is not known.

Expert perceptions survey

In both 2010 and 2013 the assessment of the Malaysian government's response to illegal logging included an expert perceptions survey in which representatives of the government, the private sector, civil society, academia and the donor community were asked to evaluate the government's performance in tackling illegal logging. Among the factors taken into consideration were the effectiveness of the government's response, how this had changed over the previous year and the obstacles to this response.

Since the number of people who took part in the survey was relatively low – 36 in 2013, and 30 in 2010 – the findings should be viewed bearing this in mind. It should be noted that, compared with 2010, more representatives of NGOs participated in the 2013 survey and fewer representatives of government.⁶⁸ The respondents were not asked to comment on the situation in the various parts of Malaysia; rather, they were asked to assess the situation in the country as a whole.

In 2013 perceptions of the overall effectiveness of the government's response were similar to those in 2010. In both surveys, the majority of respondents considered its response to have been good or very effective (the government, private sector and NGOs/other were all represented among those respondents). Similarly, when asked to assess the government's response to illegal logging over the previous year, most respondents in both surveys thought there had been an improvement – 24 out of the 31 respondents to that question in 2013 and 14 out of 23 in 2010.

Respondents were also asked to assess the relative importance of various impediments to an effective government response: ineffective enforcement and insufficient capacity; poor data; a weak legal framework; and corruption as well as lack of transparency and political will. In 2010 the scores for all these factors were similar, while in 2013 neither poor data nor weak laws were considered important.

⁶⁸ The respondents can be broken down by category as follows: 2013: private sector – eight; government – eight; NGOs/other – 15; and industry associations – five; 2010: private sector – seven; government – 11; NGOs/other – six; and industry associations – six.

Progress by the Private Sector

In addition to examining government measures to tackle the problem of illegal logging, the current assessment evaluates the degree and effectiveness of the response by the private sector. That evaluation is based on the 2013 expert perceptions survey (discussed above), which included the private sector, an assessment of private-sector voluntary certification schemes and trade data analysis.

Expert perceptions survey

Overall response

Respondents to the expert perceptions survey were asked to assess the degree to which various types of company had improved their response to illegal logging over the previous year. Overall, the respondents in the 2013 survey were slightly less positive than those in the 2010 survey: more reported no change rather than an improvement. Most improvement was perceived to have taken place among large-scale concessionaires and manufacturers and exporters that supply sensitive markets⁶⁹, while the majority of respondents considered there had been no change in the response of small concessionaires and manufacturers supplying non-sensitive markets.

Customer demand and industry association action

Industry associations taking part in the survey were also asked to comment on any change in the level of customer demand for legality assurance and on any measures taken by their members to provide such assurance. Of the five associations that responded, none had a code of conduct for its members; and none was providing training on legality to its members – reportedly owing to a lack of interest in such training.

Legality demands and other drivers

Private-sector respondents (of which there were eight in all in 2013) were asked to assess the importance of various drivers in determining the competitiveness of Malaysia's timber industry in the global market over the next five years. The various drivers were: demand for certified timber; demand for legality verification; the level of tariffs, subsidies and taxes; the cost of manufacturing; consumer preferences for timber; and the overall level of economic demand.

Respondents considered the overall level of economic demand and consumer preferences for timber to be the most important factors. There were mixed responses on the importance of certified timber and legality requirements, but those factors were considered more important in 2013 than in 2010. This is unsurprising given the introduction in the US and the EU of legislation prohibiting illegal timber imports, as well as the VPA negotiations in Malaysia.

⁶⁹ Sensitive markets are considered in this context to be the EU, the US, Australia, Canada, New Zealand, Norway and Switzerland. Non-sensitive markets are considered to be all other markets.

Sensitivity of timber prices

Private-sector respondents were also asked to assess the extent to which timber prices had risen or fallen in response to the introduction of measures aimed at tackling illegal logging and thus to changing levels of illegal timber available on the domestic market. In both 2010 and 2013, a majority of those respondents thought that such measures had had no influence on timber prices.

Levels of forest certification and legality verification

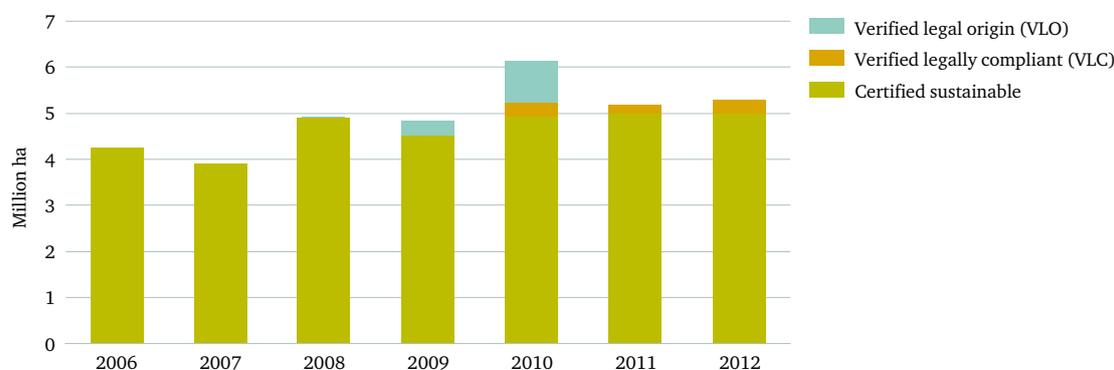
Private-sector uptake of voluntary legality verification and sustainability certification standards is a useful indicator of attitudes towards illegal logging and the sustainable management of forests. This assessment examined data on the levels of certification and verification in the industry.

The proportion of Malaysia’s active natural forest management concessions that are certified has remained roughly the same since 2008 (see Figure 5) – 37 per cent of total production forest or some 5.3 million ha (2012 figures). More than 90 per cent of this total area is certified under the MTCS and the remainder (in Sabah) under the FSC.

The MTCS is managed by the Malaysia Timber Certification Council and was endorsed by the Programme for the Endorsement of Forest Certification (PEFC) in 2009. Nearly all of the forests certified under this scheme are in Peninsular Malaysia, where the MTCS is used for natural forest management within the permanent reserved forests. There is currently one forest concession with MTCS certification in both Sarawak and Sabah.⁷⁰

One reason for the lack of increase in the total area of certified natural forest is that most production forest in Peninsular Malaysia is already MTCS-certified. Companies in Sarawak have shown less interest in certification or legality verification than those in Peninsular Malaysia – a reflection of their supplying mainly the non-sensitive markets of India, Japan and China. However, in August 2014 the Sarawak chief minister announced a scheme to promote forest certification among major timber companies: those companies that achieve certification within three years of receiving their concession licence will see their tenure extended to up to 60 years, compared with the current standard of five to 10 years.⁷¹

Figure 5: Total natural forest area under voluntary verification or certification schemes, 2006–12



Sources: FSC Forest Management (FM), MTCS, Société Générale de Surveillance (SGS) VLO, FSC Controlled Wood (CW), Rainforest Alliance (RA) VLO and RA VLC.

⁷⁰ See <http://www.mtcc.com.my/certificate-holders-for-forest-management>.

⁷¹ WWF-Malaysia (2014), ‘WWF-Malaysia welcomes forest management certification in Sarawak’, <http://www.wwf.org.my/?18005/WWF-Malaysia-welcomes-forest-management-certification-in-Sarawak>.

Sensitive-market share

In order to gauge the response of the private sector to illegal logging and the growing demand for legal timber in many major consumer countries, shifts in trade between sensitive and non-sensitive markets were assessed. Both trade data and responses from the private sector to the perceptions survey were analysed. The quantitative data are based on estimates of RWE volume.

Trade data

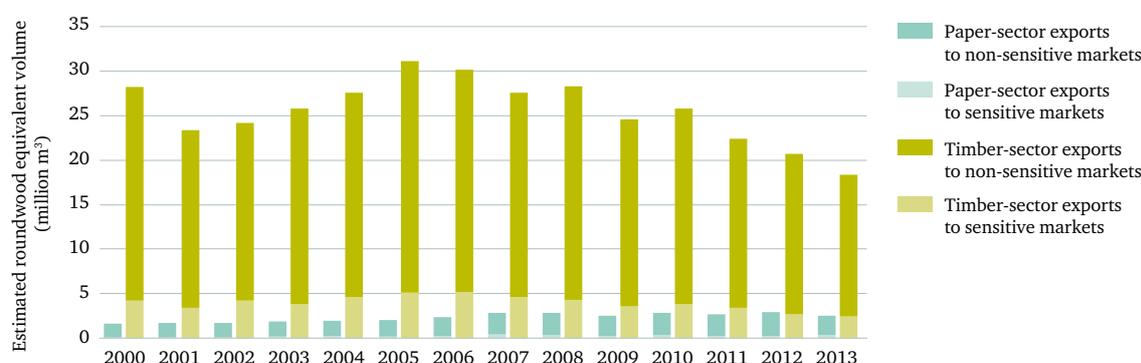
The RWE volume of Malaysia’s exports of timber-sector products grew during the period 2000–05 (from 28 million m³ in 2000 to 31 million m³ in 2005) but thereafter declined markedly (to 18 million m³ in 2013). Exports to sensitive markets showed the same pattern (see Figure 6); for this reason, the share of exports to those markets has remained at a similar level, although it has been on a slight downward trend since 2005, decreasing from 17 per cent that year to 13 per cent in 2013.

Plywood accounts for about one-third of the RWE volume of timber-sector exports, and logs and sawnwood combined account for roughly another third. No logs are exported to sensitive markets – India has become the main destination for those products, overtaking China and Japan. Plywood is exported mainly to Japan, but an increasing proportion is destined for the Middle East, which is also an important destination for exports of sawnwood. Thailand remains the largest market for Malaysian sawnwood exports.

Wooden furniture and fibreboard are important exports too. About two-thirds of furniture exports are to sensitive markets, mainly the US. That proportion has declined slightly, owing to the stagnation of that market and the growth in exports to Japan. The share of fibreboard exports to sensitive markets has increased owing to a decline in exports to the Middle East and Japan. But those markets remain dominant, accounting for two-thirds of fibreboard exports in 2012.

In contrast with timber-sector exports, paper-sector exports have increased. The main product exported is paper. The share of paper-sector exports to sensitive markets grew from 7 per cent of all paper-sector exports in 2000 to 12 per cent in 2013. This reflected an increase in paper exports to the EU.

Figure 6: Timber- and paper-sector exports from Malaysia to sensitive and non-sensitive markets, 2000–13



Sources: Based on official national statistics for Malaysia (Malaysia Timber Industry Board, Department of Statistics) and for partner countries of the corresponding imports, and UN Comtrade; with analysis by Chatham House.

Expert perceptions survey

In the expert perceptions survey, respondents were asked whether they thought there had been any shift in trade away from sensitive markets. In both the 2010 and 2013 surveys, opinions were divided: the largest number of respondents considered there had been no shift in trade, while the remainder differed over whether trade had shifted towards or away from sensitive markets. Those diverse responses may reflect the fact that respondents are located in different parts of the country: production in Peninsular Malaysia and, to some extent, Sabah is aimed primarily at sensitive markets, while the Sarawak forest sector mainly targets non-sensitive markets in Asia.

Levels of Illegal Logging and Related Trade

To measure the extent of illegal logging and the trade in illegal wood-based products, a number of methods were used. These included an assessment of discrepancies between exports from Malaysia reported by that country and imports of Malaysian products reported by destination countries. The expert perceptions survey also included several questions about the nature and extent of the problem.

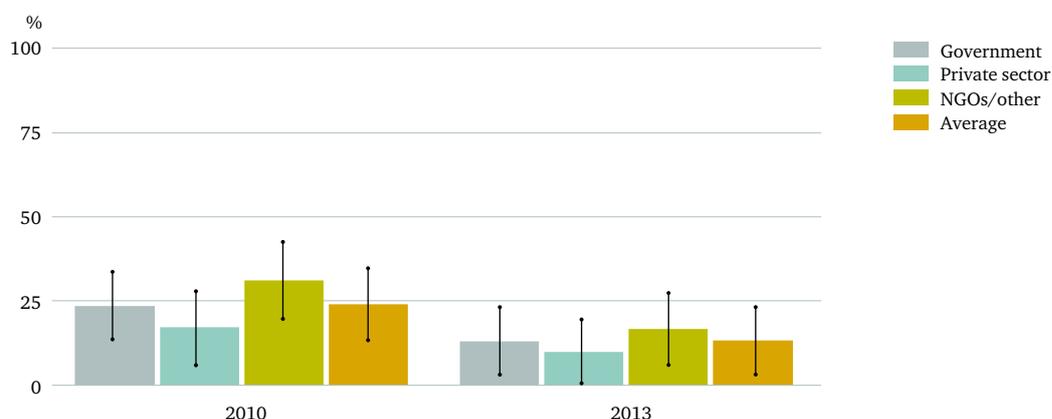
Expert perceptions survey

Respondents were asked to assess the relative importance of illegal logging as a driver of deforestation compared with that of legal logging and conversion for agriculture. The majority of respondents in both 2010 and 2013 considered conversion for agriculture the most important driver of forest degradation and loss in Malaysia.

The significance of various types of prohibited activity – illegal logging by industry or local communities and illegal clearing for mining, timber plantations or agriculture – as a driver of deforestation and its negative social impacts was analysed too. In 2010 most respondents viewed illegal clearance for timber plantations as the most important driver of deforestation and as having the most negative social impacts. In 2013, such activity was considered an important factor but illegal industrial logging was seen as equally significant. Timber plantations have been expanding in Malaysia in recent years and are predicted to double in total area by 2020 (see ‘Background’ section).

Respondents to the survey were also asked to estimate the level of illegal logging as a percentage of overall log production. In both surveys, the majority of respondents considered illegal logging to be limited (less than 20 per cent of overall production). The average estimate was lower in 2013 than in 2010–13 per cent compared with 24 per cent of total production (see Figure 7). This is in line with the experts’ perception that the government response to illegal logging has been effective over the past few years (see section on government response).

Figure 7: Estimated extent of illegal logging as a percentage of overall log production based on expert perceptions survey, 2010 and 2013*



*The black bars indicate the variance in scores.

The survey also asked which factors were driving any reduction in illegal logging. The exhaustion of timber resources was considered the most important factor by the largest number of respondents – presumably because this means it has become more difficult for illegal operators to access resources. Other factors ranked as ‘important’ by respondents were general improvements in governance, economic developments and private-sector demand (that is, demand for legally verified products).

Finally, respondents were asked to assess to what extent there had been improvements over the previous year in tackling various types of illegal practice: namely, illegal logging by concessionaires, unauthorized companies and artisanal producers; illegal processing; illegal exporting; and corruption among forestry officials as well as among the police and judiciary. Most respondents considered there had been improvements in all those areas. Compared with the 2010 survey, respondents in 2013 perceived greater improvements in tackling corruption.

Trade data discrepancies

Trade data discrepancies can be indicative of illegality. However, caution is needed in drawing such conclusions as those discrepancies may also result from poor-quality data or unintended differences in classification. But if the discrepancies are significant or persistent and if there is other evidence available, it is possible to draw such conclusions with a certain degree of confidence.

In the case of Malaysia, export statistics are not robust, as evidenced by the considerable discrepancies in data from the Malaysian government’s Department of Statistics, the Malaysia Timber Industry Board and UN Comtrade. This makes it difficult to determine which discrepancies reflect illegal trade or fraud rather than routine data errors.

For its part, China consistently reports larger volumes of logs imported from Malaysia than Malaysia reports as exported to China and Hong Kong. Similar discrepancies are evident in relation to sawnwood exports from Malaysia to China, the EU, Japan, Singapore, Taiwan and Thailand, particularly in data for the first half of the last decade. Part of the discrepancy in reporting the supply of sawnwood to the EU and Japan might be explained by inconsistencies in the classification of mouldings: it seems that both the EU and Japan tend to report larger volumes of imported mouldings from Malaysia than Malaysia reports as exports to those markets. Japan and, more recently, China have tended to report larger volumes of wood-chip imports from Malaysia than Malaysia has reported as exports.

While the degree to which such discrepancies reflect illegalities is unclear, the need for improved data is evident. This would help the respective governments monitor and control the trade in timber products.

Overview of estimates of illegal logging

While illegal activities in the forest sector are not as prevalent in Malaysia as in some countries, the level of such activities remains significant. The process of allocating forest rights is highly contested – there are widespread disputes between local people and licence holders. Corruption is another major problem, as documented by NGOs, the media and the MACC.⁷²

Illegal forest conversion is thought to be an issue throughout the country. The importance of forest conversion as a source of timber is unclear, but it has been estimated that in Sarawak two-thirds of timber production may have come from conversion in 2010.⁷³ Also unclear is the scale of illegality related to forest conversion. But there have been many reports of illegal practice in the issuance of licences for plantations, in particular involving corruption and the violation of NCRs.⁷⁴ Since government policies are aimed at expanding agricultural and timber plantations, this is likely to become an increasingly important issue.

⁷² Straumann, L. (2014), *Money Logging. On the Trail of the Asian Timber Mafia*; Lim (2013); Global Witness (2013a), *Inside Malaysia's Shadow State: Backroom Deals Driving the Destruction of Sarawak*; Global Witness (2013b), *An Industry Unchecked: Japan's Extensive Business with Companies Involved in Illegal and Destructive Logging in the Last Rainforests of Malaysia*; Bruno Manser Fund (2012), *The Taib Timber Mafia: Facts and Figures on Politically Exposed Persons (PEPs) from Sarawak, Malaysia*; 'MACC seeks help in forestry officer's case', 8 January 2012, <http://www.thestar.com.my/News/Nation/2012/01/08/MACC-seeks-help-in-forestry-officers-case/>; 'Malaysian Foreign Minister Named in MACC Investigation Into Sabah Timber Corruption – national expose!', 5 April 2012, <http://www.sarawakreport.org/2012/04/malaysian-foreign-minister-named-in-macc-investigation-into-sabah-timber-corruption-national-expose/>; and 'No more timber licences in Sarawak', 10 October 2014, <http://news.asiaone.com/news/malaysia/no-more-timber-licences-sarawak-0>.

⁷³ Lawson (2014e), Box 8, p. 50.

⁷⁴ Lawson (2014a); and Lim (2013).

Conclusions and Recommendations

This assessment of the extent of illegal logging and the effectiveness of the government and private-sector response to the issue suggests there has been limited progress in Malaysia since 2010. Peninsular Malaysia and Sabah continue to be actively engaged in the VPA negotiations, and efforts are continuing to improve enforcement and reduce corruption in the country's forest sector. For example, the MACC is reportedly due to open an investigation into illegal logging.⁷⁵ However, fundamental problems of governance of the sector remain; and the number of reports of illegal activities and the nature of those activities, including high-level corruption, suggest that a more concerted effort is required. As regards the continued VPA negotiations, progress has been hindered by concerns related to the recognition of the rights of indigenous communities. Moreover, transparency of information remains limited and more open decision-making processes have yet to be adopted.

Based on the findings of this assessment, the following recommendations are made:

- Further improvements to transparency are needed to enable more effective monitoring of the sector and the full engagement of non-government stakeholders in policy-making processes. In particular, the provision of information should be improved – for example, on management plans and trade statistics – and decision-making processes made more open. The VPA provides an important opportunity to improve transparency in the country.
- Further consideration should be given about how to protect and recognize NCRs. This should remain a priority within the VPA negotiations. The government's response to the findings of the Human Rights Commission of Malaysia's national inquiry into land rights will provide a further opportunity for action.
- Attempts to tackle corruption should continue and be reinforced, both within the forest sector and more broadly, in order to help put the sector on a more sustainable and equitable footing. A particular focus will be needed on the processes of allocating timber and agricultural plantations, given their growing importance for the forest sector. To facilitate this, Malaysia should consider establishing an independent monitoring system for the sector. Furthermore, options to strengthen the powers of the MACC should be explored in order to help ensure those guilty of corruption are convicted.
- Finally, in order to improve enforcement efforts, there should be both more investment in the training of enforcement officers and an increase in the resources at their disposal, so that they are able perform their roles more effectively. The role of civil society as a source of intelligence should also be given greater recognition, for example, as part of a system for independent monitoring.

⁷⁵ See <http://www.thestar.com.my/News/Nation/2014/10/21/MACC-opens-investigation-into-illegal-logging-in-the-country/>.

Annex 1: Policy Assessment Scores for 2008 and 2013*

	Existence (0–2)		Design (1–5)		Implementation (1–5)		
	2008	2013	2008	2013	2008	2013	
High-level policy							
Official review of illegal logging	0	0	n/a	n/a	n/a	n/a	
National action plan	0	0	n/a	n/a	n/a	n/a	
Coordination between government departments	2	2	3	3	3	3	
Multi-stakeholder consultations	0	2	n/a	4	n/a	2	
Legislative framework							
Coherent and unambiguous forestry legislation			4	4			
Forestry legislation consistent with other laws affecting forests			4	4			
Enactment of additional legislation to prevent sale and import of illegal wood-based products	0	0	n/a	n/a	n/a	n/a	
Checks and balances							
Right of public to make legal challenge	1	1			n/a	n/a	
Penalties for official corruption	2	2	4	4	3	3	
Limits to discretionary powers	0	0			n/a	n/a	
Committee with oversight of forest agencies	1	1	2	2	4	3	
Internal forestry agency audits whose results are made public	1	1	4	4	3	3	
Independent forest-monitoring system	0	0	n/a	n/a	n/a	n/a	
Customs mandated to check legality of exports	2	2			3	3	
International trade cooperation							
Formalized trade or customs arrangements	1	1	n/a	n/a	n/a	n/a	
Formalized system for sending and receiving enforcement alerts	0	0	n/a	n/a	n/a	n/a	
Regulating supply and demand							
Sawmill-permit system that requires evidence of legal supply	2	2	4	2	4	2	
Tenure, use and rights							
Property, use rights and tenure arrangements designated on publicly available maps	0	2	n/a	3	n/a	2	
Formalized mechanisms for resolving property rights issues	1	1	4	4	3	2	
Formalized mechanisms for accommodating customary rights in law	2	2	4	4	2	2	
Timber tracking systems							
System to verify the origin of timber	2	2	4	3	4	3	
System design	Independent monitoring procedures	0	0	n/a	n/a	n/a	n/a
	Reconciliation systems	0	0	n/a	n/a	n/a	n/a
	Tamper-resistant documentation procedures	2	2	2	2	1	1
	Computerized systems	1	1	3	3	3	3

Illegal Logging and Related Trade: The Response in Malaysia

		Existence (0–2)		Design (1–5)		Implementation (1–5)	
		2008	2013	2008	2013	2008	2013
Transparency							
Public document describing roles, responsibility and controls of relevant agencies		0	0	n/a	n/a	n/a	n/a
Resource allocation	Rules for resource allocation processes	0	1			n/a	2
	Dates for resource allocation processes made publicly available	1	1	3	3	3	3
	Results of resource allocation processes made publicly available	0	0	n/a	n/a	n/a	n/a
	Summary data on harvest, processing and international trade published	0	0	n/a	n/a	5	5
Resource use	Location of concessions, ownership and contracts made publicly available	1	1	3	3	2	2
	Concession licences, inventories and harvest plans made publicly available	0	0	n/a	n/a	1	2
	Environmental and social impact assessments made publicly available	0	2	1	3	3	3
Enforcement	Data on forest crimes published	0	0	n/a	n/a	3	3
	Data on disposal of confiscated wood made publicly available	0	0	n/a	n/a	3	3
Allocation and management of rights to harvest							
Pre-qualification process to exclude inappropriate bidders		2	2	4	4	4	4
Competitive allocation process		1	1	n/a	n/a	1	n/a
FPIC or stakeholder consultations for affected local communities		0	0	n/a	n/a	n/a	n/a
Measures to protect and develop forest-based livelihoods		2	2	2	2	2	2
Law enforcement							
Proportionate and dissuasive penalties				4	4	2	2
Coordination systems in place for relevant agencies		2	2	4	4	3	3
Forest/law enforcement officials sufficiently resourced				2	2	1	3
Training of	Judges and prosecutors					0	1
	Customs officials					3	3
Information-gathering	Remote-sensing systems					3	3
	Field-based investigatory tools					3	3
	Material-flow analyses					0	0
	Log-tracking and checkpoint systems					4	4
Information management							
Up-to-date, accurate information management system		1	1	3	3	3	3
Financial management							
System for monitoring revenue discrepancies		2	2	5	5	5	5
Forest administration audit		2	2	4	4	4	4

* The policy scores included in the 2010 report were based on an assessment of the situation at the end of 2008; and those for the current assessment on the situation at the end of 2013. A grey cell indicates that the answer to the question posed was not scored. Policies were assessed according to the following factors: existence (scoring between 0 and 2, whereby 1 indicates partial coverage or a policy under development); design (scoring between 1 and 5, whereby 5 indicates very well designed); and implementation (scoring between 1 and 5, whereby 5 indicates consistent and comprehensive implementation).

Annex 2: Methodology

The methodology employed to undertake the assessments of the 13 countries included in the 2014 Indicators of Illegal Logging and Associated Trade study is based on that developed by Chatham House for its 2010 assessment. Below is a brief overview of the data collection and analysis process. Further explanation of how the indicators were developed can be found in earlier reports.⁷⁶

The countries included in the study were selected on the basis of the significance of their role in the production and consumption of illegal wood-based products. Four years after the first assessment, the 12 original focus countries combined continue to account for the majority of exports and imports of such products. Lao PDR is included in the 2014 assessment owing to its increasing importance in the global trade in wood-based products.

Indicators of progress

Chatham House has developed a set of standardized indicators to allow a comparative evaluation to be undertaken. The indicators cover four areas:

- Media attention;
- Government response (assessment of the policy framework, expert perceptions survey and analysis of enforcement and revenue data);
- Progress by the private sector (assessment of levels of certification and legality verification, expert perceptions survey and analysis of trade data to assess shifts in trade with ‘sensitive’ and ‘non-sensitive’ markets⁷⁷);
- Levels of illegal production and trade (expert perceptions survey, wood-balance analysis and analysis of trade data to assess discrepancies).

An outline of how these data were collected is provided below.

Media attention

The level of attention afforded to illegal logging and related trade in the domestic and international media was assessed using both quantitative and qualitative methods. The volume of articles in the international media was measured through a search of online media archives (Factiva, Newsbank and/or LexisNexis, depending on the country) using the term ‘illegal logging’ and the country name. A similar approach was adopted with domestic media: the search term ‘illegal logging’ was used in English and/or the local language. Online archives were used where possible and physical archives where no such digital records were available. Country partners were asked to identify those newspapers, journals and media outlets that can be considered ‘major circulation’.

⁷⁶ Lawson, S. (2007), *Illegal Logging and Related Trade*; and Lawson, S. and MacFaul, L. (2010), *Illegal Logging and Related Trade. Indicators of the Global Response*. London: Chatham House.

⁷⁷ For this assessment, ‘sensitive’ markets are considered to be the EU, Norway, Switzerland, the US, Australia, Canada and New Zealand. Non-sensitive markets are considered to be all other markets.

The articles were then categorized according to their main focus: enforcement, private-sector response, government response, impacts or 'other'. The search period for domestic media coverage was the year from October to September, while that for international media was the calendar year.

Policy assessment

For each of the countries included in the assessment, an in-country partner was selected by Chatham House to assess the national policy and legal framework for tackling the issue of illegal logging and related trade.

For producer countries, the questions were grouped into 12 broad categories: high-level policy; legislative framework; checks and balances; international trade cooperation; policies to regulate supply and demand; tenure, use and rights; timber tracking systems; transparency; allocation and management of rights to harvest; law enforcement; information management; and financial management. In addition, data on enforcement and revenue collection were collected and incorporated into the policy assessment.

In-country partners were provided with an advisory framework on scoring as well as the scores from the 2010 assessment in order to maintain a degree of consistency across countries and between the two assessments. The scores were then reviewed by Chatham House researchers and peer reviewers and amended where necessary.

Expert perceptions survey

A survey of national experts asked respondents to estimate levels of illegal logging and associated trade and to evaluate the response by government and the private sector to the issue. The main part of the survey, which comprised 16 questions, was sent to all respondent groups – government officials, timber-industry representatives, NGOs and other experts. An addendum to the survey was sent to private-sector respondents, while a separate short survey was sent to industry associations.

Weighted-average perception scores have been calculated to account for slight variations in sample size among respondent groups and between the two survey periods. First, averages were calculated for each respondent group (government, private sector and NGO/other) and then the average of the three averages.

Third-party certification

Data were gathered on the total area of production forest in the producer countries that has been either verified legal or certified sustainable (plantation forests were excluded). All major independent certification schemes were included. Data were based on those provided by each of the schemes as well as on research undertaken by Chatham House staff. Various reports, including those by NGOs and trade associations, were consulted in order to calculate the total area of *active* production forest under certification at the end of each calendar year up to 31 December 2012; no areas certified after this date are included in the current assessment.

Analysis of trade data

Trade data were compiled and used to analyse shifts in trade between 'sensitive' and 'non-sensitive' markets and discrepancies in data on reported imports and exports between a producer country

and its export markets. Data were compiled from official national trade statistics and from the UN Comtrade database and converted to RWE volume. The following conversion factors were used:

- By volume (m³/m³): sawnwood: 1.8; veneer and mouldings: 1.9; plywood: 2.3.
- By weight (m³/t): particleboard: 2.0; fibre board: 2.5; picture frames and wooden furniture: 2.8; joinery, ornaments and 'not elsewhere specified': 3.5; chips and residues: 1.6; paper: 3.5; and pulp: 4.5.

Wood-balance analysis

Where robust national data could be obtained, wood-balance analyses were undertaken. These compared the legal supply of timber (from official records of harvest and imports) with consumption (based on domestic consumption and exports). The gap between supply and consumption can indicate the existence and extent of unreported and hence potentially illegal logging.

There are a number of limitations to such analyses. Most importantly, they cannot account for smuggling or illegalities related to legally sanctioned harvesting (e.g. the failure to pay taxes). Furthermore, statistics – particularly on domestic consumption – are unreliable or absent in many countries. For this reason, the methodology used varied from country to country, depending on the data available, while in many cases no such analysis could be undertaken owing to the lack of relevant data.

Glossary

CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CoC	Chain of custody
EUTR	EU Timber Regulation
FLEGT	Forest Law Enforcement, Governance and Trade
FMIS	Forest Management Information System
FSC	Forest Stewardship Council
ITTO	International Tropical Timber Organization
LEAF	Law Enforcement Assistance for Forests
MACC	Malaysian Anti-Corruption Commission
MTC	Malaysian Timber Council
MTCS	Malaysian Timber Certification Scheme
MTIB	Malaysian Timber Industry Board
MYTLAS	Malaysian Timber Legality Assurance System
NATFIL	National Task Force on Illegal Logging
NATIP	National timber industry policy
NCRs	Native customary rights
NLC	National Land Council
PEFC	Programme for the Endorsement of Forest Certification
REDD+	Reducing Emissions from Deforestation and Forest Degradation
RWE	Roundwood equivalent
STIDC	Sarawak Timber Industry Development Corporation
SUHAKAM	Human Rights Commission of Malaysia
VPA	Voluntary Partnership Agreement

About the Author

Alison Hoare is a senior research fellow at Chatham House who has expertise in forest governance, natural resource use and community forestry. She leads Chatham House's programme of work on illegal logging and forest governance and is engaged in research on environmental crime and climate change. She worked previously with various environmental and forestry organizations, undertaking research, policy analyses and project management.

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