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Progress Report on the Study on:

**FOREST LAW ENFORCEMENT AND GOVERNANCE IN
MALAYSIA IN THE CONTEXT OF
SUSTAINABLE FOREST MANAGEMENT**

**Prepared by:
TRAFFIC INTERNATIONAL
for the
Government of Malaysia**

1. Introduction

In 1989, ITTO published a report on its producing country members *No timber without trees*. This was a landmark document as it initially surveyed the status of forest management among member countries. The finding was that less than a million hectares of tropical forests were under some form of management. The membership responded by quickly developing and adopting the ITTO Year 2000 Objective. This Objective was a commitment that ITTO members through national policy initiatives, field programmes and international cooperation, would strive towards ensuring that all exports of tropical timber would come from sustainably managed tropical forest resources.

In the final review of the progress made towards achieving the ITTO Year 2000 Objective, an ITTO commissioned analytical report found that progress has been made in terms of policy and legislative reforms as well as administrative re-organisation in many countries. It should be noted that the review was mainly against policies and the quality and sustainability management of production forests in permanent forest estates. The review found that the gap was in actual implementation of Sustainable Forest Management (SFM) on the ground and included problems of illegal logging. The review found that six countries including Malaysia appeared to be managing some of their forests sustainably at the forest management unit.

As part of the review of progress towards ITTO Objective 2000, a number of activities were recommended to advance the idea of sustainable management of tropical forests. These are followed up in logical steps and one of those involve considering the issue of the illegal timber trade as outlined in ITTC Decision 6(XXXI) on Forest Law Enforcement in the context of Sustainable Forest Management.

This study was requested by the Malaysia Government under item 5 of the Decision, and is carried out by TRAFFIC International.

1.1 Scope of study

The objective of the study is to examine the state of forest law enforcement in Malaysia, identifying gaps in the legislative framework and institutional responsibility which could affect efforts to curb and prevent the practices of illegal logging and illegal timber trade. Where relevant, the study will also look into elements of environmental, social and economic sustainability in the context of sustainable forest management.

The challenge of forest management in the country involves highly complex processes that are linked to land conversion for agriculture and other land uses, dynamics of the logging and timber trade, and the legal framework regulating these processes. Moreover, these processes are embedded within an intricate socio-economy framework and the interplay of state and federal politics.

The focus of the project is on Sustainable Forest Management (SFM), against the backdrop of the various systems and tools that the government has put into place in terms of policy, law, and administration. The systems and tools reviewed are mostly focused on production forests and where relevant, the protected areas, wildlife conservation, indigenous communities living in the forests, among others.

The outline of the study is in Annex 1.

1.2 Methodology

The project started in August 2003. The study carried out a desk-based review of Malaysia's regulatory framework and processes for timber production including social and environmental aspects in relation to controlling illegal logging and illegal timber trade. Information from published sources and correspondence were augmented with selected interviews (face-to-face, and by telephone) with personnel in key government departments from Peninsular Malaysia, Sabah and Sarawak. A list is attached in Annex 2. These included the Forestry¹ Departments (FD), Sarawak Forestry Corporation (SFC), Royal Customs Department, Sarawak Timber Industry Development Corporation (STIDC), Malaysian Timber Industry Board (MTIB), Malaysian Timber Council (MTC), Ministry of Plantation Industry and Commodities (previously the Ministry of Primary Industries), Timber Associations, and selected concessionaires and representatives of the timber products industry as well as NGOs. In addition, relevant information and records from other enforcement agencies and

¹ Forestry agency of Peninsular Malaysia and Sabah are called Forestry Departments, and for Sarawak is called Forest Department. For this report, the generic Forestry Departments or FD would include the three agencies.

courts of law were obtained. To ensure a transparent process, the research included a series of fact-finding missions and workshops, discussion of findings, and feedback for each of Malaysia's administrative regions: Peninsular Malaysia, Sabah and Sarawak. The listing of ramin *Gonystylus* spp. in Appendix III of the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES), which Malaysia is obliged to implement, was used as a case study where relevant to highlight some selected findings of the study.

2. Sustainable Forest Management policies

Policies on forests in Malaysia have to be seen in the context of related, macro level policies that guide and direct the development of Malaysia towards an industrialised nation as outlined in the National Vision 2020 objective and strategy. The macro-policies are the most important instruments that shape the role that forests play in terms of conservation, socio-economic and industrial development of the nation.

The government introduced the New Development Policy (NDP) in 1991, to replace the New Economic Policy (NEP) as the framework for economic policy which has been extended beyond year 2000. The NDP follows the twin objectives of the NEP of poverty eradication and ethnic redistribution of wealth, and places greater emphasis on rapid growth through industrialisation to share the economic pie. Under the NDP are the various plans that impact on the forests including the Third Outline Perspective Plans (2001-2010), and their implementation through the Five year Development plans with the present being the Eighth Malaysia Plan 2001-2005. The Second Industrial Master Plan (IMP2) (1996-2005) sets out every ten years a blueprint for the country's future industrial development. The first IMP focused on increasing value from agriculture processing, including wood based products. In particular, the IMP's aim was to make Malaysia a highly visible and reputable centre for furniture, joinery and moulding. Integral to increasing value and competitiveness is the supply of raw or primary processed materials, i.e. logs, sawn timber, plywood and veneer for the local industry.

Malaysia has a wide array of policies that relate to biodiversity and forest resources management and control. This includes the National Environment Policy 2002, draft National Conservation Strategy 1993 and the respective State Conservation Strategies, National Policy on Biological Diversity 1998, National Agriculture Policy, as well as various Master Plans for protected areas system in Peninsular Malaysia, the Sarawak Wildlife Master Plan, and especially the National Forestry Policy (NFP) 1978.

The most important policy and related legislation in terms of forest law and enforcement is the National Forestry Policy (NFP). The NFP forms the basis for the classification of roles and hence the use and management of the forests, although only the states in Peninsular Malaysia subscribe to the NFP. The United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro in 1992 provided additional concepts and ideas which were subsequently incorporated into the revised NFP in 1993 to further enhance forest management in the country. These ideas include recognition of the importance of biological diversity conservation, sustainable utilisation of genetic resources and the role of local communities in forest development. Sabah and Sarawak have their own forestry policies, although there are similarities to the NFP. However, Sabah and Sarawak have not revised their forest policies in recent years and hence there is no mention of those new concepts in the policies.

Forests are under the responsibility of the states as enshrined in the Malaysian Federal Constitution. Under Article 74(12) of the Federal Constitution, land and forest ownership and management is the responsibility of the State governments. The executive authority of the Federal Government only extends to the provision of advice and technical assistance to the States, training and the conduct of research, unless the State agrees to delegate some of their authority to the Federal Government. However, the Federal Government is responsible for trade policies, import and export controls and international cooperation among others.

The critical concept in the NFP is the constitution of a Permanent Forest Estate (PFE) which must be determined by the States and its security assured. Under the forestry laws, the PFE interpreted as Permanent Reserved Forests (PRF) is classified into categories depending on the degree of protection and use. These forests are under the jurisdiction of the FDs, while other protected areas such as national parks and wildlife sanctuaries are managed by other agencies such as Wildlife Department and National Parks Department, at either State or federal levels. The process for gazettelement and degazettelement are different as provided for under the respective laws. The implementation of the NFP is coordinated by the National Forestry Council (NFC), the highest body with the mandate on forestry, chaired by the Deputy Prime Minister and comprising the Chief Ministers of the thirteen Malaysian states, the Minister in charge of forestry and other Federal Ministers, and heads of the forestry services of Peninsular Malaysia, Sabah and Sarawak.

2. Conservation and protection of forest resource base

Malaysia has a land area of 329,800 km² divided into 3 regions; Peninsular Malaysia comprising of 11 States, and the States of Sabah and Sarawak on the island of Borneo. The population is just over 25 million people. However, significant deforestation has occurred over the last century. Even so, by 2002, the total area of forests was estimated at 19.54 million ha or 59.5% of the total land area. Of these, only 0.27 million ha was plantation forest and the rest, 19.27 million ha is natural forests.

Malaysia has a rich flora and fauna with over 300 species of mammals (27 endemic), birds (736 spp., 11 endemic), reptiles (268 spp., 69 endemic), amphibians (165 spp., 57 endemic), freshwater fishes (449 spp.), invertebrates (more than 150,000 spp.) including 12,000 species of moth, and 1,200 species of butterflies. There are over 15,000 species of flowering plants, of which orchids account for over 3000 spp., (more than 2000 species endemic), palms (more than 250 spp., of which over 100 species are endemic), ferns (more than 750 spp.), fungi (more than 500 spp.), mosses (more than 450 spp.). According to the IUCN 2002 Red List, one animal species *Argusianus bipunctatus* is extinct while 143 species are under threat from a variety of sources, including habitat destruction, logging, forest conversion, hunting and trade. Since 1948, around 170 species of flowering plants endemic to Malaysia have become extinct, e.g. *Shorea cuspidata* (Dipterocarpaceae), *Impatiens cryptoneura* (Balsaminaceae); *Piper collinum* (Piperaceae); and Ridley's staghorn fern – *Platyserium ridleyi* (Polypodiaceae). A further 199 species are classified as critically endangered globally.

In addition, the forests are rich in species that are used in traditional medicine and as a source of pharmaceutical drugs, for ornamental purposes (orchids and palms), fruit trees, traditional technology (rattan and bamboo) and other minor forest produce.

Deforestation and forest degradation are the most significant factors impacting on the survival of species. Deforestation poses the most direct threat to biodiversity. This imposes a tremendous challenge to ensure that adequate distribution and types of habitat and biodiversity are given some form of protection from conversion, or are given the highest level of protection by designating areas as totally protected areas.

Malaysia has a system of totally protected areas including national parks, state parks, wildlife sanctuary, etc., and a system to protect its biodiversity, species, and habitat. Besides this, the protection forests within the Permanent Reserved Forests (PRF) under the jurisdiction of the Forestry Departments, which are given protection status and where commercial logging is prohibited, are also part of the protected areas of the country. These forests are by far much larger in area than the other protected areas and amounts to 3.49 million ha.

Peninsular Malaysia has 40 protected areas (PAs) distributed in all eleven States with a total area of 751,413 ha. or 5% of the land area. The PAs include national parks, State parks, wildlife sanctuaries, etc. some of which are not under the jurisdiction of the Department of Wildlife and National Parks (DWNP).

Sabah's protected areas system comprises a mix of conservation areas, wildlife sanctuaries, wildlife hunting reserves gazetted under the Wildlife Conservation Enactment 1997, and terrestrial and marine parks under the Parks Enactment 1984, totalling 265,749 ha. Sarawak has developed an extensive list of protected areas that amounts to almost 391,000 ha or equivalent to about 3% of land area of the State in year 2000. Sarawak has proposed adding to the list of protected areas but these areas have yet to be gazetted.

3. Legal framework

The forestry policies are implemented primarily through the provisions in the forest laws enacted for the three regions: National Forestry Act 1984 for Peninsular Malaysia, Forest Ordinance 1958 for Sarawak and Forest Enactment 1968 for Sabah, and the various amendments by the States.

The other related regulations that affects forestry for Peninsular Malaysia include the Land Conservation Act 1960, Environmental Quality Act 1974, National Parks Act 1980, Protection of Wildlife Act 1972, National Land Code 1965, Aboriginal Peoples Act 1954, Occupational Safety and Health Act 1994 and Forest Rules 1985. For Sabah, the relevant regulations include Forest Rules 1969, Wildlife Conservation Enactment 1977, Land Ordinance 1930, Cultural Heritage (Conservation) 1997, Sabah Parks Enactment 1984, Biodiversity Enactment 2000, Conservation of Environment Enactment 1996, Water Resource Enactment 1998, and Environmental Quality Act 1974. Sarawak has the Natural Resources and Environment Ordinance 1997, Forest Rules 1962, Wildlife Protection Ordinance and Rules 1998, The Forests (Planted Forest) Rules 1997,

Sarawak Biodiversity Centre Ordinance 1997, Sarawak Biodiversity (Access, Collection & Research Regulations) 1998, Land Code 1958, Natural Resource and Environmental Ordinance, Water Ordinance 1994, Occupational Safety and Health Act 1994, Land Ordinance 1952, Native Code 1992, Native Code Rules 1996, and Native Custom Declaration 1996.

Decisions on natural resources utilisation, management and conservation ultimately rest with the Cabinet. The key agencies responsible for sustainable forest management are the State Forestry Departments in Peninsular Malaysia, Sabah and Sarawak, and the Sarawak Forestry Corporation (SFC).

The National Forest Policy, applicable to Peninsular Malaysia is implemented by three agencies, two of which are under the Ministry of Natural Resources and Environment (MNRE): Forestry Department Peninsular Malaysia, that is concerned with the upstream or production end of the industry; and Forest Research Institute Malaysia (FRIM) with research and development as well as information gathering and dissemination about the forest sector; while the third, the Malaysian Timber Industry Board (MTIB) which is under the Ministry of Plantation Industries and Commodities (MPIC) is responsible for downstream or processing end of the industry, and partly in promoting Malaysian timber products, both domestically and internationally.

The MPIC and MNRE are new ministries established following the general elections in March 2004. The Prime Minister announced the restructuring of some of the federal ministries, which among others, involved the trade, natural resource and environment portfolios which were previously under the Ministry of Primary Industries (MPI), Ministry of Land and Cooperative Development, and Ministry of Science, Technology and Environment (MOSTE) respectively. The new Ministry of Natural Resources and Environment (MNRE) was created to plan, manage and control Malaysia's natural resources and heritage including forests. The MPI was renamed the Ministry of Plantation Industries and Commodities (MPIC) and has as part of its portfolio, the oversight for the development of forest industries, trade and marketing.

The resources of the marine, water catchment areas, highlands, riverine and lowland forests now come under MNRE to enable the ministry to plan for a holistic approach towards the management and conservation of the natural resources of the country. Previously, the management of these resources came under the jurisdiction of different ministries.

The implementing agency for SFM in Sabah is the Sabah Forestry Department. Sabah has its own division on forest research and development based at Sepilok. The downstream industry for Sabah is managed by MTIB. The Sarawak Forestry Corporation is the principal management company for forest management and conservation. The statutory function is retained by the Sarawak Forest Department. Research and development is now organised under the Applied Forest Science Unit of SFC. STIDC manages the downstream industry in Sarawak. All three FDs and SFC control the movement of timber from source to mill. Processing and trade thereafter are managed by MTIB and STIDC.

The other policies such as the National Policy on Biological Diversity 1998, National Environment Policy, National Conservation Policy, National Agriculture Policy, impact species and land use planning much more than on forest management. The exception is the Environmental Quality Act 1974 (amended 1987) which includes forestry in its list of prescribed activities requiring Environmental Impact Assessments (EIA). In relation to forest conversion and forestry operation, EIA is required for a number of activities. The most important for forestry operation is logging or conversion to other land use within a catchment area and logging covering an area of 500 ha or more. In Sabah, these activities are listed under Conservation of Environment (Prescribed Activities) Order 1999.

4. Legislation, control and practices of timber extraction and trade

a. Management structure

Forestry Departments, MTIB, STIDC, SFC, Customs and police are some of the agencies which can carry out enforcement activities. Each of them has designated divisions that are responsible for various operations as well as administration. The final report will elaborate and analyse the management structure and operations in depth. The Enforcement Unit at the Forestry Department Peninsular Malaysia coordinates and supports the enforcement actions undertaken by the Forest Operations Division at the State Forest Departments (Peninsular Malaysia only). In Sabah, investigations are carried out at the District Forest Officer level as well as by the Monitoring, Controlling, Enforcement Evaluations (MCEE) Officers. The Enforcement and Investigations Division in Sabah Forestry Department coordinates the enforcement actions in the State.

In Sarawak, the Security and Protection Unit of the Sarawak Forestry Corporation conducts enforcement actions together with the Enforcement Unit of STIDC. Anti Corruption Agency (ACA) has been requested on occasion by the Ministry to provide the transparent oversight for suspected cases of possible collusion in the control of the timber trade.

The laws cover a wide range of forestry infractions, and the penalty can be as stiff as jail sentence to fines or both. The fines and jail terms varies between Peninsular, Sabah and Sarawak. A report has to be made before investigation starts. Enforcement agencies also conduct checks on the forests to ensure no illegal extraction takes place in both State land and Permanent Reserved Forests. The lack of manpower to carry out constant enforcement vigilance is an issue. Further details, elaboration, and analysis will be provided in the final report.

b. Legal controls and practices in forest management

Malaysia has a range of procedures, manuals and guidelines on various aspects of forestry to implement the policies and ensure implementation with legal requirements. The forestry laws in Malaysia have provided for the use of forests through the issuance of licences and use permits. This is because, under the law, all forest produce are the property of the State Authorities and only those with permission are allowed to enter and extract the forest produce. There are a number of conditions attached to the licences, which has to be fulfilled by the licensee. The licences are mostly granted through tender but there are exceptions. The licences can also be revoked after due process if any contravention of the Act or the licence is found. The provisions of the law cover both PRF as well as State land. The final report will present an analysis and assessment of the laws from the perspective of the controls in practice, as well as the robustness of the chain-of-custody systems to track movements of forest produce from different sources.

There are policies governing the offering of logging contracts or for long term forest management in Forest Management Units (FMU), cutting limits, and forestry operations such as Reduced Impact Logging (RIL), road construction, and tracking of logs from source to mill, with a document called a removal pass. The licences usually have attached a set of conditions that provides the range of actions undertaken by the licensee. Sabah is the only State that appears to have included all the necessary guidelines into their licensing system for forest concessions called Sustainable Forest Management Licence Agreement (SFMLA) as the private companies are monitored and enforced against those conditions.

Malaysia has been proactive in developing the criteria and indicators (C&I) for SFM based on the ITTO *Guidelines and Criteria for the Measurement of Sustainable Tropical Forest Management*. Malaysia has developed 92 activities at the national level to operationalise the ITTO Criteria and Indicators covering enabling condition for SFM, forest resource security, forest ecosystem health and condition, continuity of flow of forest produce, biological diversity, soil and water, and socio-economic and cultural effects. Against each of the activities identified, Malaysia has also formulated management specifications for monitoring and evaluation by the State Forestry Departments. In all, 206 management specifications were formulated at the national level. A complementary and overlapping set of 84 activities and 191 management specifications were identified at the FMU levels. These are being progressively implemented under the oversight of the State Forestry Departments.

Malaysia has also formulated the Criteria, Indicators, Activities and Management Specifications (MC&I) for the purposes of forest management certification to be undertaken at the FMU level. This is to complement the operationalisation of the SFM. The development of the MC&I for certification is coordinated by the Malaysian Timber Certification Council (MTCC).

In addition, all three Forestry Departments and SFC have strived to develop consistency in its procedures and standards by applying for the Malaysian Standard (MS) ISO 9000 series. MS ISO 9000 certificates for various operations including logging, quality control, royalty collection, etc. have been awarded to the departments.

c. Legal controls and practices in trade

Malaysia has a long established system of licensing and procedures to check for log movement and timber products imports and exports. The system allows, to a large degree, the forestry management agencies to differentiate timber from State land forest, excised forests, PRFs, and imported timber through the removal pass mechanism. There are also other mechanisms in placed at the mills, and the various reporting requirements that form a framework for the control of trade. The Forestry Departments, STIDC, SFC, and MTIB carry these out, in conjunction with the Customs for export and import of forest products. The final

report will provide a review of the system and make recommendations for improving the current systems where applicable.

This system is designed to capture log extraction and movement, and what is entering the country, and leaving the country. The issue that is capturing the attention of the international community and putting pressure on Malaysia is the import of timber from Indonesia despite a ban on log exports imposed by Indonesia. Malaysia is taking steps to resolve the issues raised, and this study will document and review those measures taken or planned. At the same time, barter trade involving the import of timber through designated ports in Sabah and Peninsular Malaysia, require less stringent documentation than for timber imports from other non-barter trade countries. This study will review the mechanism for import and export of timber products, in particular the allegations made about the import and laundering of illegally logged timber from Indonesia.

In addition to the existing trade control mechanisms, Malaysia is also obliged to implement CITES import, export and re-export provisions for ramin *Gonystylus* spp. CITES is an international instrument that is used to ensure sustainable harvest and trade of wild plant and animal species, or to stop trade when it threatens the survival of endangered species and is implemented using a permit/certificate system. CITES provides for provisions to check and control trade of species listed in its Appendices. In Malaysia, of the tree species, only agarwood *Aquilaria malaccensis* and ramin *Gonystylus* spp. are listed under CITES Appendix II and III respectively.

MTIB is the CITES Management Authority for Peninsular Malaysia and Sabah, which is assigned to issue CITES permits for a commercial timber species, ramin *Gonystylus* spp. that was listed in 2001. At present, for Sarawak pending further changes resulting from the forestry administrative restructuring, the District Forest Offices in five localities are allowed to issue CITES permits for ramin. A permit or certificate is required to accompany any export of these species. The procedures for import and export of ramin will be documented and analysed. Malaysia has opted to remove certain constraints in implementing CITES requirements by putting reservations, in CITES terminology, from the listing of ramin parts and derivatives. This means Malaysia can export ramin parts and derivatives without a CITES certificate. Only logs and sawn timber require a CITES certificate of origin from Malaysia. However, CITES party importing countries could request for a certificate stating that the ramin parts and derivatives originate from Malaysia. Malaysia can re-export ramin from Indonesia when accompanied by a CITES permit issued by the Management Authority of Indonesia. This complexity will be documented in detail.

5. Social dimensions

As part of the social obligations, concessionaires are also expected to pay attention to workers' health and safety and living conditions when carrying out their daily activities. Training is given to chain-saw operators on directional felling techniques and Reduced Impact Logging (RIL), and safety equipment such as goggles and safety helmets are given. The International Labour Organisation (ILO) representative in Malaysia is in discussion with the Federal and State FDs and authorities as well as private sector to provide adequate safety and health conditions to workers, including clean water and living conditions.

In implementing SFM, Forestry Departments have included the need for companies to designate community use areas within the licensed forest areas. This is usually included as a condition of the licensing agreement for an FMU holder. Normally roads, forest roads, bridges and culverts which are established for the logging company's benefits in carrying its operations also benefit forest dwelling communities.

In Peninsular Malaysia, the indigenous groups are collectively known as *orang asli*. Over the years, they have experienced an improvement in their livelihood. Due to the government policy of bringing the groups into the mainstream of development, they have undergone various aspects of social change. This was outlined in the statement of policy regarding the administration of the Aboriginal peoples of Federation of Malaya 1961. Many are now permanently or semi-permanently settled and only a minority still lives in the forests. The interests of the *orang asli* are provided for under the Aborigines Peoples Act 1954, which is implemented by the Department of Orang Asli Affairs (JHEOA).

The Sabah SFM Licensing Agreement for concessionaires has conditions to include local communities in the use of forests through the classification of the forest areas, and access to the forest for collecting non-timber forest produce.

The Sarawak Land Code (Cap 81) (Revised Law of Sarawak 1958) is the main legislation determining land tenure and administration in the State that provides for native area land, native customary land and three

other categories of land use. The Land Code and subsequent amendments allows the State authority to gazette or degazette land as native area and native customary land.

In general, the law allows for access rights to the communities to take forest produce for their own subsistence. Land claims conflict with logging licensees forms a significant portion of the grievances between indigenous groups and the private sector and the government. These conflicts of customary land rights and land conflicts can be partly resolved through court cases that serve as precedents and provide guidance for future resolution of similar conflicts. The report will document the important court cases on compensation and native customary rights that guide the resolution of the local communities' grievances.

6. Trade practices by trading partners

Malaysia trades in timber products with a large number of countries in both developing and developed nations. Trade restrictions in terms of procurement policies, such as those that only accept a particular type of certification has a direct impact on SFM in Malaysia. Log export ban by Indonesia has resulted in a shift of products trade to large squares and scantling below 60 square inches. This impact on the Malaysian timber processing industry, especially those that uses logs for veneer. However, in terms of forest law enforcement, such restrictive policies by Malaysia's trading partners do impact on enforcement efforts when Malaysia has complementary provision in terms of administrative protocols and legislation. This section is not meant to exhaustively document and analyse the various trade practices of Malaysia's trading partners. This study will use a couple of case studies to highlight the resulting impacts on Malaysia's FLEG process. The Indonesian-Malaysian trade in ramin provides a case study to show the complementarity of policies and problems of implementation. Procurement policies in certain markets will be used as another case study on its impact on the Malaysian SFM and forest law enforcement.

7. Forest certification

For Peninsular Malaysia, the Forestry Department is progressing towards meeting the MC&I, the development of which is coordinated by the Malaysian Timber Certification Council (MTCC). MTCC has been established to develop and operate a national timber certification scheme for assessing forest management practices in Malaysia as well as in meeting the demand for certified timber products. MTCC organised a series of stakeholder meetings and provided financial support to smaller NGOs and social groups to facilitate their participation in the development and revision of the MC&I. This was followed by consultations to develop the national standards of performance for the MC&I. Through a series of consultative meetings, Malaysia has adopted a set of MC&I for assessing forest management practices in all forest management units under the MTCC's scheme for forest management certification. Malaysia has been following a phased approach towards the assessment for forest management certification.

Under the phased approach, 29 Indicators, 87 activities and 49 standards of performance of the MC&I were used to assess forest management practices in the States of Peninsular Malaysia. Seven FMUs in Peninsular Malaysia, covering 4.11 million ha have been assessed and awarded the MTCC *Certificate for Forest Management* as of October 2003. Forest certification is a strong tool that can support SFM. The implementation of the MTCC and Forestry Stewardship Council (FSC) schemes has influenced forest law enforcement and governance in Malaysia through the third party verification systems of those schemes. MTCC recently field tested the new national C&I. These mechanisms provide a strong basis for monitoring. There are also 3 concessions that have been awarded the FSC certificate for good forest management, Deramakot Forest Management Unit in Sabah, Perak Integrated Timber Complex (PITC) in Perak State in Peninsular Malaysia and a rubber plantation.

8. International cooperation

At the international level Malaysia is a signatory to the Convention on Biological Diversity (CBD), which Malaysia ratified on 24 June 1994, the International Tropical Timber Agreement (ITTA), the Framework Convention for Climate Change which was ratified on 13 July 1994, and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), ratified in 1977, all of which have direct relevance to forestry issues. Currently, Malaysia is actively engaged in the implementation phase of the above conventions/agreements. The specific obligations of Malaysia from membership in these conventions and agreements and their linkage to the forest law enforcement processes in Malaysia will be analysed in the final report.

Malaysia has professed its commitment to the UNCED Forest Principles and the various forestry programmes under Agenda 21 as adopted by the United Nations Conference on Environment and

Development (UNCED) held in Rio de Janeiro, Brazil in 1992. The revised National Forestry Policy incorporates some of the concepts outlined in UNCED.

Malaysia has participated actively at the Intergovernmental Panel on Forests (IPF) and the Intergovernmental Forum on Forests (IFF) and the continuing debate in the new forum on forestry, the United Nations Forum on Forests (UNFF). Currently, Malaysia is taking action to implement the IPF and IFF Proposals for Action that are of relevance and importance to Malaysia.

At the ASEAN level, Malaysia is involved in various technical groups, such as the ASEAN Common Forestry Policy, Intra-ASEAN Timber Trade, and ASEAN Common Stand on International Issues on Forestry.

Preparation for finalising report

Findings of the study were discussed with the various stakeholders in Malaysia. Additional inputs and further elaboration of various sections will be carried out, especially in the light of recent developments within the forestry institutions and governance structure. Additional field trips have been scheduled to Sabah, Sarawak and Peninsular. The final report will be submitted to ITTO by the end of October 2004.

TRAFFIC International,
June 2004

Annex 1: Original Study outline
FOREST LAW AND GOVERNANCE IN MALAYSIA IN THE
CONTEXT OF SUSTAINABLE FOREST MANAGEMENT

1. Introduction – including SFM and Malaysia's progress towards meeting ITTO objective 2000.
2. Malaysia's SFM policies, processes and practices. Review of literature relevant to the study in Malaysia and other ITTO producer countries as appropriate. Emphasis on transparency of the Malaysian process, enforcement and incidence of forest offences and forest-resource related cases.
3. Overview of the legal infrastructure, institution, policies and practices in Malaysia from the economic, social and environmental aspects of SFM in forestry sector – complexities and differences between Malaysia's three regions – Peninsular, Sabah and Sarawak, in the following areas:
 - i constitutional provisions
 - ii process of enacting of laws
 - iii forestry administration
 - iv regulatory functions
 - v enforcement (detection, reward and suppression)
 - vi penalties
4. Legislation dealing with the conservation and protection of the forest resource base:
 - i laws and institutions for habitat, species, conservation and environment (including fire, EIA, and EQA)
 - ii PFE by Forest Department – process of establishment and classification
 - iii National biodiversity conservation areas and species protection including international obligations under CITES
 - iv protection and management of biodiversity conservation areas, including international obligations (RAMSAR, World Heritage Sites)
 - v protection and management of PFE and other forest lands including State land forests
 - vi other reserves related to forests land and resources, e.g. for orang asli (indigenous people) and native lands
 - vii Case study of actual gazettelement to constitute a Forest Reserve to demonstrate complexity and comprehensiveness of the process as provided by Forest laws and process of de-gazettelement.
5. Legislation, control and practices dealing with use of and extraction of timber and other forest produce. Three components:
 - a. Management structure for Forest Departments, STIDC and MTIB as well as Customs, including capacity building, training and manpower resources.
 - b. Legal controls and practices at source:
 - i licensing and conditions
 - ii field procedures
 - iii control of logging operations
 - iv removal pass, checking station, revenue collection
 - v prevention of illegal logging and malpractices, enforcement and penalties
 - vi inventory of forest offences in the last 5 years or so, according to classification, cases prosecuted and penalties
 - vii some case studies of prosecution
 - c. Legal controls and practices in trade.
6. Legislation, control and practices of forest resources extracted at processing mills, including sawn timber, plywood, veneer, etc. Some examples of practices as case study in particular the differentiation between local and imported products.

7. Social dimensions of forestry operations and forest land use as they affect local communities provided by laws.
 - i protection of community rights during process of constitution of PFE
 - ii User rights of local communities in PFE, state lands etc.
 - iii reserves for local communities
 - iv land rights/ownership and conflicts
 - v list and describe some landmark court cases to resolve land rights and tenure issues
 - vi Other issues of relevance
8. Exports and imports of timber and timber products from and into Malaysia. Legislation, procedures, documentation and licensing as well as practices for both exports and imports. Implementation of CITES rules and obligations.
9. Bans, boycotts and restrictive trade practices by consumer countries and in Malaysia. Impact on SFM and on forest law enforcement in Malaysia.
10. Forest certification and MTCC as a tool for supporting SFM and forest law enforcement.
11. International cooperation in terms of SFM by Malaysia, at the bilateral level with governments and organizations, regional level under ASEAN and international, such as ITTO, and other initiatives.
12. Conclusions and Recommendations on enhancing SFM and forest law enforcement.

Annex 2: List of people and agencies interviewed, and sites visited

In Malaysia interviews were held with representatives from the federal government as well as the governments of Malaysia's three regions: Peninsular Malaysia, Sabah and Sarawak:

- Federal Ministry of Primary Industries
- CITES Management Authorities:
 - Malaysian Timber Industry Board (MTIB)
 - Sarawak Forestry Department
- Malaysian Timber Council (MTC)
- Malaysian Timber Certification Council (MTCC)
- Sabah State Forestry Department
- Universiti Malaysia Sabah, School of International Tropical Forestry
- Sarawak Timber Industry Development Corporation (STIDC)
- Royal Malaysian Customs and Excise Department (Sabah, Sarawak, Pahang and Johore)
- Forestry Department Headquarters, Peninsular Malaysia
- State Forestry Departments: Pahang, Selangor
- Kuantan Port Authority
- Sarawak Forestry Corporation Sdn Bhd (SFC)
- Sarawak Timber Association (STA)
- Malaysian Nature Society (MNS) Kuching Branch
- World Wide Fund for Nature (WWF) Malaysia
- Wildlife Conservation Society (WCS) Kuching
- Forest Research Institute Malaysia (FRIM): United Nations Development Program (UNDP)/Global Environment Facility (GEF) Peat Swamp Forest Project
- Danish International Development Assistance (DANIDA) funded Peat Swamp Forest project
- Rimbaka Forestry Corporation Sdn Bhd

Field studies

Field research included visits to a number of forests, ports and factories to assess management systems in general as well as those applying to *Gonystylus* spp. in particular. Locations visited between July-December 2003 are listed below:

1.1.1 Forests

- Pekan Forest Reserve, Pahang (Peat Swamp Forest)
- Serendah Forest Reserve, Selangor (Dry Inland Forest)
- Deramakot Forest Reserve, Sabah (Dry Inland Forest/Freshwater Swamp Forest)
- KTS Plantation Sdn Bhd licence area, Sabah (Dry Inland Forest)

1.1.2 Factories

- Cymao Plywood Sdn Bhd, Sandakan, Sabah
- KD Plywood Sdn Bhd, Tawau, Sabah

1.1.3 Ports

- Peninsular Malaysia: Port Kelang, Muar, Batu Pahat
- Sabah: Kota Kinabalu, Sandakan, Tawau (including Pulau Sebatik – the entry point for timber from Nunukan, East Kalimantan)
- Sarawak: Semantan, Tebedu, Lubok Antu (all entry points for timber from West Kalimantan)

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