

“Regional Legal and Policy Framework on Counter Wildlife Trafficking in the times of COVID-19 and other pandemics”

Witness expertise

Ms. Sallie C.W. Yang

Sallie works with Freeland, an NGO working on wildlife trafficking in the regional and globally based in Bangkok, Thailand. She currently leads the law and policy team at Freeland. The team supports ASEAN regional and national legislative, policy, and regulatory reforms to build political will of decision makers and increase commitment of focal countries for countering wildlife crime, including supporting AIPA. She authored “The Principles of Wildlife Conservation Funds and Restitution – Additional remedy to wildlife and forest offenses (USAID/AIPA 2017)¹, Scaling efforts to counter-wildlife trafficking through legislative reforms policy and legislative analysis, and recommendations for Thailand (USAID/national Legislative Assembly, Thailand 2017), The Elephant in the Room – Demystifying Thailand’s legislative and regulatory frameworks on elephant protection and conservation (2019) and A Selection of Best Practices, Key Innovations and Model Provisions (USAID/AIPA 2019)² as part of the collaboration with AIPA. She also managed the development and publication of the ASEAN Handbook on Legal Cooperation to Combat Wildlife Crime (ASEAN-Wildlife Enforcement Network/Freeland 2016)³, with AIPA as a key partner.

She also co-authored “Illegal trade in endangered forest and marine species enhancing law and enforcement: a Southeast Asian perspective” and “Wildlife trade in China and Vietnam: A comparative study of the implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora”, with Associate Professor Lye Lin Heng, Faculty of Law, National University of Singapore.

Sallie is a lawyer, qualified both in the UK as a barrister-at-law and Singapore as an advocate and solicitor. She holds a law degree (LLB, Hons) from the University of London, UK and a Masters (MSc) in Environment Management from the National University of Singapore (NUS). She is an appointed member of the IUCN World Commission on Environmental Law (WCEL) and an associate member of the Asia Pacific Centre for Environmental Law of the Faculty of Law, NUS.

Executive Summary

An overview of the regional policy and legal framework on countering wildlife trafficking and the illegal wildlife trade. We shall explore what regional legal instruments and mandate are

¹ https://www.usaidwildlifeasia.org/resources/reports/usaid-wildlife-asia-conservation-fund-restitution-briefing-paper_web.pdf/view

² <http://www.aipasecretariat.org/pb/detail/30/3>

³ <http://www.aipasecretariat.org/pb/detail/9/3>;

already in place to counter wildlife trafficking and what else is needed in view of the lessons from COVID-19 outbreak.

On the trail of COVID-19, the role of wildlife trafficking and wildlife consumption have come into question in the spread of zoonotic diseases. Further, as a consequence of many countries in lockdown, there is also a likely scenario that poaching of wildlife has increased⁴ and more wildlife trading will move to online platforms including financial transactions which can be more difficult to detect. How ready are our law enforcement agencies to tackle this? Interagency cooperation becomes even more relevant and urgent. As wildlife crime move to the internet and online transactions take place, it is imperative that the cybercrime, financial crime sectors and other non-traditional actors are also involved in the fight against illegal wildlife trade. In the wildlife trafficking chain, the ASEAN region has been mainly targeted as transit and/or destination countries. We shall highlight some of the key legal provisions needed to effectively address the problem and look at the comparison of penalties on key components of wildlife trafficking across the region as a platform to show why harmonization is key to preventing hotspots and exploitation of weaker laws in certain member states.

Testimonial

Good morning Chairman, Secretary General, members of parliaments, ladies and gentlemen. Thank you for this opportunity to testify today.

I shall attempt to give you a brief overview on what is the current policy and legal framework in the ASEAN region on counter wildlife trafficking and the illegal trade in wildlife.

Regional Policy and Mandate in ASEAN on counter wildlife trafficking

ASEAN as a region has several policies to address wildlife trafficking issues. ASEAN bodies including AIPA, ASEAN Ministerial Meeting On Transnational Crime, East Asia Summit, and ASEANPOL have all made resolutions or declarations to support combat wildlife trafficking.

The 2 main ASEAN Working groups on countering wildlife trafficking are AWG CITES and Wildlife Enforcement (under the economic pillar) and SOMTC working Group on Wildlife and Timber trafficking (under the political and security pillar).

In March 2019, a **Special ASEAN Ministerial Meeting on Illegal Wildlife Trade** was convened which resulted in the Chiang Mai Ministerial Declaration on Illegal Wildlife Trade.

From a zoonotic diseases point of view, it is noteworthy that in 2016, ASEAN established the **ASEAN Coordinating Center for Animal Health and Zoonoses (ACCAHZ)**

recognizing the need for a unified approach to address animal health, to collaborate with human health sector and to reduce disparity in capacity in dealing with animal health and zoonoses among AMS.

⁴ <https://www.conservation.org/blog/poaching-deforestation-reportedly-on-the-rise-since-covid-19-lockdowns>

Regional Legal framework in Counter wildlife trafficking

All 10 ASEAN member states are parties to CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora). CITES is an international agreement between governments and serves to both facilitate legal, sustainable and traceable trade and in more recent years, to intercept illegal wildlife trade.

Wildlife conservation and protection laws in many ASEAN member states were drafted or amended pursuant to CITES requirements, this may create legislation inconsistencies and conflicts as CITES does not necessarily deal with the full spectrum of law enforcement and criminality of wildlife crimes, especially those involving transnational and organized wildlife crimes. The inherent conflict of interest between CITES management and law enforcement prevails.

Further, CITES covers only endangered species (classified as Appendices I, II and III), that is a loophole as zoonotic diseases do not necessarily come from CITES listed species.

Let us look at some of the key provisions that are relevant to counter wildlife trafficking.

All ASEAN member States has provisions on hunting, trading, import, export, re-export, and possession in their wildlife laws.

However, I would like to highlight a few key provisions that can make a difference in preventing another outbreak:

1. **Possession** risk diseases as we have seen in this covid-19, and other outbreaks. While all 10 ASEAN member States have stipulated possession as an offence in their wildlife laws, it usually attracts a lower penalty than other offences in wildlife trafficking. It is also interesting to note that the offence for processing of illegal wildlife and their parts are often missing in the wildlife laws.
2. **Consumption** -Many countries are very reluctant to penalize consumers, instead they focus on the supply chain. This is still true for several ASEAN member states.
3. **Protected Species List** – this is often an understated issue in dealing with wildlife trafficking. Not all species are protected at the same level nationally and across the region. This creates hotspots for the criminals to operate.

The discrepancies include:

- a. Varying level of protection for different species lists
- b. Sometimes, the protection does not extend to all the species in a group of species (eg Pangolins)
- c. some are classified as suitable for captive breeding or as livestock

⁵ <https://cites.org/>

- d. some are exempted due to TCM use

With the reality of the pandemic, some scientific experts are calling for a special list for those species with high risk of zoonotic diseases to be included.

It will also be useful if there is a regional scientific authority and review mechanism for species assessment.

4. Captive breeding

Captive breeding of wildlife for consumption and other uses (this is normally different from livestock) have often been criticized as enabling the illegal laundering of wildlife and having extremely poor welfare and hygiene standards. In the ASEAN region, the penalties for illegal breeding of protected wildlife are highly uneven and are comparatively lower than the other wildlife trafficking offences, except for Malaysia, Indonesia, and Vietnam.

Speaking of which let us turn to the penalties:

5. Penalties:

- a. As of now, the penalties for wildlife trafficking offences, hunting, possession, and trading varying greatly amongst the AMS, from 0-15 years imprisonment terms, and 0-US\$88,000 in fines, with the highest cap at US\$380,000. The disparity of the penalties within the region means criminals can operate in countries that have lower penalties, thereby creating a safe haven for them. Penalties need to be strengthened and harmonized across the region to be effective. We need to start treating wildlife trafficking as a serious transnational organized crime.

6. National, regional and International Interagency, Cross sectoral cooperation is key.

Combatting wildlife trafficking requires multi agency collaboration amongst different law enforcement agencies, cross sector agencies and transnational efforts. Interagency task forces need to be funded and enabled to support counter wildlife trafficking.

Finally a word about Wildlife Market

National wildlife laws do not usually cover wildlife markets. Wildlife law enforcers must rely on primary offences such as illegal trading and possession under the wildlife laws and cooperation with other agencies implementing other relevant laws.

In other words, there is a need coordination and collaboration amongst wildlife enforcers, health and environment authorities and businesses.

I leave you with is the position of ASEAN in the Chiang Mai Ministerial Declaration on Illegal wildlife trade on wildlife market, it states:

- *13. We acknowledge that **domestic wildlife markets** need to be regulated and enforced thoroughly to prevent over exploitation and ensure the sustainable population of endangered species.*
- *18. We recognize the importance of continuous capacity building for better wildlife management and enforcement. In this regard, we welcome collaboration with other partners to strengthen our efforts in tackling the illegal wildlife trade such as establishing enforcement coordination mechanisms, **closing domestic wildlife markets where they contribute to poaching and the illegal trade**, providing equipment and training and joint international enforcement operations.*

If we take the One Health approach, perhaps in the next iteration of the ASEAN Ministerial Declaration on the illegal trade in wildlife can add to the above statement **“closing domestic wildlife markets to prevent transmission of zoonotic diseases and the next pandemic”**.

Summary of Recommendations to counter wildlife trafficking

- Strengthen laws by improving and harmonizing species list, habitat protection, and stronger penalties on a regional basis
- Strengthen and scale up interagency, cross sectoral efforts to combat wildlife trafficking and halt trade
- Shut down wildlife markets, with a priority focus on those in high-density urban areas
- Ensuring safeguards for communities and traders –ownership, incentive for alternative livelihood and compensation
- One-Health Approach