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Joint NGO statement

Environmental and Social NGOs reject the Malaysian Timber Certification Council's Scheme

In a European Tour this week, the Malaysian Minister of Primary Industries Dr Lim Keng Yaik, accompanied by senior officials of the Malaysian timber sector, will present the newly developed Malaysian forest certification scheme. Forest certification can be an important tool to improve forest management. Therefore the interest shown by the Malaysian government and Malaysian companies in certification, is encouraging. However, the role forest certification can play depends on the strength of the chosen certification system. In meetings with industry, governments and NGOs the Malaysian Delegation will present their scheme as an alternative to existing forest certification schemes and will urge timber buyers to buy Malaysian timber. Virtually all environmental and social NGOs and community-based groups in Malaysia and abroad have denounced this scheme as not yet credible.

In a joint NGO statement signed by most NGOs active in the field of forest certification the basic requirements for a credible forest certification system have been laid out¹. To be effective forest certification must be based on objective and measurable performance based standards; must be based on equal participation of a broad range of stakeholders and must be based on a labelling system that includes a credible chain of custody. The MTCC's (Malaysian Timber Certification Council) scheme does not meet any of these criteria.

Several Malaysian social, environmental and community-based NGOs were invited to participate in the process of developing the MTCC scheme, the fact that their concerns were ignored during the process has lead most of them to withdraw from the scheme in July 2001². Recently the longest involved environmental NGO in the MTCC scheme, WWF Malaysia,

¹ 21 May 2001: Why the PEFC, SFI and CSA are not credible forest certification schemes. Available at www.fern.org

² July 2001. STATEMENT Joangohutan. Joangohutan consists of Persatuan Orang Asli Semenanjung Malaysia (POASM-Association of Indigenous People in Peninsula Malaysia), Semenanjung Malaysia; Sinui Pai Nanek Sngik (SPNS), Perak; Komuniti Orang Asli Daerah Slim River, Perak; Center for Orang Asli Concerns (COAC), Selangor; Partners of Community Organizations (PACOS Trust), Sabah; KERUAN Association, Sarawak; Borneo Resources Institute (BRIMAS), Sarawak; SILOP, Sarawak Indigenous Peoples' Development Centre (IPDC), Sarawak; Institute for Development of Alternative Living (IDEAL), Sarawak; SACCESS, Sarawak; Sahabat Alam Malaysia (SAM-Friends of the Earth), Malaysia; SOS Selangor (Save Our Sungai Selangor), Selangor; 14. Suara Rakyat Malaysia (SUARAM-Voice of Malaysian People), Selangor.

declared it could not share in the responsibility for the scheme in its current form. WWF Malaysia states: *“The MTCC scheme is not an adequate mechanism to improve forest management, encourage conservation of biodiversity, solve social conflict or provide a credible guarantee of good forest management”*³.

There are many different problems with the MTCC scheme, but the main concerns are:

- It does not give due recognition and acceptance of customary land rights, tenures and user rights of indigenous people and local forest communities;
- It was not developed through a due consultative process⁴, and emphasizes economic considerations while failing to adequately safeguard social values and environmental conservation.

We, the undersigned, support the rejection by the Malaysian NGOs of the MTCC scheme. We agree with the Malaysian NGOs’ demand that the land rights of forest-dependent communities must be addressed satisfactorily and conclusively before any certification scheme can be deemed credible.

We deplore the fact that the MTCC scheme has been launched in Malaysia in January this year, when fundamental, issues concerning land rights and other matters are yet to be addressed and we strongly disapprove of the fact that the Malaysian Timber Certification Council has gone on a promotion tour for their forest certification scheme, while ignoring the concerns the social and environmental stakeholders have repeatedly put on the table in Malaysia.

We urge Minister Lim Keng Yaik to ensure that the MTCC:

- addresses satisfactorily and conclusively the land rights issues at home before promoting the scheme;
- ensures any scheme is developed with full participation and involvement of all stakeholders and is not dominated by the forestry industry or the government;
- becomes an independent and transparent body if it claims to be the national certification body.

FACTS ABOUT MALAYSIA⁵

Compiled by Fern⁶, May 2002

³ WWF Malaysia position on statement on MTCC, 19 March 2002.

⁴ In the development of an internationally credible certification scheme, it is imperative that there is a transparent, multi-stakeholder participatory process, with equal participation from groups representing the social, economic and environmental aspects of sustainable development.

Malaysia lies close to the Equator and covers an area of approximately 32.86 million hectares, consisting of 12 states in Peninsular Malaysia and the states of Sabah and Sarawak and the Federal Territory of Labuan in the Northern coastal area of Borneo Island. Peninsular Malaysia covers 13.16 million hectares, Sarawak 12.33 million hectares and Sabah 7.37 million hectares. The largest state in Malaysia, Sarawak, is approximately equal in area to the whole of Peninsular Malaysia, while Sabah is the second largest state.

Malaysia and its people

Approximately 80% of the population is found in Peninsular Malaysia and 20% in Sabah and Sarawak. The Orang Asli are the indigenous minority peoples of Peninsular Malaysia. The majority population of Sabah and Sarawak are indigenous peoples. There are 39 indigenous groups and sub-groups in Sabah. In Sarawak, there are 37 different indigenous groups and sub-groups. The indigenous peoples of Sabah, Sarawak and the Orang Asli of Peninsular Malaysia are collectively termed 'Orang Asal', which means 'Original Peoples'. Although they have distinct languages, cultures, lifestyles and livelihoods, they share one thing in common: a close physical, cultural and spiritual relationship with the land and forests. Land and forests, therefore, gives life and meaning to their whole being; for it is in the land that their history and identity is contained.

Malaysia and its forests

With favourable climate and soil conditions, tropical forests form the dominant natural terrestrial ecosystem in the country. Several classification schemes for the forest ecosystem have been developed, varying according to substrate, structure and floristic composition, altitude and other features. The Ministry of Science, Technology and the Environment (MOSTE) *Assessment of Biological Diversity in Malaysia* attempts to include all representative habitats within the forest ecosystems of Peninsular and East Malaysia as follows:

- Terrestrial/Dryland Forest: Lowland Dipterocarp; Hill Dipterocarp; Mixed Dipterocarp; Upper Dipterocarp; Montane Oak; Montane Ericaceous; Heath; Forest on Limestone; Forest on Ultrabasic Soil; Forests on Quartz Ridges; White Meranti-Gerutu Seasonal; Schima-bamboo.
- Freshwater/Riverine Forest: Riparian; Freshwater Swamp; Gelam Swamp; Peat Swamp.
- Estuarine/Coastal Forest: Mangrove Swamp; Nipah Swamp; Coastal Strand or Beach Forest.

In general, the dominant habitats include species-rich lowland and hill dipterocarp forest. There are also extensive areas of peat swamp and mangroves and less extensive areas of freshwater swamps, highland forest and specialist communities such as those located on limestone, quartz and ultrabasic rocks, calcareous soils and others. This diverse assemblage of forest habitats and ecosystems makes Malaysia a country very rich in flora and fauna and significantly contributes to the fact that it is rated as one of the 12 'megadiversity' countries of the world. The rich Malaysian flora include 12,500 species of known flowering plants, more than 1,100 species of ferns and many species, especially of lower plants, still to be studied and classified. A large proportion of plant life is endemic to the country. Malaysia's fauna is also very diverse, with about 300 species of wild mammals, 750 species of birds, 350 species of reptiles, 165 species of amphibians, 300 species of freshwater fish, 1,200 species of

⁵ Based on several sources including "An analysis of Malaysia's Implementation of the Convention on Biological Diversity with a Focus on Forests" Meenakshi Raman, Sahabat Alam Malaysia. Available at www.fern.org

⁶ www.fern.org or info@fern.org

butterflies, 12,000 species of moths and 100,000 species of invertebrates⁷. Over 90% of the country's terrestrial biological species occur in natural forests.

Forest loss in Malaysia

The invaluable forest ecosystems of Malaysia have been undergoing intense pressure. Before colonial time, small-scale farming and forest product harvesting provided sufficient food and material to the population. In the middle of the 19th century, significant conversion of lowland forests along the West Coast of Peninsular Malaysia started with the British colonisers' exploitation of tin. At the beginning of the 20th century, the rubber revolution took off and large areas of jungle were cleared for estates. By 1940, 1.4 million hectares of land were planted with rubber. In the Post-Independence period, government-supported rural development and poverty-alleviation schemes extended rubber plantations and introduced oil palm, further cutting into the forest.

Malaysia's land use policy is still 'use-oriented', designed for maximum utilization and development. Accordingly, forest land conversion for urbanisation, industrial, agricultural, mining and forestry development has higher priority than that of conservation. According to MOSTE, natural forest in the whole of Malaysia was reduced by 19.3% due to conversion to oil palm and rubber plantations over the period 1970 to 1992⁸. Manokaran writes that over the period 1970 to 1989 forested land for the whole of Malaysia was reduced by 5.39 million hectares, or 22.7% (31.4% in Peninsular Malaysia, 29.9% in Sabah and 10.5% in Sarawak)⁹. The forests cleared were predominantly lowland dipterocarps in Peninsular Malaysia and Sabah, and to a lesser extent, swamp forests and mangroves. Large-scale oil palm plantations are currently being established in Sarawak. Peat swamp forests in Peninsular Malaysia decreased from over 800,000 hectares in 1975 to only about 182,000 hectares in the late 1990s while mangroves in the whole of the country declined from 650,000 to 586,000 hectares between 1991 and mid-1990s¹⁰.

Environmental NGOs and indigenous peoples' organisations have been voicing concerns that apart from conversion to agricultural crops, large areas of natural forests have been severely degraded by industrial logging during the past 20 years. They also argue that other 'development' activities such as dam building, hill tourist resorts and large infrastructure projects are also taking a heavy toll on terrestrial forest ecosystems, while urban and agricultural development and shrimp farming continue to threaten coastal and mangrove forests.

The extent of remaining natural forests is obfuscated by differing interpretations of what constitutes 'natural forests' and by the use of terms such as 'tree cover' to boost the image of the country as a very green one. The use of 'tree cover', which includes about 4.49 million hectares of man-made plantations of timber, rubber and oil palm boosts the country's green cover to 72-75% of the total land area. In reality, most of these man-made forests are devoid of biodiversity and were actually established by clear-felling biodiversity-rich forests. Even by setting aside plantations, the task to identify how much land is still occupied by natural forests is not an easy task. One difficulty is due to the different legal classifications used in Peninsular Malaysia, Sabah and Sarawak. Another is that different sources, whether it be the

⁷ MOSTE 1998, *First National Report to the Conference of the Parties of the CBD*

⁸ *ibid.*

⁹ Manokaran N. 1996, An Overview of Biodiversity in Malaysia in *State of the Environment in Malaysia*, Consumers Association of Penang, 1997

¹⁰ Sahabat Alam Malaysia, 2001 *Malaysian Environment - Alert 2001*.

Department of Forestry, the Ministry of Primary Industries or MOSTE, have their own methodology and reasoning for presenting their numbers.

Government statistics claim that 18.91 million hectares or 57.5% of the total land area is under forest cover. That amounts to 5.85 million hectares in Peninsular Malaysia (44.5% of its land mass), 4.45 million hectares in Sabah (60.4% of its land mass) and 8.61 million hectares in Sarawak (69.8% of its land mass). The National Forestry Policy 1978 and the National Forestry Act 1984 instituted the Permanent Forest Estate (PFE), which is subdivided into: Production Forests covering 10.65 million hectares, for the production of timber in perpetuity; Protection Forests covering 3.39 million hectares, for the protection of watersheds and the environment; Amenity Forest for recreation and eco-tourism, and Research and Education Forest (unspecified size)¹¹. The PFE covers 42.7% of the total land area. The remaining 4.61 million hectares outside of the PFE are designated as Stateland Forests, which are earmarked for conversion to agriculture and other uses. National Parks, Wildlife Sanctuaries and Nature Reserves cover 1.39 million hectares and Virgin Jungle Reserves cover 110,624 hectares. About 330,000 hectares of these conservation areas are within the PFE and the remaining 1.06 million hectares are outside of it¹².

These figures, however, are questionable and the healthy status of the forests is open to debate. The term PFE, for example, is rather misleading since it implies that the forest area is permanent. However, permanency is actually not guaranteed as the State Governments can degazette any area of PFE for infrastructure development, agriculture, housing and other purposes¹³. Even the so-called Protection Forests (within the PFE) can be degazetted. Concerning the quality of the remaining forests, we need to consider that more than two-thirds of the PFE is Production Forests, which allows for logging “sustainably”. Sustainable logging, however, is a highly contested concept in the Malaysian context. Sarawak has the largest estate of Production Forest at 5.00 million hectares. Log production increased dramatically from 4.7 million cu m in 1970 to a peak of 19.5 million cu m. in 1991. According to recent sources, 16 million cubic metres were extracted yearly from natural forests from 1994 to 1997, still about double the yearly rate recommended by an ITTO mission of 1990. The intensity of logging only reduced in 1998 due to the financial crisis.

Indigenous communities have for many years complained about the highly destructive nature of logging operations in the state. These facts can hardly suggest that Production Forests are managed sustainably, at least in Sarawak. Whilst the National Forest Policy takes into consideration biodiversity concerns, as a forestry department official noted at a conference in 1998 '*there is a long way to go before such comprehensive forest management is likely to be fully practiced in Malaysia*'¹⁴.

That sustainable forest management (SFM) is a controversial issue is also demonstrated by the forest certification debate and process. The Malaysian Timber Certification Council (MTCC) was established in 1998 to develop and operate a voluntary certification scheme to ensure that SFM is practiced in all productive forests and to facilitate timber trade. At the

¹¹ Hj. Abdul Rashid b. Mat Amin, 1996. The State of the Malaysia's Forests: An Overview in *State of the Environment in Malaysia*. Consumers Association of Penang, 1997.

¹² Manokaran N., *op. cit.*

¹³ MOSTE 1998, *op.cit.*

¹⁴ Thang H.C. 1998, *International issues relating to the forest sector with specific reference to criteria and indicators for sustainable forest management in Malaysia*. Presented at the Malaysian Timber Council, Kuala Lumpur, 18 April 1998.

international level, the Forest Stewardship Council (FSC) was formed in the early 1990s to set criteria for timber certification. The MTCC developed a working relationship with the FSC and set up a national group to develop principles, criteria and mechanisms for certification in the country. As the FSC requires the participation of environmental NGOs and indigenous organisations in the national working groups, representatives of NGOs and indigenous groups were invited to participate. However, in July 2001, the indigenous organisations and most NGOs decided to withdraw from this process as they claimed that their expectations and demands were not met. Consequently, the credibility of the timber certification process has now been seriously questioned.

Meanwhile, forestry offences remain rampant. Between January 2000 and September 2001, 324 forestry offences were recorded in Peninsular Malaysia alone. Of these, 70 involved illegal logging, nine encroachments, and 245 other offences such as felling of immature trees and failure to obtain sub-licences for logging¹⁵. To compound matters even further, recently, the Minister of Environment revealed that some States have proceeded to degazette certain areas as wildlife reserves on their own accord without consulting with the Minister as is required by the law.

In conclusion, the extent of natural forests that is protective of biodiversity might be limited to 1.5 million hectares of Protected Areas and Virgin Jungle Reserves and 3.39 million hectares of Protection Forests within the PFE. The problem is that Protection Forests do get degazetted (although the exact size is not known). According to MOSTE, between 1978 and 1994 approximately 1.4 million hectares of PFE were degazetted¹⁶. The Department of Wildlife and National Parks, analysing data from the Department of Agriculture, came to the conclusion that forest cover in the Peninsula accounted for 47% of the land area and added that if the MPI were to continue to convert Protection Forests, then forest cover would be limited to 41% and would have a detrimental impact for the overall functioning of the Protected Area System. As has been pointed out earlier, what is even more worrying is that even wildlife sanctuaries get degazetted by State Governments without consultation with the Federal Government despite the fact that MOSTE's *Assessment of Biological Diversity in Malaysia* (1996) and *the First National Report to the CBD* (1998) noted that the following several important habitats were under-represented in the protected area system: remaining lowland and hill forests, coastal dipterocarps, mangroves, peat swamps and freshwater swamps, limestone and quartz hill vegetation, montane flora. These trends are indeed worrying and raise serious concerns about the state of the Malaysian forests. In addition, such trends also undermine and throw into doubt the Malaysian government's commitment to keep 50% of the country under forest cover.

Land and Forest Legislation and Policies

In Malaysia, states have jurisdiction over land, forests, fishery, agriculture, water resources and local authority areas. This means that the individual states have power of decision over its use and allocation. For example, the administration and management of forestry resources, each State has its own Forestry Department and other key institutions to implement forestry policies at state, district and local administrative levels. However, the Constitution does give the federal government powers to establish departments or ministries for resource conservation and local government plans. State agriculture and forestry departments are also obliged to under the constitution to refer to the federal counterparts on certain matters.

¹⁵ New Straits Times, *Forestry offences rampant*. 22 January 2002.

¹⁶ MOSTE 1998, *Assessment of Biological Diversity in Malaysia*

In practice, however, there are contradictions between federal and state policies on lands, forests and the environment. The states have pursued their own land and forest policies, even where they appear to contradict federal policies, and vice versa. In practice, too, there are two contrasting/conflicting views of the forests. One, forests seen as a physical and economic resource, controlled by the state, private logging companies and individuals whose main concern is in the commercial value of trees to generate revenue and income. Two, forests seen as a physical, social, cultural and spiritual resource, for livelihoods as well as the basis of beliefs, identity and survival, by indigenous and forest-dependent peoples. Also, the state only recognises that the forestry department is the 'custodian' of forest resources, disregarding that indigenous peoples are stewards of the forests since time immemorial.

The development options, undertaken by federal and state governments, which view forests as a land resource for commercial agricultural development and timber extraction for domestic and exports, have led to loss of land and livelihoods for indigenous and forest-dependent peoples. In particular, the customary rights to land and forests of the Orang Asal (indigenous) communities have been revoked by such practices by states, which deemed it illegal and punishable to occupy lands when legal certificates and titles are not issued to them by the state. As a result, indigenous peoples found accessing or traversing 'state-owned' forest areas have been evicted or resettled by the state. Indigenous women have even less power to defend their customary land rights and are often most affected when community access to and control over forest and land resources are prohibited or restricted by the state.

Conclusion

The forest is a contested resource, given the many different values, functions and interests for different people. When this happens, the state and the powerful private corporations and individuals often have upper hand in decision-making and control on forests resources. In almost all contested forest areas, there is a long running struggle by indigenous and forest-dependent peoples to defend their rights to land and forests. Malaysia is no exception. Indigenous peoples have been, and still are struggling to defend their forests against exploitation or development that have adverse impacts on livelihoods and social, cultural, political and spiritual heritage. When all efforts at negotiations fail, the affected communities, or activists, have no other option but to resort to peaceful demonstrations and often ended up being arrested, imprisoned, beaten, or even murdered, allegedly by the police, military or hired thugs. Take the case of Sarawak, where in the 1980s, large scale arrests occurred when indigenous peoples mounted blockades and demonstrations to prevent the encroachment of logging companies into their forests. The peaceful blockades and demonstrations are still continuing till today, against the encroachment of logging and large-scale commercial agriculture projects such as oil palm plantations.

End

