

Forest governance in Malaysia

An NGO perspective

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Cover photo:

The Jahai, a subgroup of the Orang Asli Negritos, were once living in the forests of Upper Perak as nomadic hunter-gatherers. Between 1940s and 1950s, they were forcibly resettled in guarded 'jungle forts' by the British colonial government to 'protect' them from communist infiltration. In 1979, they were displaced by the Temenggor Dam and resettled by the Malaysian federal government.

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List of abbreviations

ASEAN	Association of Southeast Asian Nations
BRIMAS	Borneo Resources Institute of Malaysia, an NGO in Sarawak
CBO	Community-based organisations
COAC	Center for Orang Asli Concerns, Peninsular Malaysia
CoC	chain of custody
CPET	Central Point of Expertise on Timber Procurement
DEFRA	Department for Environment, Food and Rural Affairs, UK
EIA	Environmental Impact Assessment
FAO	Food and Agricultural Organisation
FLEGT	Forest Law Enforcement, Governance and Trade
FM	Forest Monitor, a UK NGO
FMU	Forest Management Unit
FoEI	Friends of the Earth International
FRIM	Forest Research Institute of Malaysia
FSC	Forest Stewardship Council
IPDC	Indigenous Peoples Development Centre, Sarawak
ITTO	International Tropical Timber Organisation
JHEOA	Jabatan Hal Ehwal Orang Asli (Department of Orang Asli Affairs)
JOANGO Hutan	JOANGO + Hutan, respectively a Malay acronym for Jaringan Orang Asal dan NGO (Network of Indigenous Peoples and NGOs) and Hutan (Forest)
MC&I	Malaysian Criteria and Indicators
MNS	Malaysian Nature Society, a Malaysian NGO
MTC	Malaysian Timber Council, a private body established to promote the development of the timber-based industry in Malaysia and the marketing of timber products.
MTCC	Malaysian Timber Certification Council
MTIB	Malaysian Timber Industry Board, a government body
NCR	Native Customary Rights
NFC	National Forestry Council
NFP	National Forest Policy
NGO	Non-governmental organisation
NLC	National Land Council
NREB	Natural Resources and Environment Board
PACOS Trust	Partners of Community Organisations, Sabah
PEFC	Programme for the Endorsement of Forest Certification Schemes
PFE	Permanent Forest Estate
PITC	Perak Integrated Timber Complex
POASM	Persatuan Orang Asli Semenanjung Malaysia (Peninsular Malaysia Orang Asli Association), Peninsular Malaysia
SAM	Sahabat Alam Malaysia (Friends of the Earth Malaysia)
SOS Selangor	Save Our Sungai Selangor (SOS Selangor), Peninsular Malaysia
SPA	Sarawak Penan Association
SPNS	Sinui Pai Nanek Sngik (SPNS / New Life One Heart), Peninsular Malaysia
SUHAKAM	Suruhanjaya Hak Asasi Manusia Malaysia (Malaysian Human Rights Commission)
UMNO	United Malays National Organisation
VPA	Voluntary Partnership Agreement
WRM	World Rainforests Movement

1. Introduction

Malaysia consists of three regions: Peninsular Malaysia and the two Borneo states of Sabah and Sarawak.¹ Peninsular Malaysia has eleven states and is separated from Borneo by 1,932 km of South China Sea. There is a two-tier government – federal and state – and both have legislative powers. The federal government has jurisdiction over matters such as foreign affairs, international trade, defence/internal security, finance, communications, transportation and education. The individual states have control over their natural resources such as land, water, forest, agriculture and minerals, and have their own constitutions and executive legislature. The regional differences between Peninsular Malaysia, Sarawak and Sabah notwithstanding, this paper highlights the common factors.

McMorrow & Talip (2001: 217, citing Wood 1990) have pointed out that, based on its performance up till the end of the 1980s, Malaysia is one of the 14 major countries with over 250,000 hectares deforested annually. They added that by the late 1980s half of the forest area in Peninsular Malaysia and a fifth in Borneo had gone. A variety of factors contribute to this state of affairs. When deforestation and forest degradation became critical issues, shifting cultivation was singled out by the governments, and particularly by the Sarawak government, as the main cause of forest loss. Yet, it has since been established that forest degradation due to shifting cultivators is ‘minor’ (Cramb 1989; Jomo et.al. 2004; Nicholas 2003). In fact, swiddening, or rotational agriculture, has long been the accepted mode of agriculture among indigenous communities living within or close to forested areas (Nicholas 2003). The major causes of the decline in forest area and quality include commercial logging, agricultural development, dams and resettlement. This paper argues that the Malaysian forest had been, and still is being heavily exploited by the timber industry and also suffers from the pressures of plantation agriculture and land development for cultivation of commercial/cash crops, dams and other rural infrastructural projects.

This paper first discusses some official definitions related to forests before considering the extent and causes of deforestation and forest degradation in Peninsular Malaysia, Sarawak and Sabah. This then sets the context in which we make links between state power and decision-making in controlling the forest. The paper argues that state control of the forests and land use is not an entirely new and modern construct but, rather, it is modified and reinforced by post-colonial conditions and constitutes an extension of that colonial sphere. Accordingly, the paper explores the colonial and post-colonial link by looking more closely at the forestry laws, regulations, forestry institutions and land and forest tenure systems.

1 Malaysia lies between two degrees and seven degrees north of the Equator with an equatorial climate. The federation of Malaysia was formed in 1963, comprising of Peninsular Malaysia then called Malaya, Sabah, Sarawak and Singapore (the latter seceded in 1965). All were former British colonies. Consequently, contemporary Malaysia ostensibly has adapted the British model of government – comprising a constitutional monarchy with a parliamentary system – as well as other aspects (such as legislation). The Head of State, the Agong (King) is appointed from among nine hereditary rulers in the Malaysian Federation.

Finally, the paper analyses the potential and pitfalls of a Voluntary Partnership Agreement (VPA) between Malaysia and the EU to control illegal logging and to work towards sustainable forest management. The conclusion revisits both the lessons arising from Malaysia's pursuit of credible claims about sustainable forest management and their implications for forest-dependent communities, and the broader implications for Malaysia's forests and forest governance. This is important for Malaysia where there is still a need for processes to be in place that address the interests and rights of indigenous peoples, or Orang Asal.² For the Malaysia VPA process to be successful, it must place not technical issues as its supreme guiding principles but rights, justice and equity. The VPA process must therefore not shy away from addressing the customary rights issues but instead show a determination to take the lead in resolving this key area of concern.

- 2 In this paper, Orang Asal refers to the indigenous peoples of Peninsular Malaysia, Sarawak and Sabah. The indigenous delegates from the three regions unanimously agreed on the adoption of this term during the First National Conference on Land Rights for the Indigenous Peoples of Malaysia (Hak Tanah dan Jatidiri Orang Asal SeMalaysia), 2–3 September 1996, Kuala Lumpur, Malaysia.

Map of Malaysia with the 13 states



2. Key issues in forest and forest resources

2.1 Defining forests and related issues

From the outset, it needs to be mentioned that there is a lack of good-quality data about the definition of a forest, the extent of forest cover, loss of forest, (un)sustainable yields, and so on in Malaysia. Such information is crucial to any understanding of the issues relating to forest resources. However, most official data use a forest definition that focuses more on the economic value than on the socio-cultural value of a forest. Thus, the extent of deforestation in Malaysia is mostly calculated based on a definition of deforestation that equates it with land-use conversion (Jomo et al. 2004: 43). This in turn informs official Malaysian views on the extent of forest cover in Malaysia.

The official definition of a forest used in Malaysia differs from the Food and Agriculture Organization (FAO) definition, which excludes areas under agricultural crops (e.g. oil palm). In Malaysia, however, the areas under oil palm, rubber and tree crops are frequently regarded as forest. The question of the definition of forests is particularly significant in the Malaysian context where the Malaysian forests are rapidly disappearing and, conversely, 'forest' plantations areas are expanding.³

Some basic data about Malaysia's land and forest area may be helpful to map out the broad domain of the issue. Malaysia currently has 32.8 million hectares of land area, of which 24.8 million hectares – 75.5 per cent of total land – are classified as forest and tree cover. Of these, 19.5 million hectares are forest cover and 5.3 million hectares are tree cover. Of the total forest cover, 9.2 million hectares (47.4 per cent) are found in Sarawak, 5.9 million hectares (30.1 per cent) are found in Peninsular Malaysia and 4.4 million hectares (22.5 per cent) in Sabah.⁴ Sabah claims it has the least forest.⁵

These figures are arguable, when they are compared with the total land areas of each region. Peninsular Malaysia accounts for 13.3 million hectares, while Sarawak covers 12.4 million hectares and Sabah 7.4 million hectares. To be more specific, the official statistics claim,⁶ by area, that Peninsular Malaysia is still covered by almost 60 per cent of forest, Sarawak by 75 per cent and Sabah by 60 per cent. So it is not surprising that the Malaysian government boasts of Malaysia still being 'green.' Yet, the argument can be advanced that Malaysia's forests are largely gone. In 1990, the International Tropical Timber Organisation Mission Report to Sarawak (ITTO 1990) had already warned that Sarawak's forest would be gone within the next decade given the rate the forest was logged. Other studies alluded

3 There is a need to go further and examine state agricultural development particularly commercial plantations vis-à-vis land and forestry issues. In this regard, oil palm, rubber and other commercial crops could be relabelled as 'Tree Plantations' instead of forests to ensure that forestry and government officials can distinguish the forests from the trees.

4 The figures are taken from the Malaysian Timber Council (MTC) website. Available from: <http://www.mtc.com.my> [Accessed 27 August 2006]. See also Peninsular Malaysia Forestry Department, 2005, available from: <http://www.forestandtradeasia.org/guidance/Malaysia/English/17/51/>

5 Daily News Express (Sabah daily), 'Sabah's forest the least', 13 August 2005.

6 Ibid.

to similar findings (e.g. Colchester 1989; Hong 1987; IDEAL 1999; Jomo et al. 2004; McMorrow & Talip 2001). Moreover, questions about the kind of forests, and their quality, remain – particularly since Malaysia proposed, in the late 1990s, that palm oil plantations be considered as forested areas. Let us turn now to look at the rate of decline of forest area in the three regions.

2.2 Deforestation and logging

Government surveys recorded Peninsula Malaysia⁷ as having approximately 7.86 million hectares of forest in 1966, which decreased to 7.24 million hectares in 1974 and 6.50 million hectares in 1984. These figures work out to a loss of about 622 thousand hectares between 1966 and 1974, and 733 thousand hectares between 1974 and 1984. In the 1990s, the annual forest loss fluctuated from a low of 7,847 hectares in 1995 to a high of 170,842 hectares in 1996. Overall, the annual forest loss for 1992–96 was 58,002 hectares, compared to 70,000 hectares in the early 1970s.

In Sarawak, it was reported that the state maintains an annual log production of about 12 million cubic metres, with 60 per cent reserved for local processing mills and the remainder for export.⁸ Furthermore, Sarawak Forestry Department statistics show a decline in the total forest area by just over 10 per cent, or one million hectares, over the ten-year period of 1980 to 1990.⁹ The Sarawak government also claims that Sarawak still has 7.31 million hectares, or 59 per cent of land area under forest cover – Hill Mixed *Dipterocarpaceae* and Peat Swamp accounting for 1.25 million hectares or 10 per cent, and Mangrove and Nipah Swamp taking up 168,000 hectares or 1.3 per cent.¹⁰ In practice, however, the official statistics conceal the fact that 8.8 million hectares of forest (practically the whole forest area of Sarawak) had been licensed for logging by 1990 (GTZ 1992: 29, cited in Jomo et al. 2004: 176). The same statistics show that the average area logged per year between 1983 and 1990 was about 220,000 hectares. Observers (e.g. Jomo et al. 2004: 176) have noted that by 1999 only 2.26 million hectares of the licensed areas remained, and this is only considering the absolute area logged, without taking into account any practices on the ground that result in major forest destruction and degradation.

As for Sabah,¹¹ its forests began to decline in the 1890–1930 period with the introduction of logging, tobacco and rubber plantations by the British colonisers. By 1953, natural forest covered 86 per cent of Sabah. Almost three decades later, by 1981, there was only 68 per cent of forests left and 63 per cent by 1984. McMorrow & Talip (2001: 223) concluded that: 'Over a third of the natural forest had been lost in a century, most of this in the 1970s and early 1980s.' The figures cited in Jomo et al. (2004: 98) revealed that Sabah's forests dwindled from an estimated 6.05 million hectares in 1966 to 4.2 million hectares by 1991. In other words, some 1.85 million hectares of forests were lost between 1966 and 1991,

7 All figures for Peninsular Malaysia are based on Jomo et al. (2004) unless otherwise stated.

8 The Star Online, 'Sarawak not importing timber from Kalimantan', 11 November 2005; New Straits Times Online, 'Orang Utan report slammed', 11 November, 2005. Both articles accessed 11 November 2005.

9 Cited in Jomo et al. (2004: 156).

10 See the Sarawak government website: <http://www.sarawak.gov.my/contents/forestry/forestry.shtml>. Accessed 28 March 2006.

11 See McMorrow & Talip (2001).

giving an average annual loss of 74,000 hectares. The total area of forest currently gazetted as forest reserves on the Sabah Forestry Department official website is about 3.59 million hectares.¹²

As Jomo et al. (2004: 50) write, 'In both Peninsular Malaysia and Sarawak, the forest area declined by almost 50 per cent between 1971 and 1989. In Sabah's case, the area still un-logged in 1989 was less than 20 per cent of that available in 1971, indicating that Sabah had logged out most of its forests in the interim.' Considering Malaysia as a whole, the FAO estimates Malaysia's annual loss of forest between 1990 and 1995 at 400,000 hectares (Dauvergne, 2001). In fact, logging is a major culprit of deforestation and forest degradation in Malaysia.

2.3 The (il)legality issue

Another critical area lies in defining 'legal' and 'illegal' timber. This is, of course, related also to the state's definition of the 'legality' of tenure, rights and benefits of the Orang Asal, a key concern running throughout this paper. The state defines timber taken without official permission and without rent as illegal. However, the question of legality, as far as indigenous peoples are concerned, must be able to meaningfully resolve issues of their native rights at three levels. First, there are clear inadequacies in the land and forest-related legislation in the different states, which allow logging and plantation licences to be established on indigenous communities' customary land without their free, prior and informed consent; secondly, the inability of the laws to establish mechanisms for resolving conflicts between the industry and indigenous communities; and lastly, the lack of transparency and openness in the issuance of such licences. In most if not all cases, the state's authority to declare what is and is not legally logged takes precedence over any claims for forest rights by the Orang Asal. As a result, conflicts have emerged around the Orang Asal's struggles to defend their livelihood and resources in their traditional territories, where the state has allocated concessions or licenses to corporations and state agencies.¹³

A National Forests Plantation Development Policy is currently being formulated to ensure the continuing supply of raw material to the timber and related industries as the country's natural forests are depleted of raw logs and neighbouring countries tighten their export supply. In Peninsular Malaysia, 350,000 hectares are earmarked for 'forest' plantations over the next fifteen years; while in Sarawak a million hectares are targeted over the next twenty years. According to the latest research by Friends of the Earth Malaysia (SAM) in August 2006, from June 1999 to January 2006, the Natural Resources and Environment Board (NREB), Sarawak has received thirty-two Environmental Impact Assessment (EIA) reports about plantation projects in Sarawak, all of which have been approved, with the exception of the subject of the latest report submitted in January 2006, which

12 Accessed in March 2006.

13 See the Sarawak Rengah (Sarawak News) website for a detailed account of the cases. Available from: <http://www.rengah.c2o.org>. See also, Sahabat Alam Malaysia, Penang and World Rainforest Movement, Montevideo (1990), *Battle of the Sarawak Forests*.

covers 2,468,107 hectares.¹⁴ Sabah is targeting an additional 600,000 hectares of ‘forest’ plantations. The official claim is that Malaysia’s ‘forest’ plantations cover 310,553 hectares, of which 75,807 hectares is in the peninsula, 174,746 hectares in Sabah and 60,000 hectares in Sarawak.¹⁵ There is increasing pressure for logged lands to be cleared for oil palm plantations, in order for Malaysia to keep its status as a key player in the global palm oil market. This, coupled with the recent push towards bio-diesel,¹⁶ will only add further pressure for forests to be cleared for oil palm plantations. In this context, this paper argues for a reassessment of the state’s notions of the issues surrounding the (il)legality of timber and that the concerns of Orang Asal are given more emphasis.

2.4 Forest-dependent communities and users

Land and forests are crucial resource bases for various categories of forest peoples and users. Foremost amongst these are the indigenous peoples, namely the Orang Asli of Peninsular Malaysia and the native peoples of Sabah and Sarawak, which in this paper are covered by the collective term Orang Asal.¹⁷ This concurs with the judgement of the High Court in the *Adong bin Kurau & Ors v. Kerajaan Negeri Johor (Johor State Government) & Anor* [1997] 1 MLJ 118,¹⁸ which states that:

... the Aboriginal peoples’ rights over land include the right to move freely about their land without any form of disturbance or interference and also to live from the produce of the land itself ...

The Orang Asli are known by the standardised nomenclature of Negritos, Proto-Malay and Senoi, which are further sub-divided into eighteen subgroups. The Negritos are believed to have inhabited the peninsular jungles from some 25,000 years ago.¹⁹ They are found across Kedah, Upper Perak, Kelantan, Trengganu and Pahang, and speak the Northern Aslian branch of the Aslian language within the Mon-Khmer language family (Burenhult 2002). They account for 4,150 (3.12 per cent) of the total Orang Asli population of 132,873 (JHEOA 2001), and thus are the smallest of the three Orang Asli groups.

14 Email communications, 4 Sep 2006. See also the report in Malaysiakini [<http://www.malaysiakini.com/>] dated 15 December 2004 ‘Sarawak to clear 2.4 million hectares for plantations’.

15 ‘Plantation Forestry: New Approaches’ Keynote Address By Dato’ Hj. Shaharuddin Bin Mohamad Ismail Deputy Director-General Of Forestry, Peninsular Malaysia (undated). Available from: www.forestry.gov.my/mfc05.pdf Accessed 12 September 2006.

16 New Straits Times Online – Business Times, ‘Depleting Resources’, 7 November 2005. Available from: <http://www.nstp.com.my>. Accessed 7 November 2005.

17 This is not to ignore the fact that there are other categories of people in relation to the forest, such as forestry officials, logging concessionaires and the general public accessing forest areas for recreational purposes.

18 See also Appeal Court *Kerajaan Negeri Johor & Anor v. Adong b Kurau & Ors* [1998] 2 MLJ 158. Source: SUHAKAM (2002), *Laporan Aduan dan Siasatan Hak Masyarakat Asli Sarawak (Rights of the Indigenous People of Sarawak)* [Bahasa Malaysia version] available from: www.suhakam.org.my.

19 The available sources have different accounts. Iskander Carey, the Commissioner (now titled Director-General) for Orang Asli Affairs in the 1960s, wrote that John Smith, an Englishman who acted as Adviser to the Queen of Patani (now Southern Thailand), claimed that the Negritos came to the Malay Peninsula about 25,000 years ago (Carey 1976: 13). Andaya & Andaya (2001: 12) wrote that the Negritos had inhabited the jungles of Peninsular Malaysia for at least 10,000 years, based on the antiquity of hunting and gathering in the region.

The Senoi, said to have migrated around 2,000 bc, are found mainly in the central part of the peninsula. Linguistically they speak Austroasiatic languages, and they have mongoloid features. However, they are believed to have strong connections with Neolithic societies in southern and central Thailand. Andaya & Andaya (2001: 9–10) noted that the Senoi first settled in Taiwan from southern China, then migrated outwards towards the Philippines, northern Borneo, parts of Indonesia and then to the Malay Peninsula. Numbering some 72,871, the Senoi represent 54.84 per cent of the total Orang Asli population (JHEOA 2001) and are the largest group of Orang Asli.

The Proto-Malays are found mainly in the central and southern part of the peninsula. They total about 55,852, representing 42.03 per cent of the Orang Asli population (JHEOA 2001). It was said that the Proto-Malays came to the Malay Peninsula, about 5,000 years ago (Carey 1976: 220, cited in Edo 1998: 12).

The ethnic mix of Sarawak and Sabah is very diverse. According to the 2000 population census, the native peoples of Sarawak comprise 28 ethnic groups, such as the Ibans, Bidayuh, Melanau, Kayan, Kenyah, Kelabit, Bukitan, Bisayah, Lun Bawang and other smaller groups. The Iban form the major ethnic group in Sarawak with about 30.1 per cent of the total population. There are also semi-nomadic and nomadic peoples of the interior namely the Penan, and peoples who used to be hunter-gatherers such as the Ukits (who prefer to call themselves as Bhukets). Each of the groups has its own distinct language, culture and lifestyle. Collectively, the Dayak represent some 48.3 per cent of the total Sarawak population (Malaysia 2001).

Sabah has 39 ethnic groups and subgroups (1970 population census), representing about 61 per cent of the total population of Sabah.²⁰ Today, the Sabah government acknowledges only 30 indigenous groups using more than 50 languages.²¹ The Kadazandusuns are the largest indigenous group forming 28.2 per cent of the population, followed by the Bajaus (11.8 per cent) and Muruts (4.8 per cent). Other indigenous communities include the Brunei Malays, Rungus, Paitan, Suluk, Orang Sungai, Bonggi, Lun Dayeh, Illanun and Sino (Chinese)-Kadazan. Collectively, they constitute 19.2 per cent of the population (Yong 2003).

2.4.1 Why are forests and forest rights important?

By and large, the forests have been used by the Orang Asal according to their needs. Orang Asal still rely on the forests to supply their basic needs through hunting and gathering. Additionally, many still undertake shifting cultivation, fishing and other subsistence-based activities for survival. Furthermore, they derive some income from forest products such as durian, *petai* (*Parkia speciosa*, a species of seasonal bean), resin, bamboo, rattan, and so on and also from the sale of fish. Thus, the extinction of forest rights and access has a huge impact on how the Orang Asal and other forest-dependent communities live and subsist, including their physical livelihoods, security, health, education, mobility, and

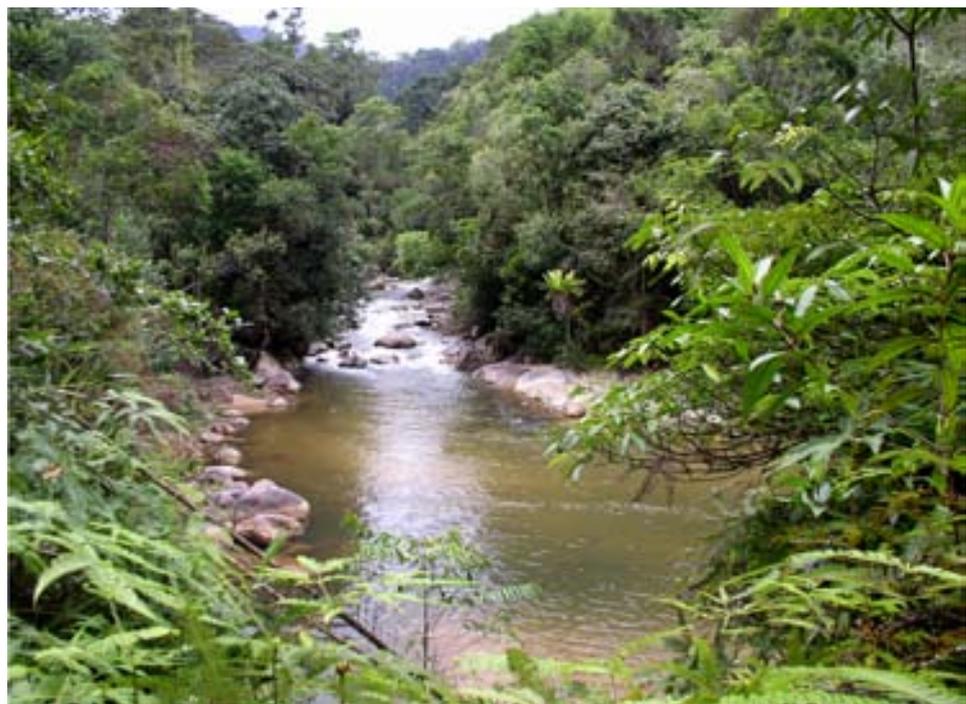
20 By the 1980 population census, however, all the ethnic communities were classified for administrative purposes as Pribumi although many of the indigenous groups disapproved of the move.

21 Sabah government website, http://www.sabah.org.my/bi/know_sabah/people.asp. Accessed 2 September 2006.



The Sungai Selangor dam project in the Selangor state involved the clearing of some 600ha of forests claimed as traditional territories of two Orang Asli Temuan groups. Besides the loss of their ancestral lands and other resources, the Temuans were forcibly resettled to make way for the project.

The once pristine Sungai Selangor (Selangor River). 1998



other factors that relate to their socio-cultural status and identity (see, among others, IDEAL 1999; Nicholas 2000; Nicholas, Chopil & Sabak 2003; Yong 2001; Yong 2003).

In the 1980s, Malaysia, with a particular focus on Sarawak, was scrutinised, and criticised, largely by the media, NGOs locally and abroad, Members of the European Parliament, and other interested individuals and groups concerned with human rights, indigenous peoples and the environment. Both the Sarawak state government and timber tycoons were criticised for the uncontrolled and rapid deforestation of Sarawak's forests where many of the native peoples live. Most affected were the indigenous groups that depended significantly on the forest, namely the Penan. More crucially, the bulldozers encroached on the natives' customary land and forest resources, destroying their livelihood bases, rivers, grave sites and other cultural artefacts. Hence the Penan have been at the forefront of resistance to logging, mounting blockades and peaceful demonstrations to prevent the encroachment of logging companies into their forest. To this day, conflicts between Sarawak's indigenous peoples and the state and loggers continue; so too the resistance by the Penan (www.rengah.org) and other affected Orang Asal groups in all three regions.

2.4.2 Obstacles and challenges for the Orang Asal in realising their rights

The forest is a contested resource because of the different values, functions and interests for different people. In almost all contested forest areas, there is a long-running struggle by the Orang Asal to defend their rights to land and forests. The socio-economic injustices and inequalities resulting from the commercial exploitation of the forests' resources have led to different forms of protest. Before they internationalised their struggles, indigenous peoples in Malaysia had tried various peaceful means to get the authorities and the private companies to respect their rights, but to no avail. By and large, the state and the powerful private corporations and individuals have the upper hand in decision-making and control over forests resources, ignoring the implications for the Orang Asal and the environment. When all efforts at negotiations fail, the Orang Asal and supporting activists and NGOs have no other option but to resort to peaceful demonstrations, yet often end up being arrested, imprisoned or beaten, allegedly by the police, military or hired thugs (IDEAL 1999, 2000; Nicholas 2000; SUHAKAM 2006). Those with economic power are often abetted by the exercise of state power intended to oppress and suppress any form of dissent, however legitimate and constitutional such dissent may be, including, in some cases, the use of force and imprisonment.²²

There are numerous cases that point to the exercising of state powers in order to curtail dissent and violate the basic human rights not just of the Orang Asal but also of politicians from opposition parties, human rights lawyers, NGOs, Malaysiakini and other media, and the general public who openly support the indigenous peoples' struggles for rights to lands

22 For details or examples, go to Rengah Sarawak (Sarawak News): <http://www.rengah.c2o.org>. See also Sahabat Alam Malaysia and World Rainforest Movement (1990), *Battle of the Sarawak Forests*. Fundamental liberties are stipulated in the Federal Constitution, part II, notably Article 10 (1) which guarantees the freedom of speech, the right to assemble peacefully and the right to form associations to every Malaysian citizen, and Article 13 on property rights.

and forest. Allegedly the worst forms of violence and harm are inflicted upon indigenous peoples in isolated or interior areas, as reported in IDEAL (1999), the NGOs' Penan Fact-finding Mission, testimonies by the Sarawak indigenous peoples at the National NGO Conference 2000 (People Before Profits: Development for Communities, 4–5 November) and numerous petitions to the government and SUHAKAM.²³ Several Sarawakian activists have had their passports confiscated by the state, and an NGO employee was imprisoned under the draconian Internal Security Act in the mass crackdown on dissent in 1988. He was subsequently released without charge, but such intimidation serves to remind activists of what can and will happen to personal liberty when one sides with the struggling indigenous peoples. Activists and politicians in Peninsular Malaysia and Sabah, as well as some international visitors who openly support indigenous struggles, have been blacklisted by the state authority and some are barred from entering Sarawak even to this day. Nevertheless, the Orang Asal are taking actions not just to assert their rights but to 'fight back' to reclaim them, both on their own and with the support of activists and NGOs.

As we shall see later, existing laws and policies fail to recognise the rights of the Orang Asal to the forest and resources despite varying degrees of social, cultural and customary rights enshrined in state and national legislation. For example, in Sarawak, customary rights lands are legally recognised, but these rights have been eroded over the decades. With the exception of the Penan, who have a State Cabinet Committee on Penan Affairs that was set up as a direct result of mass protest and international campaigning,²⁴ there is no specific ministry or department that handles indigenous rights per se in Sarawak. However, the effectiveness of the committee in addressing the grievances of the communities is in question as the living standard of the community is still appalling to say the least. A native court exists in addition to the normal court system; and a section within the chief minister's department looks into traditional customs and traditions. In Sabah, a similar scenario confronts the native groups, whilst in Peninsular Malaysia Orang Asli land rights and access to forest resources continue to be violated, including forced resettlement due to dams and other infrastructure projects.

As land matters are under state jurisdiction, the state can circumscribe the rules governing customary land rights or use their powers to oppose native titles and rights. However, this is more the case in Sabah and Sarawak. In Peninsular Malaysia, although the lands are under state control, the federal government wields wider power than in the other states. The Department of Orang Asli Affairs (JHEOA), under the Ministry of Rural and Regional Development,²⁵ is charged with handling the affairs of the Orang Asli. At the state level, there is an executive councillor, with status equivalent to a state minister, in charge of Orang Asli affairs. Although the individual state governments have been blamed for encroachment into Orang Asli lands, the federal government's wide powers and the political hegemony of the National Front coalition (Barisan Nasional) mean that the National Front controlled states have to answer to the federal cabinet. In short, despite the

23 Details and fact-finding missions related to such cases can be found in IDEAL 1999, <http://www.coac.org.my/>, <http://www.rengah.c2o.org>, <http://www.suaram.org>, <http://www.suhakam.org.my>.

24 This committee has since disappeared from public view.

25 The department had also been, at different times, placed under the Home Ministry in the Prime Minister's Department and the Ministry of National Unity and Social Development.

responsibility of the states for land issues, it is federal development policies for developing Orang Asli land that dictate the Orang Asli's access and rights to their lands.

2.4.3 Racial politics

Malaysia's political landscape is complicated, but the authority to define the rules, regulations, legislations, policies and practices governing the people ostensibly belongs to the ruling government. The federal and state legislatures are dominated by a coalition of communally based parties, in which the peninsular-based United Malays National Organisation (UMNO) leads. In Malaysia, as elsewhere, experience seemingly shows that the rich and powerful in politics and economics reap the greatest opportunities and profits.

The concept of '*Bumiputra*', meaning 'sons of the soil' to encompass the Muslim Malays and non-Muslim indigenous peoples of Peninsular Malaysia, Sarawak and Sabah was formulated in 1971 in the then New Economic Policy. The aim was to bring about more economic equality in the country. *Bumiputra* status confers special rights and privileges that are sanctioned by the state through policies and legislation, including but not limited to preferences in public sector jobs and education, access to scholarships and other support, as well as government contracts, loans, grants and mandatory shares in publicly listed companies, to name but a few examples.

After three decades or so, the Malays' share of the country's wealth has improved²⁶ (even though it still misses the targeted 30 per cent ownership of wealth). However, the non-Muslim *Bumiputra* or indigenous peoples have not fared as well – with the possible exception of some indigenous elites with political connections. If anything, while the elites within the indigenous grouping compete for a greater share of the national wealth, the grassroots continue to be marginalised, if not lose out completely. How else can one explain the fact that in the list of recommendations coming out of a highly political workshop on poverty and equality in East Malaysia sanctioned by the Prime Minister's Department, there was no mention of native land rights. Instead, there was a long list calling for special educational, economic and financial opportunities to be made available to the Sabah and Sarawak indigenous communities (Sarok & Ngidang 2004).²⁷ Thus, the concept of *Bumiputra* has had uneven benefits among the 'sons of the soil', and the non-Muslim grassroots indigenous people have been further marginalised within the grouping.

26 It should be noted that after the political falling out between the then prime minister, Mahathir Mohamad and his then deputy, Anwar Ibrahim, sections of the Malays started questioning this discriminatory policy. Anwar and his supporters had openly accused Mahathir of cronyism and nepotism in enriching family members and close allies and of self-enrichment by using proxies to exploit the New Economic Policy to the detriment of ordinary Malay people. Anwar has since maintained his stance against the revival of the New Economic Policy, the revival of which UMNO youth called for during the party's 2005 conference.

27 It must be emphasised that this in no way ridicules nor brushes aside the importance of various social and economic priorities as recognised at the workshop.

3. Politics and logging

Data from Ross's studies of Sabah, Sarawak, the Philippines and Indonesia suggest that politicians generally used undertaxed logging permits to allocate windfalls to their supporters and family members (Ross 2001: 52). In particular, the timber boom has caused politicians to engage in rent-seeking behaviour, or to borrow Ross's phrase, rent-seizing by state actors to gain the right to allocate rents (Ross 2001: 3). Thus, it would not be hard for politicians and their cronies, and corporations with strong political connections to get timber concessions. Various commentators have highlighted the dynamics between politics, and by extension politicians, and the logging industry.²⁸ Since governments conduct operations mixed with business interests, the state-owned companies and statutory bodies also benefit from timber concessions. Ross writes:

Politicians in Sarawak typically received shares in license-holding firms, or in timber processing firms, rather than licenses themselves; many have paid only nominal sums – as little as one Malaysian ringgit – to receive these shares. In the 1990s, the chief minister's typical 'gift' to a member of the assembly was worth 5 to 10 million ringgit (2 to 4 million US dollars). Besides members of the assembly, Rahman Ya'akub and Taib gave concession shares to other important state and local officials; to Sarawak's representatives in the federal parliament; and to members of their own families (Ross 2001: 153, citing INSAN 1989, Pura 1990, Leigh 1991).²⁹

In the context of Peninsular Malaysia, Majid Cooke (1999: 102) reveals that between 1986 and 1990 the Pahang State Royal Family was awarded logging licences totalling some 18,723.82 hectares.³⁰ In addition to outright concessions given to the royal family, in 1989 the Pahang palace, through a company called Lionvest Corporation, 'rescued' an ailing state-government-owned company, Syarikat Jengka Sdn Bhd (SJSB), which had about 31,000 hectares of concession area. Politicians of the ruling UMNO are also known to gain from the award of timber concessions.

Similarly, the Sarawak-based conglomerate Ta Ann Holdings Bhd controls 408,366 hectares of timber concessions in Sarawak with a monthly production quota of 41,000 cubic metres of logs and a plywood production capacity of 252,000 cubic metres. It also has 300,131 hectares of reforestation area and 39,000 hectares of plantation land. It is now among the top five timber groups in Sarawak.³¹ Coincidentally, Ta Ann's Chairman, Abdul Hamed Sepawi is the first cousin of Sarawak's Chief Minister and the minister responsible for granting of timber licences. Logging concessions controlled by Sarawak Chief Minister Taib Mahmud were estimated to be worth about RM 10 billion (Jomo et al. 2004: 211).

28 See, among others, Hong 1987; INSAN 1989; Jomo et al. 2004; Nicholas 2000; Wee 1995; WRM & Forests Monitor 1998.

29 Rahman Ya'akub and Taib Mahmud are the Sarawak state former and current chief ministers, who incidentally are uncle and nephew. See, Ross (2001) for details on renting-seeking in Sarawak, pp. 127–156 and in Sabah, pp. 87–126.

30 The breakdown is as follows: 1986 – 5,211.58 hectares; 1987 – 1,218.58 hectares; 1988 – 4,714.13 hectares; 1989 – 5,184.86 hectares; 1990 – 2,394.67 hectares (Majid Cooke 1999: 102).

31 The Star, 9 January 2006

In Sarawak, the Chief Minister, who has been in power since 1981, also holds the position of Minister of Planning and Resource Management, and so oversees the running of the Department of Lands and Surveys, the Department of Forests, and the Sarawak Natural and Environmental Resources Board (SNREB) – the body responsible for overseeing the state's Environmental Impact Assessment (EIA) process. As such, the formulation of policies on forestry, land development, mining and town planning in Sarawak is excessively concentrated at the highest level of authority which then controls, amongst other things: the gazetting of production and conservation forests; land classification matters; acquisition of any land for a variety of purposes, including for public purposes and social and economic development; issuance of timber licences, with the sole power to revoke them outside the court process; and the EIA process, which under the Sarawak law still does not require public participation unless the project proponent so desires.

Patronage practices and rent-seizing is also common in Sabah, especially 'when candidates rely heavily on patronage to sway votes ... Under the Sabah Alliance government, both Stephens and Mustapha sought to use logging permits to reward their own party backers, and build coalitions with other parties for the upcoming election ...' (Ross 2001: 88–89, 103). The Chief Minister's powers to reconfigure Sabah's forestry institutions and allocation rights over timber licenses, and so on, was also found under Harris Salleh's Berjaya government, from 1976 to 1985, under Pairin Kitingin's PBS government, from 1985 to 1994, and under the coalition led by UMNO-Sabah from 1994 to the present day (Ross 2001).

In 2005, the timber sector earned RM21.45 billion (€4.57billion) in export earnings, up 8.5 per cent from RM19.78 billion (€4.21billion) in 2004.³² Some of the Sarawak-based logging companies are now multinationals plundering the global forests (Greenpeace 2004; WRM & Forests Monitor 1998). According to the WRM & Forests Monitor report of 1998, between 1990 and 1997, Malaysian logging operations were found in Africa (Gabon, Cameroon, Democratic Republic of Congo, Malawi, Zimbabwe, Madagascar, Liberia, Equatorial Guinea), Central and South America (Belize, Brazil, Guyana, Suriname), Asia (Cambodia, Myanmar, Indonesia, Laos), the Pacific (Papua New Guinea, Solomon Islands, New Zealand, Vanuatu) and Russia. The Malaysian ventures include aborted, proposed, exploratory leases, log-supply agreements, and concessions. At least two loggers rank in the top twenty richest Malaysians. Tiong Hew King of Rimbunan Hijau, Malaysia's largest logging company, ranks ninth with some RM1.528 billion (€325million) in wealth and Yaw Teck Seng, alias Hiew Teck Seng of Samling, ranks seventeenth with some RM589 million (€125million).³³ There are obviously many more names not on the list of Malaysians within the top twenty richest category, but nonetheless, during the timber boom and other favourable times, they are surely reaping enormous benefits from harvesting the forests of timber.

32 New Straits Times Online – Business Times, 'Malaysian timber board promoting furniture-making as a career'. 5 April 2006. Available from: http://www.btimes.com.my/Current_News/BT/Wednesday/Corporate/BT219940.txt/Article/. Accessed 5 April 2006.

33 The Star Online, 'Kuok tops Malaysia's rich list for third year', 17 February 2006. Available from: <http://biz.thestar.com.my/news/story.asp?file=/2006/2/17/business/13422577&sec=business>. Accessed 17 February 2006.

3.1 The increasing commercialisation of forests and Malaysia's role

Malaysia has been a key global player in the timber trade since the 1960s. The country started out as a producer of raw material in the form of logs for export and the significance of its role increased as the export volume rose. For example, in 1971, log production accounted for 18 million cubic metres but by 1990, the volume has increased to 40 million cubic metres. That is to say, between 1970 and 1990, the total log production increased by an average of eight per cent per year (Dan 1998: 12). Increasingly, the trend is towards the promotion of downstream processing of raw log into sawn timbers and other products. This is an attempt to address the increasing problem of a dwindling timber resource and to quell criticisms about unsustainable logging practices, while at the same time maintaining Malaysia's status in the global timber trade. Thus, in addition to the primary processing activities of sawmilling, veneer and plywood production, the governments have also promoted downstream activities such as the production of timber mouldings and furniture and fixtures. Between January and July 2006, timber and timber-based products – the country's fifth largest export earner – contributed RM12.8 billion (€2.7 billion) or 3.9 per cent of total Malaysian exports; increased from 3.0 per cent in the same period of 2005.³⁴ According to a *Business Times* article, the Malaysian Timber Industry Board has said that the major destinations for Malaysian timber in 2005 were Japan, the US, the European Union, China and the Association of Southeast Asian Nations (ASEAN).³⁵

Malaysia has backed its global significance with trade promotion offices throughout the world and with specific timber trade offices in strategic locations. An example is the Malaysian Timber Council (MTC) office in London. Malaysia is also actively engaged in international timber trading organisations such as the Japan-based ITTO. Additionally, the Malaysian government through the MTC and other agencies is engaged in promotional activities, exhibitions, study missions, etc. in search of overseas market and buyers for its timber and timber-based products.

As forest areas dwindle in size locally, Malaysian loggers have extended their operations to other countries – from Africa and remote areas of Russia, through South-east Asia to the Pacific countries and, in the process, have further advanced Malaysia's status as an international player in the global logging scene. In addition, Malaysian logging firms are also investing in forest plantations in New Zealand and Australia as well as in logging activities in Russia and other countries. The key actors are Sarawak-based logging companies such as Rimbunan Hijau, Samling and WTK. Take the case of Rimbunan Hijau, which has operations now in China, Brazil, Cameroon, Equatorial Guinea, Australia, New Zealand, Vanuatu and Papua New Guinea.³⁶ Even where Rimbunan Hijau's logging operations overseas – as well as those of other Malaysian loggers – have been the subject of severe criticisms, largely for violations of local and indigenous rights, the irony is that

34 Malaysian External Trade Statistics, July 2006. Available from: http://www.statistics.gov.my/english/frameset_rpm.php?file=rpmjuly06. Accessed 12 Sep 2006.

35 Zaidi Isham Ismail [online], 'Malaysia's timber export earnings set to hit record', September 7, 2005. Available from: <http://www.forestandtradeasia.org/files/Malaysia/English/>. Accessed 29 August 2006.

36 Rimbunan Hijuan (PNG) Group of Companies. Available from: <http://www.rhpng.com.pg/aboutus.htm>. Accessed 29 August 2006.

the company sees its investments as contributing to the country's economic growth. As its chairman puts it:

Rimbunan Hijau Group is helping to transform the country's economy as we rebuild value-added downstream timber processing capabilities to compliment our timber harvesting activities.

Whilst investing, we contribute substantially to government revenues through log duties, royalties and other business tax payments.

*Through our investments, significant employment opportunities have been created for the local population, especially among rural communities.*³⁷

In a similar vein, the MTC slogan boasts: 'When it comes to Timber Trade, some of us understand it better than others.'³⁸ This is ostensibly the economics of the timber and timber trade – that the forest contributes significantly to the economic growth and development of Malaysia. Yet we see later how those in power, both politically and economically, can hide the unpalatable truths behind the 'timber trade' and disguise violations of forest peoples rights, expropriation of their forest resources, and scarring of the environment, to name just a few examples.

3.2 The economics of it all

As pointed out in the preceding section, the timber and timber trade is part of a money economy for those with political clout and vested interests. In fact, the Malaysian Deputy Minister of Plantation Industries and Commodities has been quoted as saying that the timber industry recorded its best performance in 2004, bringing in RM19.8 billion (€4.2 billion) in earnings.³⁹ This represented a 21 per cent increase on the growth of RM16.3 billion (€3.5 billion) in 2003. It was further said that, by the end of 2005, the sector was expected to earn more than RM19.8 billion (€4.2 billion) due to various construction projects getting off the ground, such as new hotels and houses in West Asian countries, the US, India, Japan and South Korea. Furthermore, the deputy minister said that, in 2004, exports of plywood and wooden furniture totalled RM5.6 billion (€1.19 billion) and RM5.5 billion (€1.17 billion) respectively. Furniture exports in 2005 are expected to break the RM7 billion (€1.49 billion) mark, compared with RM6 billion (€1.28 billion) in 2004.

37 Chairman's Message, Rimbunan Hijuan (PNG) Group of Companies. Available from: <http://www.rhpng.com.pg/aboutus.htm>. Accessed 29 August 2006.

38 MTC website, available from: <http://www.mtc.com.my/industry/trade.htm>. Accessed 29 August 2006.

39 New Straits Times – Business Times [online], 'New technologies to boost timber industry needed', 9 September 2005. Available from: <http://www.nstp.com.my>. Accessed 9 September 2005.

In 2000 Malaysia's export of plywood and veneers to Japan totalled RM 2 billion (€ 4.28 million), that is 52 per cent of total exports of plywood and veneer.⁴⁰ However, this does not include the export of round logs to Japan, which is decreasing as Malaysia increasingly needs more raw materials for its own downstream processing. Malaysia has more than 5,000 manufacturers making wood products such as sawn timber, plywood, veneer, particleboard, furniture and joinery. The Malaysian timber industry contributes about five per cent to the country's gross domestic product and offers job opportunities to about 337,000 people, or nearly 3.4 per cent of the country's workforce. It is undeniable that the forestry sector provides job opportunities for a significant segment of the population. However, what is often not highlighted is the working and social conditions that forestry workers are subject to, for instance, health and safety issues, fair wages, and so on.

Meanwhile, Malaysia is at the forefront of promoting the 'South-South cooperation' in order to encourage countries of the 'south' to cooperate with one another instead of the 'north' exploiting the south. Such gambits, however, are merely sophisticated attempts to disguise the fact that Malaysian logging and plantation companies are exploiting the situation and encroaching upon the land rights of indigenous peoples in countries in Africa, Latin America, South-east Asia and the Pacific just as much as any northern company might (see WRM & FM 1998; Greenpeace 2004).

3.3 Implications for forest-dependent indigenous communities

While official statistics boast of the billions in revenue that timber and timber products generate for the country, it is ironic that the people who live in and depend on the forests are amongst the poorest in Malaysia. According to the Malaysian Human Rights Commission's (SUHAKAM) census of 1997, 81.45 per cent of 18,234 Orang Asli families were categorised as poor, while 48.85 per cent were considered to be hardcore poor.⁴¹ It was also reported that 49.4 per cent of the Orang Asli community had no electricity supply, while 53 per cent had no clean water supply. In comparison, the general incidence of poverty in Malaysia declined from 16.5 per cent in 1990 to 5.1 per cent in 2002, while the incidence of hardcore poverty dropped from 3.9 per cent in 1990 to 1.0 per cent in 2002.⁴² Clearly, the state's intention to 'modernise' the nation and its people, in pursuit of gaining 'developed nation' status by the year 2020 has invariably neglected the marginalised indigenous communities.

Local affected communities have always maintained that land rights must be the basis for any struggle, over and above the issue of logging. As loggers come and then go with the disappearing forests, the destruction of the people (their livelihood, environment, self-sufficient lifestyle, cultures, and traditions that make up their physical, mental and spiritual wholeness) does not end. The cleared forests, with convenient access routes in place, are now prime lands for planting other commodities. As a result, rubber, oil palm

40 www.mtc.com.my/news/pr17.htm. Accessed 12 September 2006

41 Bernama National News Agency [online], 'Suhakam suggests special attention for Orang Asli to eradicate poverty', 26 October 2005. Available from: <http://www.bernama.com>. Accessed 26 October 2005.

42 Ibid.

and tree plantations, together with other supposed development projects such as dams, pulp and paper mills, and even a proposed aluminium smelter plant in Sarawak, continue to deny the indigenous peoples their land rights. Encroachment into communal lands is no longer confined to loggers, but is also committed by national and multinational companies involved in the global trade in commodities and manufacturing products, which depend upon palm oil and other raw materials.

According to a Friends of the Earth International (FoEI) survey,⁴³ the Penan people face dwindling revenue and deteriorating health due to air and river pollution, exposure to heat and lack of nutritious food, resulting from the depletion of forest resources. In 2002, the Sarawak Penan Association (SPA) submitted the Long Sayan Declaration to various state and federal authorities detailing how logging has reduced them to living in poverty, with frequent food shortages and little access to education and healthcare. However to this day the SPA has yet to receive an adequate response from the authorities. In yet another example, the Malaysian Nature Society (MNS) highlighted the detrimental effect on wildlife should the Temenggor Forest Reserve in Perak State continue to be logged.⁴⁴ However, the state government has continued to disregard the call to stop logging, purportedly because of the direct economic gain for the state from the logging.⁴⁵ Besides the direct threat to flora and fauna, logging has severe impacts on forest peoples all over Malaysia. Various studies (e.g. Hong 1987; IDEAL 1999, 2000; INSAN 1992; Manser 1996; Nicholas 2000; WRM & FM 1998) have pointed out the negative impacts of logging on the indigenous peoples of Malaysia.

As Malaysia consolidates its global position in the timber trade, it is not showing any willingness to change its much-criticised logging practices. Rather, Malaysia is intent on maintaining its global position in the timber trade, and so has to heighten its logging activities. Protests by forest-dependent indigenous peoples in Peninsula Malaysia and Sarawak over what the people consider to be the illegal logging of communal lands have gone unheeded. Protests by local and overseas NGOs in support of communal land rights continue to be directed at different levels and elicit varying responses. Some two decades of resistance by the communities and supporting NGOs have not produced any concrete and sustainable sign of attaining the ultimate goals of communal land rights being recognised and respected, and the environment being safeguarded from destruction.

43 Malaysiakini Internet News, 'NGOs: Stop logging, clearing Penan lands', 17 October 2005. Available from: <http://www.malaysiakini.com>. Accessed 17 October 2005.

44 The Star Online, 'Logging threatens wildlife at Temenggor forest', 11 April 2006; New Straits Times Online, 'Turn forest into state park, says group', 17 April 2006. Accessed 11 and 17 April 2006.

45 The Star Online, 'Tajol: Logging at Belum-Temenggor has to go on', 19 April 2006; News Straits Times Online, 'Logging in Temenggor forest to continue', 19 April 2006. Accessed 19 April 2006.

4. Forest legislation and policies in Malaysia

In Malaysia, forest policies are made at the state level. That is to say, the respective state governments have jurisdiction over land, forests, fisheries, agriculture, water resources and local authority areas, including the power of disposal.⁴⁶ In theory, this means that forests are public lands administered by the states. Thus they, not the federal government, are empowered to gazette reserves, issue logging permits, collect royalties and premiums, decide on the use and allocation of the forest and its development, and so on. For example, each state has its own Forestry Department and related institutions to manage the forest resources and to implement forestry policies at the state, district and local levels.

However, under the Ninth Schedule of the Federal Constitution, the federal government retains powers over certain provisions for forests and forestry, resource conservation and local government plans through its ministries and departments (Yong 2001: 64–66). Constitutionally, state agriculture and forestry departments are obliged to refer to the federal counterparts on certain matters, such as EIAs, regulations on forested catchments and biodiversity conservation – with the exception of the Sabah and Sarawak states which are given more autonomy in such matters due to some constitutional arrangement within the federation. The federal government may introduce legislation relating to these matters for the purposes of ensuring uniformity of law and policy between the states. However, it can only be enforced after being accepted by the state legislatures. In practice, 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 1970 the Land Capability Classification (LCC) was formulated but was heavily biased in favour of agriculture. As such, state forest policies continue to exist in isolation from land policies. Plantation agriculture has greatly increased in significance, in the process weakening if not diminishing customary land rights of the Orang Asal. Several land development agencies based in Peninsula are involved in opening large tracts of land for oil palm development in Sabah and Sarawak, often encroaching into native peoples' lands, yet we are not aware of any state regulation to curtail such activities. Neither is there any effective regulation governing plantation and land development agencies involved in oil palm and other commercial schemes in Sarawak and Sabah. This is ostensibly because land policies, largely remnants of the colonial legacy (see section below), are upheld by the political and business elites with hardly any civil society participation in the decision-making processes.

⁴⁶ Under Article 74(2) of the Federal Constitution.

4.1 Colonial history⁴⁷

Forest legislation in Peninsular Malaysia, Sarawak and Sabah is a legacy of the British colonial government. According to Kathirithamby-Wells (2005: 49):

The era of British pioneer exploration in the Straits Settlements⁴⁸ during 1786–1900 was devoted largely to advancing imperial economic botany in the humid tropics, laying the foundations for tropical forestry. The influence of forests on soil and climate and, more immediately, the economic value of forests and the threat of species depletion, engaged the concerns equally of botanists, naturalists and horticulturists. Though the concept of forest preservation was accepted unequivocally, arrangements for management remained tentative until British expansion into the larger arena of the Malay States warranted the creation of a professional forest service.

The forest management system and forest-related legislation were introduced and established during the colonial period. Foresters undertook research and promotion of reserve forest areas for watershed and hill-land protection, and sustained production. The then Peninsular Malaya instigated its forestry authority, the Forestry Department in 1901, when the first Conservator of Forests for Straits Settlements and the Federated Malay States took office. With it, systematic forest reservation programmes were introduced. About 80 per cent of Peninsular Malaysia was under forest in 1935, but when a resource survey was conducted in 1966, it was found to have reduced to about 70 per cent (Ooi 1976). The development of forest policy began in the 1930s when a policy of administrative decentralisation was adopted that placed mining, agriculture and forestry under individual state control. In 1952 the federal government released the Interim Forest Policy Statement which recommended that 25 per cent of the land area be used for sustained timber production (Wyatt-Smith & Vincent 1962) and supported the essential exploitation of the forest and conversion to other land use. It was accepted but not adopted by the states. As noted earlier, forest control continued to rest with the states.

Sarawak established its Forests Department in 1919. In Sarawak, the Borneo Company exported small quantities of *billian* to Hong Kong and Calcutta. But inexperience, difficult terrain, and fluctuating timber prices hampered large-scale operations during the pre-1941 period. A few Chinese logging companies also served the overseas market, and the European-owned VAMCO Timber Company pioneered the export of sawn timber and plywood in the 1930s.

Sabah's Forest Department was formed in 1914 and thus began conservation and regulation of the timber industry in Sabah. In fact, the timber industry in Sabah started in the 1880s, with a chance sale of felled timber from a clearance of land near the seaport town of

47 This section mentions only some significant developments during the colonial period. For a more detailed study of the forest history of Peninsular Malaysia see, Jeyamalar Kathirithamby-Wells (2005), *Nature and Nation: Forests and Development in Peninsular Malaysia* (NIAS Press, Copenhagen and Singapore University Press, Singapore). We are unaware of any comprehensive study of the history of forestry in Sabah and Sarawak.

48 These consisted of Penang, Singapore and Melaka, which in 1826 were constituted as a Crown Colony headed by a Governor, and remained under British India until transferred, in 1867, to the Colonial Office (Kathirithamby-Wells 2005: 49 fn 2).

Sandakan for sugar planting. In February 1885, the first shipment of felled timber headed for Australia. Other shipments followed, and by the 1930s Sandakan had become one of the major timber ports of the world. The leading market for the tropical hardwood known as *billian* was Hong Kong, where it was used for sleepers in the expanding railway network then being undertaken in China. Timber companies at that time were in European hands, namely the British North Borneo Trading and Planting Company and the British Borneo Timber Company. Timber was Sabah's major export from the 1910s onward; exports, mainly in logs, reached their peak in 1937. Before 1941, Sabah was the third-largest timber exporter in the British Empire, with markets in Hong Kong, Japan, Britain, and Australia. The Forest Ordinance of 1954 gave the Conservator of Forests wider powers concerning overall forest management than its revenue-collection role before that.

4.2 Contemporary forestry policies and legislation: the federal–state divide

Upon independence from the British in 1957, the Colonial Office returned the forests to Malaysia. In 1958, with provisions under the Federal Constitution, the National Land

A group of Temuan Orang Asli women walking home to Gerachi village with bundles of firewood collected from the forest fringing the oil palm estate where they provided waged labour. In 2001, the Temuan were displaced and resettled by the Sungai Selangor Dam.



Council (NLC) was formed 'for coordinating State and Federal policies and objectives covering land use, mining, forestry and agriculture ... to formulate from time to time in consultation with the Federal Government, the State Governments and the National Finance Council a national policy for the promotion and control of the utilisation of land throughout the Federation ... the development of natural resources was therefore perceived piecemeal, rather than holistically' (Kathirithamby-Wells 2005: 267).

In 1971, the federal government set up the National Forestry Council (NFC), to serve as a forum for the federal and the state governments to discuss and resolve common problems and issues relating to forestry policy, administration and management. In 1978, the federal government through the NFC issued the National Forest Policy (NFP), purportedly to monitor the extent of logging and the unsustainability of such practices. Subsequently the NFP was translated into federal legislation in the form of the National Forestry Act, 1984 (Jomo et al. 2004: 46). But the 'National' Act only applies to Peninsular Malaysia, while Sabah and Sarawak maintained their own forestry policies. Furthermore, the peninsular states have already gazetted the act as the State Forest Enactment and Rules, and these were made uniform to streamline forest administration, planning and management. The uniformisation helps to avoid confusion among forest users between the states. Under the present policy, the strategy is to ease the pressure on remaining primary forests while meeting domestic demand, as mentioned in Aiken and Leigh (1992), and includes:

- I establishing compensatory plantations of fast-growing species in damaged, degraded or unproductive forest areas;
- II increasing forest production by silvicultural management through better silviculture practices;
- III promoting local utilisation of lesser-known species to increase gain per unit area of forest;
- IV altering government policies on logging away from profit maximisation by rapid exploitation; and
- V minimising the export of unfinished products by restricting quotas and levies.

The implementation of the above policies requires a degree of federal control over the forestry practices of the individual states, and a high level of cooperation and coordination between state forestry departments, to ensure that the target levels of forestry operations are adhered to. Here again contradictions emerge between federal and state jurisdictions as each state and the federal authorities explicitly express protection of their own powers.

In 1992, the federal government revised the NFP to reflect 'the current concern expressed by the world community about the importance of biological diversity conservation and sustainable utilisation of genetic resources, as well as the role of local communities in forest development.'⁴⁹ The revision was an obvious attempt to keep up with the changing times and to 'green' the policy: the revised policy included sustainable management, developing community forestry, establishing Permanent Forest Estates (PFE), law enforcement, research, education, conservation, tree plantations and agro-forestry promotion, and,

49 Forestry Department of Peninsula Malaysia. Available from: <http://www.forestry.gov.my>. Accessed 29 August 2006.

interestingly, the commercial maximisation of timber resources. Although the creation of PFEs may have given some hope, since then it has become clear that the permanent nature of the PFEs is not so permanent after all.

According to the Friends of the Earth Malaysia (SAM), between 1978 and 1994, 1.4 million hectares of PFEs were de-gazetted, rendering the legal status of the forests obsolete. Of that total, 1.2 million hectares were converted into agriculture (SAM, undated). As Ross (2001: 151) pointed out, 'Even in the Permanent Forest Estate, the forest department lacked the necessary resources to properly regulate commercial loggers.' More importantly, in the case of Sarawak for example, the establishment of Permanent Forest Estate, where logging is supposedly subject to stricter regulations, specifically requires the termination of native customary rights. Furthermore, in Sarawak the land and forest-related legislation has consistently and progressively compromised Native Customary Rights (NCR) over the years. The two most important laws on land and forest matters in the state – the Sarawak Land Code 1958 and the Forests Ordinance 1953 – have been periodically amended to introduce increasingly aggressive clauses to limit and create vulnerability in the NCR.⁵⁰ In addition, new laws such as the Land Surveyors Ordinance 2001 have also been enacted to criminalise activities related to land rights defence, such as community mapping activities, and to remove from the courts the power to decide on the admissibility of community-made maps as evidence at the court. Thus the question remains as to whether or not the real intent behind the forestry policy is the commercial exploitation of timber resources as the first step towards further 'development' on the cleared lands. This also opens up questions about the institutions behind the official policies and legislation, which the next section deals with.

50 For instance, the Land Code has been amended to establish a broader base for NCR destruction in 1994, and to facilitate the conversion of the peoples' land into private plantation estates in 1997; while the Forests Ordinance 1953 has had inserted new sections in 2001 to allow the assumption that the people are taking forest produce for sale, exchange or direct profit in their own Communal Forests unless they can prove otherwise, to disallow the collection of forest produce, other than timber, in the Protected Forests (such a prohibition already exists for Forest Reserves) even for the domestic use of native communities, while timber can only be removed with prior written state approval, and also to allow that offences under the new amendments to be regarded as seizeable offences within the meaning of the Criminal Procedure Code and to authorise forest officers to arrest, without a warrant, any person reasonably suspected or if the person concerned refuses to give his name and residence, or gives a name and residence which there is a reason to be believed as false, or if there is reason to believe that he will abscond.

5. Forestry institutions and governance

We cannot give an exhaustive account of all the forestry institutions in the three regions, and hence our focus is on key forestry institutions that play a role in shaping forest-based resources and forestry politics. We have included the concept of timber certification and Voluntary Partnership Agreements (VPAs), and a review of these, to see how the Malaysian government addresses issues related to claims about sustainable forestry practices on the one hand, and on the other the recognition of the rights of the Orang Asal. This paper challenges the conventional accounts of the Malaysian government that the forest managers are the Forestry Department and other forest-related government institutions, that forestry practices in the country are sustainable, and that the rights of the Orang Asal to their customary lands and forest are recognised.

5.1 Forestry institutions: the case of the MTCC

As discussed earlier, several key agencies such as the forestry departments were constituted during the British colonisation. Writing on what they call ‘Empires of Forestry’⁵¹ in the context of colonial forestry, two academicians, Vandergeest and Peluso (2006: 2), argue that ‘... the institutional dimensions of professional forestry discourses ... enabled governments and private interests to accumulate huge amounts of capital at the time of and since their creation, and also constituted the mechanisms for primitive accumulation through state appropriation of forest resources.’ We concur, and add that even after the end of colonialism the post-independent governments not only retained many of the key colonial institutions but also amended them at different times and local contexts to suit their political agenda.

In Peninsular Malaysia, the Federal Department of Forestry is within the Ministry for Primary Industries, a ministry which is also responsible for mining and agriculture. The departmental role is largely advisory, covering forestry planning, research technical developments, and training. The peninsula states as well as Sarawak and Sabah each have their own Forestry Department. Additionally, there are various organisations related to the timber industry which claim to be ‘autonomous’, yet many of their practices and services are integrated into or collaborate with the government. Examples of major forest-related organisations in Malaysia are the Forest Research Institute of Malaysia (FRIM), the Malaysian Timber Industry Board (MTIB) and the Malaysian Timber Certification Council (MTCC). However, in this paper, we highlight only the MTCC as it is directly related to the issues of certification and forest governance that this paper discusses.

The MTCC (formerly known as National Timber Certification Council Malaysia) was established in 1998 to help the government establish and operate a national timber

51 By ‘empires of forestry’ they mean the networks of knowledge, practice and institutions produced differently in different local contexts, and exchanged across sites through institutions facilitating this exchange (Vandergeest & Peluso 2006: 2).

certification scheme in Malaysia. To quote the Primary Industries Minister Lim Keng Yaik: 'Malaysia wanted to revive its timber-product exports to Europe where the trade has suffered from the ill-founded perception that the products did not come from well-managed forests' (Lim 2002). In other words, the MTCC was, from the outset, launched in order to assure buyers that Malaysian timber products have been sourced from sustainably managed forests and, in so claiming, to avoid boycotts and ensure market access for Malaysian timber to the European and North American markets in particular.

5.2 Sustainable forest management: a masquerade for logging?

Clearly, the 'power of the market' is driving Malaysia to create incentives for sustainable forest management, and 'voluntary' timber certification is one of the ways in which this occurs.⁵² However, timber certification involves an elaborate verification process or credible standards, and the framework for achieving such standards is highly structured.⁵³ The process calls for transparency, accountability, public consultations, peer review mechanisms, public disclosure of information, and so on. To project the message that they are following the required procedures, the MTCC, in mid-1999, invited various social and environmental groups including community-based indigenous groups and communities to be involved in the process 'to review, discuss and improve the MC&I [Malaysian Criteria and Indicators]'. However, the concerns and suggestions expressed which related to the protection of indigenous peoples rights were not adequately addressed despite numerous inputs and submissions being made to this effect (Yong 2002). For instance, since the early 2000s, several Sarawak NGOs and indigenous communities have asked the MTCC to defer certification in Sarawak pending the resolution of disputes in areas where loggers are in conflict with the forest communities.

In fact, the MTCC interpreted the participation of the social and community-based indigenous groups as giving consent and approval to the MC&I. In short, the MTCC processes gave very little room for real dialogue yet legitimised indigenous and local forest communities' participation in the process through the attendance list. Finally, on July 2001, ten of the social and community-based indigenous groups withdrew their involvement in the MTCC MC&I process. Even then, the MTCC proceeded with finalising the MC&I – despite objections to the inadequacy of the MC&I in giving due recognition to the rights of local indigenous and forest communities and their user rights to traditional territories, among other shortcomings. A case in point is the MTCC certification of the Forest Management Unit (FMU) in Sarawak, which openly disrespects the Penan people's rights. Samling Plywood (Baramas) Sdn. Bhd. – a Malaysian timber company belonging to the Miri-based Samling group – was granted a Certificate for Forest Management in October 2004. However, the certified Sela'an-Linau FMU encroached upon an area over which the

52 Other instruments include import levies, for instance, which this paper does not deal with.

53 The Forest Stewardship Council is the first organisation to forge an international consensus on the content and protocols for voluntary, independent timber certification programmes. It took four years and nine revisions on the FSC's Principles and Criteria for Natural Forest Management being it was formally approved in 1994 (Cabarle and De Freitas 1995:25-6).

Penans claim to have Native Customary Rights and which had already been submitted to court in 1998.⁵⁴

To date, nine FMUs covering an area of 4.73 million hectares have been certified by MTCC, and 83 companies from the timber-based industries are holders of MTCC's chain of custody (CoC) certificates. Meanwhile, the MTCC has formed a technical working group to develop a certification standard for plantation forests based on FSC's principles and criteria.

Several companies and state forest departments have now proceeded with the certification process based on FSC standards. In fact, the FSC even contemplated watering down their principles on customary land rights to bring more loggers into its certification brand.⁵⁵ So far, only two logging concessionaries in the country have been certified by the FSC, namely the Deramakot Forest Reserve in Sabah and the Perak Integrated Timber Complex (PITC) in Peninsula Malaysia. The Deramakot Forest Reserve covers 55,083 hectares of mixed dipterocarp forest, whereas the PITC in Peninsular Malaysia covers a total area of 9,765 hectares of rich and pristine lower and upper hill mixed dipterocarp virgin forest. However, it was recently reported that the FSC has suspended the issuance of its certificate for timber products from the PITC for failure to rectify several corrective action requests issued to them during audit checks since 2002.⁵⁶ Besides the FMU, a rubber wood plantation named Golden Hope Plantation, which covers an area of 12,434 hectares located in central Peninsular Malaysia, has also achieved FSC certification.

On paper, this scenario looks good, and it appears as if Malaysia is truly on the path towards sustainable forest management. Indeed, the MTCC claims that: 'In pursuing sustainable forest management practices in Malaysia, the MTCC certification scheme is already making a positive contribution.'⁵⁷ However, we claim that such strategies are being used as disguises for the real problems on the ground: conflicts surrounding the lack of recognition of customary rights, lack of a clear definition on legality beyond the existing official framework, intimidation, attacks and even imprisonment of indigenous peoples and activists, and so on.

5.3 Voluntary Partnership Agreement (VPA): pitfall or solution?

Malaysia is now undertaking measures to further strengthen and enhance the acceptance of the MTCC scheme in the international market. This involves what the MTCC sees as 'a

54 See www.rengah.c2o.org for a map that indicates that Samling and MTCC arbitrarily partitioned the concession to exclude known vocal opponents or Penan land.

55 FSC's Heiko Liedeker was quoted thus: 'Interest should climb further when the FSC introduces a watered-down form of certification designed to make life easier for timber companies in the developing world, albeit only as a step towards a full-strength version. This would do away with some onerous requirements concerning land tenure, for example, which is often murky in poorer countries.' *The Economist*, 'Down in the woods', 25–31 March 2006, pp. 73–75.

56 *The Star Online*, 'Blow to timber exports' 14 July 2006, <http://www.thestar.com.my/news/story.asp?file=/2006/7/14/nation/14835197&sec=nation>. Accessed 14 July 2006.

57 MTCC website, 'Information Update: Implementation of The MTCC Certification Scheme'. Available from: <http://www.mtcc.com.my/fullstory.asp?ID=61>. Accessed 30 August 2006.

new institutional arrangement for the MTCC scheme, which aims, amongst other things, to enable the MTCC to meet the requirements of the Programme for the Endorsement of Forest Certification (PEFC) and the timber procurement policies which have been implemented by European countries (such as the United Kingdom and Denmark) or are in the process of being finalised (such as in Germany and the Netherlands).⁵⁸

One of the latest EU's proposals is the FLEGT-VPA. However, to date, Malaysia has not yet formally stated any intention of starting an VPA agreement with the EU. Furthermore, in its attempts to increase acceptance of its timber within Europe, it seems that Malaysia is not too keen on having an EU-wide VPA, since it considers itself to be 'successful' in selling the MTCC label independently to the British and Danish market. As emphasised by the Plantation Industries and Commodities Minister, Peter Chin:⁵⁹

The MTCC has made a breakthrough by getting Denmark to include the certification as an accepted scheme in its policy on timber procurement by the public and the private

58 Ibid.

59 The Star Online, 'Malaysia keeping abreast of new rules imposed by developed countries', 16 July 2006. Available from: <http://biz.thestar.com.my/news/story.asp?file=/2006/8/4/business/15031597&sec=business>. 16 July 2006.

Logging in the Pahang forests. The Pahang state has been declared an FMU and awarded the MTCC certification for sustainable forest management.



sectors ... Malaysia is working closely with the European Union (EU), taking views on market demand and looking at regulations of each member country, with the view of establishing bilateral relations. Through such bilateral relations, there will not be any unnecessary barriers set up by the respective countries that will jeopardise the entry of our wood and wood-based products into the EU markets ... There is also increasing demand for MTCC-certified timber products, especially in the form of plywood and mouldings, in the UK market.

Likewise, the MTCC has already announced in its website that ‘The report commissioned by the Central Point of Expertise on Timber (CPET), an expert group appointed by the Department for Environment Food & Rural Affairs (DEFRA), United Kingdom, has concluded that the MTCC certificate provides the assurance of legally harvested timber.’⁶⁰

Nevertheless, we believe that the VPA negotiations, if properly done, can be seen as a strategic process to bring Malaysia into a thorough examination of its forestry practices, and undoubtedly the most important concern is the extent to which Malaysia has or has not addressed the forest and land conflicts, past and ongoing, with its indigenous peoples and other such real and underlying issues. The EU-VPA process is also a means by which other purchasing countries in the international timber trade can check on whether the timber they procure from Malaysia is being sourced legally or illegally. Significantly, it is also a challenge from the Malaysian NGOs and indigenous peoples to the EU and others in order to demonstrate that a top-down, expert-driven, scientific determinism and the market-driven world view cannot continue to dominate all aspects of the forestry scene, just as we squarely challenge our own government on their interpretation and implementation of sustainable forestry.

So while communities and supporting NGOs continue to work towards having a stronger voice and greater clout over governance in Malaysia, the VPA process has the potential to bring the Malaysian state and federal governments into the public arena and ensure that the expressed aims and objectives of the Malaysian government with regards to land and tenure rights are clearly spelled out, in accordance with acceptable international human rights instruments, enabling provisions in national and state laws and the *adat* (customary law) of the Orang Asal. This, in our view, is of importance because it is for this reason, and a wider lack of clarity regarding legality, that forestry practices, legislation and policies are enforced in a manner that is discriminatory and continues to undermine indigenous peoples’ rights and other human rights.

60 ‘Implementation of New Institutional Arrangement for MTCC Scheme’. Available from: <http://www.mtcc.com.my/fullstory.asp?ID=61>. Accessed 30 August 2006.

6. Recommendations for a credible and viable VPA

It is commendable that the European Commission has taken the initiative to develop its own Forest Law Enforcement, Government and Trade (FLEGT) Action Plan to co-share the responsibility with timber-producing countries to tackle illegal logging and ensure good forest governance on the ground. The EU, as the initiator of the VPA process, is as a whole neither a key buyer of Malaysian timber nor a significant donor of official aid to Malaysia. Whilst this might imply that the EU has less clout to encourage Malaysia to accept any VPA, it nonetheless has other political and trading muscle beyond the timber sector.

Since VPAs are based on the establishment of licensing schemes to ensure that only legal timber enters the EU, the basis of the definition of legality is of significance. Concerning a possible Malaysia-EU VPA, the process of defining legality should start with an open and honest debate including communities, indigenous peoples and civil society groups to define afresh what is legal and not legal. These debates should include a proper analysis of all existing legislation, including the Federal Constitution as well as the state forest and land laws, the Orang Asal's *adat* law, legal and human rights instruments and institutions, both within and outside Malaysia as well as court decisions including those of the Native Courts. This means that the VPA process must not bow to political pressures and dispense with the need to address the customary land rights issue, but instead show its determination to resolve this key concern.

The EU's Council Conclusion when adopting the EU FLEGT Action Plan hit the nail on

The indigenous Kadazandusun of Penampang, Sabah displaying their 'catch of the day' from the river.



its head when it called upon the European Commission and the Member States to ensure that the FLEGT process would⁶¹:

- strengthen land tenure and access rights especially for marginalised, rural communities and indigenous peoples;
- strengthen effective participation of all stakeholders, notably of non-state actors and indigenous peoples, in policy-making and implementation;
- increase transparency in association with forest exploitation operations, including through the introduction of independent monitoring; and
- reduce corruption in association with the award of forest concessions and the harvesting and trade of timber.

Unless and until the Malaysian government and industry can see the forest beyond the trees and embrace the customary rights of indigenous communities, no equitable partnership can be forged. In effect, the fundamental challenge facing any possible partnership is that of narrowing the gap between the widely different conceptions of forests. This is because, to the supporting NGOs and the communities concerned, full recognition of customary land rights must be the basis for any legitimate claim to forest resources. Respect for such rights, even if it means that valuable resources are blocked from commercial exploitation, must be acknowledged. In effect, there can be no equitable partnership beyond this fundamental starting point. However, acknowledgement and respect for the indigenous communities' rights go beyond the typical property rights to build, sell or mortgage. Customary rights to land also involve the right to maintain, to live, and to hope, which transcends time and generations and which an industry is incapable of perceiving, let alone comprehending. Indigenous knowledge about forests, the land, biodiversity, the ecosystem, etc. continue to withstand the onslaught of modernisation but have stood the test of time, albeit with diminishing strength.

With respect to the NGO community and indigenous groups in Malaysia, we need to become more organised, coordinated and adequately funded in order to be able to engage with governments and other forestry industry stakeholders. Communities and NGOs have shown in the past a willingness to engage in processes that support equality, justice and respect for the rights of indigenous communities. For the governments, beyond rectifying the injustice and inequality contained in their policies and practices, there is a clear need to show that they are transparent, accountable, and democratic and that they provide true leadership in being pluralistic and accommodating of different views. After all, the hallmark of good governance goes beyond mere technical factors but must be guided fundamentally by the universal principles of justice and equality.

For the VPA process to be successful, it must lead to Malaysia's ensuring that its forest management system places not technical issues as its supreme guiding principles but rights, justice and equality. The VPA process, therefore, must not shy away from addressing the customary land rights issue but instead show a determination to take the lead in resolving this key area of concern. With over 150 land rights cases pending and few landmark

61 Council of the European Union (2003) Communication from the Commission to the Council and the European Parliament on Forest Law Enforcement, Governance and Trade (FLEGT): Proposal for an EU Action Plan – Council Conclusions. p 3

judgements to provide clarity on the issue, the legality of the current concession system is in serious doubt. The fact that many of these concessions are 'certified' as sustainable under Malaysia's certification scheme (the MTCC) makes matters even worse. Failure to address these issues will render the VPA process inadequate and invalid. Ultimately, the VPA process will test the sincerity of all the stakeholders who claim that they want a workable solution to this long-standing dispute.

On that basis, a good first step towards bringing about a united stand on forestry matters should include constituting a national body, with civil society involvement, to bring about the clearly stated objectives and address the principles of equality and justice within the whole Malaysian forestry sector. A good stakeholder process is key to the success (see Annex for the requirements). However, such a body must be provided with the political and legal clout to ensure that its decisions are implemented. Details can then be discussed and worked out with the participation of key stakeholders.

The Rungus in Kudat in the northern part of Sabah is one of the many diverse indigenous peoples found in the Sabah state.



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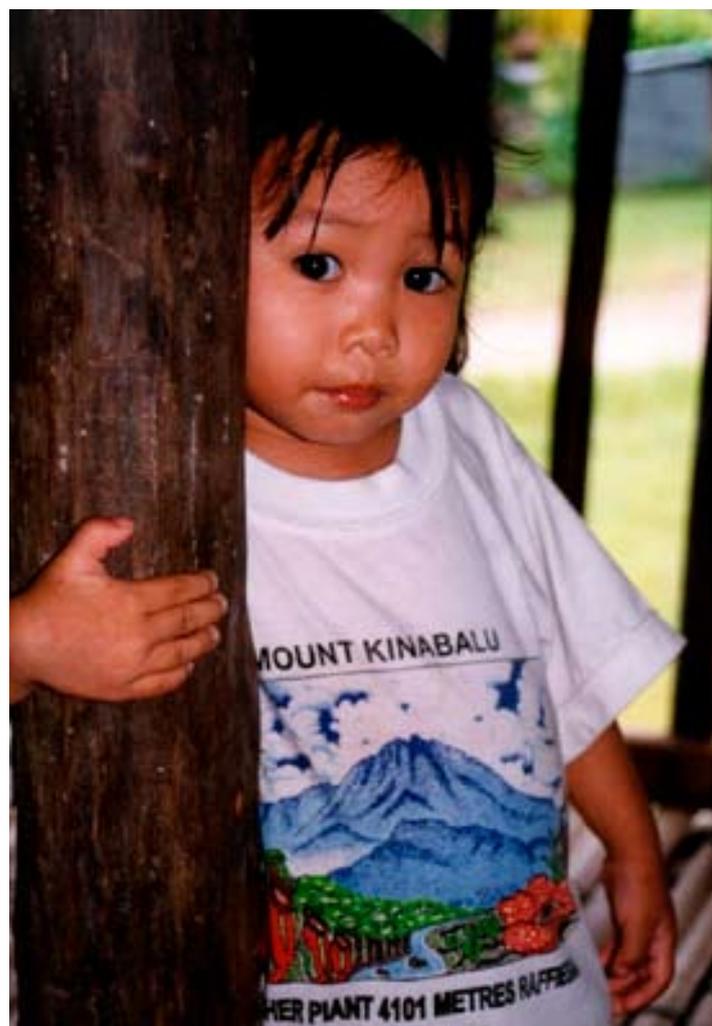
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*Rungus child,
Kudat, North
Sabah.*



Annex

Requirements for a credible and viable VPA

A successful VPA process would include, but not exclusively:

Initiation Stage

- Identifying key stakeholders:
 - Agreeing to terms of reference – that the process has the political and legal legitimacy to accept whatever outcome arises and that it is not to be based on the dictate of majorities;
 - Identifying resources – resources to be available for various stakeholders to ensure that all stakeholders will have equal participatory capacities and capabilities. This is especially needed when NGOs and communities do not have the kind of resources at the government's and industry's disposal;
 - Agreeing to organisational structures – accountability, transparency and roles and responsibilities of each party.

Planning Stage

- Key stakeholders to identify and agree upon:
 - Process – ensuring that the process is also part of the agreed results and that trial and error is allowed;
 - Structures – recognising that bottom-up is not only mandatory but practised;
 - Logistically how the whole process will be implemented taking into considerations the wide geographical area of Malaysia.

Implementation Stage

- Ensure that a proper and equally balanced cross-section of participants from the environmental, social and economic sectors is invited to participate in the process;
 - Ensure that all participants have at least a two-months' notice period before meetings to allow them to prepare and organise their constituencies;
 - Provide sufficient information to all participants: background material should be made available at least two weeks prior to consultation, including an explanation of the process, proposed substantive issues to be discussed, etc. If translation is needed it should be made available;
 - Ensure independent facilitation, approved by all participants or shared facilitation by different stakeholder groups, approved by all participants;
 - Ensure there are rapporteurs for each meeting and minutes of each meeting to be approved by all participants at next meeting;
 - Consider the formation of a multi-stakeholder drafting committee to draft the final agreement with self-selected members from each constituency.
-

Ending Stage

- Provide feedback to participants and make sure participants know how their input influenced decisions;
- Present the draft VPA text and ask for feedback from participants – participants must have ample time and opportunity to review any final draft before it goes for approval;
- Present final VPA text;
- Evaluate the consultation process.

Practical conditions that need to be met:

- Facilitators should run the meetings, setting the tone by clearly stating the purpose of the meeting, the role of the participants and getting everyone to agree to common ground rules. These rules should be circulated among participants ‘prior’ to any face-to-face meeting for feedback and mutual agreement. A facilitator will guide the proceedings without interjecting personal views and opinions, by being an active listener and by accepting ideas and suggestions from members of the group without evaluating them and by encouraging all members of the group to participate and to respect differences in views and opinions. The facilitator will focus the group’s energy on the task at hand;
 - Rapporteurs will accurately record the proceedings and assure that the group’s findings are presented to the whole group for approval;
 - NGOs, CBOs and other stakeholders will be asked to represent their constituencies or their partners and will therefore need to have sufficient time before and between meetings to consult, prepare positions and organise travel. A two-months’ notice period is therefore essential.
 - Financial means need to be made available to those participants who are financially disadvantaged and whose views will not easily be heard.
-