

Deforestation Drivers and Human Rights in Malaysia



Forest
Peoples
Programme

A national overview and
two sub-regional case studies

Carol Yong, SACCESS and JKOASM

COUNTRY INFORMATION: MALAYSIA



Forest area:

20,4566,000 ha reported to FAO; other source report cover to be significantly less at 18,080,0000

Forest peoples:

8.5 million rural dwellers; 3.5 million indigenous people, many still highly forest-dependent

Forest land tenure:

The state claims it owns and controls areas known as 'state land forests'. Ownership of these areas by local forest communities and indigenous peoples is largely unrecognised.

Deforestation rate:

0.54%: satellite images indicate annual average tree cover loss of as much as 2%.

Main direct drivers of deforestation:

Commercial logging; commercial agribusiness; mining; infrastructure; mega dams and urban developments

Indirect drivers of deforestation

National and state legal and policy instruments with related contradictions, governance issues, trans-border forest crimes, powerful political and economic elites, unethical financial and investment culture, trade and consumption

This Malaysia case study is the revised and updated version of the draft report originally prepared as a contribution to the International Workshop on Deforestation Drivers and the Rights of Forest Peoples, held in Palangka Raya, Indonesia, March 9-14, 2014.

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SACCESS (Sarawakians Access) is a Kuching-based, non-profit entity established in 1994 that offers "Information, Documentation and Research Consultancy Services" in support of human rights, including Native Customary Rights (NCR), democracy, justice and equality in Sarawak.

JKOASM (Jaringan Kampung Orang Asli Semenanjung Malaysia) is the Peninsular Malaysia Orang Asli Village Network initiated by Tijah Yok Chopil, the network's current coordinator. The field information on Kg. Sebir for this case study was collected by two Orang Asli community activists and JKOASM members, Norsinani Binti Achin and Asmidar Vira Binti Les.



(Image 1) The remaining fragments of healthy forest in Malaysia are mainly located on the lands and territories of indigenous peoples, yet these lands lack effective protection and are vulnerable to destruction by logging, mining, plantation developments, etc.

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This Malaysia case study includes two sub-regional field reports contributed by SACCESS in Kuching, Sarawak and JKOASM in Peninsular Malaysia. The Sarawak field study was undertaken by field researchers of SACCESS working closely with the Long Itam Penan community and land rights lawyer See Chee How. The Peninsular Malaysia field study was facilitated by JKOASM and in particular by its coordinator Tijah Yok Chopil, and data collection and interviews in Kg. Sebir were undertaken by two JKOASM members and community activists, Norsinani Binti Achin and Asmidar Vira Binti Les. My immeasurable gratitude to the many women and men, young and old, from Long Itam and Kg. Sebir for their time and willingness to participate in this initiative, along with See Chee How and the NGO/IPO that assisted. We do our best to adequately reflect the peoples' lives and experiences, adat, oral history, practices, hopes and fears in this case study.

The process of putting together this whole case study and the two local case studies presented here has been challenging, to say the least, and the whole report should be read with due consideration of a number of limitations. These included time constraints, changing scenarios on the ground and the differing situations of the different regions within Malaysia and Malaysia as a whole, which resulted in further challenges, balancing the need to get the most current data and information and meeting the timelines for this report. Specific interviews and communications with Sarawak's land rights lawyer, activists, academics and others in Malaysia and abroad, helped to address information and analysis gaps. Some limitations could be addressed with indirect and/or secondary sources used where primary sources were not available. We hope the information, findings and recommendations contained in this final manuscript will contribute to continuing debates, and lead to solutions for protecting forests and securing rights of forests peoples.

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Image 8: SACCESS

Image 9: Carol Yong

Image 10: Carol Yong

Image 11: Carol Yong

Image 12: Drawing by Hashim

ABBREVIATIONS, ACRONYMS AND TERMS

Adat	Customary law systems
BMF	Bruno Manser Fund, a Swiss-based NGO focussing on Sarawak. Website: www.bmf.ch
CEDAW	The United Nations Convention on the Elimination of All Forms of Discrimination Against Women
Damar	resins
DID	Drainage and Irrigation Department (Malaysia)
EIA	Environmental Impact Assessment
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
FELDA	Federal Land Development Authority, previously a government agency but now is corporatised
FERN	A European NGO that promotes the conservation and sustainable use of forests, and respect for the rights of forest peoples in the policies and practices of the European Union. Website: www.fern.org
FLEGT-VPA	Forest Law Enforcement, Governance and Trade - Voluntary Partnership Agreement
FMU	Forest Management Unit
FPIC	Free, prior and informed consent
FPOe	Freiheitliche Partei Oesterreichs-The Austrian Freedom Party of Austria, far-right party.
FPP	Forests Peoples Programme, an international human rights organisation based in the UK. Website: www.forestpeoples.org
Gaharu	<i>Aguillar</i> sp. Diseased wood from the inner core of the trunk, used as ingredient in some perfumes
GFI	Global Financial Integrity, a Washington-based financial watchdog.
GO	Governmental organisation
ha	hectares
HSBC	Hong Kong and Shanghai Bank
IJM	Merger of three local construction companies: IGB Construction SB, Jurutama SB and Mudajaya SB
IPO	Indigenous Peoples Organisation
ITTO	International Tropical Timber Organization
IUCN	International Union for Conservation of Nature
JAKOA	Jabatan Kemajuan Orang Asli/JAKOA (Department of Orang Asli Development), formerly Jabatan Hal Ehwal Orang Asli/JHEOA (Department of Orang Asli Affairs)
JKOASM	Jaringan Kampung Orang Asli Semenanjung Malaysia (Network of Orang Asli Villages Peninsular Malaysia)
JOANGO-Hutan	Jaringan Orang Asal & NGOs Tentang Hutan (indigenous peoples & NGOs coalition on forest issues)
JOAS	Jaringan Orang Asal Se-Malaysia (The Indigenous Peoples Network of Malaysia)
Kapon	latex of kapor trees used by the Penan
Kg./Kpg.	Kampung (village)
LCDA	Land Consolidation Development Authority (Sarawak land agency)

LoggingOff	A joint initiative by NGOs from European and timber-producing countries involved in or monitoring the implementation of the EU FLEGT Action Plan, and specifically the VPA. Website: www.loggingoff.info
Lembaga Adat	Orang Asli traditional institution such as village council of elders
MACC	Malaysian Anti-Corruption Commission
Molong	Penan practice of using resources in a sustainable way to meet specific needs while preserving or recovering trees, sago clumps, etc. for future harvests
MTC	Malaysian Timber Council
MTCC/MTCS	Malaysian Timber Certification Council / Malaysian Timber Certification Scheme
NCR	Native Customary Rights
NGO	Non-governmental Organisation
Nyateng	Penan term for resin to get fire
OeVP	Oesterreichische Volkspartei-Austrian People's Party, centre-right party
Pelimak	Orang Asli Temuan term for community-appointed forest guardian/warden
PEFC	Pan European Certification Scheme
RAGM	Raub Australian Gold Mining Sdn Bhd
RECOFTC	Regional Community Forestry Training Center
RSPO	Roundtable on Sustainable Palm Oil
SACCESS	Sarawakians Access, a Kuching-based non profit entity
SCORE	Sarawak Corridor of Renewable Energy
SMSL	Save Malaysia, Stop Lynas! SMSL is a citizens group set up solely to provide space for residents and concerned people because of the threats from an Australian company. Lynas REE (rare earth elements) refining plant LAMP near Kuantan, Malaysia. Website: www.savemalaysia.org
SPOe	Sozialdemokratische Partei Oesterreichs-The Austrian Socialist Party
SUHAKAM	Suruhanjaya Hak Asasi Manusia Malaysia/National Human Rights Commission of Malaysia
Tanah Pengurip	Native customary rights (NCR) land and territorial domain of the Penans of Sarawak
Tanah Pinggir	Fringe forest areas of the Orang Asli of Peninsular Malaysia
TK	Tuai Kampung, Village head
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNEP	United Nations Environment Programme
Uvut	Sago starch from the palm <i>Eugeissona utilis</i> , Penan staple food and primary carbohydrate source

EXECUTIVE SUMMARY

Deforestation and forest degradation in Malaysia is a complex phenomenon with varying causes. So far, however, the focus is largely on direct or proximate causes like industrial logging, large-scale commercial oil palm plantations and agribusiness, road construction and large dams. Far less attention is paid to the indirect or underlying causes and agents, inter-linking and working to enrich the very few while creating hardships for many people as a result of degraded or diminished resources. Major agents of deforestation include commercial loggers, commercial oil palm and other tree planters, infrastructure developers or governmental and developmental agencies. As community forests are plundered and forests are cleared, local sustainable customary land use systems are confined to reduced areas of forest land threatening their sustainability. This has had harmful impacts on communities' access to forest resources for livelihoods and food security, consequently intensifying livelihood hardship and poverty. Beyond the immediate losses, there is also the loss of generational stories, customs, tales, legends, history, and so on, that shape and define so much of the once forest dwellers.

This report is one of several commissioned case studies of the FPP's Rights, Forests and Climate Project entitled: "Drivers of deforestation and human rights". This FPP Project is an attempt to fill this gap in examining the combinations of direct and underlying agents and causes of deforestation and forest degradation in Malaysia, and to support the convening of a global workshop to analyse these problems and develop solutions to the crisis.¹

This Malaysian case study was undertaken by a Malaysian consultant and a small team of local and community researchers, following FPP's terms of reference. It has been based on four main sources of information:

- Review of existing literature and documents
- Fieldwork in two sub-regions in Malaysia
- Personal and professional experiences and understanding of a range of themes and issues
- Interviews, discussions and email communications with relevant individuals and groups in Malaysia and outside

This case study report has three parts:

- Part 1 gives an overview of the status of Malaysia's forests today, highlighting the major direct and underlying causes of forest degradation and deforestation in the past and the present. Major global drivers of deforestation and forest destruction which interact with a number of local factors are discussed. Where relevant, the roles of national and international efforts to tackle deforestation and rights abuses in Malaysia are mentioned.

¹ In the late 1990s, FPP has been actively involved in a 16-month initiative of a diverse group of NGOs, governments, indigenous peoples' organisations, intergovernmental agencies and other stakeholders that included 7 regional workshops, one Indigenous Peoples workshop, and a Global Workshop to Address the Underlying Causes of Deforestation and Forest Degradation. Case studies and discussion papers to address a wide-range of forest-related issues formed the basis for discussions in these workshops. **However, there was no specific case study on Malaysia.** For an overall report on these theme and case studies, see, Verolme, Hans J.H., Moussa, Juliette, April 1999. *Addressing the Underlying Causes of Deforestation and Forest Degradation - Case Studies, Analysis and Policy Recommendations*. Biodiversity Action Network, Washington, DC, USA. x+141pp. Available from: bionet@igc.org, http://www.wrm.org.uy/oldsite/deforestation/uc-rpt_eng.pdf

- Part 2 explores what is happening on-the-ground through fieldwork in two different geographical locations: a Penan community in Middle Baram in Sarawak and an Orang Asli community in Labu, Negeri Sembilan in Peninsular Malaysia. The Penan of Long Itam in Middle Baram are still struggling against logging, and have been since the 1980s when they and other native groups first mounted blockades in logging roads.² Most other Sarawak communities today are struggling with post-logging “development” including large-scale oil palm plantations, large dams and other infrastructure projects. For the Orang Asli, their forests and customary lands are also issued with concessions and licences for “development”. While each case is unique, there are similar problems faced by the Penan and Orang Asli communities: their ancestral lands and forests have continuously been encroached by direct and underlying agents of deforestation often without communities’ Free, Prior and Informed Consent (FPIC) resulting in FPIC violations, loss of forests, land rights and rights abuse. Other deforestation drivers like plantations development, large dams, road construction that affect indigenous and local forest peoples are also discussed.
- Part 3 presents some main lessons learned as well as community initiatives and solutions to protecting their forests and, more generally, some recommendations for a range of inter-governmental, governmental and non-governmental organisations in Malaysia and internationally on addressing forest degradation and forest loss.

Core findings of the Malaysian case study and analysis are outlined below.

National Overview

The last few decades have witnessed once-rich rainforests in Malaysia rapidly destroyed or disproportionately damaged. NASA’s satellite-based tool to detect areas where deforestation and forest degradation is occurring on a quarterly basis, the Quarterly Indicator of Cover Change (QUICC), has ranked Malaysia second (150% increase) after Bolivia (162%) in terms of a surge in deforestation during the first quarter of 2014.³ These areas of significant new forest disturbance are corroborated by FORMA alert data generated by Global Forest Watch, a forest monitoring platform which also uses NASA data to generate reports on potential forest loss. A new Google Earth mapping tool has likewise exposed alarming rates of deforestation and forest degradation in Malaysia (Hansen et.al. 2013). The mapping team from University of Maryland that documented forest loss and gain between 2000 and 2012 using satellite images, revealed that:

- Malaysia is one of three countries in the world with the highest national rates of deforestation (the other two countries being Cambodia and Paraguay).
- Malaysia lost 14.4% of its forests from 2000-2012, the world’s highest rate.
- Malaysia is ranked ninth in the world in highest area of forest loss.
- During 2000-2012, Malaysia lost a larger proportion of its dense forests (over 75% canopy) than any other major tropical forest nation, an estimated 4.5 million ha of forests - equivalent to a football pitch every 1.5 minutes.

² See, *The Peaceful People: The Penan and their Fight for the Forest* by Paul Malone, SIRD (2014), Pb 285 pp, ISBN: 9789670630366. Available from: http://gbgerakbudaya.com/bookshop/index.php?main_page=product_book_info&cPath=1_4&products_id=2321

³ NASA detects surge in deforestation in Malaysia, Bolivia during first quarter of 2014, [mongabay.com](http://news.mongabay.com/2014/0421-glofdas-2014q1.html#IUvBCJyvH4VHM02.99), April 21, 2014. Available in full from: <http://news.mongabay.com/2014/0421-glofdas-2014q1.html#IUvBCJyvH4VHM02.99>

- Between 2010-2012 alone, Malaysia has lost 4.72 million ha of forests.
- Deforestation during the last decade is actually worse in Malaysia, in percentage terms, than in Indonesia.
- Actual deforestation rates in Malaysia since 2000 have been three times higher than Malaysia reports to the FAO.

Another study further attested to the alarming trends in Malaysia's forest loss. The research team from the University of Tasmania, University of Papua New Guinea, and the Carnegie Institution for Science, using high-resolution satellite imaging of the Carnegie Landsat Analysis System-lite (CLASlite), highlighted that more than 80% of tropical forests in Malaysian Borneo have been heavily impacted by logging (Bryan et al, 2013). Analysis of satellite imagery collected from 1990 and 2009 over Malaysian Borneo showed approximately 226,000 miles (364,000 km) of roads constructed throughout the forests of this region. Nearly 80% of the land surface of Sabah and Sarawak was impacted by previously undocumented, high-impact logging or clearing operations.

The research further revealed that only 3% of land area in Sarawak remains covered by intact forests in designated protected areas. These findings strongly contrasted with neighbouring Brunei, where 54% of the land area is intact unlogged forest. The study's team leader, Jane Bryan, was reported as saying: "There is a crisis in tropical forest ecosystems worldwide, and our work documents the extent of the crisis on Malaysian Borneo. Only small areas of intact forest remain in Malaysian Borneo, because so much has been heavily logged or cleared for timber or oil palm production." We add that those areas not already cleared are under immediate threat as logging concessions are active and loggers are ever advancing into intact forests on a daily basis.

A series of field investigations by FPP with local partners and communities in Malaysia also revealed alarming findings and projections of degradation of forests and subsequent conversion/clearance for palm oil expansion, particularly in Sabah and Sarawak (FPP, Sawit Watch and TUK Indonesia, 2013). With most of the economically-attractive forest for timber extraction now gone, the timber industry is shrinking and has been overtaken or replaced by large-scale oil palm plantation development and industrial tree-plantations. For example, Sarawak currently has one million ha of land under oil palm and the Sarawak state government intends to double that huge area to 2 million ha by 2015, and possibly even up to 3 million ha (Sarawak Report, 20 January 2014). As for industrial tree plantations, the Sarawak government has set a target of 1 million ha by 2020 but with licences issued for 2.8 million ha.⁴

Are these trends likely to continue in the future? All indications point to a continuing increase in logging as concessions have not been halted but instead renewed, and logging continues on a daily basis. Analyses of inter-linking causes and actors, discussed later, also point to much work that needs to be done to keep the remaining forested areas in Malaysia intact. The loss of forest cover today is the continuation of a process that began during colonial rule that saw the exploitation of natural wealth of the colonies for the enrichment of the motherland England. In Malaysia, the evidence is clear in the lasting influence of colonial era policies and laws on land and forests. However, the process of deforestation is far greater today than it ever was during the colonial era, and much of the exploitation of natural wealth today is embedded in allegations of massive corruption. The indigenous landowners' efforts to save their forests and lands are effectively the last safeguard against total loss of intact forests.

⁴ Source: [http://sarawaktimber.org.my/timber_issue/Paper%201%20\(International%20Conference%202013\).pdf](http://sarawaktimber.org.my/timber_issue/Paper%201%20(International%20Conference%202013).pdf);
<http://news.mongabay.com/2013/0622-sarawak-tree-plantations.html>

Deforestation and Forest Degradation Drivers

Direct causes

- Industrial logging, both legal and illegal, causing degradation of forest resources.
- Indirect consequences of logging, such as the construction of forest roads to access the camps and temporary housing for logging workers, river pollution and damage to the forest floor, soil, vegetation, etc. by logging trucks and heavy machinery. These forest roads often open forests to further encroachment not only by the logging companies but also migrants to clear remaining trees, etc.
- Natural forest clearance or conversion of forested lands to other land uses, usually with logging as a precursor. These other activities include: oil palm and other industrial tree plantations, agribusiness expansion, large dams, extractive industries such as mining and quarrying (e.g. open pit, blasting) and mining-related activities such as the processing facilities and the tailings, and land development and other land schemes (e.g. agricultural schemes, rubber estates, and so on).
- Infrastructure and urban development projects such as construction of roads and highways, industrial plants and factories, hilltop bungalows and resorts, and other facilities related to urbanisation and demographic changes.
- Consumer demands for logs and for palm oil, particularly among food producers and the bio-diesel industry, have resulted in more forests being logged and or cleared to establish new palm plantations, leading also to increasing commodification of nature and natural resources.

Indirect or underlying drivers

Behind the direct causes are multiple indirect processes and drivers, which are usually interconnected and vary regionally within the country. The important underlying causes include:

- National and state legal and policy instruments and related contradictions arising from different levels and actors of federal and state power and jurisdictions over land and forestry legislation and policies. Protection of each state's power over land and forest resources often results in continued contradictions with federal government's policies, regulations, enforcement, projects, etc. However, the development choices of both federal and state governments have favoured large-scale projects such as commercial agriculture plantations, large dam projects, etc. Monitoring and enforcement of the many laws for land and forest protection is relatively weak, and inevitably the government role in tackling the many issues connected with deforestation is also weakened.
- Many of the existing land and forest laws have colonial (British) origins. These laws and policies are not only outdated but have over time been amended and tightened by post-independent federal and state governments steadily eroding the collective customary rights of forest peoples over their lands. Pre-existing customary land rights of forest peoples are systematically ignored and overridden, which contributed considerably to unjust land acquisition and concession allocations to commercial enterprises, at the same time failing to uphold the core standard of FPIC.
- Weak or flawed forest governance, absent of provisions for full local forest community and gendered perspectives. As a result, forest governance exacerbates the disempowerment of local communities and marginalisation of women, women's rights to community resources, and unequal and insecure land tenure of families and forest communities.

- Ineffective governance or incorrect governance system: a non-transparent, non-accountable system of governance that allows for corrupt politicians to lease out licences for logging and then for land leases to be issued to corporations and private individuals at the expense of land owners. Yet, Malaysia’s “commitment” to curb systemic corruption, nepotism and political patronage in appropriation of forests and natural resources through logging, land leases and concessions, especially of politically exposed persons, remains to be seen.
- Interaction of international, national and local factors, including links with trans-border forest governance and crimes, e.g. global corruption, money laundering, tax evasion.⁵ Malaysia ranks fourth in global capital flight (GFI report, 2013). Logging concessions, permits, contracts and allocation of rights to exploit forests and state assets are often controlled or held by powerful political and economic elites and well-connected corporations. Also, unethical financial and investment culture, unsustainable trade and consumption patterns, perverse large-scale infrastructure “development” (e.g., dam-building), perverse incentives (e.g, tax breaks for foreign companies), and so on have contributed to an increase in deforestation.

Effects of deforestation and forest degradation

Deforestation affects women and men, young and old, in both material and non-material ways. Natural wealth is plundered and much of the biodiversity loss is permanent. Indigenous peoples and local forest communities dependent on the forests for livelihoods, cash income, and social-cultural and spiritual needs are arguably the most affected. Yet the profits derived from exploitative logging and other forest resources benefit only a small segment of political and economic elites, especially in Sarawak where allegations against key Ministers have been plentiful over the decades. There are no signs of forest exploitation, degradation and deforestation stopping. Loss of land rights is a direct consequence of logging as the state ignores land rights to issue licences to loggers. After logging, with the infrastructures in place, logged areas are turned into plantations – oil palm and industrial trees – for a set period of time. Even areas with minimal intact forest cover left are now at risk of being lost.

The destruction of forests and deforestation have many far-reaching consequences, including human rights violations, *inter alia*:

- Recognition of the rights of communities to native land tenure (NCR lands) weakened or removed.
- Landowners and communities’ free, prior and informed consent (FPIC) is not sought or obtained.
- Local communities’ and indigenous peoples’ lands are acquired without due fair payment and without remedy.
- Use of violence by the authorities, police and companies in land conflicts with affected communities, including violence and abuses on women and children.⁶

⁵ On The Alleged Corruption And Abuse Of Power Of Former Sarawak Chief Minister Abdul Taib Mahmud Taib (Presently The Sarawak Governor), See *Money Logging: On The Trail Of The Asian Timber Mafia* By Lukas Straumann, Berli Books, Basel (2014), Pb 313pp. ISBN: 9783905252729. Also available in German, titled *Raubzug Auf Den Regenwald: Auf Den Spuren Der Malaysischen Holzmafia*, Lukas Straumann, Salis Verlag AG, Zuerich (2014), 380s, ISBN 978-3-906195-05-6.

⁶ See, Ideal (1999). *Our land is our livelihood - The undermining of indigenous land rights and the victimisation of indigenous peoples in Sarawak*. IDEAL, Sibiu. This report documented a number of such cases, based on communities’ testimonies and IDEAL’s field researchers investigations. More recent information is available from: <http://www.sarawakreport.org/?s=melikin&lang=en>

- Deprivation of traditional livelihoods and means of subsistence and income, water sources, etc.
- Loss of indigenous knowledge, socio-cultural systems, spiritual meanings, oral traditions, and so on.
- Broader rights abuses linked to prejudice, discrimination and marginalisation, right to development, right to citizenship, gender inequality, and other disadvantages faced by indigenous peoples.
- Exposing marginalised communities to rape and other forms of sexual violence, as per the Penans.⁷

Extensive and permanent forest clearance for plantation development, agribusiness and infrastructure has drastically reduced the area of customary forests used by communities. With major reductions in forest areas, local resource management systems are being undermined. Forest peoples' access to or use of resources for livelihoods and incomes are also affected. As forests are logged, those communities unable to halt logging are forced to encroach into other communities' forests to seek out resource needs as the logging impacts on their ability to hunt wild game, fish and access to other forest resources. With less land swidden cultivators are forced to reduce fallow periods which in turn may slow forest regrowth and or potentially lead to greater usage of chemical fertilisers to maintain yields. Environmental degradation resulting from indiscriminate, large-scale development projects, including land conversion activities, worsen many natural disasters. These effects are being felt not only in the margins of logged areas, or degraded hill slope areas, but also in the suburbs and cities. Undisturbed forests, coral reefs and mangroves act as a buffer zone against forces of nature such as gales, tidal waves, sudden downpours of rain, etc. Where these natural buffers are destroyed or disturbed, the vulnerability of the areas and inhabitants to disasters such as flash floods, mudslides, flooding and other climatic catastrophes is increased.

Main lessons

The changes triggered by past and ongoing deforestation and forest destruction have had adverse impacts on human lives, on the environment and on biodiversity. These symptoms are related to wider social factors associated with greed and economic dominance over all else:

- Powerful political and economic elites plundering the rich resources and wealth of the country for quick profits, while destructive development activities and processes continue unabated.
- Failure to respect constitutional provisions, adat⁸ law and other domestic laws that uphold human rights, including lack of implementation of court judgements in favour of indigenous communities and their NCRs to land, ancestral territories and forest resources.

⁷ See, for example, National Task Force (2009) *Laporan Jawatankuasa Bertindak Peringkat Kebangsaan Bagi Menyiarat Dakwaan Penderaan Seksual Terhadap Wanita Kaum Penan di Sarawak* [Report of the National Task Force to Investigate Allegations of Sexual Abuse of Penan Women in Sarawak]. Ministry of Women, Family and Community Development, Government of Malaysia. Despite confirmation of the existence of sexual violence and exploitation as experienced by Penan women and girls, it was reported that response from both federal and state government authorities was rather unsatisfactory. Subsequently, an NGO team conducted their own independent Mission, see: The Penan Support Group, the Asian Forum for Human Rights and Development (FORUM-ASIA), and the Asian Indigenous Women's Network (AIWN) (July 2010). *A Wider Context of Sexual Exploitation of Penan Women and Girls in Middle and Ulu Baram, Sarawak, Malaysia*, SUARAM Komunikasi, Selangor.

⁸ Adat refers to customary law systems, an all-encompassing institution that includes all the activities people customarily practise in their society. It also covers the individual's behaviour and personal habits. The function of the adat is to ensure harmonious relationship among members within the community and maintain the general state of wellbeing with the spirit world. Breaching of this adat would risk a breakdown in social relationship which is punishable in both the secular and spiritual senses. Source: SACCESS 2008, *Adat and Human Rights in Sarawak*, paper written as a section on Sarawak in SUARAM's 2008 Human Rights Report launched on 23 July 2009.

- Failure to enforce many existing domestic and international agreements on human rights, environment, and other critical areas where such actions are warranted.
- Failure to effectively tackle financial crimes like corruption, bribery and money laundering for personal monetary gain, especially involving politically exposed persons, despite existing laws and guidelines.
- Failure of State Parties to hold Member States to account and enforce the various applicable international instruments including the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption. In particular the United Nations Office on Drugs and Crime (UNODC) has yet to publicly show what it has done on numerous reports alleging Malaysian politically exposed persons in corruption cases, including global money laundering.

What emerges from the two sub-regional case studies on Long Itam and Kg. Sebir is the communities' perspective that:

- Encroachment into their ancestral lands and communal forests is occurring without their free, prior and informed consent.
- Severe changes, mainly negative, are being seen and felt in forest resources and livelihoods.
- Negative economic, environmental and social impacts are due to these changes, including increasing gender inequalities and further marginalisation of minority groups within indigenous populations in Malaysia such as the Penan and Orang Asli.
- Increased control is being exerted over land and forests by the state and state machineries/agencies, as well as increasing policies and legislation on lands and forests designed to derive benefits for political and economic elites.
- There are different views of the forests and their uses between indigenous/local communities and the state/political-economic elites.
- Deforestation and the associated impact on the socio-economic, cultural and customary practices of the Penans are pressing them to practise an unknown land-use system which is even altering the egalitarian nature of Penans and requiring them to adopt the practice of having to allocate lands to families to farm, among other changes.

Nevertheless, there are some encouraging signs:

- Several landmark court judgements and decisions recognising and affirming indigenous peoples' rights to NCR lands, not just as a physical entity but applying adat and international human rights values and principles, including FPIC.
- Within the affected local forest communities and indigenous peoples, there is increasing awareness of possible community actions (such as filing land dispute cases in court, lodging complaints to relevant authorities, etc.), with support of civil society and concerned individuals as well as international NGOs, to protect their lands, territories, resources, and other rights.

- Forest communities are also increasingly ready to assert their rights by standing up for their rights to defend their livelihood, resources, space, and so on.
- There is increasing recognition that it is essential to explore and harness new energy systems which are more sustainable, such as solar, wind, small dams, etc., and utilising local resources and indigenous knowledge.
- Segments of the scientific community are focussing more attention on, and conducting studies on issues affecting humankind such as deforestation, using multi-disciplinary approaches.
- There is growing international understanding and concern about the ongoing and intensifying global forest and resources crisis. This opens up some spaces and fora for governments and NGOs/citizens' groups/communities to deliberate and discuss such issues and to find workable solutions. However, governments and corporations need to recognise the importance of genuine processes of multi-stakeholder participation and negotiations, and not just 'for the record' sake.

Much more still needs to be done. A crucial question is whether Malaysia and the international community of inter-governmental, governmental, non-governmental and civil society more generally, want to do something in support of community efforts and to urgently address this global forest crisis. Does the political will exist or is it business as usual – allowing this crisis to intensify? At the local level, some initiatives and efforts have been adopted by the communities to protect their remaining forests. These are summarised below.

Community initiatives and solutions for securing rights and protecting forests

- Reclaiming NCR lands in court, resulting from the growing awareness among native landowners of the need to file claims in the Malaysian courts to protect their ancestral lands and forests.
- Adopting forest-related community activities, namely the Penan Peace Park, conceptualised and established by 18 Penan communities in Upper Baram, as a model community-managed protected area for resource sharing and conservation for the present and future generations.
- Funding their own development and social projects such as community hall and village pre-school to serve the community needs, with financial and material support from general public donations, NGOs, churches, etc. as a way to reduce or avoid depending on the logging companies and dictates of the government.
- Monitoring their remaining forest areas including forest resource assessments and documentation and community mapping, using geographic positioning systems (GPS), geographic information systems (GIS) and other community user-friendly information base systems.
- Building awareness of community and gender empowerment and skills training and development in order to understand the causes and consequences of forest degradation and loss, implementing sustainable alternatives to protect and manage the remaining intact forests, etc.

General Recommendations

1. A human rights-based approach

- Adopt a human rights-based approach to land and forest tenure that takes into account human rights as enshrined in domestic and international law and policy, recognition of indigenous peoples' adat, NCRs to land and other rights, practices and knowledge, the rights of indigenous peoples and forest-dependent local communities to represent themselves through their own institutions and community-elected representative leaders, taking into account gender, age, ethnicity/minority status and other socio-economic factors that marginalise one or more groups of people and favour the other.
- Prioritise security for peoples and communities in land tenure, food and basic human needs (adequate housing, clean water, transportation, etc.), complying with international laws and standards like the Universal Declaration on Human Rights, UN Declarations on the Rights of Indigenous Peoples and the Right to Development, Vienna Declaration and Programme of Action 1993.
- Review and modify existing national and international macro-economic and trade policies and laws that contribute to escalating human rights abuses and land-grabbing.

Actors: Malaysian policymakers and national/state legislatures, forestry departments and forest or land-related agencies, activists/IPOs/NGOs, independent media, academics/research centres and the National Human Rights Commission of Malaysia (SUHAKAM). Internationally, actors include also inter-governmental organisations (UN and others), international NGOs, development agencies, industry and financial institutions, international research institutions (e.g., Center for International Forestry Research/CIFOR, The Forests Dialogue/TFD, International Land Coalition/ILC, Regional Community Forestry Training Center/RECOFTC), and regional political blocs (e.g. EU, ASEAN, NAFTA, etc.)

2. Laws and policies on forests and lands

- Recognition and protection of indigenous peoples' NCRs to lands and resources, in line with statutory provisions, common law and adat (customs) including amendments to laws that are discriminatory to NCR lands.
- Redress and the restitution of illegal expropriated or alienated NCR lands, forests and other resources of indigenous peoples and facilitate affected peoples' access to justice and related agencies such as the courts, lawyers, etc.
- Class Action/Citizen Suits: Allow communities/citizens and organisations to sue violators and collect damages.
- Review of existing Malaysian laws and policies to make language and implementation explicitly recognise human rights.
- Review and ratify laws and policies passed by state and federal parliaments in Malaysia, including policies for forest management and large-scale agricultural expansion that have not given due recognition to NCR and FPIC. Important components in the process and outcome of such a review include multi-stakeholders' views and promoting a sound balance between growing crops that sustain livelihoods and that generate cash incomes.

- Land capability classification studies need to be updated to provide current information to determine the best use of land and forests for Malaysia, towards a more effective and integrated national/state land-use plan.
- Need to formulate an optimal land-use policy with full participation of indigenous peoples and local communities, rural farmers, women, NGOs, the scientific community and governmental agencies across sectors in decision-making.
- Enact a Resource Extraction Disclosure requiring businesses to report the amount of natural resources (timber, minerals, etc.) that the company has extracted and processed, particularly for export, and tighten supply-chain tracking with a non-corruptible system of verifying tags kept by forestry departments for tax/royalty payment purposes.⁹
- Adopt the Freedom of Information Act, requiring governments and large corporations, banks, investors, etc. to report on their operations in domestic and foreign countries.
- In general, in the Malaysian political system, ensure that public institutions are statutorily independent of the executive and accountable to parliament/legislative assembly.

Actors: Malaysian federal and state parliaments and federal and state governments

3. Responsible business, finance and trade

- Obtain FPIC for all activities planned on the customary lands and territories of indigenous peoples and on the farmlands of rural communities. Adopt voluntary regulations such as certification and a due diligence code of conduct that fully respect and recognise NCRs to lands of indigenous communities.
- Reveal detailed plans and make available foremost to the communities and also to NGOs and relevant government authorities to enable all stakeholders' participation in decision-making before the start of any project, if agreed to.
- Recognition and protection of indigenous peoples' rights to their lands, territories and resources must be made a precondition of business and bank funding.
- Land disputes and conflicts between logging and oil palm companies as well as project holders must be based on dispute resolution mechanisms according to international human rights standards, and not companies hiding behind the state and their enforcement forces such as the police.
- Respect for indigenous peoples' and indigenous women's adat, social, cultural and resource rights that are recognised in international laws and conventions, especially those that Malaysia has ratified (CBD, CEDAW) and adopted declarations (UNDRIP, Rio Declaration and Agenda 21). Carry out thorough social and environmental impact assessments with proper processes for public full participation.
- Public education to identify and understand underlying causes of forest loss, including the links between deforestation in producer countries and unethical trade and over-consumption patterns in consumer countries.

⁹ An exclusive report by Sarawak Report, an online news portal on Sarawak has exposed how forestry staff were in hotels while supposedly verifying logs for the state in tax purposes. For the full article, see, <http://www.sarawakreport.org/2014/02/forestry-department-write-ground-reports-from-seaside-hotels-in-kk-exclusive-expose/>

- Ensure an inclusive, transparent and effective multi-stakeholder participation in the VPA-FLEGT process between the EU and Malaysia. Prioritise strengthening the capacity of CSOs and indigenous peoples and addressing some of the underlying causes of forest loss and bad forest governance, particularly corruption, land tenure rights of forest peoples, and unjust forest and land policies and laws. The central role of the EU and European NGOs (notably FERN) in ensuring that various civil society groups, including local communities, are involved in FLEGT and or any other mechanism, based on transparent, nurturing and respectful participatory principles could be used as a guide.

Actors: Malaysian federal and state enforcement agencies, national and international companies/industry, investors and banks, inter-governmental organisations (UN/regional groupings, e.g. FAO, ILO, ITTO, World Bank, EU), media.

4. National and development plans

- There is a need to find ways to reverse unbalanced resource flows that result in the concentration of wealth among elites and the overexploitation of timber and other resources.
- Review all ongoing projects that create inequitable gaps between NCR landowners, rural local farmers and non-industry landowners on one side and political and economic elites on the other side.
- Stop issuing permits for industrial logging, oil palm plantations, large dams and other infrastructure projects and review existing ones in terms of their compliance with human rights standards, rights-based approach and FPIC.
- Land and forest-related development schemes and projects must not cause forced evictions or resettlement and must not transfer land ownership and tenure from landowners to the state and corporations; FPIC must be applied at every step.
- All development projects, both public and private, must be independently and credibly audited with an open, transparent and accountable process for their socio-economic and environmental impacts on all Malaysians, including ripple-effects in communities outside Malaysia.
- Strengthening the capacity of government monitoring and enforcement to ensure the successful implementation of regulatory standards of practice, due diligence, and most crucially proper understanding of customary land use and tenure systems so that they take a neutral stand between local communities and companies in any land disputes.
- Address weakness and loopholes in coordination with sectors, such as forestry, energy and public utilities.

Actors: Malaysian federal and state governments and various agencies and statutory bodies.

5. On good governance

- Ensure the long-term security of tenure, customary and traditional rights of indigenous and local communities, essential for securing livelihoods and other aspects of life.
- Stopping corruption, money laundering and nepotism must be given the highest priority.
- Stricter law enforcement on violations and speed up prosecution and punishment of violators,

especially politically exposed persons and high level corruption, with independent third party/ international assistance when required.

- Strengthen public awareness of corrupt practices relating to resources, forests and lands and increased knowledge of reporting such cases.
- Provide funding for training on community/public awareness programmes, developing a database on traditional knowledge of forest use, especially the knowledge of traditional elders, both women and men.

Actors: Malaysian federal and state governments, Malaysian Anti-Corruption Commission (MACC), UN and other international agencies (UNODC, EU, Member States, etc.), indigenous peoples and local communities, private citizens, NGOs, development and donor agencies, international business community, investors and banks.

6. Definitional issues and questions over deforestation statistics

- Valuation of forests' goods and services, communities' view of forests as a source of livelihood and existence of communities and their traditional forest-related knowledge and non-timber forest products uses must be taken into account, with value not based just on how the state and industry rank forests primarily as a source of income.
- Existing FAO and official definitions and data of forests and forest-related concepts, deforestation, forest cover and plantations need to be redefined as well as recognition of indigenous and rural communities' views and practices.

Actors: Malaysian policymakers/legislatures, forestry/land-related agencies, indigenous and forest communities, activists, independent media, inter-governmental organisations (especially the FAO), development agencies, industry and international research institutions.



(Image 2) For many indigenous children, forests are their 'living school' on plants, and a place where there is much traditional indigenous knowledge of their people of successive generations.

PART 1: OVERVIEW OF NATIONAL SITUATION

Malaysia's forests encompass many forest types, including mangrove, peat and freshwater swamp, beach forest, tropical lowland rainforest, and hill and montane forest. Indigenous peoples and other communities have sustainably inhabited, managed and used the forests of Peninsular Malaysia, Sabah and Sarawak for centuries. However recent decades have witnessed rapid destruction of, and damage to, Malaysia's once-rich forests. This overview section presents information on the past and present forest status in Malaysia. Land use changes over time are reviewed, both in the past due to historical land uses and colonial legal and policy issues, and the present. The overview also assesses the current direct and underlying causes of deforestation and forest degradation, recognising they are often mutually reinforcing. National and international efforts to tackle deforestation and rights abuses in Malaysia are mentioned, where relevant.

Historical deforestation

In pre-colonial times groups of aborigines – now called the Orang Asli – living on the fringes of the forests of the “Malay Peninsula” and “Malaya”¹⁰, were already collecting forest produce such as rattan, resins (*damar*), gums, saps and scented wood (*gaharu*). These products were for their own use as well as for trade locally and internationally, from China to the Middle East and Europe. The Sarawak peoples, likewise, had traded forest products such as rattan in exchange for Chinese bronze wares, ceramics, glass beads, textiles and large jars, many of which form part of family inheritance today. Similarly, as early as the mid-1880s, gathering non-timber products for domestic use and for trade was an important activity for Sabah's indigenous communities. Various studies have shown that forest resource exploitation by these groups of people had only minor or localised impacts.¹¹

Then came European colonisation, beginning around the early 16th century through until the late 19th century. At different periods, the Portuguese and the Dutch had some minor or local impacts because they concentrated largely on Malacca, as the gateway of trade through the Strait. It was the British rule that had the most significant influence, and in the process of establishing and managing colonial holdings, reorganised the political, economic and social landscape of Malaya and the Borneo territories of Sabah and Sarawak.¹² The British colonisers viewed forests as valueless unless converted into more productive uses such as agricultural plantations or mining, especially tin.¹³ Thus in Malaya, after 1874, the colonial government established various policies and legislations “for a profitable export

10 Both terms correspond to what is today “West Malaysia” and “Peninsular Malaysia”.

11 See, for example, Aiken, S.R. and Leigh, C.H., 1992, *Vanishing Rain Forests: The Ecological Transition in Malaysia*. Clarendon Press, Oxford; Dunn, F.L., 1975, *Rain-forest Collectors and Traders: A Study of Resource Utilization in Modern and Ancient Malaya*. Monographs of the Malaysian Branch of the Royal Asiatic Society (MBRAS M.) No. 5, Kuala Lumpur; Lee Yong Leng, 1965, *North Borneo: A study in settlement geography*. Eastern Universities Press Ltd., Singapore; Jackson, James C., 1968, *Sarawak: A geographical survey of a developing state*. University of London Press Ltd, London.

12 Malacca fell to the Portuguese in 1511, the Dutch in 1624 and the British in late 19 century. British rule expanded to the Federated Malay States and later the unfederated states. Peninsular Malaysia achieved independence from the British in 1957. British North Borneo (Sabah) was ruled by the British North Borneo Chartered Company from 1881-1941, whereas Sarawak was governed by the Brooke family for 100 years (1841-1941). After a brief period of Japanese occupation, Sabah and Sarawak came under direct British rule (1946-1963). They joined the Malaysian Federation in 1963.

13 Various sources, cited in: Majid Cooke, F., 1999, *The Challenge of Sustainable Forests: Forest Resource Policy in Malaysia, 1970–*

economy” largely based on tin and plantation agriculture, including:¹⁴

- introducing new legal and administration structures and apparatuses to support production for export
- widening the ‘modern’ systems of communication including railway networks
- implementing the Torrens system of land tenure
- introducing liberal taxation policies
- introducing trigonometrical land survey
- ensuring cheap labour was available to planters and miners
- ensuring law and order.

Land and plantation development in colonial times

Early plantation agriculture in British Malaya was experimental with a variety of cash crops, influenced by factors such as price fluctuations, soil and nutrient exhaustion, ignorance of the local environment, pests and diseases, competition from other colonies and changing government policy.¹⁵ Crops were chosen primarily by their market prices and no one crop remained permanent. For instance, around 1875, coffee was introduced and grown in small-scale on hilly land and later coastal plains in Malaya. Then the car industry development in the early 1890s created a “rubber boom”, which led to large-scale felling of the Malayan forests for rubber planting. In 1916, commercial rubber planted was some 405,000 ha, doubling by 1921. By 1925, nearly 1 million ha of land had been cleared of forest and planted with rubber.¹⁶ Besides rubber, other cash crops like pineapple in Johor and coconut small-holdings in coastal areas were promoted for agricultural diversification. In Sabah, plantation economies on a large-scale were established much earlier. Tobacco was planted in the late 19th century, focussed mainly in the north-east coast of Sandakan. Then in the beginning of the 20th century, large areas of lands beyond Sandakan were opened up to create rubber estates and new settlements, railways and towns. Sarawak’s economy, like Sabah, was dominated by Chinese traders in gold-mining, vegetable gardening and small-holdings cultivation of rubber, gambier, pepper and sago during the early 14th to mid-15th century, until the British colonialists took over. The adoption of rubber as a commercial crop from 1905 – although it had been introduced in 1881 – had a substantive impact on Sarawak’s forests despite the Brooke policy of establishing smallholder production estates. The continuing high prices of rubber accelerated the pace of land clearance for areas under rubber cultivation.¹⁷

Logging in colonial times

Until the 1940s, timber trees were felled by axe and pulled by water buffaloes and sometimes elephants. Before the 1950s, the logging industry in Malaya and Sarawak was small and for local demand. In Malaya, the timber was mainly used for construction of railway sleepers or as firewood in tin mines, whereas in Sarawak, up until after World War II, timber only played a minor role in Sarawak’s export trade. This was not the case in North Borneo (Sabah). When Sabah became a British

14 Aiken, S.R. and Leigh, C.H., 1992, *Vanishing Rain Forests: The Ecological Transition in Malaysia*. Clarendon Press, Oxford, pages 49-50. For a more detailed account on forests exploitation during the colonial period, see, Aiken, S.R. and Leigh, C.H., 1992, op. cit.; Berger, R., 1990, *Malaysia’s Forests - A Resource Without a Future?* Packard Publishing Ltd, Chichester; Ross, Michael L., 2001, *Timber Booms and Institutional Breakdown in Southeast Asia*. Cambridge University Press, Cambridge; Lee Yong Leng, 1965, op. cit.; Jackson, James C., 1968, op.cit.

15 Aiken and Leigh 1992, op.cit. pages 52-53; Berger 1990, op. cit.

16 Jomo, K. S., Chang Y. T., Khoo K. J. and others, 2004, *Deforesting Malaysia – The Political Economy and Social Ecology of Agricultural Expansion and Commercial Logging*. Zed Books and UNRISD, London and Geneva.

17 Jackson, C., 1965, op. cit. pages 89-98.

colony from 1881 to 1963, the British turned Sabah into an important base for its trade expansion and commercial profits. Timber was an important export earner and mainstay of Sabah's colonial economy. From 1920 to 1952, all commercial logging was controlled by a private company called the British Borneo Timber Company (BBT) and during this time the forests were managed by new forestry institutions of the British Crown.¹⁸ In the 1930s, timber exports accounted for about 95% of the colonial economy in Sabah, and by 1959 timber was North Borneo's most valuable export. The timbers were exported to Hong Kong, and later also to Japan.¹⁹ In Sabah, the introduction of logging, tobacco and rubber plantations by the colonisers had led to rapid forest conversion between 1890 and 1930, and continuing thereafter.²⁰

Large-scale commercial logging in Sarawak for the timber export trade began around the late 1940s. Within the short time span of two decades, timber had replaced rubber as Sarawak's main export. In the 1950s the timber industry was mainly confined to the exploitation of ramin along the extensive coastal peat-swamp and mangrove forests. From the early 1960s, when ramin had been over-exploited, logging rapidly spread to the hill dipterocarp forests in the interior area. Timber extraction and other forest produce during the colonial period was facilitated by the introduction of laws and policies, land tenure arrangements and institutional changes which supported the forestry sector. For example, forest management systems were established and professional foresters were brought in from England. Forest-related policies and legislations were introduced that alienated land tenure rights of local people, indigenous and non-indigenous, towards the state and private corporations. After independence these colonial systems and laws were continued by the Malaysian government at federal and state levels because the government and allied elites could benefit, as the colonisers had benefited, from controlling the forest, lands and resources (see below).

Emergence of post-colonial logging industry

The timber industry that developed rapidly from the early 1960s onwards was largely responsible for the loss of forests in Peninsular Malaysia.²¹ The opening up of previously isolated curfew areas of forests after the end of the insurgency between the British colonisers and communists in Malaya in 1960 was a key factor that had intensified logging. Throughout the 1960s and 1970s, timber export was a major source of foreign exchange income for Malaysia. Modern technologies such as chain saws, crawler tractors and winch lorries, changed the face of logging dramatically: for example, the use of heavy machineries to build roads to access felling sites and to transport the cut logs, to fell trees and to extract logs. All these also caused severe damage to the soil, vegetation, forest undergrowth, river and ground water sources. Sabah and Sarawak both became Malaysian states after the British colonisers left in 1963. Colonial forestry laws and regulations were quickly amended to bring forest resources directly under state jurisdiction. The chief ministers of Sarawak and Sabah respectively gained extensive political powers and wide discretion over the use of forests, particularly over the issuance of timber concessions and logging licences (Ross, 2001:87-156). There was a marked increase in logging activities. In Sarawak, from the early 1960s, ramin had been over-exploited. In Sabah, timber (logs and sawn) overtook rubber as chief forest export from 1959. But Sabah's natural forest areas were already decreasing due to excessive logging in the 70s and early 80s. Over the period 1966-1991, deforestation in Malaysia was estimated as 1.85 million ha, or an average total of 74,000 ha of forest loss each year.²²

¹⁸ Ross, Michael L., 2001, op. cit. pages 94-99.

¹⁹ Aiken and Leigh 1992, op.cit. page 61.

²⁰ McMorrow, J and Mustapha Abdul Talip, 2001, Decline of forest area in Sabah, Malaysia: Relationship to state policies, land code and land capability. *Global Environmental Change*, vol. 11, pages 217-230.

²¹ See, among others, Aiken and Leigh 1992; Berger, 1990; Ross, Michael L., 2001. Full references in earlier footnotes.

²² Jomo, K. S., Chang Y. T., Khoo K. J. and others, 2004, op. cit.

The problem with statistical data and data sources is described later (Box 1). However, to show how using statistics generated by different sources with different emphasis can influence the assessment of the extent of logging today, we present Table 1. It is a snapshot of the status of Peninsular Malaysia's forests. We have identified the following trends:

Protection forests are forests which should not be logged, and these include forests on steep slopes, river banks, heritage sites, and so on. The total area of these forests, as provided by official data, namely the Malaysian Timber Council (MTC) for the year 2009 and the Ministry of Primary Industries for 1983 (grey) is higher than the other data sources including the World Bank estimates but lower than the area proposed in 1977 based on the recommendations of the National Forestry Council.²³ This “magical” increase in the Ministry/official data when compared to other more independent data sources is aimed at giving a higher figure to show Malaysia has ‘achieved’ notable forest conservation (green).

By 1991, the primary forests were almost gone. Of the total 13.2 million ha land area of Peninsular Malaysia, only a total of 0.4 million remained as primary forests. This was the estimate by the World Bank, whereas the MTC did not provide this data in their report (red).

In 1977, the proposed area for logged-over forests as recommended by the National Forestry Council was 2 million ha. By 1991, it was increased to 2.4 million ha, which showed that logging was happening in logged-over forests because most of the primary forests were gone (brown).

Conversely, conversion forests were reduced from 2 million ha in 1997 to 0.2 million ha in 1991, indicating that “planted” forests were increasing, which currently means oil palm (blue).

Table 1: Extent and Status of Forest Areas in Peninsular Malaysia

(Compiled by author with figures from Table 4.1 in Berger 1990, op. cit., World Bank 1991 and MTC 2011)

	1966 ¹	1977 ² (proposed)	1981 ³	1983 ⁴	1991 ⁵	2009 ⁶
Total Land Area of Malaysia: 32.98 million ha						
Land area of Peninsular Malaysia: 13.2 million ha						
Area of primary forest as percentage of land area	69	55	39	47	42	45
Total area of primary forest (million ha)	9.1	7.2	5.2	6.2	5.5 ^{5a}	5.89
Permanent forest estate/PFE		5.2			4.74	4.87 ^{6a}
Protection forest+		1.9			1.9	2.04
Productive PFE		3.3			2.84	2.83
- Virgin*		1.3			0.4	(no data)
- Logged*		2.0			2.4	(no data)
Forests for conversion to agriculture (State Land Forest / SLF- Virgin and Logged)		2.0			0.2	0.39 ^{6b}
Total Logged Forest*		3.5			3.1	(no data)
Virgin Loggable Forest		1.8			0.4	

²³ The National Forestry Council was established in 1971 resulting from the government's concern about the uncontrolled rate of forest clearance in the 1960s (especially for commercial cash crop growing). The Council's role was to formulate forestry policy. The broad policy emphasised conversion of forested land suitable for agricultural development (3.3 million ha) and the remaining 5.8 million ha of the forests for logging for timber extraction for domestic use and for export. An interim policy was formulated but later fully adopted. There was an estimated 7.2 million ha of forests in the peninsula and further designated and gazetted for different purposes.

Sources:

1. Figures based on aerial photographs taken in 1974 at the time of formulating the National Forestry Policy; Davidson, G. 1982, *Malayan Naturalist*, January (cited in Berger 1990, op. cit., page 52).
2. Salleh M.Noh 1982, *Forestry in Peninsular Malaysia and its Role in Environmental Conservation*. In: *Development and the Environmental Crisis: a Malaysian Case*. Consumers Association of Penang (cited in Berger 1990, op. cit., page 52).
3. Davidson, G. 1982, *Malayan Naturalist*, January (cited in Berger 1990, op. cit., page 52).
4. Annual Report of the Minister of Primary Industries, 1983 (cited in Berger 1990, op. cit., page 52).
5. World Bank 199, *Country Study on the Forestry Sub-sector of Malaysia*, Table 2.1, p.4
6. Malaysian Timber Council, *Malaysia: Forestry & Environment (Facts & Figures)*, 2011, Table: Area under tree cover 2009 p.2, Forest Land use in Malaysia 2009 p.4

Key:

- * Some logged-over forests are already capable of yielding a second harvest, others are not (Source notation).
- + Protection forest: forest on steep slopes, river banks, etc. which should not be logged (Source notation).
- 5^a The World Bank cautioned that these figures were still estimates (Source notation) [thus the PFE and SLF figures don't add up].
- 6^a MTC data, 2011. [Source data categorised as Permanent Reserved Forest (PFR) which included sub-category of National Parks, Wildlife & Bird Sanctuaries to be maintained in perpetuity, which the table here has excluded].
- 6^b MTC 2011. [Source Note: Conversion Forest to be converted to other uses in the context of balanced long term development.]

Rapid expansion of destructive logging in the 1980s

In the 1980s, Malaysia dominated the international trade in tropical hardwood. Malaysia was the world's major exporter of logs (from Sabah and Sarawak) and processed sawn wood, plywood, and veneer (from Peninsular Malaysia). The height of the tropical hardwood timber trade was in the 1980s. Large tracts of forests were being logged in Sabah and Sarawak to provide round logs for Japan, Taiwan and South Korea, whereas the main markets for exports of Malaysian sawn wood and veneer were Singapore and Western Europe.²⁴ Logging in Malaysia, both legal and illegal (as in most tropical timber exporting countries) is often under-reported. But major media coverage on the logging blockades by the Penan, and other indigenous communities in the interior forests from the 1980s, generated publicity and destructive industrial logging gradually became known.

Logging in Peninsular Malaysia slowed down significantly in the 1980s with the ban on logs exports in 1985 and the adoption of a National Forestry Policy in 1986 to reduce the annual cutting rate of timber through selective harvesting systems. This decline was used by the government to demonstrate the country's progressive commitment towards sustainability concerns. However, critics said that the decline was caused by over-harvesting in the last three decades.²⁵ While this reduction plan was somewhat effective in reducing the rate of logging (at least in the case of legal logging), land conversion for oil palm and other plantations increased,²⁶ as did timber extraction in Sarawak and Sabah. Thanks to the timber windfall, logging remained a profitable business for the political and economic

24 See, Aiken and Leigh, 1992, op. cit. page 71; Nectoux, F and Dudley, N, 1987, *A Hard Wood Story: Europe's Involvement in the Tropical Timber Trade*, Friends of the Earth and Earth Resources Research Ltd, UK.

25 Friends of the Earth International, October 2013, *From Policy to Reality: Sustainable Tropical Timber Production, Trade and Procurement*. A critical analysis on forestry governance in Malaysia and the timber importation and procurement policies of Japan, South Korea and Australia. Amsterdam. Available to download from: www.foei.org

26 This excluded direct forest clearance but utilising cleared lands that were found unsuitable for agriculture, which was one of the proposals under the National Forestry Policy to allocate 10% of the peninsula's land areas for forestry plantations. As often witnessed in the field however, there was very little if any of enforcement of the regulation and monitoring. Thus the actual amount of lands converted was of a bigger area than legislated.

elites of Sabah and Sarawak, to this day, including *rent-seizing* incentives for wealth accumulation (Ross, 2001). The “discredited” Malaysian Timber Certification Council (MTCC) reports that Malaysia’s export of *certified* timber products showed an increase of 16% from 96,722 m3 in 2011 to 112,098 m3 in 2012.²⁷ Saudi Arabia, Pakistan, Bahrain, Finland, China, Jordan, Sweden, Oman, Qatar and Kuwait were the latest destinations. Malaysia exports to 23 countries, namely the Netherlands, Belgium, Germany, the United Kingdom (UK), France, Australia, Greece, Denmark, Poland, Italy, Norway, Indonesia, South Africa, South Korea, United States of America, Japan, the United Arab Emirates (UAE), Mauritius, New Zealand, Albania, Ireland, Singapore and the Philippines. For Europe, the Netherlands is the largest market with 33% (36,901 m3) of the total volume exported in 2012, followed by the UK with 26%.

Post-colonial commercial plantations development

Commercial plantation and agribusiness expansion for rubber, oil palm, eucalyptus tree, etc, are a significant cause of forest loss and land grabs. They bring with them a need to create new settlements for the labourers and their families, especially for plantations located in very remote areas. This means more forests are being cleared for establishing settlements, roads and other physical infrastructure around the plantation sites in addition to the area taken up by the plantation sites themselves. By 1980, Peninsular Malaysia had about 2 million ha under rubber which dropped to 1.4 million ha in 2000.²⁸ Fluctuations in the rubber market led many large rubber planters to switch to oil palm for better returns. Between 1978 and 1982 commercial oil palm acreage increased by nearly 200%.²⁹ According to an article in a United Nations Environment Programme publication, by the early 2000s, 8.3 million ha of closed canopy oil palm plantations were established in Peninsular Malaysia, with one-tenth of that surface established on peat lands (880,000 ha or 6% of total peat land area).³⁰ The article also revealed that 2.3 million ha of peat swamp forests clear-felled by 2010 are degraded lands today. The increasing scarcity of available lands in Peninsular Malaysia has led to plantation development and expansion shifting to Sabah and Sarawak.

27 MTCC Annual Report 2012, available from: www.mtcc.com.my. Accessed on 3 December 2013. In MTCC’s terms, *certified* [our emphasis] timber refers to its voluntary national timber certification scheme, Malaysian Timber Certification Scheme (MTCS) endorsed by the Programme for the Endorsement of Forest Certification schemes (PEFC). However, virtually all environmental and social NGOs and indigenous/forest-based groups in Malaysia (which withdrew in early 2000 from the MTCC “consultation” process) and abroad have denounced this scheme as not yet credible and not of international acceptable standards. The reasons, among others, are the MTCC is very much a government lead scheme, it does not clearly recognise the rights of forest peoples to their traditional lands and Adat rules, and its goal is to sell timber over and above all else. See, for the details on the background and NGOs’ statements, Indigenous peoples’ media statement on the MTCC presented 19 February 2004 at the 7th UN Conference of Parties (COP7) On The Convention On Biodiversity (CBD), Kuala Lumpur; Yong, Carol (2001) *Report/Proceedings: Community Workshops on the FSC-MTCC Malaysia Collaboration-Development of FSC-Compatible Malaysian Criteria, Indicators, Activities and Standards of Performance (MC&I) for Forest Management Certification*; Yong, Carol (2002), The Malaysian Timber Certification Scheme and the FSC, Case Study 8: Malaysia, in “*Trading in Credibility: The myth and reality of the Forest Stewardship Council*”, The Rainforest Foundation, UK and Norway; and Logging Off, www.loggingoff.info.

28 Woon Weng-Chuen and Norini, Haron, 2002, Trends in Malaysian Forest Policy. In: Policy Trend Report, pages 12-28. Forest Research Institute Malaysia, Kuala Lumpur.

29 Berger, R. 190, op. cit. page 27.

30 Koh et al, 2011, cited in: United Nations Environment Programme *environment for development*, December 2011. Thematic Focus: Ecosystem Management and Resource Efficiency. <http://www.unep.org/GEAS/> Accessed on 20 October 2013.

Present deforestation

Historically, several factors have been instrumental in affecting the patterns and trends of land use in the three Malaysian regions. These include: formalised legal systems and policies on land and forest use, land use classifications, land tenure, “scientific forestry” and administration. The colonisers’ laws, institutions and practices differed greatly from indigenous and non-indigenous forest peoples’ perspective of forests and lands. The colonisers’ economic paradigm was based on profiteering from the lands. This resulted in natural forests and lands for communities who inhabited those areas dramatically worsening over time. The exploitation of the forests has continued relentlessly until today, in various contexts, as discussed below.

Satellite images indicate alarming deforestation rates

In terms of a surge in deforestation during the first quarter of 2014, NASA’s satellite-based tool to detect areas where deforestation and forest degradation is occurring on a quarterly basis, the Quarterly Indicator of Cover Change (QUICC), has ranked Malaysia second (150% increase) after Bolivia (162%).³¹ These areas of significant new forest disturbance are corroborated by FORMA alert data generated by Global Forest Watch, a forest-monitoring platform which also uses NASA data to generate reports on potential forest loss.

New Google Earth mapping has also exposed alarming rates of deforestation and forest degradation in Malaysia.³² The mapping was carried out by a team from University of Maryland to document forest loss and gain between 2000 and 2012 using satellite images and has revealed that:

- Malaysia is (with Cambodia and Paraguay) one of the world’s three countries with the highest national deforestation rates. Malaysia lost an estimated 14.4% (4.5 million ha) of its forests and tree cover from 2000-2012.
- Malaysia is ninth in the world in area of forest loss.
- During 2000-2012, Malaysia lost a larger proportion of its dense forests (>75% canopy) than any other major tropical forest nation – about one football pitch every 1.5 minutes.
- Deforestation during the last decade is actually worse in Malaysia, in percentage terms, than in Indonesia.
- Actual deforestation rates in Malaysia since 2000 have been three times higher than Malaysia reports to the FAO.

Another piece of research has attested to the alarming trends in Malaysia’s forest loss. The research team from the University of Tasmania, University of Papua New Guinea, and the Carnegie Institution for Science, using high-resolution satellite imaging of the Carnegie Landsat Analysis System-lite

31 NASA detects surge in deforestation in Malaysia, Bolivia during first quarter of 2014, mongabay.com, April 21, 2014. Available in full from: <http://news.mongabay.com/2014/0421-glofdas-2014q1.html#IUvBCJyvH4VHMr02.99>

32 M. C. Hansen, et. Al, ‘High-Resolution Global Maps of 21st-Century Forest Cover Change’ 15 November 2013. In: *Science Vol. 342 no. 6160 pp. 850-853.DOI:10.1126/science.1244693*. See also, “M’sia has one of world’s highest rate of deforestation”,

<http://www.malaysiakini.com/news/246755> and <http://www.bbc.co.uk/news/science-environment-24934790>. Accessed on 16 Nov

2013. *Note:* Although agreeing that this Google Earth map was useful as an overview, Victor from Transparency International-Malaysia said the findings had limitations such as no ground verification, replanting processes, etc. (Response to cyber questionnaire via email, 23 December 2013). Echoing similar views, a respondent with some years of dealing with forestry agencies and the industry said there was a need to do “ground truthing” to verify the satellite imagery with actual situations on the ground (Email of 3 January 2014 to Carol Yong).

(CLASlite), highlighted that more than 80% of tropical forests in Malaysian Borneo have been heavily impacted by logging.³³ Analysis of satellite imagery collected from 1990 and 2009 over Malaysian Borneo showed approximately 226,000 miles (364,000 km) of roads constructed throughout the forests of this region. Nearly 80% of the land surface of Sabah and Sarawak was revealed to be affected by previously undocumented, high-impact logging or clearing operations. The research further revealed that in 2009, only 8% of land area in Sabah was covered by intact forests in designated protected areas and only 3% in Sarawak, whereas Brunei has 54% of the land area maintained as intact unlogged forest. Team leader Jane Bryan said: *“There is a crisis in tropical forest ecosystems worldwide, and our work documents the extent of the crisis in Malaysian Borneo. Only small areas of intact forest remain in Malaysian Borneo, because so much has been heavily logged or cleared for timber or oil palm production.”* Those areas not already cleared are under immediate threat as logging concessions are active and loggers are ever advancing into intact forests on a daily basis.

A series of investigations and documentation by FPP, local partners and communities back up these alarming findings of deforestation rates, notably forest conversion for oil palm and other plantations in Sabah and Sarawak.³⁴ Currently there is already one million ha of land under oil palms in Sarawak yet the Land Development Minister James Masing said the government intended to double the area to 2 million ha by 2015, whilst the Sarawak Oil Palm Plantation Owners Association (SOPPOA) recently revealed, by accident, that the Sarawak government’s actual plan is to achieve 3 million ha of oil palm.³⁵ In Sabah, by 2012, almost 1.5 million ha of oil palm had been planted.

Issues over definition and statistics/data on deforestation rates

Malaysia’s forests are deteriorating and disappearing at an alarming rate, way beyond the rate at which they are regenerating. Most of the economically-attractive forests for timber extraction are now gone. Malaysia’s timber resources have been largely depleted and have been overtaken by oil palm plantations. Despite the evidence given above, both federal and state authorities continue to claim that Malaysia still has a high level of forest cover. For example, former Sarawak chief minister Taib Mahmud has repeatedly claimed that Sarawak is over 70% forested and that the state remains committed to sustainable forestry.³⁶ It is clear that in claiming this, Malaysia takes advantage of the

33 Bryan JE, Shearman P.L., Asner G.P., Knapp D.E., Aoro G., et al., 2013, ‘Extreme Differences in Forest Degradation in Borneo: Comparing Practices in Sarawak, Sabah, and Brunei’, in: PLoS ONE 8(7):e69679.doi:10.1371/journal.pone.0069679.

34 For more details on the case studies, see, Colchester, M. and Chao, S. (eds.) (2013). Conflict or Consent? The oil palm sector at a crossroads. Forest Peoples Programme, Sawit Watch and TUK Indonesia.

35 Sarawak Report, 20 January 2014.

36 On 12 February 2014 Taib resigned from the chief minister post he had held for 33 years and “hand-picked” Adenan Satem, a former brother-in-law to succeed him. Adenan officially took office on 28 February and the next day Taib was appointed Sarawak’s Governor (Head of State). This transition of power to Adenan and Taib’s promotion was an “expected plan of succession”. Adenan Satem was reported as saying that tenure for timber licences can be extended up to 60 years from the date of issuance to encourage logging operators to obtain Sustainable Forest Management (SFM) certificate, emphasising major licence holders like KTS, Shin Yang, WTK, Samling, Rimbunan Hijau, Ta Ann and Sarawak Timber Industry Development Corporation (STIDC) to obtain the International Forest Management Certification for their timber products from MTCC’s (MTCS or FSC or PEFC schemes. For the full reports, see: Tenure Of Timber Licence Could Be Extended To 60 Years, 20.08.2014 <http://www.bernama.com/bernama/v7/ge/newsgeneral.php?id=1061931> and Longer tenure for timber licence, 21.08.2014 <http://www.theborneopost.com/2014/08/21/longer-tenure-for-timber-licence/>. Fundamental issues are not treated, including whether there is political will and transparency of logging companies and the Sarawak Government to reveal full details on licences issued and the companies involved, to address ongoing forest lands disputes between logging companies and local communities, to investigate and take appropriate actions on allegations of corruption against ministers and loggers, and to recognise and protect collective NCRs of forest peoples over their lands and safeguard the rights of forest peoples in Malaysia? See also Sarawak Parti Keadilan Rakyat (PKR) statement against the government’s decision to extend the tenure of timber licence: <http://www.theborneopost.com/2014/09/30/pkr-against-extension-of-timber-licence-tenure/>. Accessed 30 September 2014.

FAO's language that defines industrial plantations as "planted forests." Thus formally reported data often becomes a poor indicator of the scale and less obvious causes of deforestation, adding to the difficulties of ascertaining the actual extent and rate of Malaysia's forests and forest loss. This case study has identified three broad issues: (i) problems with definition of forests; (ii) questions over deforestation statistics and lack of reliable data; and (iii) differing views of forests and forest resources.

Box 1: Definitional issues and questions over statistics

What constitutes a forest?

The parameters used by Malaysia and many tropical forest countries is the FAO's definition, which is 10% forest cover and which includes monoculture/industrial tree plantations as "planted forests." Forest peoples who live in or close to forest areas, however, see the forests as more than just trees. Forests are living ecosystems with spirit and soul, rich in biodiversity. They sustain forest peoples' livelihood, social, cultural and spiritual well-being (see, Part 2).

Questions over statistics and data

There is a considerable discrepancy between the sets of figures available. Statistical data often serves the defined agendas and purposes of those who produce or commission it, so it is not possible to make water-tight conclusions. Yet, various government agencies have glossed over Malaysia's forest cover purely in number terms. For example, the Malaysian Timber Council (MTC 2011) echoes government data reported to the FAO, that over 62%³⁷ (20.5 million ha) of the country is under forest and tree cover (see Map 1a). It further claims that Malaysia's forest cover is higher than Indonesia (52.1%) and China (21.9%), but there is no explanation on how the figures are calculated or the criteria used to reach such figures. Furthermore, state and national data usually is not based on wide-scale research or in-depth examination of underlying causes of forest loss. In addition, the FAO definition of "forest" that includes planted forests (e.g. rubber and other monoculture plantations) has been widely criticised by indigenous peoples and a range of NGOs. Common official data sources on timber production and exportation trends of Malaysia include: (FOE 2013)

- Malaysia Timber Industry Board (MTIB), based on regional inputs from Sarawak, Sabah and Peninsular Malaysia. It publishes statistical information on timber exports
- The three regional forestry departments, Forestry Department of Peninsular Malaysia, Sarawak Forests Department and Sabah Forestry Department (provide timber production data)
- Sarawak Timber Industry Development Corporation (STIDC), a state statutory corporation, that undertakes activities related to the planning, coordination and development of the timber-based industry in Sarawak
- Forest-related education & research institutions: University Putra Malaysia and Forest Research Institute Malaysia.

Differing views of forests and forests resources

There are contrasting and conflicting views of forests, forest resources and forest management in Malaysia. The federal and state governments largely view forests and forest resources as revenue sources as opposed to forests peoples' perspective as sources of livelihoods and existence (see Part 2). Official views often prevail that forest exploitation for timber export is not rainforest destruction but state revenue earnings. This Malaysian case study prioritises the local and indigenous forest peoples' view on forests, including both material and non-material value of forests and forest resources.

Fifty-five percent forest cover or eleven percent conservation areas?

Friends of the Earth International, in its October 2013 report, states that the terminology of forested area/cover neither automatically implies that the forests concerned have received full legal protection in order to ensure their permanency nor that they are protected from timber harvesting activities. While Malaysia may claim that in 2008 the country had maintained some 18.08 million ha of forested areas, covering 55% of the country's total land area, 10.80 million ha or 59.7% of these have actually been reserved for timber production to take place in perpetuity. In short, in 2008, at least 32.7% of Malaysia's total land area has been reserved for timber harvesting activities and the country's totally protected areas stood at only 3.61 million ha or a mere 11% of the country's total land area.

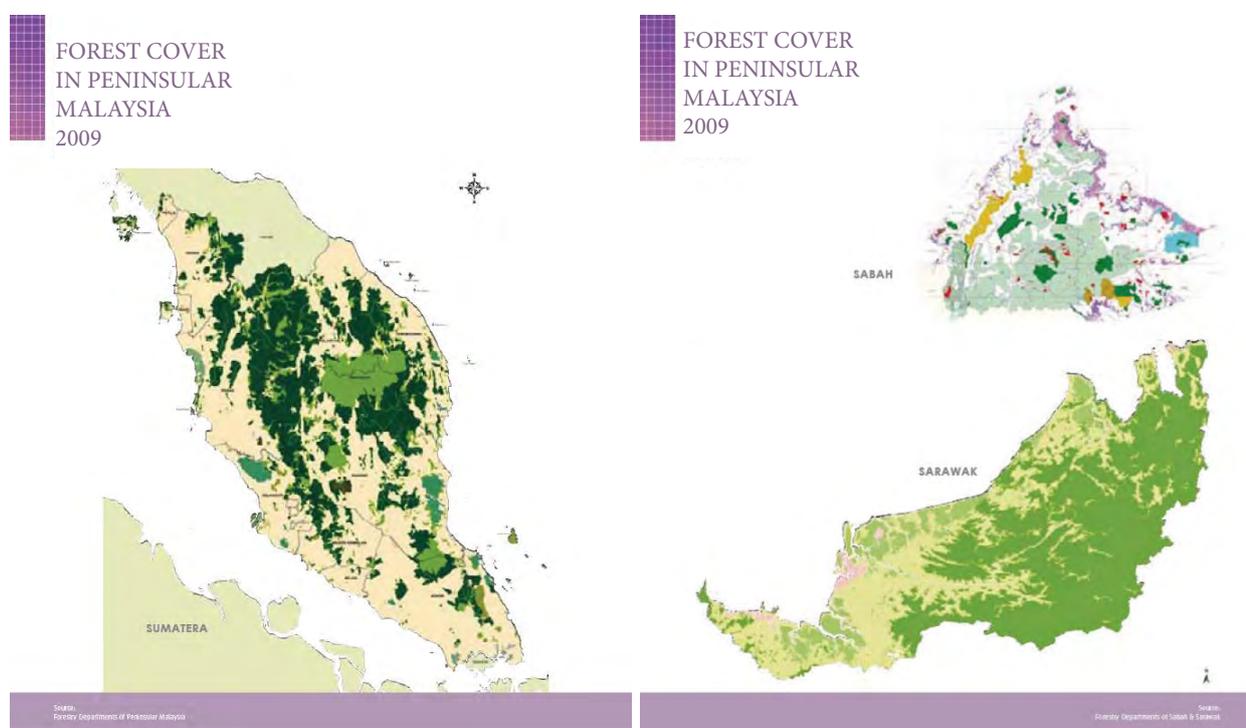
Two different sets of maps below illustrate the stark contrasts between Malaysia's claims on forest cover (Map 1-a) and the Google Earth mapping based on academic study of the research team from the University of Maryland. (Map1-b). The University of Maryland data may provide some insight on questioning the existing ways of Malaysia treating forest cover data.

Map 1-a: Forest cover in Sabah, Sarawak and Peninsular Malaysia, 2009

Source: Forestry Departments of Peninsular Malaysia, Sabah and Sarawak. Cited in Malaysian Timber Council, Malaysia: Forestry & Environment (Facts & Figures). MTC 2011, www.mtc.com.my.

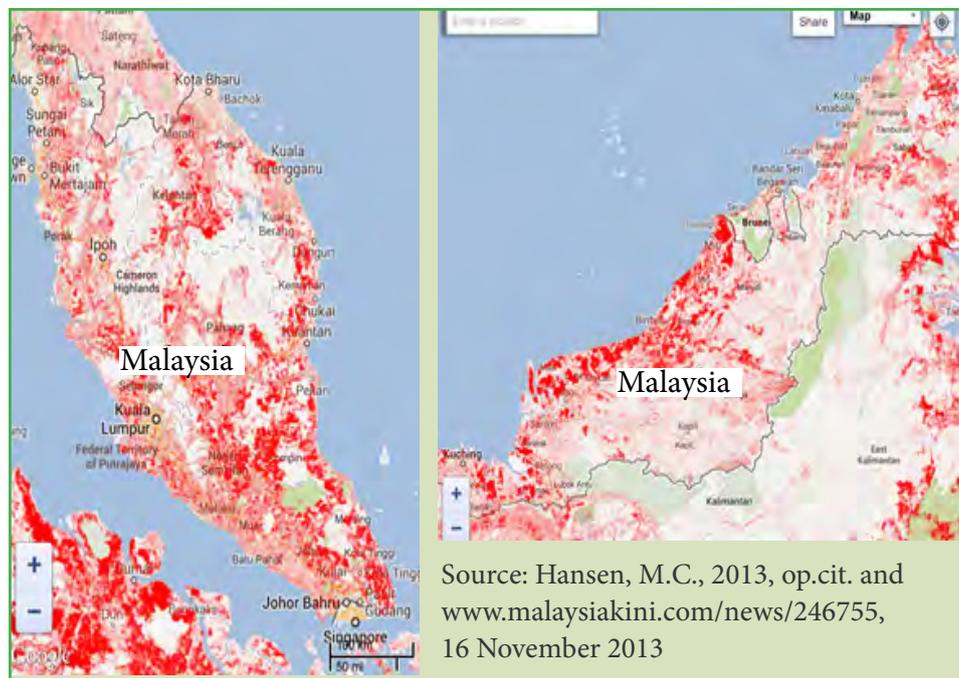
See, <http://www.mtc.com.my/info/images/stories/.../factsheets.pdf>, pp.8-9. Accessed on 4 November 2013.

Key/Legend: Maps sourced from MTC website, no explanatory notes provided.



37 Based on the data in Country Report: Malaysia to FAO for the Global Forest Resources Assessment 2010 (also known as FRA 2010) (FAO, 2010).

Map 1-b: Google Earth mapping of forest change, Global Forest Change University of Maryland



Key/Legend: Red indicates Forest Loss. The Peninsular states of Kelantan, Terengganu, Pahang and Johor have the most intense clearing activities. In Sarawak, the long coastal areas from Sibü to Miri are the most deforested.

Blaming communities for deforestation

The loss of forest cover today is merely a continuation of a process that began during colonial rule, although the process of deforestation has advanced far further today than during the colonial era. In addition to the drivers discussed already, some communities are also driven to clear other forests moderately to plant their crops because of lack of access to arable lands or to their farms. As lands are seized by outside interests and converted to commercial land uses, communities and local farmers are often pushed off their lands. When NCR lands are lost, communities' once self-sufficient capacity to feed themselves decrease drastically.

Though deforestation in Malaysia is primarily driven by industrial logging, large-scale plantations, and megaprojects, time and time again, the government has cited so-called "slash-and-burn" or swidden cultivation by local and indigenous communities as key culprits responsible for deforestation.³⁸ James Wong, Sarawak's Minister for Tourism and the Environment in the 1980s and 1990s and also a major Sarawak timber tycoon, said:

³⁸ Repetto 1988:57, cited in Ishigami Y., 1996, Deforestation in Indonesia and Malaysia - A search for sustainable tropical forest management. MSc Thesis, Faculty of The College of Arts and Science of Ohio University, USA, page 35.

Some people have said that “Shifting Cultivation farming does not destroy forest.” I do not know how they could ever have come to this conclusion except if they have never seen shifting cultivation areas for themselves. The fact is that the slashing and burning of the primary forest for farming will result in all trees and seedlings being destroyed. [His emphasis]³⁹

In other words, clearing forests entirely for monoculture plantations is not seen as destructive, whereas temporary forest clearance and burning of selected plots as farms for hill paddy planting is. Shifting the blame to local farmers disguises the many so-called development projects that involve clearing vast areas of forests and exploiting resources in different ways, both direct and indirect. Are these trends likely to continue in the future? All indications point to the continuing logging process as concessions have not been halted but renewed, and logging continues on a daily basis. Analysis of inter-linking causes and actors point to much work to be done to keep remaining forested areas in Malaysia intact. There is a long way to go in amending government decisions and policies to fully recognise the rights of indigenous and non-indigenous forest peoples, including their rights to access and use forest resources. Alongside robust measures to secure NCR, including through land restitution, there is a need for official policies to recognise and protect the customary agroforestry systems that are essential to sustainable local livelihoods. There is a pressing need to incorporate agroforestry in land use planning using an integrated approach in support of local livelihoods and forest and climate protection. Effectively, the dominant economic model of large-scale capital-intensive land development cannot be accepted as the only viable model to dominate land development.

Drivers of deforestation and forest degradation

Factors causing forest loss in the three regions of Sarawak, Sabah and Peninsular Malaysia cannot be generalised, as each region has its own history, socio-economic and political developments, settlements, land use patterns and land tenure systems, and so on. Nevertheless, dominant political and economic interests that influence decisions on lands, forest and natural resources are often linked with the desire to yield maximum profits by controlling those resources. In this context, it is relevant to point out that the causes of deforestation and forest degradation identified in this Malaysia case study (Box 2) reflect many of those causes identified some 15 years ago at the Global Workshop in 1999 in Costa Rica.⁴⁰ The Costa Rica Workshop emphasised that underlying causes and actors of deforestation and forest degradation “form part of a complex chain of causality” that often influenced one another and the outcomes.

³⁹ James Wong, 1992, Hill Logging in Sarawak, pages 18-20. Apart from the printer’s name (Sarawak Press Sdn. Bhd.) and foreword by Prof. Ebverhard F. Bruenig, Kuching, 16th May 1992, no other details were provided about this 33-page book, maps and appendices excluded.
⁴⁰ cf. footnote 1.

Box 2: Major causes of deforestation and forest degradation in Malaysia

Direct causes

- Industrial logging, both legal and illegal, causing degradation of forest resources.
- Indirect consequences of logging, such as the construction of forest roads to access the base camp and temporary housing for logging workers, river pollution and damages to forest floor, soil, vegetation, etc. by logging trucks and heavy machineries. These forest roads often open forests to further encroachment not only by the logging companies but also migrants to clear remaining trees, etc.
- Natural forest clearance or conversion of forested lands to other land uses, usually with logging as a precursor activity. These other activities include: oil palm and other industrial tree plantations, agribusiness expansion, large dams, extractive industries such as mining and quarrying (e.g. open pit, blasting) and mining-related activities such as the processing facilities and the tailings, and land development and other land schemes (e.g. agricultural schemes, rubber estates, and so on)
- Infrastructure and urban development projects such as construction of roads and highways, industrial plants and factories, hilltop bungalows and resorts, and other facilities related to urbanisation and demographic changes.
- Consumer demands for logs and for palm oil particularly among food producers and the bio-diesel industry, have resulted in more forests being logged and or cleared to establish new palm plantations, leading also to increasing commodification of nature and resources.

Indirect or underlying drivers

Behind the direct causes are multiple indirect processes and drivers, usually interconnected – these vary regionally within the country. The important underlying causes include:

- National and state legal and policy instruments and related contradictions arising from different levels and actors of federal and state power and jurisdictions over land and forestry legislation and policies. Protection of each state's power over land and forest resources often results in continued contradictions with federal government's policies, regulations, enforcement, projects, etc. However, the development options of both federal and state governments have favoured large-scale 'development' projects such as commercial agriculture plantations, large dam projects, etc. Monitoring and enforcement of the many laws for land and forests protection is relatively weak, and inevitably the roles in tackling the many issues connected with deforestation is also weakened.
- Many of the existing land and forest laws have colonial (British) origins. These laws are not only outdated but over time have been amended and tightened by post-independent federal and state governments, steadily eroding the collective customary rights of forest peoples over their lands. Pre-existing customary land rights of forest peoples are systematically ignored and overridden, due in part to unjust land acquisition and concession allocations to commercial enterprises, and a failure by the state to uphold the core standard of FPIC.
- Weak forest governance, including flawed or absence of provisions for full local forest community and gendered perspectives. Consequently, this exacerbates the disempowerment of local communities,

marginalisation of women, women's rights to community resources, and unequal and insecure land tenure of families and forest communities.

- An indirect driver, identified through the analysis and local assessment, is ineffective governance or a non-transparent, non-accountable system of governance that allows for corrupt politicians to lease out licences for logging and then for land leases to be issued to corporations and private individuals, etc, at the expense of land owners. Yet, Malaysia's "commitment" to curb systemic corruption, nepotism and political patronage in appropriation of forests and natural resources through logging, land leases and concessions, especially of 'politically exposed persons' (PEPs), remains to be seen.
- Interaction of international, national and local factors, including links with trans-border forest governance and crimes, e.g. global corruption, money laundering, tax evasion. Malaysia ranks fourth in global capital flight (GFI report, 2013). Logging concessions, permits, contracts and allocation of rights to exploit forests and state assets are often controlled or held by powerful political and economic elites and well-connected corporations. Also, unethical financial and investment culture, unsustainable trade and consumption patterns, perverse large-scale infrastructure "development" (e.g., dam-building), perverse incentives (e.g., tax breaks for foreign companies), have contributed to an increase in deforestation.

Direct drivers of forest degradation and deforestation

Industrial Logging

Large-scale commercial logging started in the 1960s (see above) and is a major cause of the massive depletion and degradation of forest lands in Malaysia. It is important to note that logging is only the first stage in opening up areas for actual forest clearance and land use conversion. Timber exports have been a major foreign exchange earner for Malaysia.⁴¹ Therefore large areas of forests under the control of the individual state government have been licensed to logging companies through state-granted timber concessions. This led to a dramatic rise in the pace and extent of logging, particularly in Sabah and Sarawak in the 1980s, the peak period of timber boom (Ross, 2001).

Despite the Malaysian timber export volume's steady decline in the 1990s, in 2008 Malaysia was still the world's largest exporter of tropical logs, sawn timber, veneer and plywood.⁴² At that time, Malaysia exported 4.19 million tonnes of tropical logs (which accounted for about 35% of the world volume of tropical timber producer countries) 3.7 million tonnes of sawn wood, 303,511 tonnes of tropical veneer and 4.5 million tonnes of plywood (Table 2). China, India, Japan and Taiwan were the world's top tropical log importers, purchasing some 6.94 million tonnes, 3.30 million tonnes, 0.72 million tonnes and 0.62 million tonnes of tropical logs respectively. The major markets for Malaysia's tropical timber product exports include China, Japan, South Korea and other Asian nations.

⁴¹ Forest revenues may come from royalties and fees (forest produce), timber extraction, sawn log export fees, export duties (timber and forest produce), timber scaling, grading, inspection and marking fees.

⁴² ITTO's Annual Review and Assessment of the World Timber Situation 2009, cited in Friends of the Earth International (FOEI), 2013, op. cit.

Table 2: Summary statistics on global/Malaysia tropical timber production, selected importers and exporters, 2008 (m3)
(Compiled by author using ITTO data cited in FOEI 2013)

MALAYSIA	Logs (m3)	Sawn timber (m3)	Veneer (m3)	Plywood (m3)
Export Production % of global ex. vol.	4,188,216 (35%)	3,714,887 (37%)	304,000 (42%)	4,490,000 (56%)
Total global prod.	141.0 million	44.0 million	4.1 million	18.4 million
Total global im-vol	12.9 million	8.1 million	0.8 million	6.7 million
Total global ex-vol	11.8 million	10.0 million	0.80 million	8.0 million
Top Importers				
China	* 810,495 ** 670,347	* 252,582 ** 237,650		
Egypt				* 660,000 ** 133,000
France		* 16,456 ** 9,683	77,600	
India	* 1,553,413 ** 1,891,356			
Italy		* 8,022 ** 8,693	90,600	
Japan	* 572,982 ** 583,864	* 118,587 ** 240,049		* 1,960,000 ** 2,040,000
Malaysia itself		428,000		
Taiwan	* 519,684 ** 521,832	* 223,699 ** 170,659	*122,060 ** 15,252	* 393,300 ** 397,000
Thailand		* 2,690,060 ** 1,635,301		
The Netherlands		* 32,593 ** 40,598		
South Korea	* 36,683 ** 59,943		* 150,877 ** 14,823	* 333,800 ** 610,000

Legend:

Coloured boxes = Top importer; ex-vol. = export volume; im-vol. = import volume; prod. = production.

* Importing country reporting source (Selected major importers only).

** Malaysian source

Some country data is not given in the FOEI report, while some of the figures do not necessarily tally with the figures reported at the individual country level by the respective national agencies tasked to report on such data.

Source: Statistical data described here was taken from the Friends of the Earth International report titled “From Policy to Reality: Sustainable Tropical Timber Production, Trade and Procurement” (2013). Used with permission.

Today, many government and private agencies in the timber industry claim Malaysia is still the world's largest exporter of timber. Sarawak is said to be the largest timber producer state in Malaysia, meaning timber remains a major export for the state.⁴³ In 2010, Sarawak accounted for 25% of the world's exports of tropical logs, 15% of global tropical sawn wood exports, and almost half of all tropical plywood exports by source country exporters.⁴⁴ Sarawak Timber Industry Development Corporation (STIDC) Chairman and Sarawak's Second Resource Planning and Environment Minister, Awang Tengah Ali Hassan said that the timber industry had contributed MYR 7.2 billion (about Euro 1.8 billion) a year in foreign exchange earnings to Sarawak.⁴⁵ Sarawak's timber industry has shifted from logging and sawmilling as its main activities to secondary and downstream processing activities, such as wood residues processed into value-added products: medium density fiberboard, particle board, charcoal briquettes, laminated veneer, pulp and paper.⁴⁶ Former chief minister Taib Mahmud likewise disclosed that: "We have decided to open up one million ha of planted forest and with that, we can produce at least two and a half times more of the timber currently produced by the state in 20 years' time."⁴⁷ It needs to be emphasised that Taib's "planted forest" means large-scale commercial oil palm plantations, yet another major cause of loss of native rights and deforestation as planted forests are on completely logged areas. As we see later, the Malaysian government, in particular Sarawak, is reluctant to address outstanding issues of native lands, including land grabs for conversion to oil palm and other plantations and agribusiness. There likewise remains the thorny problem of land tenure rights and other issues in Malaysia's VPA negotiations with the EU (see Box 3). Although the government has held several hearings, there has been no inclusive and transparent participatory process, and particularly limited NGO involvement in decision-making. According to the European NGO FERN, the EU FLEGT VPA process is one of the most promising EU tools to address one of the direct causes of forest loss, namely (illegal) logging and to improve forest governance. Yet as FERN has aptly noted:⁴⁸

Forestry issues in many timber exporting countries have tended to be dealt with in a top-down fashion, with governments – often allied with timber industry interests – making decisions and implementing policies. Groups concerned about the forest environment or the many millions of people whose lives are dependent on the forest have usually been excluded from such policy-making discussions.

43 STIDC: Timber still a major export earner, <http://www.theborneopost.com/2013/11/21/stidc-timber-still-a-major-export-earner/> 21 November 2013. Accessed 23 November 2013.

44 Global Witness, November 2012, In the future, there will be no forests left, page 6. Available to download from web: www.globalwitness.org/hsbc

45 See, <http://www.theborneopost.com/2013/12/13/rm7-2b-a-year-in-foreign-exchange-earnings-from-timber-industry/> 13 December 2013. Accessed on 14 December 2013. However, the news on 21 November by the same newspaper quoted the STIDC general manager Sarudu Hoklai's as saying MYR7,45 billion. <http://www.theborneopost.com/2013/11/21/stidc-timber-still-a-major-export-earner/>. This is yet another example of the discrepancy in data and data source, which can distort the assessment on the actual state of the timber industry. More crucially, the question is: Where has all the money earned from selling Sarawak's timber gone?

46 In the first half of 2014, the total export value of Sarawak's timber products was RM3.66 billion. Plywood was the main export product with the total export value of 54% or RM1,98 billion. Japan is the key market for Sarawak's timber products with an export value of RM1.55 billion (40%), followed by India (RM702 million), Tawian (RM379 million) and Korea (RM253 million). See, Timber export value up in first half year, 20.8.2014, <http://www.theborneopost.com/2014/08/20/timber-export-value-up-in-first-half-year-awg-tengah/>

47 See, <http://www.theborneopost.com/2013/12/13/accolades-for-stidc-from-taib-for-role-in-state-devt/>. Accessed on 14 December 2013.

48 Local Civil Society Organisations Join EU Battle Against Illegal Logging. FERN Briefing Note on Forest Law Enforcement, Governance and Trade. July 2012.

Logging blockades

In the early 1980s several communities of indigenous peoples in Sarawak were erecting blockades to halt logging companies from encroaching into their communal forests. Often set up as road blockades, these actions were an often last desperate resort and open form of protest against the logging of their forests and rapid depletion of forest resources that maintain their livelihoods and survival. In October 1987, the Penans, Kayan and Kelabits set up their first logging road blockades and barricades in over 20 sites in the Baram and Limbang districts where logging was at its heaviest, while another source recorded that there were altogether about 25 blockades between March 1987 and 1991.⁴⁹

Conflicts between indigenous peoples and local forest communities and the logging industry have been going on since 1987 until today, including protests on issues of human rights abuses. Indigenous communities are still mounting blockades and protesting against the timber companies today, such as for example, the Penans of Long Itam (see Part 2). The decision to set up road blockades and barriers comes as a last resort to stop the timber companies and loggers from encroaching into their ancestral lands and destroying their forest, when state and federal authorities ignore their pleas and attempts to negotiate fail. These blockades are usually made up of logs or frail wooden structures put across the road and scores of women, men and children standing or squatting around the barrier to stop timber lorries from passing through the structure. Blockades often last for several months. People go without food and have to walk for many days from their homes to the blockade sites.

Blockades can effectively stop logging for several months, although they place a heavy toll on the communities. In November 1987, the Sarawak State Assembly (The State Assembly has been under the control of Taib Mahmud until his retirement on 28th February 2014) amended the forest laws making any resistance by indigenous communities through blockading logging and access roads a criminal offence.⁵⁰ Despite that, peaceful blockades by communities to stop logging and other large-scale projects continue today. Penans, Kayans, Kenyahs and other native groups living along the Baram river have protested through marches and set up blockades since October 2013 to stop work on the Baram dam, now in the preliminary stages.⁵¹ The Penans likewise have blockaded the Murum Dam site but “agreed” to dismantle their blockade on August 27 because of promises by the state government to provide them with access roads to their resettlements at Murum, a health clinic and school within a month after they took down their blockade.⁵² So far there is no public official information to say that the Penans have got what they were promised.

49 Carol Yong, April 2010, Logging in Sarawak and the Rights of Sarawak's Indigenous Communities. A JOANGOHutan report produced for and published by FERN, Brussels and Moreton-in-Marsh; Heyzer, N., 1996, Gender, Population and Environment in the context of deforestation: A Malaysian case study. Asian and Pacific Development Centre (APDC), Kuala Lumpur and United Nations Research Institute for Social Development (UNRISD), Geneva, page 65.

50 Forest Ordinance Amendment (1987), Section 90(B)(1) states that, “Anyone who sets up a blockade on any road constructed or maintained by the holder of a licence or permit and/or prevents any forest or police officer, or licence or permit holder, from removing the blockade, be guilty of an offence punishable by a jail sentence of up to 2 years and a fine of RM6000. In the case of a continuing offence, a further fine of RM50 will be imposed, in respect of every day during which the offence continues.”

51 The Baram dam, if built, would affect 26 villages and displace up to 20,000 people of the Kayan, Kenyah and Penan communities from their ancestral lands.

52 “Blockade to resume if promises not kept” 08.09.14, <http://www.theborneopost.com/2014/09/06/blockade-to-resume-if-promises-not-kept/>

Plantations and agribusiness

With most of the loggable forests either cleared or awaiting clearing as active concessions are still in place, the timber industry is shrinking and has been overtaken by palm oil and, to a lesser extent, plantations of fast-growing species especially for pulp and paper production. Currently there are some 4.6 million ha of oil palm plantations in Malaysia located mostly in Sabah and Sarawak, due to limited available land in the Peninsular. As noted above, Sarawak alone currently has one million ha of land already under oil palms, yet the government still plans to achieve 2 million ha by 2015 and possibly even up to 3 million ha. Presently, oil palm plantations cover over 500,000 ha of peat swamp forest in Sarawak, or approximately 38% of the total peat swamp lands. In Sabah, by 1999, it had 941,000 ha and by 2012, almost 1.5 million ha of oil palm had been planted.⁵³

What is driving palm oil expansion in Malaysia? For one, domestic and international demand for vegetable oils, biofuels and a whole range of consumer products. Malaysia's policymakers and industry interest groups have also been claiming the oil palm industry fulfils due compliance with the Roundtable on Sustainable Palm Oil (RSPO) acceptable standards in promoting the development and trade of palm oil, yet evidence available to date shows the opposite - e.g. the growing number of land dispute cases filed in courts by native landowners against oil palm plantation companies, state government and others in the industry. Particularly for Sarawak, local politics are a key factor, namely the state policy of transforming the traditional rural sector into a modern one; a *raison d'être* for Taib Mahmud, during his tenure as chief minister, to alienate large tracts of land for large-scale commercial plantations. As if indicating that RSPO is not effective in Sarawak, Wilmar and the US giant Cargill are setting their own policies on imports of palm oil which impacts on Sarawak oil palm.⁵⁴

Under the so-called New Concept or *Konsep Baru* land development policy, Taib promoted a 60-year period "joint venture" between native landowners and private oil palm plantation companies with a state land agency as the trustee for the landowners. The Sarawak government sees the traditional swiddening agriculture for livelihoods as waste because in its view, community-based land use systems are not fully utilising the land productively for cash crops such as oil palm, dubbed the 'golden crop'. So landowners have been "encouraged to surrender" their lands to the state to manage them profitably. The Sarawak government has classified large tracts of lands claimed as belonging to the state as State Land Forest (SLF) under the Land Bank. Sarawak's land bank is estimated as 3.9 million ha, in contrast to Sabah with 0.6 million ha and Peninsular Malaysia with 0.2 million ha.⁵⁵ This means that Sarawak has more deforestation occurring than in the other two regions since it has bigger areas earmarked for conversion to plantation agriculture, using the FAO category of plantations as "planted" forests. In actual fact, the main motives for palm oil expansion in Malaysia are:

- Business: extracted palm oil (vegetable oil) is used in many food and household products (e.g., margarine, detergents and cosmetics) and for biofuel production (bio-diesel)
- Growing global consumption and international trade in vegetable oils, especially from India, China and the EU.
- Increasing global market demand for biofuels

⁵³ See, Colchester, M. and Chao, S. (eds.), 2013, op. cit. especially pages 232-281.

⁵⁴ See these links: <http://news.mongabay.com/2014/0920-palm-oil-deforestation-moratorium.html> and <http://news.mongabay.com/2014/0522-watsa-balikpapan-zero-deforestation.html> and <http://news.mongabay.com/2014/0923-cargill-zero-deforestation.html#Vkh2QVu1bliViFjm.01>

⁵⁵ Jomo, et al, 2004, op. cit.

This snapshot provides valuable background information for more detailed analysis later of how large-scale oil palm plantations in Sarawak has enriched Taib Mahmud as the state chief minister for over three decades. Investigations by several NGOs (e.g. Global Witness, BMF) and media (e.g., Sarawak Report) point to Taib's involvement in corruption, tax evasion and land grabbing through his control over lands as he was then the minister in charge of all resources and issuing licences for logging, oil palm plantation and other "projects" in Sarawak, without the landowners' FPIC.

Infrastructure projects

Large dams, and even some smaller-scale ones, are another major cause of deforestation in Malaysia. Dams involve the flooding of the entire river basin and invariably the resettlement of people – the majority of whom are indigenous peoples – often by force for being in the way of the project.⁵⁶ Dams also involve the loss of forests that extend beyond the dam area because of the necessity to build the electricity lines. The dam and the electricity lines need maintenance and these, in turn, need roads to reach them. All the infrastructures connected to the dam take up a huge area but this is rarely seen in connection with forest clearance. The number of major dams that have been built ostensibly for the "larger good" have invariably legitimised deforestation.⁵⁷ Examples are the Batang Ai, Bakun and Murum dams in Sarawak, Sabah's proposed Kaiduan dam in Penampang, Tambatuon in Kota Belud, the completed Babagon dam, and the spate of dams in Peninsular Malaysia including the Kenyir, Cenderoh, Sungai Batu, Sungai Selangor and Temenggor dams, among others. Planned dams are still in the queue, throughout Malaysia and especially in Sarawak such as the Baleh and Baram dams. The Baram Dam project located between Long Naah and Long Kesseh, about 200km inland from Miri, if constructed will displace some 20,000 indigenous people from 26 villages, including the Penan village of Long Itam (see, Part 2 sub-regional Case Study 1).

Extractive industries

Mining activities are rarely associated with deforestation and forest degradation, but in fact various aspects of mining activities have adverse social and environmental consequences. FPP has documented, at the request of indigenous organisations from different countries, that the situation of mining "is a source of serious concern"⁵⁸ and remains a key problem especially for indigenous peoples. This is because most of these non-renewable resources, such as oil, gas, coal, gold and gravel are found in indigenous peoples' territories. The prices and increased demand for many of these minerals, metal and non-metal, further pushed the mining industry to open up more areas for mining including national parks and protected areas.⁵⁹

56 See, Carol Yong (2006), 'Dam-Based Development in Malaysia: The Temenggor and Sungai Selangor Dams and the Resettlement of the Orang Asli', doctoral thesis submitted to the University of Sussex, England.

57 Wilson Nyabong, the political secretary to the Sarawak chief minister and representing the Minister of Land Development (James Masing) was praising Sarawak Energy Berhad (SEB) for aggressively embarking on "green energy" power projects in Sarawak and singled out the hydro dams to generate electricity, saying by doing so, SEB was also contributing to rural development in terms of roads and other infrastructure. See, <http://www.theborneopost.com/2014/01/20/sarawak-energy-berhad-praised-for-job-well-done-during-companys-dinner-in-kapit/> Accessed on 20 January 2014. Paradoxically, the Bakun Hydropower Project, which promised economic development for Sarawak, has resulted in the loss of ancestral lands of over 10,000 indigenous peoples who were forcibly relocated, as well as their hunting grounds, wild game, rivers, and other vital forest resources. All the valuable timber had been harvested from the catchment area, totalling over 70,000 ha.

58 See, Colchester, M. and Caruso, E. (eds.) (2005). *Extracting Promises: Indigenous Peoples, Extractive Industries & the World Bank*. Second edition. Tebtebba, Baguio City and Forest Peoples Programme, Moreton-in-Marsh.

59 Colchester, M. and Caruso, E. (eds.), 2005, op. cit.; World Rainforest Movement (WRM), 2004, *Mining: Social and Environmental Impacts*. Montivideo.

Malaysia has no lack of examples of destructive mining activities. The sand and quarry mining activities encroaching into the Orang Asli village, Kg Sebir, highlighted in Part 2 is an example. In Pahang, the Raub Australian Gold Mining Sdn Bhd (RAGM) began using cyanide to extract the mineral and raised an outcry from the nearby villagers and NGOs because of the serious side effects on the villages nearby and their farming lands as well as on the surrounding ecosystems and water courses – the villagers had already filed a suit against the company.⁶⁰ The Pahang state and Malaysian federal governments have apparently downplayed the potential risks from the Australian-owned Lynas Corporation rare earth refinery at the Gebeng industrial estate near Kuantan. The local NGO SMSL says many urgent issues have remained unanswered by the Malaysian government and Lynas; of special concern is the still unknown location of the permanent waste disposal facility.⁶¹ SMSL has also highlighted that every hour some 500 tonnes of waste water can be discharged into the Balok River, the habitat of significant mangrove forests with four mangrove species listed under the IUCN (International Union for Conservation of Nature) Red List.⁶² The radioactive materials and decayed substances produced from the Lynas refinery can enter the environment, contaminating air, water and the food chain. There is already a precedent case, the Mitsubishi Asian Rare Earth plant in Bukit Merah, Perak. In the 1980s-1990s there were serious environmental disasters and health hazards surrounding the plant. Yet, the Malaysian government at a recent meeting, through the AELB, has decided to issue a Full Operating Stage Licence to Lynas for a period of two years (as the internet media reported), when the temporary licence expired on September 2, 2014.

Exploitation of sand resources is a major issue, especially illegal sand-mining activities and sand-stealing. The open letter of the Friends of the Earth Malaysia (SAM) to online media revealed that in 2011 about 1,036 permits were issued for extraction of sand and gravel with the total production amounting to 37,339,082 tonnes; sand is heavily used in the construction industry, land reclamations, creation of artificial islands, and for coastline stabilisation.⁶³ The letter further said that the Drainage and Irrigation Department (DID) in its River Sand Mining Management Guideline 2009 “recognises that mushrooming of river sand mining activities have given rise to various problems such as river bank erosion, river bed degradation, river buffer zone encroachment, and deterioration of water quality”. It also referred to “sand stealing, some involving bribes or inducements for approval or to expedite approval of sand-mining permits or to refrain from taking action against those illegally mining or transporting sand.” Authorities such as DID, Department of Environment, etc. are empowered by the law to take constructive action. Yet it is not obvious how effective their monitoring and enforcement actions are.

60 Raub villagers protest potential cyanide use, <http://www.malaysiakini.com/news/62550>. Related articles: Gold mine villagers cry for action <http://www.malaysiakini.com/news/109123>, and <http://www.malaysiakini.com/news/80222>. Accessed 24 Jul 2009.

61 See, Oeko Institute, 25 January 2013. “Description and critical environmental evaluation of the Lynas REE refining plant LAMP near Kuantan/ Malaysia: Radiological and non-radiological environmental consequences of the plant’s operation and its wastes.” Scientific report from Oeko Institute in Germany prepared for SMSL. Available for download at Oeko-links: Report - <http://www.oeko.de/oekodoc/1628/2013-001-en.pdf> and Summary - <http://www.oeko.de/oekodoc/1629/2013-002-en.pdf>.

62 Save Malaysia, Stop Lynas! (SMSL), Facts about the Lynas rare earth refinery in Malaysia, Fact Sheet July 2011. Further information available from SMSL website: <http://www.savemalaysia.org>. See also, Stop Lynas Inc. campaign at www.stoplynas.org.

63 Whither our sand? SM Mohamed Idris, SAM, 22 October 2013, <http://www.malaysiakini.com/letters/244557>. Mining was also an important theme of the recent Konrad Adenauer Stiftung Seminar on “Current South-east Asia Forestry & Mining Issues (Malaysia), held in Kuala Lumpur from November 27-29 2013.

Indirect drivers of forest degradation and deforestation

Legal and policy instruments and related contradictions

In discussing the issue of NCR lands of indigenous peoples and land rights in general of non-indigenous communities, and the subsequent loss of those rights to companies for commercial exploitation of resources such as land, forest lands and timber, it is crucial to examine related legislations and policies. The discussion below focuses on laws and policies on forests and lands, and includes an analysis of resources control, especially over land, and power as held by those in dominant economic-political positions.⁶⁴

Forest laws

- Peninsular Malaysia: The key forestry law for the 11 peninsula states is the National Forestry Act, 1984 and supplementary Forest Rules 1984. This Act enables the implementation of the National Forestry Policy.
- Sarawak: Forest Ordinance, 1953 and Forest Rules, 1962. This ordinance defines ownership and use of the forests in Sarawak, under the jurisdiction of the state Forest Department.
- Sabah: The key forestry legislation is the Forest Enactment, 1968 and Forest Rules, 1969, which is enforced by the Sabah Forestry Department (SFD).

Land laws

- Federal level: the National Land Council formulates national policies for the use of or control of land for mining, agriculture and forestry. Because land is a state matter and the individual states have jurisdiction over its use and allocation, the Council's recommendations are only advisory and any state can disregard them without being penalised by the federal authorities. However, on Orang Asli land matters, the Orang Asli Development Department (JAKOA, previously JHEOA) is the main agency authorised to alienate Orang Asli lands, gazette (and de-gazette) Orang Asli reserves. In addition, there is also the Orang Asli Land Ownership policy adopted in 2009 and aimed to empower the government to grant individual land ownership over Orang Asli traditional lands held communally. The Aboriginal Peoples Act is in various stages being amended to allow for this policy to be implemented. (The sub-regional case study 2 shows that a majority of the Orang Asli object to the state over-riding customary rights to traditional rights.)
- Sarawak: the Land Code 1958 (Cap 81), with amendments, is the main legislation on land. It contains specific stipulations that recognise NCR in written law (Section 2(a)) and further recognises NCR land through classification of lands into Mixed Zone, Reserved land, Native Area Land, Interior Area Land and Native Customary Land.
- Sabah: the Land Ordinance 1930; Land Acquisition Ordinance (Sabah Cap. 69), a general law for the acquisition of land for public purposes, such as dams.

Virtually all Malaysia's forests and lands are claimed by the federal and state governments as belonging to the state, obscuring land questions of indigenous and forest-dependent peoples' customary rights. Malaysia has continued post-independence with laws and systems of colonial origin that have steadily eroded and extinguished communities' forest tenure and access. This issue is elaborated using two examples: logging concessions in the forestry sector and the Sarawak Land Code 1958.

⁶⁴ Great variations exist between the regions, and even within each region and state, so we are cautious in not generalising or uniforming too much.

Forestry and concession laws

The current framework of forestry and concession laws contradict and undermine indigenous peoples' rights (Ideal, 1999). These laws and policies undergo changes over time, predictably, biased in favour of governments that control and determine access to, use of and control over lands and other resources. At best, this will almost certainly increase pressures on forests and forest peoples' rights and at worst, open the way for corruption through the non-transparent way in which logging concessions and permits are awarded, for example. Accessing information about logging concessions in Malaysia can be extremely limited for public, if not confidential. During the consultation sessions of the EU FLEGT-VPA between Malaysia and the EU, the request from civil society coalitions for the process to make publicly accessible all information on forestry and logging matters was twice rejected by the Malaysian Government.⁶⁵ (An overview of the FLEGT VPA process is found in Box 3 below).

Logging licences in Malaysia have been abused as a tool to garner political support and dispense political favours to further strengthen one's status quo and power, having the final say on approval of applications for timber licences. Sarawak's top-down and centrally-controlled system of forestry governance and land use decision-making can easily pave the way for a series of high-level forest crimes - e.g. corruption, rights abuses, illegal activities (illegal logging, fraud, money laundering, etc.), non-compliance with environmental and human rights' highest standards including FPIC, and tightening forest laws by making logging blockades a criminal offence. Taib Mahmud was Sarawak's chief minister between 1981-2014, and also the Finance Minister and Planning and Resources Management Minister. Holding three key posts for 33 years had given him excessive power to control the land, timber, minerals and other resources, and direct responsibility for handing out leases, concessions and licences for commercial plantations, logging and privatisation of infrastructure projects such as dams and roads. 78-year-old Taib handed over power to his former brother-in-law (Adenan Satem) in February 2014 and became state governor. Theoretically, nobody in Malaysia is legally immune from prosecution. There is legal provision for a special court to try even sultans. So Taib as governor is not immune, though in practice trials and prosecutions can be blocked by senior politicians. What seems clear to date is that there will be many federal and state ruling politicians and industry interest groups ready to protect Taib against critics and opposition, investigation and prosecution of massive corruption, land-grabbing and tax evasion allegations.⁶⁶

65 Statement On The Signing Of The FLEGT-VPA. Submission by JOANGO Hutan (Jaringan Orang Asal & Ngo Tentang Isu-Isu Hutan/Network Of Indigenous Peoples & Non-Governmental Organisations On Forest Issues) and Jaringan Orang Asal Semalaysia (The Indigenous Peoples' Network Of Malaysia, JOAS). To the Malaysian Ministry Of Plantation Industries and Commodities and the European Union Delegation For Forest Law Enforcement, Governance And Trade (FLEGT), Kuala Lumpur, on October 2009.

66 On the alleged corruption and abuse of power of former Sarawak Chief Minister Abdul Taib Mahmud Taib (presently the Sarawak Governor), see *Money Logging: On The Trail Of The Asian Timber Mafia* By Lukas Straumann, Berli Books, Basel (2014), Pb 313pp. ISBN: 9783905252729. Also available in German titled *Raubzug Auf Den Regenwald: Auf Den Spuren Der Malaysischen Holzmafia*, Lukas Straumann, Salis Verlag AG, Zuerich (2014), 380s, ISBN 978-3-906195-05-6. Taib and his family are accused of massive corruption, through his political authority in charge of land and other resources of Sarawak and uncontested for 33 years, while many of the forest peoples remain one of the poorest group in Malaysia. A 2008 US State Department cable revealed by WikiLeaks called Taib "highly corrupt" and "unchallenged"; and Global Witness has made a film on Taib's corruption available at: <http://www.malaysiashadowstate.org/>. Yet Taib has persistently denied wrong doing and rejected all allegations. Even the MACC, Malaysia's anti-graft agency which launched an investigation in 2011, has until today never yielded a result disclosed publicly.

Sarawak Land Code and native customary rights (NCR) to lands⁶⁷

The Land Order in Sarawak was first introduced in 1863, changed in 1920, and amended to what we know today as the Sarawak Land Code 1958 (SACCESS 2008). Section 2(a) defines “Native Customary Land” as being lawfully created if they are prior to 1 January 1958, and Section 5(2) lists the methods by which NCR can be established:

- (a) the felling of virgin jungle and the occupation of the land thereby cleared
- (b) the planting of land with fruit trees
- (c) the occupation or cultivation of land
- (d) the use of land for a burial ground or shrine
- (e) the use of land of any class for rights of way or
- (f) any other lawful method (this category was deleted in 2000)

On paper, there is some recognition of the rights of natives to establish their customary lands. However, the Land Code has been amended many times, with far-reaching implications for Sarawak’s natives, *inter alia*:

- 1990: grants further rights for foreign investors to obtain lands for the purpose of tourism, recreation, high-rise commercial complexes, industry and/or individual parcels of land within a building.
- 1994: empowers the Land Minister to extinguish NCR to lands
- 1996: puts the burden of proof with respect to NCR over land on the native landowners, that is, they must prove they were on the land before 1st January 1958, exercise their adat to clear forests, cultivate, live and occupy the lands and continue to occupy according to the adat until the present day
- 2000: the category “any other lawful method” was deleted from Article 5(2)

These amendments were hastily passed in the state parliament, dominated by Taib and his cabinet ministers. Until today they are not gazetted as laws, yet. Despite that, these ‘laws’ have already been used to allow state and private companies to carry out logging and post-logging land clearance for cash crop plantations thereby causing more forest depletion and changes in land use. Malaysia is a member of the Human Rights Council and the UN General Assembly and signatory to the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). Yet, in practice, Malaysia has failed to fulfil many of its obligations to uphold the highest standards in the promotion and protection of human rights, including rights to customary lands, and even if it does, its commitments are half-hearted. Indigenous peoples and, to varying extent, other local communities are very vulnerable to rights abuses by political and economic elites using force to suppress opposing communities and other rights defenders.⁶⁸

67 SACCESS (2008), Adat and Human Rights in Sarawak, paper written as a section on Sarawak in SUARAM’s 2008 Human Rights Report launched on 23 July 2009. For more information on the report, refer to www.suaram.net. See also, Wee Aik Pang (2012). Guidebook On Reclaiming Sarawak NCR Lands In Courts: Practical information for communities on resorting to the court process (civil litigation) to reclaim Native Customary Rights (NCR) lands, SACCESS, Kuching; and Colchester, M, Wee, A.P., Wong, M.C: and Jalong, T. (2007). Land is Life: Land Rights and Oil Palm Development in Sarawak, FPP and Sawit Watch, pp.13-16.

68 See, Ideal, 1999, Our land is our livelihood – The undermining of indigenous land rights and the victimisation of indigenous people in Sarawak. IDEAL, Sibui; IDEAL, 2000, Not Development but Theft – The testimony of Penan Communities in Sarawak, IDEAL, Sibui; Yong, C., 2010, op. cit., and also, information compiled by national NGOs such as Suaram, Ideal, Saccess, COAC, JKOASM, JOAS, Brimas, SAM, Save Rivers Network and the National Human Rights Commission of Malaysia (SUHAKAM) and international NGOs esp. BMF, EIA, FERN, FPP, Global Witness.

The Sarawak government under the then chief minister Taib Mahmud has continuously disputed the three courts in the country – the High Court, Court of Appeal and the Federal Court – that have decided that NCR lands also include ‘*pulau galau*’ (reserved forests) and ‘*pemakai menoa*’ (communal land).⁶⁹ Instead the state only recognises ‘*temuda*’ (farm land) as NCR. This narrow interpretation of NCR rights by the Sarawak Government based on statute, ignoring the role of traditional law, case law and international law, is not in line with judicial landmark decisions on court cases related to land matters filed by indigenous communities and individuals.⁷⁰ These judgements have confirmed that the extinguishment of NCR, specifically *pemakai menoa* and *pulau galau* that are part of NCR lands, is discriminatory and contravenes a number of other human rights guarantees and common law respecting the pre-existing rights of indigenous peoples under native law and custom.

Today, there are hundreds of land dispute cases filed in courts. Yet the Sarawak government continues to grant or renew timber licences and provisional leases (concessions) to large-scale oil palm companies in Sarawak, even in contested areas. Furthermore, the former Attorney-General of Sarawak, JC Fong, whose current official position is State Legal Consultant, has faithfully defended the state government’s fiduciary duty of promoting human rights and land rights in Sarawak. For example, in his address to the UN’s Universal Periodic Review (UPR) in October 2013 in Geneva, he said that:⁷¹

For almost two centuries, the laws of Sarawak have recognised and protected indigenous peoples’ rights over land created by their recognised customs and practices. Based on well-documented official records, Sarawak has approximately 1.5 million ha of native customary (NCR) lands.

Interestingly, one of the respondents to an email questionnaire who replied as JC Fong has modestly claimed that:⁷²

I do not think I am the qualified person to provide you with the feedback or answers to you [your] questions. [I] trust the other persons to whom you have directed your questions would [will] prove to be more helpful.

69 Each indigenous group has its own concepts and the description here is Iban: Pemakai menoa means rights to a particular territory within a defined boundary that has been handed down from their ancestors, who were the first to clear a piece of land for farming and thus also the right to inherit that land and to pass it on to the next generation. Pemakai menoa includes temuda (cultivated land that have been left to fallow), tembawai (old longhouse sites), rivers, water catchment areas and ancestral burial grounds and sacred land (pulau mali), and higher forests, or pulau galau i.e. intact forests for the preservation of certain species of trees to provide the community with forest resources for domestic use (www.rengah-sarawak.net).

70 Sahabat Alam Malaysia-Friends of the Earth Malaysia, Position Paper, November 2013, Landmark judicial decisions on the indigenous peoples’ customary land rights/title in Malaysia 1991-2011: Legal implications of the failure in instituting policy and legislative reforms. Penang and Baram.

71 Sarawak state legal consultant JC Fong delivered the state’s address to the United Nations Human Rights Council Working Group on the Universal Periodic Review (UPR) regarding the Murum hydroelectric dam project in Geneva. Posted on October 27, 2013, Sunday, Borneo Post On-line. <http://www.theborneopost.com/2013/10/27/fong-soeaks-up-for-state-at-un-review/>. Accessed 30 November 2013

72 Email reply of Datuk Fong Joo Chung (e-mail signature: JC Fong) to Carol Yong, 24 December 2013.

The Sarawak government and corporations have continually refused to recognise the NCRs to lands of the indigenous communities, despite landmark court judgements affirming rights to NCR lands, adat and the principle of FPIC. In Peninsular Malaysia, the federal government plans to push ahead with the implementation of the Orang Asli Land Ownership policy, despite protests from the Orang Asli and many NGOs. Because of the government and corporations' disregard for the key rights of the indigenous communities over customary lands, and protection of those rights, indigenous and local forest communities constantly face the threats of their lands and forests being bulldozed or cleared by loggers, commercial planters, infrastructure developments and others.

The right to free prior and informed consent (FPIC)

As discussed earlier, most of the land rights issues facing the indigenous communities in Sabah, Sarawak and Peninsular Malaysia are associated with dispossession of customary rights, as a result of state over-riding, and not recognising, customary rights as practised in the adat. This political and economic system of controlling lands and forests are often in breach of the principle of communities' right to free prior and informed consent (FPIC). Consultation, if practised, is limited only to a small group of government-appointed local community leaders, local authorities, state agencies and ruling state and federal representatives. We see FPIC violations in the manner in which the state allocates forestry concessions and provisional leases to oil palm companies. There is rarely any transparency or the need to obtain the communities' FPIC, resulting in NCR lands and territories being extinguished without their knowledge and consent. When that happens, they are entitled to the right to fair and adequate compensation for rights violations, in line with UNDRIP. However, the state rarely ever offers fair and adequate compensation for those rights violations, such as forced displacement of indigenous communities by dam projects.

Governance issues

Corruption and nepotism

Deforestation, especially linked to the forestry sector and timber trade in Malaysia, cannot be seen in isolation from its relationship with political processes and control. Undoubtedly, behind the direct causes of deforestation are corrupt political and governance systems.⁷³ The top leaders of Sabah and Sarawak have been exposed for using their political positions to build up excessive powers to control the forests and resources through logging and palm oil concessions, linked to a chain reaction of corruption. Former Sarawak chief minister Taib Mahmud claimed that over 70% of Sarawak's forest is still intact. However, evidence is now available to show that Sarawak has had massive forest loss and major rivers have become endangered by logging, dams, etc.

⁷³ In a Transparency International survey on bribery, Malaysia topped the list of 30 countries. Over 3000 executives were asked whether they had lost a contract in the past year from competitors paying bribes, and 50% of Malaysians said yes. It was ahead of India and Indonesia. Another example was the 29 March 2007 report by Japan Times about nine Japanese shipping companies that transported lumber from Sarawak, Malaysia, and allegedly failed to report some 1.1 billion yen of income in total during a period of up to seven years. See, Wood carriers allegedly hid 1.1 billion yen income, Kyodo News, 29 March report by Japan Times (source: www.japantimes.co.jp).

The Swiss NGO BMF has documented the unprecedented rate of deforestation in Sarawak linked to Taib's abuse of his political positions to enrich himself and his family members. The Taib clans reportedly own or hold business interests in over 400 companies in 25 countries and offshore financial centres – wealth sourced from deforesting Sarawak's rainforests and other unlawful abuses against native communities and individuals.⁷⁴ Rights abuses against landowners have been highlighted in many communities and NGO documentation, and also in the increasing number of cases in courts filed by native landowners and non-natives landowners relating to land disputes involving logging companies, oil palm developers, dam builders, etc.

Recently there has been a criminal case brought by BMF against the Chief Minister of Sabah, Musa Aman, on charges of kickback and bribes from logging concessions and logging permits. In August 2008, a Sabah businessman, Michael Chia, was detained at the airport in Hong Kong, carrying a bag of \$16 million in cash, and suspected to be a proxy for Musa Aman.⁷⁵ The money was believed to be revenue received from timber sales from concessions owned by the state statutory body, Yayasan Sabah (Sabah Foundation). In September 2013, a newspaper article asked: "Is Chief Minister Musa Aman's son the "mystery hand" behind the Geothermal Power Plant project and the ongoing logging at Mt Andrassy, a Class 1 Virgin Forest Reserve here?"⁷⁶

This is not to say that corruption happens only in Malaysia. On the contrary, corruption is a big problem in many countries, to varying degrees. Some variations are international in nature while others are national or local. Factors such as socio-economic, institutional, historical and political setting, presence and strength of civil society organisations, NGOs and opposition political parties, and international drivers contribute to the complexity of corruption problems and arbitrary government behaviour. Yet, very few NGOs deal overtly with corruption in the forest sector and timber trade. Some exceptions are already mentioned in this report. This point on corruption and related issues is discussed further under the section on international drivers.

Roles of forestry institutions in monitoring and enforcement

The lack of coordination among the ministries, departments and agencies including statutory bodies is quite apparent. There are weaknesses and gaps, including a lack of coherence between different levels of government, and a lack of interface between agencies at the national, regional and local levels.⁷⁷

74 Taib Family's illicit billions exposed: http://stop-timber-corruption.org/campaign_update/?show=35. See also, *Money Logging: On The Trail Of The Asian Timber Mafia* op. cit.; Bruno Manser Funds - <http://www.stop-timber-corruption.org>; Sarawak Report - <http://www.sarawakreport.org/>. Numerous petitions and complaints had been made against Taib about his wealth derived from timber corruption and money laundering. This included in 2012 a letter to UN Secretary General signed by 21 NGOs from nine countries calling on the UN to impose sanctions against Malaysia for the country's systematic breach of its obligations to prosecute Taib under international anti-corruption and anti-money-laundering treaties.

75 See, Musa-linked money laundering still on HK radar, <http://www.freemalaysiatoday.com/2011/04/28/musa-linked-money-laundering-still-on-hk-radar/> 28 April 2011. Last accessed on 28 October 2013.

76 Who's behind logging in forest reserve? Azman Habu, 2 September 2013, Hornbill Unleashed. <http://hornbillunleashed.wordpress.com/2013/09/21/50378/>. Accessed 10 November 2013.

77 These issues are also pointed out by a respondent to the e-mail questionnaire, 3 January 2014.

A major problem lies in the constitutional division of powers between federal government and the state governments on governance of land and forests. Another problem is jurisdiction and legal basis conflicts in forestry and non-forestry authorities. Several loopholes can hinder coordination on enforcement action relating to customs control of legal and illegal export and import of logs and smuggling of banned timber (e.g. Ramin) flows. Firstly, Customs may lack the technical or competent expertise on identification of timber species, such as the difference between Ramin and other species. Secondly, only Customs has the authority to carry out checks on cargoes particularly in Free Trade Zones (FTZ), which effectively means that the MTIB and STIDC – the two statutory bodies charged with controlling the timber industry in Malaysia and others, cannot seize any shipment of illegal timber mixed with the legal consignments, and even if they did, they have to release the consignment regardless of the offence committed. A related concern is “what happens to seized logs, and who benefits from these?”⁷⁸ In cases of illegal logging, law enforcement officers are often reluctant to intervene and law enforcement mechanisms are generally weak as are legal frameworks to curb deforestation. These weaknesses may well have facilitated deforestation, destructive logging, illegal exports of timber products and smuggling. Another problem is the disconnection of policies in the forestry sector with policies in other sectors, such as energy, agriculture and land use, environment, trade and transport. Development of these various sectors – of which forestry is just one part – is not only fragmented but polices and authorities in each sector are conflicting each other.

Disempowerment of communities

There is contradiction in the treatment of different forest sector stakeholders: the rules, restrictions and punishments are relatively flexible with large well-connected companies and corporations but heavy penalties and other punishments apply for communities. Over the last few decades of logging blockades, the protesters were the ones who were detained, jailed, fined, or attacked, and their peaceful blockades deemed illegal activities and “trespassing” even in their own lands – unlawfully acquired by the state and awarded to big companies. In contrast, politically well-connected company owners and loggers were seldom touched, if ever. The forest authorities are rather arbitrary regarding implementation and sanctions for different stakeholders. Landowners have reported that forest authorities collude with the companies and police in conflict resolution situations. On decision-making, local knowledge and expertise is seldom considered in policy decision-making, despite indigenous and non-indigenous forest communities having strong forestry traditions. The basis for decisions on the forest sector and natural resources management is scientific. This bias places a particular quantitative value on forests and forests goods, rather than tapping on communities’ local experiences and appreciating their holistic view of forests, limiting community participation in decisions over forest management.

International deforestation drivers and interaction with local factors

Powerful corporate and government forces in Malaysia are bent on controlling the forestry sector, especially timber trade, because lucrative profits can be enjoyed from the timber trade. Despite causing massive forest destruction and accelerating deforestation, industrialised countries continue to demand tropical timber and this is often facilitated by international trade policies and global financial systems including banks with little or no due diligence procedures. This collusion of powerful political, economic and financial forces gives them the upper edge over the marginalised people.

⁷⁸ As exemplified in one Ramin seizure on the FTZ in Pasir Gudang Port in Johor in 2004. This is not the most current case but it reveals the implications of the problems in law enforcement. Cited in: Chen, H.K. and Sizer, N. (2004). Legal and Institutional Arrangements in Malaysia to Prevent the Import of Illegal Wood from Indonesia, Draft paper prepared for the Asia Forests Partnership, The Nature Conservancy, Bogor and TRAFFIC International, Kuala Lumpur.

Powerful political and economic elites

Official data sources, including mainstream media, are replete with claims by many Malaysian government agencies and forestry authorities that their forest management and production systems are sustainable and compliant with domestic and international standards. In fact that is only on paper; in reality there are many contradictions because:

- Malaysia promotes the timber industry as sustainable and necessary for economic development and foreign exchange. The actual motivation for this development model, looking at ground experiences, is to turn independent community economic activities into state and elite-controlled structures.
- The blame is often placed on swidden cultivators and “nameless” illegal loggers as culprits of deforestation, but hardly on the policymakers deciding how current development policies have changed land use, forest resources, local economy structure and communities’ livelihood options and activities.
- Sources of revenue for the state governments from total exports of timber and timber products have not benefited the majority of populations especially poor households and poor women. Instead, large chunks have gone into the pockets of politicians and business sectors – which indirectly also drives white-collar crimes such as bribery, embezzlement, corruption and money-laundering.

Unethical financial and investment culture

Malaysia ranks fourth in capital flight (stolen money) in the world after China, Russia and Mexico.⁷⁹ There is no lack of evidence and NGOs complain to both Malaysian and international and UN authorities over corruption and money laundering of politically exposed persons (PEPs) in Malaysia. Two outstanding cases are the former Sarawak chief minister and currently state governor, Taib Mahmud, and the Sabah chief minister, Musa Aman – both tied closely to fortunes made from the logging industry. Despite the controversies, Sarawak and Sabah are still exporting timber ostensibly for state revenue earnings. Unfortunately corruption has not been sufficiently highlighted yet as a major underlying driver of deforestation. Lukas Straumann, director of the Bruno Manser Funds, a Swiss-based NGO which has exposed evidences of Taib’s corruption in Sarawak, aptly said, “Corruption is one of the main issues to be dealt with when it comes to the Malaysian timber sector/trade.”⁸⁰

NGOs’ research have revealed that global banks and financial investors play an active, although often covert, role in conducting business with Malaysian companies. They fund activities such as logging, oil palm plantations and agribusiness which profoundly damage the environment and the livelihood of numerous indigenous communities in Malaysia and in other countries such as Guyana, Cambodia, PNG and Liberia. At the same time, this is in clear violation of the bank’s own forestry standards including the Equator Principles (a pledge to only finance projects that meet certain environmental and social standards). Examples include Deutsche Bank, HSBC, Macquarie Bank and Credit Suisse.⁸¹ Global banks and financial institutions should be held accountable for their indirect impact on deforestation and rights abuses alongside Malaysian drivers.

⁷⁹ According to Global Financial Integrity, an average of RM1.2 trillion (US\$37,038b) flowed out of Malaysia, 2002-2011. See, also, ‘M’sia still bleeding billions in dirty money’, Steven Gan, Malaysiakini 12.12.2013, <http://www.malaysiakini.com/news/249139>. Accessed 26 January 2014.

⁸⁰ Email of 2 February 2014 from Lukas Straumann to Carol Yong.

⁸¹ For the details on each case, see, Bruno Manser Fund www.bmf.ch; Global Witness: www.globalwitness.org/hsbc

Trade and consumption

Malaysian tropical timber for export is still in demand because the Malaysian government and forestry authorities have portrayed themselves as practising sustainable timber exploitation. They appear to execute sound policies and manage the effects on forests, environment and communities. In summary, forest governance campaigners said:⁸²

Malaysia impresses with a strong administrative mechanism and outwardly appears to have very polished management systems. It also talks of commitment to good forest management saying all the right things with the resources to say them.

FERN's campaign coordinator, Saskia Ozinga, also notes that senior officials of the Malaysian timber sector (Minister, MTCC, MTC, Forestry, timber industry, etc) are very good at using public relations (PR) and the “sovereignty card” in relation to their forestry practices.⁸³ The various Malaysian delegation visit European countries and speak about the excellent forestry practices in Malaysia in order to sell their timber. MTC staff often formally represent the Malaysian Government at public meetings, such as at Chatham House in London. The Malaysian government presents logging for timber export as necessary for the purpose of earning national/state income, thus influencing decisions on the industry in their favour and eluding criticisms about logging practices linked to human rights abuses, land grabs, etc. The EU-Malaysia FLEGT VPA process in Malaysia is an interesting example of attempts by the Malaysian Government and timber sector to sign a trade agreement with the EU to ensure all its timber is legally produced. To date this has not yielded any results for Malaysia, shooting a hole in Malaysian PR that all is well (Box 3).



(Image 3) Many commercial loggers profit from the plunder of the rainforest – and corrupt politicians have many opportunities to skim off profits.

⁸² Emails and personal communications with Carol Yong, February and May 2014.

⁸³ Email of 2 February 2014 from Saskia Ozinga to Carol Yong.

Box 3: The ‘never-ending’ EU-Malaysia FLEGT VPA negotiation process⁸⁴

Purpose and origin of the EU FLEGT VPAs:

Under the European Union (EU) Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan produced in May 2003, the EU has been negotiating a series of legally-binding bilateral trade agreements with timber producer countries, Malaysia included. They are called Voluntary Partnership Agreements (VPAs). The VPAs set out the commitments and action that the EU and timber exporting countries will take to tackle illegal logging and improve forest governance. In January 2010, the EU launched the RM30mil EU FLEGT Asia regional support programme.

Formal negotiations of an EU FLEGT VPA with Malaysia started in January 2007 following an EU delegation visit to Malaysia, including a visit to Sarawak. VPAs should have the buy-in of national stakeholders, including NGOs. For this purpose, the Malaysian Ministry of Plantation Industries and Commodities (MPIC) was given the task by the government, under pressure from the EU, to conduct a series of Multi-Stakeholder Consultations. Among other stakeholders, the two key indigenous, social and environmental NGO/IPO coalitions were JOANGOHutan and JOAS.

Why have NGOs boycotted?

JOANGOHutan and JOAS attended four multi-stakeholder consultative meetings – held in March, June and November 2007 and March 2008, in Putrajaya, Kota Kinabalu, Kuching and Kuala Lumpur respectively – on defining legality and developing a Timber Legality Assurance System (TLAS). These were two of the three main elements of a VPA (the third is independent audits of the whole system). During the fourth consultation, JOANGOHutan, JOAS and Concerned Lawyers walked out on the second day, 18th March 2008. They also withdrew from all future meetings (a total of 15 stakeholder consultations for FLEGT were conducted since 2012). This was in response to the inadequate manner in which the majority of their inputs were being responded to and ultimately rejected. As stated in their July 2008 memorandum to the Minister in the Prime Minister’s Department:

“We have been thoroughly dismayed that several of the legal positions adopted by the MPIC and its legal advisors on NCR matters are highly erroneous, flawed or misleading, as can be seen from their written responses, as well as those that were verbally expressed during the meetings.”

Failed attempts to get the critical NGOS back:

On 15 August 2008, the MPIC called for a dialogue with the two coalitions, whereby the two coalitions clearly stated their position. Before the dialogue, on 1 August, they submitted a bundle of documents highlighting their concerns and outstanding issues to the Ministry.⁸⁵ They were inadequately addressed and many of the coalitions’ proposals were rejected by the Ministry.⁸⁶ On 15 October 2009, the NGOs were invited to another dialogue session with the new Minister of Plantation Industries and Commodities in Kuala Lumpur. The coalitions’ issues and concerns raised in their previous communications to the MPIC were not adequately addressed, in particular the failure of the process in recognising native customary rights (NCR) and the country’s judicial rulings and court decisions upholding NCR.

Why the EU-Malaysia VPA process has not been concluded?

Malaysia was one of the first countries to start negotiating a VPA with the EU. In spite of engaging in the VPA process for a long time, both parties have not completed the negotiations to reach an agreement, to this day.

The first Asian country that the EU signed a VPA with was Indonesia, and beyond Asia, with Ghana, Republic of Congo, Cameroon, Liberia, and Central African Republic.

In Malaysia, the FLEGT VPA process repeatedly failed to reach a consensus, particularly around contentious and outstanding issues between the IPOs/NGOs on one side and Malaysian government and industries on the other side. One of the main concerns here is the missing reference to recognising NCR, a key element of the VPA. It is also a cause for concern that the interpretation of the law used by the Sarawak Government has been narrow and largely based on statute, ignoring the role of traditional law, case law and international law.

That the Malaysia government has not yet been able to set up an inclusive and participatory consultation process is also worrisome. The government claims to have held over 200 consultations, as pointed out in the FLEGT Asia 2012 report. Yet the same study also pointed out under 'lessons learned' that multi-stakeholder dialogues don't always work because of power imbalances,⁸⁷ (which should be addressed first) and that there is no history of effective multi-stakeholder dialogues in Malaysia.

It is also important to note that Malaysia did not sign any of the big international human rights conventions.⁸⁸ This dismal record shows a lack of commitment by the state to uphold individual and collective rights consistent with existing international law and customary international law. As said earlier, the Malaysian government has been justifying that Malaysian timber has been logged sustainably and will continue to be. However, both the contents and processes, as summarised below, indicated Malaysia so far is not fully complying to the objectives as outlined in the EU Council Conclusions on FLEGT (2003/C 268/01).

Content failures:

- Solely addresses the technical questions on the definition of legality, ignoring adat definitions of NCR, other legal and rights issues.
- Land and tenure rights are not clearly spelled out, and there is a lack of political will and meaningful resolution to issues of NCR lands, especially NCR issues in Sarawak.
- Existing laws and regulations facilitate destructive logging and compromise principles of sustainability.

Process failures:

The flawed process of consultation and participation is recorded as participation of multi-stakeholders but in essence, the process is dominated by government, industries and non rights-based NGOs and indigenous leaders.

The social NGOs demand, among others, that: (Wong 2010)

- Disputes over land be settled prior to logging;
- Timber harvested in disputed areas be considered illegal; and
- Applicable customary laws are not limited to codified customary laws, but includes unwritten customary practices as recognised by the federal constitution and adat.

The timber sectors' objections, among others: (Wong 2010)

- Timber industries of Sarawak withdrew their support of a VPA;
- They do not want land rights and social economic conditions of indigenous peoples to be included;
- They want sovereignty over management and uses of natural resources to be upheld, and not be compromised by VPA.



(Image 4) Piles of felled logs on the way out of Baram, Sarawak

84 Information presented here is from FERN (<http://www.fern.org/>), Logging-off (<http://loggingoff.info/>), Malaysian NGOs memorandums, and personal communications between Carol Yong and key forest governance campaigners. See also, Wong Meng Chuo's power point "Why FLEGT VPA fail in Malaysia?" presented at the Regional Meeting: Forest and Governance, held in Bali, Indonesia on 23-25 November 2010.

At the time of writing, and making every attempt to obtain the most recent information, there was no readily available latest information to the public from the Malaysian government or mainstream Malaysian media of where the Malaysia VPA is at. Thus the contents presented here is not the most up-to-date and the picture is uncertain about the progress, although it seemed the VPA process has stalled and the Malaysian government has not shown real interest to meet the EU demands which include proper consultation process.

85 The submission comprised of the following documents:

- Summary of Comments, Submission by JOANGOHutan and JOAS (Nov 26, 2007)
 - Report of the Fourth Stakeholder Consultation Malaysia-EU on FLEGT VPA, Prepared by MPIC (June 27, 2008)
 - Third Stakeholder Consultation of the Malaysia-EC on FLEGT VPA, Responses to Comments/Submissions from Stakeholders, Prepared by MPIC (February 15, 2008)
- Responses to Proposals and Concerns raised at the Fourth Stakeholder Consultation Malaysia-EU on FLEGT VPA, Prepared by MPIC (June 27, 2008).
 - Notes on Legal Concerns on a Selection of Issues Debated during the Multi-Stakeholder Consultative Process of the FLGT VPA (with a Summary)

86 See, Ministry's response dated 17 November 2008, <http://loggingoff.info/document/ministrys-responses-issues-raised-joangohutan-and-joas>

87 FLEGT Asia (2012), Mapping of Forest and Forest-related Stakeholder Consultations in Malaysia, 31 January 2012. EU FLEGT Facility, Kuala Lumpur, pages 51-53.

88 Of the nine core human rights international treaties Malaysia has only ratified two: Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and Convention on the Rights of the Child (CRC), with certain reservations

Commenting on the development and process of the EU-Malaysia FLEGT VPA process, FERN's Saskia Ozinga said:

It is the only trade-related process that has put NCR squarely on the political agenda which is useful, even though it has not got very far. If the NGOs and the EU had collaborated better and had a similar understanding of possibilities and problems, more could have been achieved. If a VPA does get signed without a proper consultative process and without pointing to the need for legal reform it will be a missed opportunity.

Although the Sabah timber industry has changed its position and is now supportive of the VPA (Sabah jointly with Sarawak withdrew support in 2009) as well as the industry in Peninsular, the industry in Sarawak and the government of Sarawak maintain they are not interested in a VPA. Hence negotiations are now solely focussed on a TLAS for Sabah and Peninsular with Sarawak being out of the picture.

This situation has, however, provoked a strong response from the Indonesian government. They have called the EU position to negotiate with parts of a country 'illegal' and expressed strong concern that if the EU were to go ahead and sign an agreement with Malaysia excluding Sarawak, there would be repercussions from Indonesia. It is therefore unlikely the EU will sign an agreement without a clear timeline for future inclusion of Sarawak. It is equally unlikely that Sarawak would want a binding timeline included in a VPA. Hence it looks like a stalemate.

The Sarawak Timber Association in late 2013 released a statement on its position on the VPA-FLEGT supporting the Sarawak government's cautious stance to adopt a phased approach to the signing of the EU-Malaysia FLEGT VPA, which is on a voluntary basis. The reason being that "the real benefits to the industry must first be forthcoming."

As for forest governance campaigners, the Malaysia VPA process raises a number of concerns:⁸⁹

Last year [2013] we were saying that we understood, at least in theory, the view that isolating Sarawak could bring pressure to bear, but as our partners say otherwise we support their position that without Sarawak there should be no VPA. Partly because of practical reasons (high possibility of mixture of timber from Sarawak) but mainly because it defeats the purpose of respect of indigenous rights that a VPA supposedly upholds. It is misleading to characterise all problems being rooted in Sarawak as if Peninsular and Sabah are fine. Corruption in Sabah for instance is also high. Given that deforestation in Malaysia is the highest in world and apparently especially bad in Peninsular where there is little being said by CSOs, we agree that the focus should be on the federal level/whole of Malaysia and not only finger-pointing on Sarawak alone.

There was also concern at the apparent lack of commitment shown by the government of Malaysia, as Lukas Straumann, BMF director explicitly pointed out:⁹⁰

⁸⁹ Email of 3 February 2014 to Carol Yong.

⁹⁰ Email of 20 May 2014 to Carol Yong.

In short, our answer should be a clear NO to a Malaysia VPA because of a lack of commitment by the Malaysian government to tackle the most important governance issues. Malaysia has failed to prosecute Sabah Chief Minister Musa Aman despite damning evidence that he was involved in a timber-industry-related money-laundering scheme involving UBS. In 2008, Musa nominee Michael Chia was caught at the Hong Kong airport with a suitcase full of cash. The following investigations by the Hong Kong authorities were not properly supported by Malaysia. As to Sarawak, I can't stop repeating that the lack of governance in the timber sector is a direct consequence of the Malaysian federal government's judicial protection granted to the Taib regime. It is a direct responsibility of Kuala Lumpur. There is no such thing as a legal or judicial autonomy of Sarawak.

In other words, there are many shortcomings in the Malaysia VPA process, including the lack of a proper consultation process and the lack of willingness by the government to integrate the concerns of indigenous peoples and key indigenous, social and environmental NGOs regarding customary rights to lands and other human rights. Signing the VPA with Malaysia without a proper consultation process and without a roadmap to address contentious issues like NCR is setting a dangerous precedent, undermining NGOs and forest communities demands' specifically Native Customary Rights to land. Nonetheless the VPA negotiation process has increased political space for indigenous communities to make their demands visible to outside partners such as the EU and EU timber companies. Malaysia was together with Ghana and Cameroon one of the first countries to start negotiating a VPA, it is the only one of that group that has not been able to conclude. This makes a mockery of PR by the Malaysian industry that all is well.⁹¹

If a VPA was to be signed, it would have to include Sarawak, the TLAS would have to be based on a consensus position – including local NGOs and IPOs – and recognise native customary rights across Malaysia. If this is not possible, not signing a VPA is better for the EU than signing a bad VPA. The lack of signing in the past seven years is indicative of the problems. In this respect, the EU is to be complimented for particular efforts to develop broad engagement with civil society organisations, IPOs and marginalised communities as well as visiting different regions and communities to review and understand first-hand these problems and issues. The EU has also viewed seriously the concerns of indigenous peoples and key NGOs/IPOs regarding native customary rights, a proper consultation process, transparency and so forth, and kept repeating these points to the Malaysian government and the industry.

The Malaysian government should now recognise that for a credible and viable VPA, the process should foremost be guided by principles of rights, justice and equality, and that includes addressing and resolving customary rights issues satisfactorily and conclusively, rather than trying hard to greenwash it. Through the MTCC Malaysia seems to have pushed for their own “standard-setting certification scheme” in timber, for example, when criticisms still continue that the MTCS/PEFC certification is “discredited” and thus unsustainable.⁹²

91 A Malaysian media has either cheekily reported or misinterpreted facts that “After seven years, Malaysia and the European Union (EU) have finally come to signing an agreement ...” See, FZ: Malaysia News - M'sia, EU consents on legal timber partnership agreement, Sarawak hesitant, available at: <http://www.fz.com/print/content/msia-eu-consents-legal-timber-partnership-agreement-sarawak-hesitant>, May 22 2014. Yet, there is no official announcement by the EU that a VPA has been signed with Malaysia or promises for signing have been made. See, for more information on the VPA-FLEGT issue in Malaysia, Yong, Carol (2006), Forest Governance in Malaysia: An NGO Perspective. A Joangohutan Report for FERN, Moreton-in-Marsh. This report and also other reports on the same series on Ghana and Congo (DRC) are available at www.fern.org. For detailed description of the EU's FLEGT Action Plans, see, 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, Brussels.

92 cf. footnote 27.

The VPA exposes that Malaysian state and loggers not wanting to abide by international standards have instead presented their own terms and conditions into the VPA.⁹³ Yet most EU governments have accepted – provisionally or otherwise – MTCC as an acceptable certification scheme within their procurement policies, despite claims of indigenous peoples that the scheme does not properly recognise their rights. The incoherencies of the EU governments is really concerning. European countries' acceptance of MTCC “allows” the Malaysian government and the forestry industry to ignore addressing key issues like land rights, contested lands and allegations of PEPs' corrupt practices. This denies the full participation and involvement of all stakeholders – at the moment the scheme is dominated by the forestry industry or the government – based on a due consultative process, before promoting the scheme. It also shows how inconsistent Europe is and that is one loop hole that Europe must close if the EU FLEGT VPAs are to be credible.

In addition, this does not make for consistent policy formulation of the VPA, which is not just with Malaysia but a standard applied to several countries that had actually agreed and signed the VPA. The issue this raises for the EU is how the EU is assuring that the common standard is followed rather than the individual member countries making their own standards for a forest certification scheme or a VPA. Likewise, it is crucial for all other international consumers, especially in Asia and the Middle East (the big consumers of Malaysian timbers) to acknowledge that commercial priorities can obscure the adverse environmental and social impacts. A key point is that the economic and political structures of Malaysia and many other nations can accelerate the degradation and loss of Malaysian forests and rights violations of local forest communities if the issue of land rights, crucial in a country like Malaysia, is not being addressed.

Trade and investments ‘facilitating’ deforestation

Trade and investment agreements facilitate big business to plunder the forests and natural resources, but place no binding clauses for them to operate responsibly. Among the biggest buyers of Malaysian wood, Japan and Australia have recently enforced policies and legislations towards ensuring the legality and sustainability of the timbers they procure, while South Korea has none (FOEI 2013). Many of the importing countries have yet to fully understand the actual conditions on the ground and flaws in forestry practices and governance in producer countries like Malaysia.⁹⁴ Malaysia's present forestry and land governance framework is continuously linked to violations of customary rights to land of indigenous peoples and other rights abuses. Therefore it is not enough to focus only on legality in technical terms. Moreover, the legality-sustainability issue and NCR have generated considerable debates and controversy in national and international initiatives such as voluntary certification processes and standards in Malaysia, including forest certification, FLEGT VPA, and the RSPO. There is also a bilateral Free Trade Agreement (FTA) going on between the Association of South-east Asian Nations (Asean) and the European Union (EU). Developments have been equally slow, and the reason for this is not publicly known. Although EU investments in Malaysia are still relatively small compared with importers like China, India, Japan or South Korea, the EU is nevertheless considered an important trading partner for Malaysia because it is a powerful regional bloc. In 2008, the European Union market accounts for about 30 percent of Malaysia's annual timber exports.⁹⁵

93 Likewise with RSPO oil palm, Malaysia seems to have a standard whereby international standards will expose Malaysian state and corporations to scrutiny that will expose underlying hidden hands.

94 Forest Governance in Malaysia: An NGO Perspective, op cit

95 Satellite used to fight illegal logging, Malaysiakini, 28 December 2008

Business is another main driving force influencing the trends in forestry and forest industries. Specifically, in early 1993, the Austrian Parliament passed the tropical timber law banning the import of tropical timber. Due to protests from the Malaysian and Indonesian governments, which demanded the cancellation of that law, two main parties' parliamentarians (OeVP and SPOe) at that time voted for the withdrawal of that law in exchange for contracts for Austrian companies building dams and a cellulose factory. But the Greens and FPÖ had objected and already pointed out the corruption in the Malaysian timber trade. This means that the issue of corruption was already publicly known. In the political context, Austria's withdrawal of that tropical timber law was instrumental in promoting this timber trade business, by bowing to the Malaysian government's public response to the timber boycotts with counter threats, for gaining business contracts. For this reason, involved international drivers should be held accountable for their indirect impacts on Malaysia's forests, alongside the Malaysian drivers. Thus, corruption should not be viewed in the Malaysian context only but as a global problem. As Saskia Ozinga, FERN's campaign coordinator notes: "Corruption is rife everywhere – e.g. within the EU, notably the East, there are many corruption issues – and if the EU would not deal with any countries where corruption was an issue it could not deal with any country."⁹⁶

Market forces influence demand and supply, and as Malaysia is very much a part of the global-trading system, there is no escape from the market forces of demand and supply. The question, however, is: to what extent should consumers be blamed for their consumption behaviour? Looking at the way trade currently is, there are multiple levels of interactions and power dynamics: between the sellers (companies) and the consumers, where the sellers try to manipulate the consumers; and also the political process to force consumers into certain kinds of consumptive behaviour; for example, the EU biofuel policy. Actors who want to make money out of this, both Malaysian and global, need to come up with policies that meet certain acceptable standards and practices they are happy with.

Using the example of biofuel, they – the EU, Malaysian government, oil palm planters' state and private, bankers and financiers – need to influence the consumers who otherwise would not buy it. How do they influence? They target the political process (policies) or they use existing legislations like Free Trade Agreements, and influence through advertisements paid for by the consumers.⁹⁷ So the few dominant global economic players use this as a strategy to encourage national and international initiatives such as voluntary forest certification schemes, sustainable oil palm, and other "green" policies and initiatives of FSC, PEFC, RSPO, etc. However, evidence is still lacking and there is a need for more data to provide greater evidence of the complex networks that shape and control these processes of change in the forests and pressures on forests.

Perverse "development"

The Malaysian government is seemingly wary about the kinds of economic activities related to forests and land-use practices that they have little or no control over, such as community-based projects/initiatives, small-holding agricultural schemes, micro hydro projects, etc. Therefore the government often chooses to develop the biggest and grandest projects that are easy to control, in terms of benefits and ownership. An example is the proclamation of a new tropical forest reserve such as Penan Peace Park in Sarawak's Upper Baram region, mentioned earlier, which the government authorised logging in the area to Samling.

⁹⁶ Email of 2 February 2014 from Saskia Ozinga to Carol Yong.

⁹⁷ At the end of the day, most of the direct and indirect costs are paid for by the consumers. An example is so-called "free" advertisements, using paper made from wood chips coming from some rainforest plantations, which consumers didn't order but got sent. Often, too, consumers don't know or are kept unaware, where the paper comes from.

Box 4: Sarawak's Mega 'Taib' Dams

Taib's grand political plan to build 12 dams in Sarawak's interior, at various stages of implementation – revealed from leaked documents – would invariably flood vast areas of the rainforest and displace the indigenous peoples in the way of these projects.⁹⁸ These dams are part of an immense industrialisation project called Sarawak Corridor of Renewable Energy (SCORE). Who gains?

- Energy-intensive industries of main interested investors such as Press Metal (aluminium smelter), Tokuyama (polycrystalline silicon plant), Singapore-based OM Materials (manganese and ferrosilicon alloy smelter) and Asia Minerals Ltd (manganese smelter).⁹⁹
- New roads paved the way for further timber-based and palm-oil industries, two priority sectors of SCORE.¹⁰⁰
- Malaysian banks, the main lenders to various SCORE projects.
- Foreign companies' involvement, though lending so-called professional personnel and experts, technology, money or simply green washing the dams. The publicly known international actors include:
 - Germany - Fichtner GmbH & Co KG
 - Australia - Entura, Hydro Tasmania, SMEC, GHD
 - China - China Three Gorges Corporation, China Exim Bank
 - USA - MWH Global
 - Swedish-Swiss-ABB, the technology group currently building a close business relationship with SEB.¹⁰¹
 - International Hydropower Association (IHA)
 - Norway's citizen, Dale Sjøtveit, hired by Taib as CEO of Sarawak Energy Berhad who receives an annual salary of USD1.2 million, 10 all expenses paid holidays, a new car and free housing.
 - Rio Tinto, Norsk Hydro and Hydro Tasmania: they have recently withdrawn from Sarawak after an in-depth analysis of the human rights situation, the economic feasibility and the reputational risks involved.

All these main actors in Sarawak's dam business play a role in deforesting Sarawak. Dam projects in Malaysia continue to symbolise modernisation and progress, thus are promoted by political and business elites. In reality, many factors point to corruption as the main driver behind dam plans. Affected communities have protested through marches and blockades, such as the Penans, and other native groups, at the proposed Baram dam site, who have protested since October 2013, to express growing concern about deforestation, human rights abuses and the big corporations contributing to the crisis.

98 Sincere thanks to Bruno Manser Funds and Save Rivers Network, and most importantly, the Sarawak communities that are struggling to stop these dam projects, for information herein, reproduced with permission. More information are available from the BMF website: www.bmf.ch and SAVE Rivers blog and facebook: <http://saveriversnet.blogspot.com/>; <http://www.facebook.com/pages/SAVE-Rivers/376175715744786>

99 Oxford Business Group (2011) "The Report: Sarawak 2011", page 64, cited in BMF 2012.

100 The Sarawak State Government "Sarawak Corridor of Renewable Energy – An overview".

101 Sarawak Energy is mentioned as a "Major Customer" on the website of ABB Malaysia. It is envisaged to provide the turbine governor for the Murum Dam. Already in the 1990s, ABB led an international consortium in charge of the construction of the controversial Bakun Dam in Sarawak, but later withdrew from the project. Transparency International named the Bakun Dam, one of the largest dams in Asia, a "Monument of Corruption". See, "ABB urged to withdraw from controversial Malaysian dam projects", BMF Media Release, 18 November 2011

Perverse incentives

The Sydney-based Lynas rare earth plant mentioned above is linked to national politics, laws that permit overriding environmental regulations, and flawed processes including the offer by the Malaysian government of a 12-year tax holiday to set up shop in Pahang, the home state of the present Malaysian Prime Minister (Najib Razak). Yet the internet media reported that the Malaysian AELB/Minister at a recent meeting has decided to issue a Full Operating Stage Licence to Lynas for a period of two years (upon expiry of the Temporary Operating License/TOL awarded in September 2012), though until today there has been no transparency and accountability from Lynas to tell Malaysians, and crucially the local citizens, the site of the permanent waste disposal facility.¹⁰² The Sarawak dams and the perks for SEB's CEO may be a classic example too. Likewise, sand-miners in Malaysia are seldom held accountable "because the public servants that are supposed to protect our natural resources just keep silent, and are in cohorts with the miners or simply cater to the people in power for the sake of royalty received from the sales of sand."¹⁰³

Impacts of deforestation and forest degradation

Logged and degraded forests in Malaysia dominate satellite aerial photos and NGO reports. It is no surprise. The UK-based NGO Global Witness has revealed that less than 5% of Sarawak's primary forests remain unlogged today. Deforestation affects all people – women and men, young and old. Indigenous peoples and local forest communities, who depend on forests and lands for livelihoods, income-generation, social-cultural and spiritual links, are arguably the most affected. The profits benefit only a small segment of people: the political and economic elites. Yet, there are no signs of forest exploitation, degradation and deforestation stopping. Contrarily, even what forest cover remains is now at risk. Large dams, infrastructure projects, industrial logging, mining, land schemes and large-scale monoculture plantations all intensify pressures on the forests. These activities have led to rapid deforestation and degradation of forest and rivers ecosystems as well as triggered conflicts between age-old forest dwellers/indigenous peoples and the political-economic elites. The consequences of deforestation are far-reaching, thus this section only attempts to sum up the main human, social, environmental and biodiverse consequences of activities causing forest degradation and deforestation. Detailed impacts are presented in the two sub-regional case studies.

Human rights violations

- States continue issuing logging and plantation licences on state land claimed under indigenous customary land rights/title, without the consent of affected communities, or any prior process to clearly extinguish their rights and pay adequate compensation for the loss of the rights.
- Local people and indigenous communities, especially those practising swidden agriculture, have generally been blamed for accelerating deforestation and degradation.
- Legislation, such as the Aboriginal Peoples Act 1954, Sarawak Land Code 1958, Sabah Land Ordinance 1930 and various colonial and post-independence executive and legal documents, have been applied to claim indigenous customary land rights and forests as state-owned.

¹⁰² Source: Save Malaysia, Stop Lynas! (SMSL), <http://www.savemalaysia.org>.

¹⁰³ Whither our sand? SM Mohamed Idris, SAM, 22 October 2013, <http://www.malaysiakini.com/letters/244557>

- Deforestation and the expansion of agribusiness, mining and other extractive industries, infrastructure, and so on are often associated with land-grabbing, forced evictions, human rights violations and state-sanctioned violence, impoverishment of indigenous peoples and forest-dependent communities.
- Human rights defenders (community members, villagers, activists, NGOs) are often the subject of police harassment, attacks, arrests, detention, etc. in cohort with the companies.

Human and social costs

- People directly dependent on forest resources and farmers are especially vulnerable when deforestation destroys or depletes the resource base for their livelihoods and for cash income.
- Flooding, landslides, soil erosion and other human-induced disasters through logging and hill slope cutting can cause loss of human lives, homes, crops, livestock, properties and public infrastructures like roads, schools and bridges.
- Monoculture plantation economies can reinforce existing gender inequalities because of gender-differentiated access to land and division of labour.
- Women's negotiating power within the household and the community is undermined by reduced or loss of access to forests and lands, further reinforced by the limited off-farm economic alternatives.
- The degradation of forest and water resources can affect peoples' food security, livelihoods and cash-income sources (see the two sub-regional case studies).
- Pressures on the forests and resources competition that intensify with increased deforestation may undermine local sustainable land-use practices that are based on long rotations between swidden fields and forest fallows over extensive areas of forest, e.g. shortened fallow periods in shifting cultivation cycles.

*Environmental and ecological impacts*¹⁰⁴

These consequences are, of course, widely known and obvious: changes in local landscapes and forest ecosystems, reduced biodiversity, climate change and global warming effects, extinction of plant and animal species, soil erosion, catastrophes linked to deforestation (e.g. flooding, mudslides), and deteriorated watersheds and water quality. The Malaysian rainforests once harboured a rich variety of plant and animal life. There were some 1,671 known species of amphibians, birds, mammals and reptiles, of which 13.9% were endemic and 9.3% were threatened and at least 15,500 species of vascular plants with 23.2% of endemic species.¹⁰⁵ The Peninsular, or then Malayan forests, contained between 9,000-10,000 species of plants and an equally rich fauna diversity. Sabah had 265 of the 390 dipterocarp species in Southeast Asia. Sarawak was well known for its "biological diversity in the Old World Tropics." Sarawak's forests then were dense; the lowland dipterocarp forests had "a very long period of development uninterrupted by man or by marked climatic changes" and an estimated 2,500 indigenous tree species and other great diversity of trees; lianes and rattans were numerous. Today, this rich biodiversity and forest landscape has been dramatically altered by deforestation and forest degradation impacts.

104 For more details, see: Peninsular Malaysia: Dunn, F.L., 1975, op. cit., esp. Chapters IV and V; Sabah: McMorrow and Talip, 1999, op. cit, page 217; Sarawak: Primack, 1992, *The Future of Biodiversity in Sarawak*. In *Borneo Research Bulletin*, v.24, pages 229-230, Jackson, C. 1968, op.cit., page 35.

105 Cited in <http://www.mongabay.com/Malaysia Forest Information and Data>. Accessed 4 November 2013.

PART 2: LOCAL ASSESSMENT

SUB-REGIONAL CASE STUDY 1: LONG ITAM, MIDDLE BARAM, SARAWAK¹⁰⁶

Gathering and hunting wild plant and animal products from the forests was a significant part of Penan life since the days of their ancestors, and still is today. This was especially true of the nomadic Eastern Penan found in the Baram, Tutoh and Limbang river systems. Hunting and gathering is still widely practised by the Penan, although today almost all have been settled or semi-settled. The more sedentary mode of life was the result of numerous influences. For instance, when some Penan groups developed the system of setting up satellite sago harvesting camps they started to be semi-nomadic, about 100 years ago. Another influence was contact with neighbouring communities like the Kenyah and Kayan who practised swidden cultivation and animal husbandry for generations. Besides the roles of the Christian missionaries in getting the Penans to settle down in colonial times, the current state policies and programmes instituted also moved the Penan away from their nomadic lifestyle.

The process of adaptation is still being felt today, because the Penans did not practise any form of agriculture, depending instead on the forest for hunting and for collecting various forest products.¹⁰⁷ The Penans are well-known for their adept skills in hunting and jungle trekking, even by other indigenous groups in Sarawak. However, life for the Penans has become increasingly difficult as their forests as sources of food, medicine, wildlife and other forest products have been rapidly depleted. The damage from logging at an unprecedented rate and scale had major consequences for the Penans. Timber concessionaires often took what they could then moved to other intact forests, or continued harvesting with re-entry permits.

This field study represents a unique area where the Eastern Penan communities in Baram and Limbang are still struggling against logging in primary forests,¹⁰⁸ since their first blockades in the early 1980s. The Penans in the Middle Baram are also confronted with incidences of rape and sexual abuse of Penan women and minors workers from the logging camps.

106 All information described here was obtained from participant observations and interviews conducted with women and men in Long Itam during the field visit by the local researchers in November 2013. Court case information was based on legal court documents, used with permission from the communities, land rights lawyer See Chee How and the NGO SACCESS. Additional information is based on this consultant's past experiences in Sarawak, email communications and desk review.

New book on the Penan - The Peaceful People: The Penan and their Fight for the Forest, Paul Malone, SIRD (2014), Pb 285 pp, ISBN: 9789670630366. Available from: http://gbergerakbudaya.com/bookshop/index.php?main_page=product_book_info&cPath=1_4&products_id=2321.

107 This has been described in substantial literature, among others: Arnold, G., 1958, "Nomads of the Upper Rejang (Plieran), Sarawak", in: *Journal of the Malayan Branch of the Royal Asiatic Society*, 31(1), pages 40-820; Brosius, J.P., 1991, Foraging in tropical rain forests: the case of the Penan of Sarawak, East Malaysia (Borneo), in: *Human Ecology* 19(2), pages 123-150; Harrison, T., 1949, "Notes on some nomadic Punans", *Sarawak Museum Journal*, 5:130-146; Langub, J., 2010, "Making Sense of the Landscape: Eastern Penan Perspectives." Paper for A Conference on United Nations Declaration on the Rights of Indigenous Peoples: Implementation and Challenges organised by the Centre for Malaysian Indigenous Studies (CMIS), and Centre for Legal Pluralism and Indigenous Law (CLPIL) at the Faculty of Law, Universiti Malaya, Kuala Lumpur, November 9-10.

108 Primary forests here means intact forests used interchangeable with unlogged forests. Reference to primary forests is basically those under the Long Itam, Ba Abang and Long Kawi land claims and that are under licence which means they are licensed to be logged unless defended. There are other re-entry and land clearing type of forest clearance.

The Setting - Long Itam village

Long Itam village is a predominantly Eastern Penan community with about 203 people (118 male, 85 female) and 38 families. It is located in the interior district of Middle Baram in Miri Division. The physical feature of Long Itam ranged from flat, rolling, steep to very steep slopes, with rivers and streams. The types of forests found in Long Itam are intact communal forests, logged-over forest, secondary/fallow forest and cultivated areas. Rivers are an important aspect of the Penan landscape, imbued with values and meanings. Penans can recognise the names of rivers and streams (big or small), the watershed and direction of river flows.

The current village site of Long Itam was established around the 1950s but its oral history and Penan ancestry dates back further. The ancestors of present-day Penan communities, who are now settled in Middle Baram like Long Itam,¹⁰⁹ were groups of Penan that had moved within a home territory in and around Ba Pita, about 200 years ago. They hunted and gathered food from the forests and lived on sago (*uvut*) – traditionally their primary source of carbohydrate and staple food. Their customary practice was based on the practice of *molong* – using resources in a sustainable way to meet specific needs while preserving or recovering trees, sago clumps, etc. for future harvests. In this way, resources from the forests and rivers have sustained the Penans for generations, providing them with the source of their basic needs like food, medicines, and so on. The Penans also barter traded with other indigenous groups from other villages and settlements. They exchanged goods such as *Nyateng* (resin to get fire), and stone from wild animals, *Kapon* (latex of kapur trees) and handicrafts (mat, basket) for shotguns, clothes for *avet* (dressing) cooking pots, axes and hatchets, etc. Traditional dwelling huts called *lamin toro* were left behind as distinct marks of earlier settlements within the home territory. This showed that, when they lived a nomadic lifestyle, the Penan usually moved in several separate bands (usually 2-5 families per band) also to form other villages. The size of bands vary depending on the available resources.

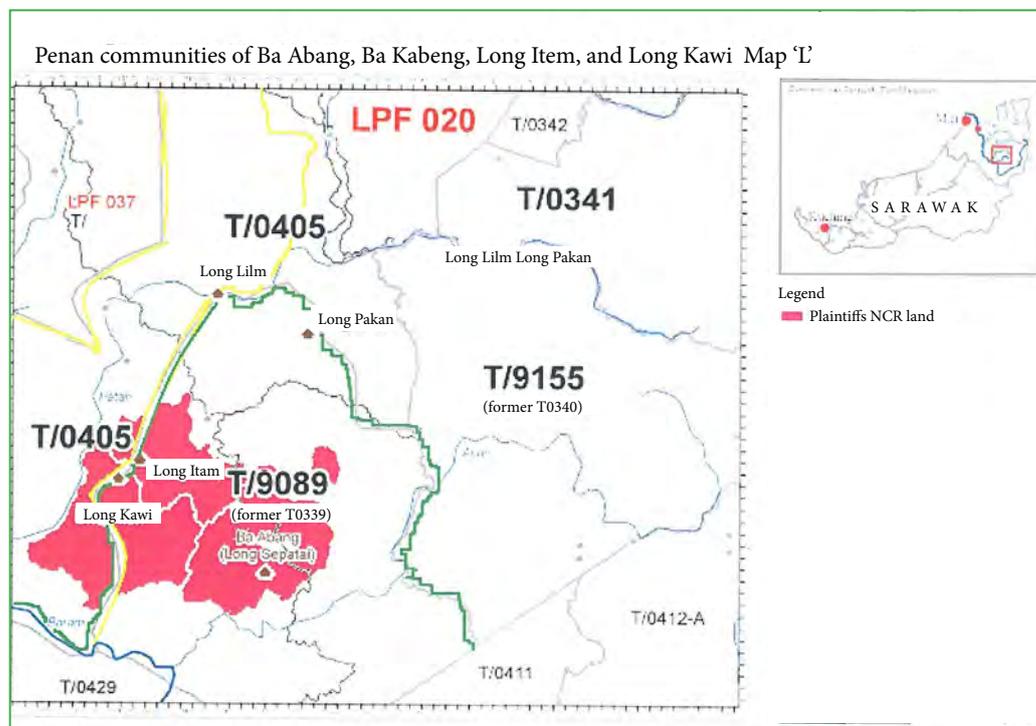
Deforestation in the Penan heartland

The forests of Baram, Tutoh and Limbang – traditional homelands of the Penan and Orang Ulu groups such as Kayans, Kenyahs and others – were heavily logged in the 1980s. As said above, the Penan of Long Itam is one of the remaining indigenous groups still struggling against logging in their primary forests, both logging in virgin forests and re-entry logging. There is no forests conversion yet in Long Itam, unlike some other communities such as the Long Miri Kayan whose lands were logged some years ago when it was converted to a fast-growing tree plantation. The *Tana Pengurip* (or NCR land of the Penan communities of Ba Abang, Long Itam and Long Kawi) (Map 2) was encroached in early 2002, when a company called Damai Cove Resorts Sdn Bhd was given a Re-Entry Hill Logging Timber Licence (T/9089) to log.¹¹⁰ The forest area covered some 61,334 ha located in the Lower Patah-Akah area in the Middle Baram region. The licence was issued on 29 January 2002 for a six-year period, until 28 January 2008. On April 2002, Damai Cove Resorts transferred the rights to the licence to Interhill for logging operations. After expiry, the licence was further extended to 28 January 2013 – the current status is unknown to the communities, but it is assumed to have been extended, as in most cases. In an adjacent area the logging company, Samling Plywood (Lawas) Sdn Bhd issued a Forest Timber Licence No. T/0405, valid until May 2013, (on paper at least).

¹⁰⁹ Long Itam's Penan neighbours include Long Kawi, Long Luteng, Long Sengayang, Long Kabeng, Long Lilim and Ba Abang.

¹¹⁰ The area was initially licensed to Sara Resorts Sdn Bhd under the Forest Timber Licence No. T/0339, issued in 1991.

Map 2- *Tana Pengurip* of the Penan communities of Ba Abang, Long Itam and Long Kawi, encroached by logging companies (Interhill, Samling Plywood) (Source: BMF)



The headman of Long Itam, TK Balan, remarked:¹¹¹

We have acquired and claimed native customary rights (NCR) over the area of land and territorial domain we Penan say as [call] Tana Pengurip. This is within the territory of original place first utilised and claimed by our ancestors. The boundaries are known to us and our neighbouring village communities as the ancestral land or NCR land of Ba Abang, Long Itam and Long Kawi villages. The timber licences were granted for areas of land which encroached onto our NCR, without our permission.

When the logging companies came to Long Itam, they first cleared sections of the forests for opening new logging roads to access the virgin forests. Then these logging roads were used to transport logs out from the felling sites. Additional forest areas were cleared to build temporary logging camps, which contained a few new but small huts for the few workers who could guard the machineries. The logging camp could be easily dismantled and then moved into other areas as the logging advanced. In re-entry logging (that means re-logged in and around the concession previously worked), the old logging roads were resurrected. When bulldozers entered the virgin forests, the wider forests were degraded as the tractors and bulldozers caused severe damage all along the path, contributing to soil erosion of streams, loss of vines, rattan and other vegetation, pollution of rivers and other drinking sources, in addition to the loss of the valuable timber the loggers took.

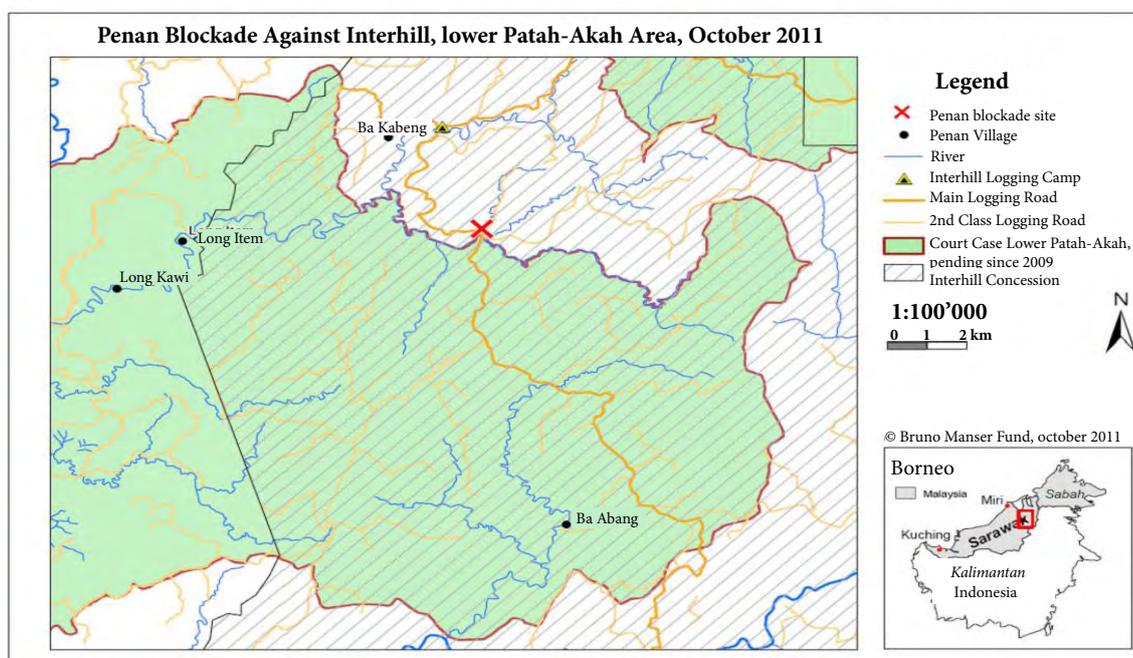
¹¹¹ One of the series of interviews conducted during field visit to Long Itam.

Increasingly, jungle produce and game declined as logging advanced. The affected communities in interior settlements thus began to set up logging-road blockades to protect their lands against a number of encroaching logging companies.¹¹² TK Balan and his assistant headman, Wakil TK Lah recalled that, in 2002 when the communities discovered the logging encroachment onto their NCR land, they tried to see the manager and workers at the logging camp but didn't succeed. In order to stop logging destroying their NCR land, the people of Long Itam, Long Pakan, Sungai Kabeng and Sungai Patah united to set up a blockade. TK Balan added:

The blockade was against Interhill. We were asked by the company to travel to Marudi to sign an agreement at the District Office, but we didn't know what kind of agreement. However, when we arrived there on that day, the company representative was absent. So we resumed our protest. Later joined by Long Lilim and Long Lutim from Sungai Patah as well as Long Pangaran Iman from Sungai Akah when the blockade was resumed.

The headman and some other leaders had taken a series of actions on behalf of the villagers. This included sending appeal letters, making police reports, taking direct actions (blockades), and directly meeting workers and going to logging camps to warn the manager to stop the encroachment. Yet there was no indication that logging had stopped. The continuation of logging affecting their NCR land rights, livelihoods and other distinctive way of life finally forced the Penans to seek legal avenue. On 2 Dec 2009 the headman of Long Itam together with Long Kawi and Ba Abang, representing their respective communities, jointly filed a case at the High Court in Sabah and Sarawak to claim the licensed area under dispute (Map 3).

Map 3: Interhill concession area overlapping the NCR land of the Penan (Source: BMF)



112 The series of peaceful protests and human barricades staged by the Penans, Kenyah, Kelabit and Kayan in the 1980s and 1990s made headlines in the national and international media, NGO reports, etc. Today, many of these communities are still forced to set up blockades to stop destructive forest activities although the government, time and again, has said such profit-making ventures are necessary for developing Sarawak and especially the remote areas where rural and indigenous communities live.

Underlying causes of deforestation in Long Itam and Lower Patah-Akah areas

Direct pressure on the forests of Lower Patah-Akah areas may come from logging, but the underlying processes and nature of political-economic relationships that are obscured are critically important. After lengthy interviews, conversations, storytelling and walking along the path to forests, the local research team and Long Itam informants, including the headman and deputy, identified the principal indirect causes of the loss of their forest in the Interhill licensed zones as:¹¹³

- Logging concessions
- Failure of the state to resolve the problem of logging concessions overlapping with NCR lands
- Politicians
- Company tactics
- Government policy and Penan development

Discussion and analysis

As briefly described in Part 1, industrial logging in Sarawak's hill forests in the 1949s under colonial rule made little progress except for a few logging firms.¹¹⁴ However, after the British left Sarawak in 1963, hill forest logging was exacerbated due to several factors. These included the increasing demand for timber, introduction of new mechanised logging equipment, political pressures, control over ramin harvesting in the peat swamp forests and the transfer of authority to issue and cancel all logging permits from the independent forest conservator to the minister of forests (Sarawak Law No. 68 of 1964).¹¹⁵ Intensive hill logging was authorised by the Sarawak government in the early 1980s and was concentrated in the upland forests in the Baram, Tutoh and Limbang watersheds. This led to a boom in Sarawak's timber industry, which up until early 1970s still remained small:¹¹⁶

But in the later 1970s, both Philippine and Indonesian log exports began to fall, producing a demand for Sarawak logs to feed the plymills of Japan, South Korea, and Taiwan. From 1975 to 1985, Sarawak's share of the international hardwood log market rose from 3.4 percent to 38 percent. In 1984, Sarawak became the world's leading exporter of hardwood logs, a position it held through the late 1990s. It also authorised logging at three to four times the sustainable rate, despite a storm of protests from both home and abroad.

113 These factors were emphasised by the informants. There may be other factors not mentioned by them, for example, timber trade and investments, role of forestry department and, most critically, alleged corruption and money laundering of politically exposed persons. The discussion part attempts to provide an analysis which makes the links of underlying drivers and actors more explicit.

114 According to Ross M.L., 2001, op. cit, page 134, there were between 15-20 large concessions in the hill forests but only a few had survived because at that time high logging costs and low timber yields proved to be unprofitable. One of the few that survived was owned by James Wong, formerly a Sarawak Minister for Tourism and the Environment (see above, his comment on shifting cultivation as the main culprit in deforestation).

115 The forestry portfolio has always been held by themselves while in office as chief minister - Rahman Ya'akub (1970-1981) and Taib Mahmud (1981-present), the nephew of Ya'akub. See, Ross, 2001: 127-156.

116 Ross, M.L., 2001, op. cit. page 127. It is pertinent to point out here that Japan's Regent Star Company was identified by the Japanese Tax Authorities in 2007 as having received 32 million Malaysian Ringgit in kickbacks from Japanese timber exporters over the preceding seven years covered by their investigation. The Japanese shipping cartel is known to have been making such payments since the early 1980s, amounting to a total of hundreds of millions of Ringgit. Taib even sued the on-line news portal Malaysiakini which had published the story.

Since Taib virtually controlled all of Sarawak's forests (then holding three key posts in the state cabinet), he was responsible for issuing the logging concessions in Lower Patah-Akah areas to Damai Cove Resorts, without the communities' knowledge or prior consent. This clearly contravened the Penan adat law on NCR land. TK Balan and his people said the government treating all their customary lands as belonging to the state was different from the Penan way. The Penans have their own views on forests as cultural, spiritual and physical resources for provision of food, ritual paraphernalia, medicines, shelter, fuel, and so on. TK Balan explained:

Penans traditionally or customarily have communal land-use rather than ownership. Now we are told the forests can be cleared by loggers issued with licences by the state. We need to claim back our NCR lands. That means we are forced to seek rights that have "ownership" value, something not within our Penan customs.

Yet, the government and logging companies refuted the Penan claims and insisted that the Penans were illegally occupying state land. Such a claim also clearly contravened the laws. The laws on NCR lands are clear after the highest Federal Courts had ruled on the issue; however the Sarawak Government seems to continue to defy such rulings, and therefore shows complete disregard for the rule of law. Sarawak state legal consultant, JC Fong continues to echo the government's position on land rights, or rather, the non-recognition of land rights by arguing in the courts that laws must be statutory and follow the land code, whereas the federal courts had ruled that common laws take precedence and not statutory laws. Thus it can only be said that the non-recognition of NCR lands is for political reasons, supporting allegations that logging licences in Malaysia are being abused as a political tool.¹¹⁷

The Sarawak government granted the logging concessions to Interhill on the ostensible authority of legislations such as the Forest Ordinance. Those concession areas formed part of Long Itam's ancestral territory, which is very important for their traditional livelihoods and other uses. Yet the government and logging contractors failed to conduct a ground survey to identify and establish the boundary of the NCR lands or lands claimed by the Penan to be burial grounds, historical sites, sacred sites and or crucial localities within the licensed area. In the Writ of Summons/Statement of Claim relating to the court case filed by the communities, it was emphasised that:¹¹⁸

Since time immemorial the ancestors of the Penan had established and maintained a comprehensive scheme by which through their laws, customs, traditions and practices they determined questions concerning the ownership, land use, management and occupation of land, forests and rivers within their Tana Pengurip.

Financial records showed that from 1983 to 2002, some of the company's assets and purchases, like logging trucks, were backed by 16 loans from six different banks.¹¹⁹ Five of the banks were local: four were based in Sarawak and one in Kuala Lumpur. The sole foreign bank was described as Marubeni Hong Kong Limited, based in Hong Kong, where Interhill had received two charges in unspecified amounts of foreign currency: one as a floating loan (1992-1995) and another as fixed and floating (1989-1997).

117 Sahabat Alam Malaysia (SAM), 2013, op. cit.

118 Writ of Summons/Statement of Claim in the High Court in Sabah and Sarawak at Miri, Suit No. 21-10-2009(MR)/2.

119 Companies Commission of Malaysia/Suruhanjaya Syarikat Malaysia (SSM) e-info-Company/Business Information: Interhill Logging Sdn. Bhd.(No.49911-P), Interhill Holdings Bhd (No.100688-V) and Interhill Enterprise Sdn. Bhd. (No.39530-H). Accessed 17.12.2013.

Interestingly, the registered name of the companies were “Interhill Enterprise Sdn. Bhd”, “Interhill Holdings Berhad” and “Interhill Logging Sdn Bhd.” Additionally, all the loans except the May 2002 loan were taken circa 1983-2002. There seemed to be discrepancies in information on the companies’ name, dates the loans were taken and the date (April 2002) of transfer of rights to licence from Damai Cove Resort to Interhill. These are difficult issues for the Penan to understand, let alone to know where to start to locate the data.

The Environmental Impact Assessment (EIA) report of November 2008 for the Damai Cove Re-Entry Hill Logging stated that 15 settlements with a population estimate of 2,608 people are found in or within 3km of the licensed area.¹²⁰ The Timber Licence (No. T/9089) to Damai Cove Resorts for re-entry logging was reported to have expired on 28 January 2008, but in June 2007 however, it was renewed to 28 January 2013 without an EIA report on public display. This also posed the question of whether in the first entry, there was no such EIA? Seemingly, the EIA process was only a formality since re-entry timber harvesting had already started – Coupés 01-05 were already logged and Coupés 06-07 were being logged at the time of the EIA study.¹²¹ Arguably, the EIA findings were questionable. The area was re-licensed to allow the logging companies to operate. They completely ignored the rights of the Penans of Long Itam, Ba Abang and Long Kawi to their forests and their objections to logging activities within their customary territory. Yet the EIA report highlighted the companies claiming they assisted the communities with construction materials and weekly transport to Long Lama. Long Itam’s headman TK Balan, however, said:¹²²

We asked for water pipes for several years, but was [were] never given [any]. The logging companies will often use “gift”, for example, a generator and fuel, in exchange for no protest against logging.

Community consent for logging has been engineered by ruling politicians and government officials telling villagers that to receive benefits they must cooperate. Indeed, villagers that supported logging got some funds from the logging companies, for example during Christmas. And to break resistance, as has happened in numerous cases, elected community leaders were replaced with more compliant company and government appointees. After Long Itam sued the government and loggers, the headman said the company delivered building materials and a generator to the village. But a majority of the villagers knew not to accept, especially since they had filed their case in court against the company.

120 Environmental Impact Assessment (EIA) for the Damai Cove Re-Entry Licence No.T/9089 at the Sungai Akah Area, Miri Division, Sarawak. November 2008, pages C3-21 Executive Summary. The 10 villages inside the licensed area are Long Kabing, Long Itam, Ba Abang, Long Tebangan, Long Liam, Long Selatong Ulu, Long Tap, Long Akah, Long Beku, Long Pakan. The 5 villages within 3km radius are Long Lilim, Long Seniai, Long Selakong, Long San, Long Kawi. [Re-entry means re-logging in and around the concession previously harvested.]. It is pertinent to point out that, as the case in many EIAs, the project proponent decides on the EIA consultant. That being so, the EIA is unlikely to be independent or credible.

121 Environmental Impact Assessment (EIA) for the Damai Cove Re-Entry Licence No.T/9089 at the Sungai Akah Area, Miri Division, Sarawak. November 2008, 1.0 Introduction and Section 2.3.2 of Chapter 2. The lack of EIA undertaken before the commencement of large-scale logging has also been highlighted in the Auditor-General’s 2008 Report, and subsequent annual report.

122 One of the series of interviews conducted during field visit to Long Itam in November 2013.

Another major underlying factor of forest loss in Long Itam, as in other Penan villages in Sarawak on the whole, is the Sarawak state and federal governments policy on “developing” the Penans. Taib’s infamous rhetoric that the Penans have benefited from his three decades of “development” is deceit at best. The reality is that the Penans are among Malaysia’s poorest, and many Penan villages still have limited or no access to basic amenities and facilities like schools and clinics, or local government offices to issue birth certificates and identity cards. As the field findings revealed:¹²³

- Supplies: The nearest town to get food and basic household needs is at Long Lama, about 3 hours’ drive but most Penans can hardly afford to own a car.¹²⁴
- Primary school: the nearest school (SK Long Luteng) is about a 1 hour drive.
- Secondary school: the nearest is at Long Lama and another is at Long San (4-5 hours’ drive).
- Medical treatment: government clinics are available only at Long Kevok (about 2 hours’ drive), Long Lama and Long San, but they are generally found to be poorly supplied and lack full-time doctors. A flying doctor’s service is available but it is unreliable and inadequate. For more serious treatment, there is a public hospital in Marudi (5-6 hours’ drive) and also in Miri (7-8 hours’ drive).
- Electricity supply: they depend on a generator that runs on expensive fuel that costs almost double the pump price in town and thus is used only sparingly and only when needed.

In order to resolve the development deficit in Penan areas, the government promotes logging companies as socially responsible, bringing projects such as bridges, schools, libraries, roads and health clinics to Penan settlements. In return, however, the Penan are “encouraged” to give up their nomadic lifestyle and settle down to “develop”, and consequently increase their chances of getting government social services, amenities and projects, supported by the logging companies. This sort of Penan “development,” promoted by the state, tells of trading of one right for another as if developmental rights are tradable, namely development in exchange for land rights. Transportation is one big “incentive” offered by the logging companies, knowing too well that going in and out of the Penan villages must be the toughest challenge and costly.¹²⁵ On occasion, a logging camp vehicle may be heading to Long Lama town, which becomes a “blessing” of sort. This is the irony – logging has brought huge economic benefits to the logging companies and, of course, the ruling political elites, but has resulted in the Penans losing their land and land rights. Furthermore they are forced to be dependent on logging companies for provision of basic amenities and services.

The above discussion shows that logging cannot be seen in isolation as an economic activity, because direct and indirect causes of forest loss are often interlinked or overlapping.

123 As corroborated by field findings of the international NGO Mission in Baram. See, the Penan Support Group, FORUM-ASIA and Asian Indigenous Women’s Network (AWIN) (July 2010), “A Wider Context of Sexual Exploitation of Penan Women and Girls in Middle and Ulu Baram, Sarawak, Malaysia” pages 42-51.

124 After the rape report revealed the living conditions of the Penans, the Selangor and Penang state governments gave a total of RM80 thousand (about 20 thousand Euros) and the Penans, SACCESS, land rights lawyer See Chee How and the Selangor and Penang Pakatan Rakyat state governments representatives used to purchase a 4X4 vehicle for use among the few villages of Long Pakan, Long Lilim, Long Itam, and Long Kawi to transport mainly school children.

125 Motorbikes are few, owned and shared among villagers but there is no car ownership. In a recent case, a villager had died in Miri hospital and having a transport to collect the body and send to Long Itam cost the family RM1500.00 (USD500). This is a hefty expense especially since cash is rare among the Penans.

Implications for the Penans of Long Itam

It is not hard for the Penans of Long Itam to see why logging concessions were issued to Interhill and other logging companies like Samling to log their forests – there are enormous profits to be made from the valuable timber. But are forests just trees? And who gets the most profit? As described earlier, the profits apparently supported the commercial interests of Taib, Taib’s family members and his political and economic elites. Although individual community members may gain some short-term benefits such as temporary jobs in the logging camps and other “development” aid, on the whole deforestation has adverse impacts on the majority of the Penan people. We now turn to these impacts.

Human rights

Logging has had a major impact on the NCR lands of the Long Itam Penan and associated land and forest use. The problems faced by Long Itam, and the Penan people as a whole, are not related to logging alone. A central issue is human rights violations which include:¹²⁶

- Denial (and or violation) of their land rights, especially having the rights of the Penan communities to native land tenure (NCR lands) weakened or removed.
- Denial of basic citizenship rights through failure to register and issue birth certificates, identity cards, etc.
- State neglect of their welfare including failures to guarantee adequate access to basic facilities such as education and health, and protection of women and children’s rights against external actors and forest-related violence
- Failures to provide supportive right of redress, in accordance with international human rights standards and laws.

The hardships of the Penans have been exacerbated by the increased logging activities. On logging encroaching into Long Itam’s ancestral land, some respondents said that they know of cases where other communities living near the timber camps don’t see logging as a problem because they can be hired by the company as logging workers, even if temporarily. The Long Itam people are divided on this issue because, on one side they are fighting their case in court to reclaim their forests from Interhill but on another side, they have to consider short-term options for survival. This situation is not unique to Long Itam. To allow or prohibit logging of their NCR lands as “job opportunities”¹²⁷ is often one of the main ways in which logging companies justify their permit as a right to harvest. The underlying issue, however, is logging only provides short-term cash income, as the logging camps will move out once all the logs have been taken.

¹²⁶ As is also evident in the field findings of the international NGO Mission in Baram. See, the Penan Support Group, FORUM-ASIA and Asian Indigenous Women’s Network (AWIN) (July 2010), “A Wider Context of Sexual Exploitation of Penan Women and Girls in Middle and Ulu Baram, Sarawak, Malaysia” pages 42-51.

¹²⁷ The EIA for Damai Cove, Sungai Akah, Miri: Interhill Enterprise Sdn Bhd. mentions employment.

The loss of forest resources also threatens the villagers' food security. When accessible resources are taken from them, they must now go further to more remote areas of forests to gather or hunt, or fish. As the resources become more and more difficult to locate, they have to travel further to find them. It also means that women, men and children cannot move freely and easily in the forest any more to find all the materials necessary for their survival and existence – not just for food, medicines, fuel, and income sources but also cultural and spiritual aspects. An elderly Penan handicraft maker said:

Rattan was available everywhere before logging. Now it is limited to unlogged areas only. The unlogged areas are further away from the village, which makes gathering harder, and also decreasing. The same has happened with the animals – they are now harder to find. Men need to go further, and are away from the family longer, in order to hunt and bring back meat to the village.

See Chee How, the counsel for the Long Itam Penan, told the local researchers:

The villagers only have seasonal incomes. The rattan are too far away. They have no market there. It is only 'visitors' like us buying from them. This is one big concern – how to bring their products to the urban markets and pay them appropriate and fair prices? We also don't know how long their court case will drag on. Despite taking up their case on pro bono basis, they need money for transport, food, accommodation, etc. when they go to court.

Changes in forest resources are felt more by the women than the men. As TK Balan said:

Many women previously played an important part in fishing. With the loggers around and no fish within safe vicinity, women's involvement in fishing and gathering forest products is decreasing because it is dangerous for them to venture too far away.

With changes in livelihoods caused by logging directly and by increasing pressures on forests, there are also changes in community and individual attitudes, roles, economic and social relations, based on field observations and related by some informants. These changes in turn have differential effects on women and men (gender) as well as for the young and old (generational). Women and girls in particular are more vulnerable due to the influx of logging workers from outside – incidences of sexual violence and exploitation experienced by Penan women and girls have been reported.

Gender

Collecting and gathering sago, fuel wood, fruits, rattan, resin, wildlife, fish, and timber for their own use is collective work by both women and men, and older children. Logging has altered these roles. For example, women and girls are not able to venture too far out due to security reasons including the increased risks of sexual violence and exploitation (see below). Women mainly collect from the village compound for ferns, unripe papaya as vegetables and certain leaves for food. Thus the men hunt, fish, and cut and bring home timbers as well as rattan for the women to process at the village and to make handicrafts. In other words, women used to be part of the team in searching for food and were able to enter the jungle safely. But with loggers around, it is proven to be not safe any more (with the confirmed rape cases of Penan women and girls). This is affecting food gathering roles of women and men. Besides, women did not just search for food in the forests but the journey was also for enjoying nature and their surroundings. But now they cannot venture into the forests on their own, and if they do, they must venture further and further away from the village to more isolated sections of forests

which are not yet (but eventually will be) reached by the loggers. Therefore women are now more confined to the village areas only, or they must go with the men.

Generational

Boys and girls used to be able to learn and share work with elders. Now they can't learn from their elders about Penan history and places, hunting, medicinal knowledge, and so on, because of their elders' loss of access to their forests and depletion/degradation of forest resources. So the youths tend to find work in logging camps or in towns, take up smoking and drinking, especially influenced at logging camps. Children going to school face immense problems with road transportation that is often unavailable, unreliable and expensive. Girls have been raped when hitching a ride with a logging truck, between their village and the school (see below).¹²⁸ Penan children are bullied by other ethnic groups in government schools, and face language of instruction problems, as well as an alienating school environment. Some are even hit by teachers. Yet the children still want to go to school to achieve as much as possible.

Sexual abuse and rape cases

Allegations of sexual violence and exploitation, including rape and domestic violence of Penan women and girls in the Middle and Ulu Baram regions by timber workers, were investigated by fact-finding missions, first by the federal women ministry and later by an international NGO team (NGO Mission).¹²⁹ The NGO Mission's report released in July 2010 confirmed that such cases had indeed happened and further uncovered seven new cases in the Upper Baram region by timber workers, with survivors being school girls as young as 10 years old. The NGO Mission highlighted that in addition to the isolation of the Penans 'allowing' sexual violence and exploitation, transportation was also a major factor. Parents can sometimes escort their children to school but the return journey is harder because they seldom know when their children can come home next. This means the children usually have to make the return journey from school to the village on their own. Regarding the transportation problems, local researchers recalled the villagers' ordeal:

Pre-arranged mode of transport with private car owners is most expensive, beyond the affordability of the Penan communities. The journey on foot is now more difficult as a result of logging, so they must use logging company vehicles, which is what the communities must do more often than not, from illness to all other transportation needs. The company vehicle usually heads to a certain point. This means they have to then wait either in the camp – Samling camp is about 30 minutes away or Interhill camp about an hour or so away – or on the road side for another vehicle, hopefully heading towards the direction where villagers are heading, and hopefully to the destination, which is a log pond where waiting for a once-a-day express boat is the best available option. This means sleeping rough wherever in the camp if you arrive later than the express boat. This heightened the vulnerability of the Penan, especially women and children in remote areas where the majority of logging is operating to various forms of abuse and other human rights violations, including rape.

¹²⁸ As confirmed in the fact-finding missions of both independent and government teams to investigate these allegations.

¹²⁹ The issue was first reported by BMF on 15 September 2008, that Penan women and girls were being sexually abused by employees of Samling and Interhill, two of the several logging companies operating in the Middle Baram region (www.bmf.ch/en/news/?show=118). It was then highlighted in a local media. Both companies denied the allegations. The issue led to public outcry and call to the authorities for immediate action, and this subsequently led to the forming of a high-level National Task Force under the Malaysian Ministry for Women, Family and Community Development to investigate the rape allegations (November 2008) with subsequent report (September 2009) confirmed the rape; see, <https://hornbillunleashed.files.wordpress.com/2009/09/penan-ir.pdf>. In November 2009 the Penan Support Group, FORUM-ASIA and Asian Indigenous Women's Network (AWIN) conducted an independent investigation and in July 2010 released the findings through the report, "A Wider Context of Sexual Exploitation of Penan Women and Girls in Middle and Ulu Baram, Sarawak, Malaysia".

ACCOR, the Paris-based European hotel group has pressured Interhill “to commit themselves, in writing, to the progressive establishment of social responsibility measures” for its logging operations in the Middle Baram region, and furthermore the Accor Group are pursuing similar aims as the network of NGOs “especially in relation to local development and in the battle against the sexual exploitation of children.”¹³⁰ An independent review of logging operations in the region commissioned by ACCOR reveals numerous offences committed by Interhill.¹³¹ It is no accident therefore that the individual cases of sexual abuse and rapes of the Penan women and girls are linked to the encroachment onto their lands by outsiders, or intricately linked with those working in logging camps. The logging giant Samling even used the rape cases as an excuse to not provide transport to the Penan communities in Upper Baram “unless they retract sexual abuse and rape allegations against the timber companies active in the region.”¹³² The NGO Mission’s Report quoted a Penan woman who simply said: “The ultimate solution is to revoke the logging licences” (p.vii).

Livelihoods

The Long Itam Penan and their ancestors have survived for many centuries through skilful adaptation, use and management of the forest for their survival. Large trees in the forest provided timber for building houses, boats, sheds, etc. which they selectively harvested. The forests and the environment met many of their basic needs through gathering and hunting – animals, fish, and wild vegetables for food and plants for medicine. They did not survive by foraging alone but also traded exotic species for cash income, but they did not irreversibly deplete those resources. An example is the “scented” wood tree, *gaharu*, where the heart from which aromatic wood is obtained can fetch tens of thousands of Ringgit Malaysia, if considered of top grade, as cash income. The Interhill logging has affected many aspects of livelihoods. While a few individuals in Long Itam earn some kind of cash income from camps or urban areas, the majority are still dependent on subsistence farming with rice and tapioca as the main crops. The tapioca is cooked like their traditional staple, sago. Chickens are kept but they are hardly eaten as traditionally any animal kept by the Penans is not eaten, especially among the older people. Although some beans and a variety of leafy vegetables are planted, gathering from forests is still crucial. Fruits, especially seasonal fruits, also form a significant part of their diet. Hunting for animals as the main source of protein is still crucial. Fishing was once crucial but logging has reduced the number of fish in the river. The main river, Sungai Bunau, has been polluted and silted by a timber camp upriver. Siltation is serious especially after heavy rains when the water turns murky and dirty.

Logging activities have depleted or degraded many forest resources. The depletion of rattan is affecting their source of cash income from rattan handicrafts. The Long Itam villagers are also burdened by increasing competition for forest resources, from other communities nearby and not so nearby. Some of these are workers including Penans from nearby villages hired as logging staff, driving tractors and using chainsaws to enter Long Itam forests to cut trees and extract logs. These workers from outside

130 ACCOR’s letter to BMF signed by Hélène Roques, the group’s Director for Sustainable Development, 9 March 2009 (from the original in French translated by BMF); Also, “ACCOR to meet Interhill over destructive logging allegations”, BMF media release, 27 February 2009; “ACCOR announces review of Interhill’s logging operations”, BMF media release, 12 May 2009.

131 Independent Fact-Finding Mission in relation to Interhill Logging, Final Report. Hugh Blackett, 11 September 2009.

132 Samling threatens Penan with retaliations over rape allegations, BMF News, 30 August 2010, <http://www.bmf.ch/en/news/?show=216>. Already in 2009, logging companies operating in the Middle Baram region ceased to provide transport for a number of communities who had voiced concerns over sexual abuse and rape by timber workers (<http://www.bmf.ch/en/news/?show=216>)

normally have limited places to collect, gather, fish and hunt for their daily food. As others' forests are logged, they are encroaching onto Long Itam areas, which means that the pressure has also increased for their own resources which are also getting scarce. These intruders also know the monetary value of some plants and animal parts, and are targeting these specific species in the Long Itam lands.

When asked how the Penans are dealing with finding new livelihoods, TK Balan and his assistant said they are uncertain and merely followed the practices without fully understanding “new” concepts, including “settling down”. These changes have vast implications for the Penans on “land rights.” From nomadic survivors to being sedentary farmers and adopting farming for subsistence means suddenly needing to allocate plots to individual families to farm. As TK Balan elaborated:

The community as a whole now has to deal with the concept of “family or individual” rights to land, to follow other tribal groups’ practice of farming “rights.” New rules are required but we do not know the implications on Penan customs and traditions. So we just follow the new rules. Can you advise us how best to deal with these new rules to ensure the survival of the Penans? [asking the researchers.]

As more young people set up their own families, the need to find more lands will increase too. Some of them have started to clear secondary forests, which is totally alien to the Penan practice. Now, they are just following the custom of other groups in separating land use for village, rice farming, areas for gathering forest produce and forests for hunting, all due to logging which in turn has forced them to settle down.

There was no distinction between individual lands and communal lands during the nomadic era; lands and forests were communal. Now, they need to decide whose individual lands are where and seek approval from the headman and village committee for the opening up of areas for farming. Now, new rules are required to ensure communal access to limited resources in gathering, hunting and collecting. Does this mean that the headman and his committee have more power now than before, when resources management was traditionally self-regulated by the whole community? The shifting view of forests as subsistence base to supply of forest products of monetary value can mean that new rules to limit or control the extraction and or use of wood and other valuables may become irrelevant, as completion for scarce resources increases. There will also be no control as to how forests today and in future will be opened up by villagers themselves, and how it contributes to the rate of deforestation.

Right to basic needs and development

Besides the loss of access to food and game supply, the villagers’ main sources of clean water – spring and piped – were also affected by logging. A village piping system existed but it was contaminated by logging and the supply source became unreliable. Some villagers reported seeing discarded vehicle batteries, oil leaks, etc. dumped into the main river. Yet this main river continues to serve the washing, cleaning and bathing needs of the villagers, despite being polluted. The river turns murky due to the effects of logging, especially after the rain from upriver. The villagers have complained to the logging camp and the authorities about the river contamination from discharged domestic and industrial waste. A new source has been identified, with crystal clean water, just over 1 km away. For several years, the villagers requested the government to provide them with new pipes to use this new source of water, but they were ignored. With support from Nottingham University Malaysia Campus, the pipes are now completed.



(Image 5)

Logging operations affected the villagers' main source of clean water from the river, especially after the rain. The river turned murky due to the effects of logging.

Yet this main river continues to serve the washing, cleaning and bathing needs of the villagers, despite being polluted.

As pointed out earlier, the logging companies and government often use the tactic of withholding the development needs of the Penan as a “ransom” to allow logging to come in. Villagers who protested have been subjected to intimidation and other forms of violence. The Sarawak police and enforcement agencies often act at the bidding of the government and logging companies to intimidate the villagers who protested.¹³³ There have been cases in Ulu Baram where Penan leaders who were elected by a majority of the communities were not given due recognition or have been replaced with other leaders seen as supportive of “development” and officially recognised by the authorities.¹³⁴ This is to weaken the community and to break the Penan resistance to logging. In other areas, villagers who opposed logging have been attacked and beaten by hired thugs. In Long Itam, TK Balan is still not formally recognised as the Long Itam headman. So he does not receive the headman’s allowance, even though he performs many functions of a headman, including dealings with government administrative offices with jurisdiction over Long itam areas. He continues to be vocal in defending the rights of his villagers.

Biodiversity

The Lower Patah-Akah area is between 100 and 1,000 metres above sea level, with the highest peak at approximately 1,300 metres. About 7% is steep terrain and over 92% are hilly areas. To preserve the Patah Akah biodiversity and forest ecosystem, the Penans have customary rules and restrictions concerning the selection of new areas for watershed forest, burial grounds, sacred forest, salt springs, etc. Previously, lands to be cleared were selected based on fertile areas outside of hills in order not to pollute the waterways. Similarly, if they had been practising shifting rice cultivation to maintain soil fertility, then logging activities would limit the spaces for swidden cultivation. Consequently, this would cause intensive land use in the same area, which would then lead to the erosion of soil nutrients. Therefore, as logging intensifies, less fertile areas and even areas not so suitable, near rivers and rocks, are also cleared and used for farming. The people’s rich diversity of wild game, medicinal plants, rattan and sago, among others, are affected, especially when logging, which uses heavy machinery, destroys those diverse plant and animal species that the Penans identify with as food, medicines, etc.

133 New report alleges Sarawak government, police and loggers “act in collusion to harass and intimidate indigenous communities” http://news.mongabay.com/2010/0415-hance_sarawak.html. This issue was also highlighted by NGOs at the 20th Session of the UN Human Rights Council in Geneva, June 20, 2012, Malaysia’s human rights violations: Native Customary Rights and police brutality/harassment/intimidation towards Sarawak’s indigenous people.

134 BMF Media Release dated 9 September 2008, “Sarawak Government deposes elected Penan leaders.”

Grassroots solutions and initiatives

Penan Peace Park

In protecting the last primeval rainforests in the Upper Baram region and challenging the state government's concession for logging to the Malaysian timber giant Samling, 18 Penan communities have proclaimed a new tropical forest reserve on their native lands called Penan Peace Park (PPP). An adat inauguration ceremony was held on 17 November 2009 at Long Ajeng, one of the remote Penan villages, where the Penan communities and their leaders unanimously declared their intention of conserving their last remaining primeval forests as a nature reserve.

The proposed Penan Peace Park comprises an area of approximately 1630 km² (163,000 ha) around the Gunung Murud Kecil mountain range close to the Indonesian border and is located between the existing Pulong Tau National Park in Malaysia and the Indonesian Kayan Mentarang National Park. The area is considered to be a core settlement area for the Penan Selungo (Eastern Penan) rainforest culture.

The Penan Peace Park Committee was formed with 10 representatives authorised to represent the respective villages and NCR landowners of the 18 Penan villages of Ulu Baram, namely: (1) Long Laman, (2) Long Ajeng, (3) Long Murung, (4) Ba Mubui, (5) Ba Sepateu, (6) Ba Data Bila, (7) Ba Pengaran Iman, (8) Ba Pengaran Kelian, (9) Be Benali, (10) Long Kepang, (11) Long Suit, (12) Long Kerong, (13) Long Sepigen, (14) Long Lamai, (15) Ba Jawi, (16) Ba Lai, (17) Long Sabai, and (18) Ba Kemareu.

On 14 May 2012, the PPP Committee submitted a signed letter (9 thumbprint and 1 signature) and the detailed proposal on the PPP to the Second Minister of Resource Management and Environment, Sarawak (Datuk Amar Awang Tengah Ali Hasan) seeking the Sarawak government's recognition and support "of our collective proposal to turn our NCR lands and forests for the long-term benefits of our people and the people of Sarawak specifically, and the world in general." The Penan communities' proposal was "to turn our NCR lands and forests into a park from which we can derive social, economic, environmental and customary benefits that are decided by us. We see this as the best way to ensure the needed development that will truly benefit us directly and indirectly."

Yet the Sarawak government has not supported the Penans or legally recognised the PPP. Instead, the Sarawak Government keeps repeating that the state owns all forests in Sarawak under the Forest Ordinance 1953 (and amendments) and asserting that the Penan Peace Park has "no legal basis."¹³⁵ As mentioned above, the state is also wary about forest-related community activities because this means they have little or no direct control.

Without giving up hope, on 31 January 2013, the Penan communities sought legal help to appeal against the Sarawak government's rejection of their initiative (on file with author). The PPP clearly demonstrates that it is a potential model for community-managed protected areas and indigenous peoples' conserved areas, consistent with a number of legally-binding decisions of CBD's Conference of Parties (COP) and substance of the CBD's provisions and human rights norms. Yet according to the above official statements as reported in the media, and until today, the Sarawak government has not recognised the Penan's right to regulate and manage this new forest reserve according to their own laws and customs.

¹³⁵ "Death knell for Penan Peace Park" Catherine Goh, 02.01.2010, <http://www.brunet.bn/news/bb/weekend/news/jan2f6.htm>

Other community solutions and initiatives:

Reclaiming NCR lands in court

- Due to the very limited recognition that the Sarawak government gives to customary rights, the Long Itam and two neighbouring Penan communities (Ba Abang and Long Kawi) have filed land rights cases with the Miri High Courts, claiming NCR lands, and thus the forests too.
- Reviving their oral history and traditions and documenting them, Penan elders can name mountains, rivers, events and movement paths that correspond with the genealogy of previous leaders, customs and traditions. The Penans use this information as evidence to testify in court trials to prove their claims are legally acceptable
- Forging links and agreements with neighbouring communities strengthens their claims to NCR lands and forests, including joint court cases, with each village providing detailed descriptions of their boundary.
- They continue to be alert and vigilant and ready to set up adat blockades against intruding logging.

Community needs

- The community works closely with the church and NGOs as a way to avoid depending on the logging companies for development and social projects. For example, the village church was built by the community with church-connected donations. The church has a hall which is used as a community hall as well as a pastor living quarter, an office, a kitchen and dining hall that serve the community needs.
- A village pre-school was established in 2010 in Long Itam, supported by general public finances, the NGO SACCESS, the Penans' land rights lawyer (See Chee How), and the Kuala Lumpur and Selangor Chinese Assembly Hall Youth Committee. The pioneer of the village pre-school was a Penan young woman in Long Itam, who is still the pre-school teacher today. The nearest village to Long Itam is Long Kawi. Some people within the Long Kawi community, working with SACCESS, have opened a pre-school project there, which started running in January 2014. The Long Kawi pre-school also has a Penan teacher from the village. These initiatives help to prepare the children for the transition to their formal primary education at a boarding school in Long Luteng. Learning with a Penan teacher from their community also helps to strengthen Penan culture and oral history – an essential part of asserting their cultural identity and claims to NCR lands against logging and other forms of encroachment.



*(Image 6)
Malaysian and non-Malaysian publicly supported and Community-NGO managed pre-school building in Long Itam village.*

SUB-REGIONAL CASE STUDY 2: KG. SEBIR, LABU, NEGERI SEMBILAN

This sub-regional study examines the way in which the land rights and other aspects of human rights of the Orang Asli, the indigenous minority peoples of Peninsular Malaysia, have been violated by quarrying activities. The information is largely based on a short fieldwork/brief survey in Kampung Sebir, Labu in the peninsular state of Negeri Sembilan, the study area. Two Orang Asli community activists (Norsinani Achin and Asmidar Vira) conducted the interviews in Kg. Sebir, assisted by the Peninsular Malaysia Orang Asli Village Network (JKOASM) and its coordinator, Tijah Yok Chopil. To complement the field research that focussed mainly on quarrying, extra information on other direct and underlying deforestation drivers have been included.

The setting - Kampung Sebir

Kampung Sebir (Kg. Sebir) is a predominantly Temuan Orang Asli village located in the West Malaysian state of Negeri Sembilan (NS). It is 8 kms from Seremban town, the state capital. The geographical land type of Kg. Sebir, as described by the villagers, is 80% hilly and 20% flat lands. Kg. Sebir has a very small population of 40 families and a total of 185 people. When the interviews were conducted, only 122 people were counted, comprising 56% male and 44% female (see Figure 1a). A relatively high proportion of the population were adults, 49% (60 persons), indicating a large working age group (see Figure 1b). Some 26% of the population were young dependants below 15 years old (32 persons), compared to elderly dependants which was much lower at 11.5% (14 persons). The youth population was comparatively low with only 13% (16 persons). This was partly due to there being quite a large number of young people who live, work and or study in the urban areas or elsewhere.

Figure 1 a: Population of Kg. Sebir by gender
(Fieldwork data, November 2013)

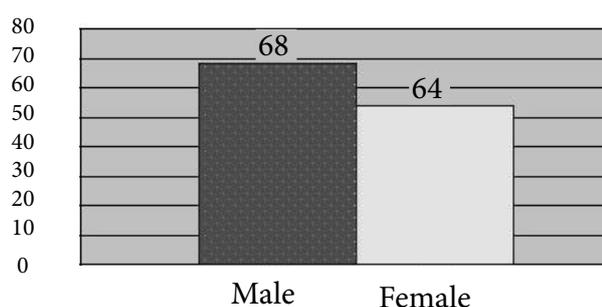
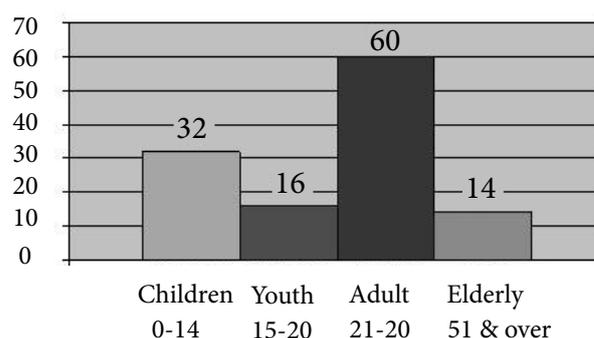


Figure 1 b: Population of Kg. Sebir by broad age group
(Fieldwork data, November 2013)



The settlement was established during the British colonial era as an “Aboriginal Reserve” (*Rezab Sakai*). The present settlement covers about 161 acres (65 ha), but the villagers assert that the area is at least 310 acres (126 ha), counting their traditional territories located in the hilly parts. Those areas consist of community forests, fruit orchards (e.g. durians), herbal plants, old rubber trees and *petai*, which the community still utilise today. Those lands are still not gazetted yet, which the state regards as state land. However, those lands were passed down from their ancestors as customary lands for the present and future generations of Orang Asli and trespassing by outsiders is strictly prohibited. The community had even carried out community mapping to demarcate the boundary of those areas. Those presently staying in the village manage their own rubber smallholdings and are also engaged in subsistence farming and some hunting and gathering within or close to forested areas surrounding the village. The forest produce

collected is mainly for their own consumption, including a variety of fruits and vegetables, while other non-timber forest products are also traded, like damar and honey. A number of them are also involved in their own business (contract work, self-employed) or in paid work outside, e.g. in factories.¹³⁶

Historical framework and underlying causes of deforestation in Orang Asli territories

In Malaya during the British colonial period, the colonisers had designated “aboriginal reserves” for Orang Asli or Malayan aborigines whom they labelled with various derogatory terms, including “Sakai”¹³⁷. The legislation known as Aboriginal Tribes Enactment of 1939 was introduced, which later became the Aboriginal Peoples Ordinance of 1954 and in post-colonial era was revised as the Aboriginal Peoples Act of 1974 (Act 134), or commonly as Akta 134. This Orang Asli Act is seen by Orang Asli leaders and NGOs as the biggest stumbling block in Orang Asli advancement and undermines their autonomy. We will return to this issue later.

A Kg. Sebir informant, Zurdi bin Baharu, one of the community-appointed *pelimak* said the older villagers often recalled the story of their late Tok Batin about the “6 *papan tanda* Aborigine Reserve” around where the Orang Asli lived.¹³⁸ It is a story often repeated even today, because those signboards at least “protected” Orang Asli rights to the lands including traditional areas they were occupying. Zurdi said those signboards have disappeared now. What does this imply in terms of Orang Asli traditional lands? Zurdi replied that Orang Asli rights to even places historically recognised as their “Rizab” (Reserves) have been “stolen” from them.

Zurdi said divisions among the Orang Asli started from the time the British colonisers introduced the Aboriginal Tribes Enactment in 1939. The Enactment was amended and subsequent legislation and policies on Orang Asli were adopted, which the authorities reported were crucial for security control and protection of the Orang Asli. At that time, the emergency of 1948-1960 was declared when the British forces were fighting the communist insurgents. It is important to note that the communist bogeyman has been used by governments, past and present, to exert control over the civilians. Many Orang Asli and various Chinese communities in early times lived in or on the fringes of rainforest areas which were resource rich. In order for the colonial government to take control over Orang Asli traditional territories and resources, they resorted to various measures including legislation, policies, and administration of Orang Asli affairs.¹³⁹ This British legacy was continued by the post-colonial government and, over time, sharply tightened.

As noted in Part 1, and briefly repeated here, colonial exploitation of the forest in the Peninsula flourished through the development of an export-oriented economy largely based on tin mining and early plantation agriculture. Although tin had been mined in the Peninsula before colonial rule, mines were largely controlled by Malay royal families and their district chiefs, and mining then was

136 The local researchers did not survey the exact number of people by occupations as this aspect was not a key focus of the study, although livelihoods on the whole was later referred to in the section of social impacts of deforestation.

137 See, Article 160 of the Malaysian Federal Constitution, also Section 3(1) defining what an “aborigine” is in the Aboriginal Peoples Act of 1954.

138 *Pelimak* refers to a community-appointed forest guardian, Tok Batin is an Orang Asli village-head/chieftain, and *papan tanda* means signboards.

139 For a detailed discussion, see: Nicholas C. (2000). *The Orang Asli and the Contest for Resources: Indigenous Politics, Development and Identity in Peninsular Malaysia*. Iwgia, Copenhagen and COAC, Subang Jaya, pp.69-82.

done by panning (*mendulang*), the small shallow mines in river valley and hillsides for the ore (circa 15th century). When the Chinese came (and later the British), mining activities accelerated along with the advent of new mining techniques. Open-pit tin mining activities devastated parts of Perak and Selangor, where rich tin deposits were found, resulting in degraded soils and forests.

Some aboriginal reserves were established for Orang Asli but they were limited. The majority of Orang Asli were still heavily dependent on the forests; their livelihoods, identity and cultural lives evolved around the forests. Land uses were altered for “more productive” economic activities such as mining and early plantation agriculture by colonisers, who overlooked the vital importance of the forests to the Orang Asli and their indigenous land use practices.

In Kg. Sebir, community members informed the two Orang Asli researchers that when the British came, they tried to experiment with mining gravel. They started a quarry operation by the public works. The result, it appeared, failed. Although the impact of environmental damage was limited, the villagers protested and the quarry was closed. Ever since the closure of that quarry, the community always watched over their lands and traditional territories.¹⁴⁰ Once, when a developer was digging to collect rock samples, the *Lembaga Adat* (adat leaders) knew that damage would occur. So the village people stopped the developer and chased him out. That was proof that the Lembaga Adat of Kg. Sebir were vigilant.

Current deforestation drivers in Kg Sebir and Orang Asli traditional territories

As aforementioned, the British colonisers introduced legislations and policies governing the Orang Asli. Among others, they introduced an aboriginal act (today’s Aboriginal Peoples Act 1974/Act 134/Akta 134), an exclusive agency to administer the Orang Asli (today’s Jabatan Kemajuan Orang Asli (JAKOA) or the Orang Asli Affairs Department), and the Statement of Policy. This policy was adopted in 1961, a year after the emergency ended, to enable the authorities to closely monitor and supervise the Orang Asli, particularly those remaining in the jungle areas.¹⁴¹

Whereas previously the British colonial government’s control over Orang Asli autonomy and their traditional territories and resources was made apparent through adoption of new legislations and policies, the post-independent Malaysian government proved to be even more paternalistic. After the British colonisers left, the main watershed policy for the government to exert political, social and economic control over the Orang Asli was the so-called 10-point development strategy of Orang Asli. This 10-point strategy was given to the JAKOA to implement, but it had excluded certain protections of the 1961 policy statement relating to Orang Asli autonomy and control of their traditional territories.

140 Officially there are 18 Orang Asli ethnic subgroups classified under three administrative categories: Senoi, Negrito and Aboriginal Malay. Each Orang Asli group and sub-groups have variations in their culture and adat, but the concept of rights to lands and traditional territories known as tanah dan wilayah adat (tanah saka,) and customs governing uses of forests and forest resources are understood and respected by all of them.

141 JAKOA was a metamorphosis of the colonial Department of Aboriginal Affairs and, until 2010, the Jabatan Hal Ehwal Orang Asli /JHEOA (Department of Orang Asli Affairs). Both JHEOA and JAKOA are used interchangeably here, both referring to this particular government agency. The statement is: Statement of Policy Regarding the Long term Administration of the Aboriginal Peoples in the Federation of Malaya, Kuala Lumpur: Ministry of Interior, 1961. The Policy was updated and reissued as ‘Statement of Policy regarding the administration of the Orang Asli’ – Ministry of Home Affairs Malaysia: 1977 with no fundamental changes (see Hooker 1991).

It was not surprising therefore to hear Zurdi, and his fellow villagers, complaining about the JHEOA, now called Orang Asli Affairs Department (JAKOA), and official policies on the Orang Asli. Zurdi said the Orang Asli were freer to manage themselves and especially their lands and traditional territories using their customary law (*Undang-Undang Adat Resam*), but saw their rights steadily eroded by the state using legislations as their political tool. Zurdi highlighted, for example, S.6 and S.7 which empowered the state authority and the Orang Asli Affairs Department (JAKOA) giving them the rights to decide on matters concerning Orang Asli land without the community's FPIC.

The majority of the Orang Asli opposed the Aboriginal Peoples Act, and there was even a proposal tabled in the federal parliamentary session of 2010 to amend it. The proposal was, and continues to be strongly challenged by the Orang Asli and NGOs supporting the Orang Asli. This is because, if passed, it would only strengthen the powers of the state authorities to lay claim over Orang Asli lands under a number of "development" disguises. The proposed amendment to the Aboriginal Peoples Act is in fact closely linked to the Policy on Land Ownership and Development of Orang Asli Land (DPPTOA) adopted on 5 December 2009. The DPPTOA policy has been approved by the Regional and Rural Development Ministry in December 2013. Under this policy, each Orang Asli household is given only about 440 m² (approx. 4000 ft²) of land for a house and 0.8-2.4 ha (2-6 acres) of land for farming, depending on which peninsular state they are in. In the eyes of the JKOASM, the policy was carried out without proper consultation and participation with the Orang Asli. This policy of granting individual land ownership is of great concern to JKOASM and many Orang Asli, as Orang Asli traditional territories have always been held communally, not individually, and they are not alienable. The underlying motives of the government is seen by JKOASM and the Orang Asli as taking full control over Orang Asli lands, traditional territories and resources.¹⁴²

Direct drivers

Commercial Logging

In the context of forest extraction of timber for export, there is compelling evidence across the states in Peninsular Malaysia that logging in Orang Asli traditional territories has gone on for decades. Simply scan the newspapers headlines, or count the number of memorandums and petitions Orang Asli communities and the village networks under JKOASM or the national Orang Asli association, POASM and other NGOs have submitted to the individual state and federal governments. Logging is still a major cause of depletion of forest resources and forest areas of Orang Asli. Even individual JHEOA officers may have placed pressure on the Orang Asli to allow logging in their traditional forests. There has been such a case in Kg. Sebir.

Zurdi bin Baharu is himself a rubber tapper and forest produce gatherer. He heard from the village elders that the Department of Orang Asli Affairs (JHEOA)¹⁴³ was involved in the implementation of a government housing project for the Orang Asli called Rumah Melati (Melati houses) in the early 1970s. Phase one of the project entailed the so-called construction of nine units of model houses for the Orang Asli. Zurdi said:

¹⁴² Personal communications via e-mail between Tijah Yok Chopil, JKOASM coordinator, and Carol Yong. November 2013-March 2014.

¹⁴³ This is a government department set up to solely manage the Orang Asli. In 2010 it was renamed Department of Orang Asli Development/Jabatan Kemajuan Orang Asli (JAKOA). Both names are used interchangeably in this report.

The houses were built, but the electricity supply was not connected. The JHEOA told the community that house receivers who wanted electricity had to pay for it and the money could come from selling the timber from their forests. The community agreed and started to log the forests around the village area. It was from then that parcels of land near the forest fringe that the community had logged was given the status Tanah Pinggir and excised to outsiders, supposedly for the development of those lands.

Ironically, Kg. Sebir only got their electricity supply on 29 March 1988.

Infrastructure projects

Within Peninsular Malaysia, several major dams have thus far invariably affected the Orang Asli communities. The federal government and some state governments have announced plans to construct more dams, even though Malaysia's record on dam building is dismal.¹⁴⁴ Also widespread is the acquisition of Orang Asli lands for construction of roads and highways and the development of industrial zones, townships and golf courses. Examples include the construction of the Kuala Lumpur International Airport (KLIA) in Sepang, the KLIA Expressway and the East-West Highway between Kelantan and Perak. These few specific examples resulted in not only the loss of customary land and forest rights of the Orang Asli, but were also primarily responsible for deforestation and forest degradation including protected areas. Some of these cases involved the Orang Asli filing cases in courts to reclaim their customary land rights.¹⁴⁵

Large-scale commercial agriculture plantations

The federal government's agricultural policies promoted agricultural expansion through various land schemes for cultivation of cash crops (e.g. rubber) and large-scale oil palm plantations. This involved clearing land where Orang Asli lived and resulted in loss of land, prohibited access to forests and forest resources, and gradual degradation of soil, land and water.

Regroupment and resettlement schemes

Regroupment schemes were introduced by the British in the state's fight against the communists. Later regrouping was seen as a paternalist effort to develop the Orang Asli. The post-colonial government has continued with such regroupment and resettlement schemes. The underlying motive is for the state, both during colonial rule and after, to assert control over the Orang Asli in order to appropriate their resources, especially lands and forest resources. Regroupment and resettlement schemes have an adverse impact on the Orang Asli because the state can acquire Orang Asli traditional territories "wholesale" in the process of regrouping them. Often the lands are then issued with concessions to political and economic elites for developing a range of projects such as airports, highways, industrial projects and dams.

Mining and quarrying activities

The Kg. Sebir community protested when their rights to what the JHEOA classified as *Tanah Pinggir* were taken away for development of a rubber-planting project. Their protest managed to stop

¹⁴⁴ For more information on dams and impacts on Orang Asli communities, see, Carol Yong Ooi Lin, 'Dam-based development in Malaysia: The Temenggor and Sungai Selangor Dams and the resettlement of the Orang Asli', doctoral thesis submitted to the University of Sussex, Brighton, 2006.

¹⁴⁵ For mention on some of these cases, although in the context of the EU FLEGT VPA issue, see, SAM (2013). 'Landmark judicial decisions on the indigenous peoples' customary land rights/title in Malaysia 1991-2011: Legal Implications of the failure in instituting policy and legislative reforms'. Sahabat Alam Malaysia, Penang and Marudi.

quarrying activities at the point when quarry operators approached the *tanah pinggir* for rock blasting. Perhaps because those areas were still tagged as “tanah pinggir”, or perceived by the companies as such, the quarry activities went on, ignoring protests from the community. The villagers were worried about the quarrying activities. But as in the case of logging described earlier, individual JHEOA officers can sometimes be seen as abetting with the external actors, as Zubir explained:

Since the application for the quarry licence by Syarikat Azam Ekuiti Sdn Bhd was approved, the NS and Melaka district JHEOA officer, Encik Malik b. Mohd Dom came with a representative of the company to tell us their purpose of operating the quarry. The excavator came to Kg. Sebir and started digging despite protests from the villagers.

This issue is complex and we will discuss this in more detail after some indirect causes of deforestation and forest degradation have been outlined.

Indirect drivers

Insecurity of Orang Asli land and forests tenure

Insecure land tenure among the Orang Asli is a major underlying factor contributing to deforestation and forest degradation. As noted above, legislation and policies facilitate the control of the state over the Orang Asli. With land and other natural resources becoming increasingly scarce in Peninsular Malaysia, acquisition of Orang Asli traditional territories may also increase. This is one of the reasons behind the lack of political will to gazette Orang Asli reserves, or conversely, the over-zealousness in revoking the status of gazetted lands. Referring to the aforementioned proposal to amend the Aboriginal Peoples Act, to date, there has been no development on this issue yet. This also means that the Policy on Land Ownership and Development of Orang Asli Land cannot be implemented, yet. The JAKOA is waiting for the outcome of SUHAKAM’s Report on the National Inquiry into the Land Rights of Indigenous Peoples.¹⁴⁶ Based on past experiences of policies, laws and other aspects of OA “development” the JAKOA will try to persuade the OA to accept the policy, which implies that the said policy will be implemented, eventually.

The state, through the JHEOA, holds power over Orang Asli land matters and the Orang Asli are treated as tenants at will. This means the Orang Asli are dependent on the goodwill of the authorities to allow them to stay or leave. Theoretically, lands gazetted as Orang Asli Reserve cannot be appropriated by outsiders,¹⁴⁷ but if it happens, the affected Orang Asli must be compensated or allocated to an alternative site. Nevertheless, a common experience of many Orang Asli communities is the continual loss of their customary lands whereby the government can revoke the status of their lands, including gazetted reserves, without due compensation or substitute land.

146 Emails of 26-27 December 2013 between Anthony Williams-Hunt, an Orang Asli lawyer in Ipoh, Perak and Carol Yong. See, also, “Orang Asli: Jangan ibarat terlepas mulut singa, masuk mulut buaya” (Malay proverb, translit. “Out of the lion’s mouth into the crocodile’s”) memorandum by members of JKOASM in Perak, Pahang, Selangor, Negeri Sembilan, Johor dan Kelantan (Melaka, Kedah, Terengganu) to the Malaysian Prime Minister, Minister of Rural and Regional Development and the Director-general of JHEOA (now JAKOA) in 2010, and various newspaper articles.

147 Some 23,903.84 ha of land has been gazetted as Orang Asli land, and 92,775.39 ha are in the process of application to be gazetted. KAJOA to continue gazetting Orang Asli Land, 20.11.2013, <http://www.bernama.com/bernama/v7/po/newspolitics.php?id=994861>

The case of Kg. Peretak and Kg. Gerachi reveals how the government can appropriate Orang Asli lands at any time. Based on JHEOA records, approximately 600 ha were approved in these two villages to be gazetted as Orang Asli reserves in 1965.¹⁴⁸ However, when the area was required for the construction of the Sungai Selangor Dam, the state simply asserted that the actual gazette notification was never formally completed. Dispossession of traditional lands also undermines Orang Asli women's access to the forests and forest resources, increasing their insecurity of forest tenure.

*Making Orang Asli "Malays"*¹⁴⁹

The state conversion programme in targeting the Orang Asli to reconstitute their ethnicity and religion as Malay Muslims, is an issue that merits brief comment. This is because it is connected to a political-ideological strategy of the state with direct and indirect consequences on Orang Asli indigenous identity, including their distinct religious and spiritual beliefs and practices attached to land and forests. Juli Edo, an Orang Asli anthropologist, claims that the state tends to find reasons for not gazetting Orang Asli land, expounding that they are "nomadic, backward and uncivilised people." The state, through the JHEOA, have therefore increasingly organised programmes of developing the Orang Asli and at the same time "Islamising" the Orang Asli. An important aspect of this is their underlying objective "to enable the control of a people and to control their traditional territories."

Appropriation of Orang Asli in this way clearly contravenes Orang Asli customary rituals and attachment to land, which is recognised under Orang Asli customary law, common law and provisions in the Federal Constitution. This is articulated by Tijah Yok Chopil, an Orang Asli activist and JKOASM coordinator:

The quarry encroached into the traditional territories of the Orang Asli in Kg. Sebir because the state government wanted to collect taxes and revenues. They focussed on Orang Asli villages because Orang Asli rights to the lands are deemed to be in designated aboriginal reserves and can be abolished at any time because they have no legal title to the land and are not recognised by the government, unlike Malay reservations.

In the view of Zurdi, and some other villagers, the underlying cause of the quarrying activities is the lack of free, prior and informed consent (FPIC). They claimed that the companies and JAKOA did not consult the Kg. Sebir community about the quarry operations that may affect their lands and traditional territories. That the Kg. Sebir people knew only very little about the outsiders that encroached onto their lands reflected, to a large extent, how little information was given to them in the first place. In short, the companies had failed to obtain the community's FPIC, yet they had begun their operations. They did so because they were supported by the authorities to acquire the community's lands using "legal means" to claim those lands as state land.

148 See, Nicholas, C., 2000, *The Orang Asli and the Contest for Resources – Indigenous Politics, Development and Identity in Peninsular Malaysia*. IWGIA, Copenhagen & COAC, Subang Jaya.

149 For more information on this issue, see, Nicholas, C., 2000, op. cit.; Edo, J., 1998, 'Claiming Our Ancestors' Land: An Ethnohistorical Study of Sengoi Land Rights in Perak, Malaysia'. Ph.D. thesis, Australian National University, Canberra.

Kg. Sebir and the quarry operators

Who are they – the quarry operators and other entities?

The researchers noted that the community only knew the companies were called Syarikat Azam Ekuiti and Malaysia Rock Product-IJM. Beyond the names, other information about the companies remained largely unknown to the community. The villagers also did not know exactly what kind of relationships existed between the two companies or which bigger entities they belonged to. The lack of such data from the field had to be supplemented with secondary sources of information, including the Internet and Companies Commission of Malaysia. There were a lot of complicated details from the information available, but two companies were mentioned in the community interviews:

- Azam Ekuiti Sdn Bhd – held 100% by Malaysian Rock Products Sdn Bhd. Its principal activity is listed as the leaseholder of quarry land.
- Malaysian Rock Products Sdn Bhd – a wholly owned subsidiary of IJM. Its principal activities are listed as quarrying, sale of rock products and investment holding.

According to IJM's website, the group was formed in 1983, from a merger between three medium-sized local construction companies – IGB Construction Sdn Bhd, Jurutama Sdn Bhd and Mudajaya Sdn Bhd. IJM advertised itself as one of Malaysia's leading conglomerates with market capitalisation and total assets in March 2012 of some MYR7.8 billion and MYR13.9 billion respectively. In 1986 when it first went public, it only had a market capitalisation of MYR66 million and total assets of MYR172 million. Its core businesses include construction, property development, manufacturing and quarrying, infrastructure concessions and plantations, and its overseas market comprises India, United Arab Emirates, China and Indonesia.¹⁵⁰ With quarries strategically located in Kuang, Ulu Choh, Kulai, Kuantan, Labu and Junjung, the Group's annual capacity exceeds 7 million tons of granite and industrial-use stones. In 1984, IJM expanded into quarrying and property development, and invested into Singapore. The Group also ventured into oil palm plantations in 1985 "as a source of steady income to cushion the cyclical nature of its core construction business" and is currently expanding its plantation operations into Indonesia.



(Image 7) Sand quarrying within the Kg. Sebir Orang Asli village traditional forests; yet information about the quarry operators remained largely unknown to the community.

¹⁵⁰ About IJM: Our Company: Corporate Profile, Malaysian Rock Products Sdn Bhd Core Business: Industry: Quarry Operations, http://www.ijm.com/web/coreBusiness\Industry\Overview_quarry.html. Accessed 15.12.2013.

On quarrying business, IJM profiled itself as one of the largest operators in Malaysia, managed by Malaysian Rock Products Sdn Bhd. (MRP). MRP was first registered as Correct Mix Concrete Sdn Bhd on 10.09.1962, changed its name to MRP in May 1967, and its nature of business: quarrying, sale of rock products and investment holding.¹⁵¹ The financial records¹⁵² of MRP showed that it took two loans from the First National City Bank New York via Kuala Lumpur. The first loan was by way of 3rd fixed and floating charge on its assets and undertakings for the charge amount of RM1 billion, date charge created on 25.04.1975 and charge status “unsatisfied.” The second loan was for 4th fixed and floating charge on its assets and undertakings for the charge amount of RM1.5 billion, charge created on 04.12.1975 and charge status “unsatisfied.” A third loan was from a Malaysian bank (Southern Bank Bhd) amounting to RM2.15 billion, charge created on 05.02.1985 and charge status “fully satisfied.” This meant that the two loans from the First National City Bank New York were not repaid, while the third loan was fully paid (date release 01.04.1991).

The IJM website did not specify or identify local or Orang Asli communities as inhabiting the quarry site. However, the fact that Azam Equiti is the leaseholder of quarry land and Malaysian Rock Products is operating a quarry near Labu, indicates that they are carrying out blasting work near/in an Orang Asli village, which is Kg. Sebir by geographical location.¹⁵³ It is in this context then that the Kg. Sebir villagers largely believed that their lands have been encroached upon by these companies.¹⁵⁴ Furthermore, Negeri Sembilan State has been certified as a Forest Management Unit (FMU). The Public Summary report, dated 11 January 2010, pointed out that there were 19 Orang Asli villages within the FMU and further clarified some comments from the Audit Team relating to social issues, in particular the case involving Kg. Asli Sebir (near Gallah FR).¹⁵⁵ This further verified that Kg. Sebir is located within or near to these entities.

As noted above, Kg. Sebir villagers had opposed earlier efforts of quarry companies, particularly in 1993 when the JHEOA officer came to tell the community. At that time, the villagers were unclear on what they could do. Zurdi told the researchers that, according to the community, the state government assumed their *Tanah Rizab* (Reserve Land) was vacant lot and tendered to the quarry companies. The JAKOA (previously JHEOA) was involved in the issue and it neither consulted with the community nor asked for their prior consent to the quarry. Affected families were ordered to move out and there was no compensation payment. It was also pointed out that some compensation was claimed as already paid, but the arrangement on the compensation payment was reportedly decided only between the director of JAKOA and the Tok Batin (village head). Zurdi said this reflected the reality in 1993 whereby the Orang Asli were still ignorant of their rights and only depended on the JAKOA, as they were clearly not yet exposed to the outside world.

151 Companies Commission of Malaysia (CCM)/Suruhanjaya Syarikat Malaysia (SSM) e-info - Corporate Information (p.1/6): Malaysian Rock Properties Sdn Bhd. (No. 4780-T), Accessed 17.12.2013.

152 Companies Commission of Malaysia (CCM)/Suruhanjaya Syarikat Malaysia (SSM) e-info - Company/Business Information: Malaysian Rock Properties Sdn Bhd. (No. 4780-T), Accessed 17.12.2013.

153 Geographically, Kg. Sebir is located between 2° 44' 0" of North latitude and 101° 53' 0" of East longitude.

154 The author also found out from a reliable media source that “MRP (Malaysian Rock Products S/B) is operating a quarry near Labu and it is near/ in an Orang Asli village.” One other company name was involved, NS Cement (Negeri Sembilan Cement), which would mine the limestone hills there but don't know how long the company has been doing this, and that “the Orang Asli in Kpg Sebir are affected.”

155 The Negeri Sembilan FMU is located at 2° 29' N to 3° 5' N and 101° 49' E to 102° 35'E, Certificate No: FMC 002 Certificate date: 29 December 2009. See, p.5 2.8 Environmental and Socio-economic Context and Annex 2 Comments by Stakeholders and Responses from the Audit Team (Group A), 20 November 2009, p.23.3.: <http://www.sirim-qas.com.my/attachments/article/143/2.%20Public%20Summary%20FMC%20of%20Negeri%20Sembilan%20Forest%20Management%20Unit%20-%20Main%20Assessment.pdf>. Accessed 15.12.2013.

In July 2009, the Kg. Sebir villagers took their concerns to the state plantation affairs, human resources, environment, and public complaints chairman, V.S. Mogan.¹⁵⁶ They complained that the operator carried on blasting work beyond operating hours, even on weekends, and about the damage resulting from the operations. An official ground check reported that the operator at Kampung Sebir was the only one found to have breached the law, of the seven quarry operators in NS: “the operator had breached the law and their activities had even exceeded the 500 metre buffer zone. That is a no-no as the buffer zone is to ensure the activities do not pose a threat to nearby residents.” Despite the authoritative warning that “Quarry operators who do not follow the rules can be fined or have their licences revoked” the company in question appeared to have continued to expand its operations. Rock blasting also appeared to have continued.

The villagers even recalled that once they were threatened by Indian gangsters and a Chinese *tauke* (boss) called Sin Hup Seng who came to the quarry site after the villagers lodged a police report in Seremban town. The villagers continue to oppose the quarry operations to this day. There are many reasons for this, but primarily, it is because their forests and resources are now in danger of being degraded or lost for ever.

Impacts on the Orang Asli

Violations of basic rights

FPIC in Kg. Sebir is evidently lacking, as highlighted by the quarry operators encroaching into their customary land and traditional territories. This land, as described earlier, is not part of the aboriginal reserve. These forested lands and intact forests are located in Sirat, Tadu, Hunjam and several other areas. They are dense and thick forest areas considered sacred by the Orang Asli and encroachment by outsiders is strictly prohibited. The community has been utilising these areas as reserve forests for various communal purposes. Today, there may be only 20% of those areas that remain intact, comprising of graveyards, historical sites, farming areas, orchards and sacred sites. Zurdi said:

The developers have no respect for our adat and sentiments. They don't care if they disturb the spirits living inside the forests. They don't care if their machines start operating from early morning and disturb the villagers. The expansion of this quarry in 2000 is without the approval of the Orang Asli.

The community noted that in 2000, the quarry extended an additional 66 acres (26 ha), which encroached on their traditional territories of orchards and rubber trees. The JAKOA officer (Encik Ishak Akim) informed the Sebir villagers that they were entitled to claim for compensation following the Act 134 (section 11), which was sent in a letter dated 8 March 2002. When the matter was investigated by the respondent, Zurdi, the said letter appeared to have just manipulated the rights of the villagers in favour of the quarry operator. Zurdi explains:

Parts of those areas are now damaged, but JAKOA still has not gazetted those areas as Orang Asli customary lands. So the companies can easily encroach thinking that those are vacant lots. The blasting activities have caused a lot of damage to the rivers – Tampang, Buluh Coley and Cuhau – when rock splinters fall inside and the hills have been severely levelled. The soil from eroded hillsides and siltation were washed into the rivers.

¹⁵⁶ The issue was reported in a national newspaper, The Star Online, Archives, Thursday July 9, 2009, Quarry operator to toe the line. By C.S. Nathan. Accessed on 20.12.2013. <http://www.thestar.com.my/story.aspx?file=%2F2009%2F7%2F9%2Fcentral%2F4279854&sec=central&FORM=ZZNR7>

Another grave concern was the loss of the significant role of the adat and traditional institutions which are largely centred on the customary lands, territories and resources that they possess. As an example, the *Lembaga Adat* which comprises of the *Tok Batin*, *Tok Jenang*, *Tok Jekerah* and *pelimak* (customary leaders and community leaders) have traditionally been responsible for ensuring the well-being of the whole community, an integral part of communal decision-making, ceremonies and affairs such as weddings, death, birth, quarrels, division of property, and the care-taker of customs and traditions (music, rituals, etc.), heritage, taboos, philosophy, laws, natural laws and crafts. The *Lembaga Adat* may die out one day if their roles and functions are no longer relevant due to the loss of Orang Asli customary lands.

Already some changes were said to be taking place in the community – as some community members related to Zurdi and the researchers:

- The Lembaga Adat is weakening due to various external influences, while different individuals are losing their sense of direction, or feeling hopeless, uncompromising or frustrated;
- Internal conflicts are weakening the community harmony, the main reason seems to be related to the compensation issue;
- Women's health has been increasingly affected. An example is slow recovery from a difficult birth, the reason being the loss of the herbal plant species which they previously used for healing and recovery, in addition to the loss of food varieties from the forest;
- The younger generation is losing interest and or the opportunity to learn about their customs and tradition;
- The older people are losing hope and feel restless, lamenting the loss of traditional knowledge to pass down to the younger generation. They suffer from chronic headaches and respiratory ailments (asthma), depending on government medical services and mobile clinics for treatment. Most importantly, they regret that they cannot access the forests now because the path is dangerous with the rock blasting and splinters – there is another path but the distance is about three times further to walk; and
- The traditional village healers are finding it more and more difficult to practise their skills and knowledge, which are centred on the land, nature, spiritual and soul of their ancestors, herbal plants and taboos/rules of behaviour.

As Zurdi summed up: “We are left with an empty life and spirit without the forests as the identity of Orang Asli. That will be worse than being a squatter or illegal immigrant on one's own land.”

Village level impacts

To convey some impression of the richness and value of the forests to the Orang Asli in Kg. Sebir, Zurdi, the community forest warden (*Pelimak*) listed them:

- Forests are our lifeline. To ensure sustainable balance between nature and the Orang Asli, and from one generation to the next, we have the responsibility to ensure our forests are well taken care of.

- Forests are a resource for livelihood, knowledge and experience and appreciation of the plants and animals inside. We must use and manage the forest and forest resources according to our needs, so that forests and land can continue to sustain our livelihood and our existence.
- Inside the forests live the soul of our ancestors (*roh-roh nenek moyang*) and the spirits of gentle immortals (*semangat halus*) such as *enek-enek main* and *peloh buah*. Thus the forests are the basis for our existence and our spiritual beliefs – in essence the identity of Orang Asli.
- Based on our traditional knowledge, we know how to use and convert the forest areas, guided by the do's and don'ts passed down from our ancestors (*pantang larang nenek moyang*). In the same way, because of our land customs, traditional knowledge can be handed down to ensure we know all the forest resources, which ones are edible and which ones are poisonous. If we lose our forests, we will also lose our Orang Asli knowledge.

The community reported that the quarry companies and their activities caused hardships for many families. A key concern for the community is the blasting work and the related noise and dust pollution, soil erosion and pollution of their rivers.¹⁵⁷ The community reported that the river resource has also been badly affected by the pollution: “Two of the rivers – Sungai Tampang and Sungai Sebir – have disappeared (*lenyap*), the river source is also entirely polluted and the fish populations have also disappeared.” Thus water from the rivers is available but polluted and or contaminated, and unsuitable for consumption or household use. But the villagers still use water from these polluted rivers, being the few accessible water sources.

The community claimed that their well-being has deteriorated and the number of people with skin and respiratory problems has also increased since the operations started. Zurdi told the researchers that his wife's asthma problem is becoming more critical and his children are also suffering from itchy skin. He also related other cases where people in the village, especially the children and elderly were getting sick and suffering from various ailments resulting from the dust pollution – particularly skin and respiratory problems, asthma and, among the elderly, chronic headaches. That the village population is dwindling may have resulted from the fear of health effects due to the quarrying activities, with quite a number of young people and newly married couples moving out of the village (see Figure 1b above). Yet the government authorities, including medical personnel, never once assessed whether or not health hazards and risks suffered by the villagers were caused by incessant quarrying activities.

The Network of Orang Asli Villages JKOASM coordinator, Tijah Yok Chopil also heard complaints from Kg. Sebir about the quarrying activities and the damages due to such activities:¹⁵⁸

The quarry cases in Kampung Sebir and Kampung Gebuk in Negeri Sembilan. These projects had caused a loss of the affected villagers' customary lands. The rock blasting with explosives (letupan-letupan bom) had also caused the villagers' houses to vibrate, and had also caused cracks. There was also a few times that the blasted rock pieces fell right through the roof to the floor. The air was polluted with dust and the rivers were contaminated too. The villagers' protest letters and complaints were just ignored.

¹⁵⁷ See, for example, recorded documentary films on these issues in Kg. Sebir, September 2013, available at:

<<http://youtu.be/YTYUWhSxQnk>> and <<http://youtu.be/QVUJyFS3W7s>>

¹⁵⁸ Email communications between Tijah Yok Chopil and Carol Yong, 14-15 November 2013.

Other significant impacts on community livelihoods and income were reported as follows:

- Community forest resources, sacred sites, water sources and access paths were badly damaged or affected. In some cases, the lands were badly damaged and not suitable for farming any more.
- Community cash income derived from forest resources such as fruits, rattan, gaharu, damar, wild honey and handicraft-making has lessened. The villagers could continue tapping rubber only in areas where the rubber trees were unaffected.
- Community subsistence food such as forest fruits, edible vegetables and animals have decreased or gone.
- Quite a number of men, perceiving themselves to be the family provider, went to seek paid work outside the village when forest resources they could previously depend on were getting scarce.

Kg. Sebir community action in protecting their forest

Numerous efforts have been made by the Kg. Sebir community to oppose the quarry operations and encroachment onto their traditional territories, inter alia:

- Memorandum and appeal letters to the authorities
- Lodged police reports
- Press release and press statements
- Community meetings
- Participation in NGO events including those organised by Orang Asli organisations such as POASM and JKOASM on land rights and other indigenous peoples' issues.

The present and future challenges for Orang Asli

The lack of full recognition by the political and economic elites of the Orang Asli, and many of their social and cultural aspects of their life, can be traced back for many decades. The marginalisation of the Orang Asli continues to prevail today. This study has reviewed some key issues, causes and effects on Kg. Sebir, and the actions and initiatives taken by the community. Seremban is an upcoming city with townships, commercial buildings and other infrastructure development. Such trends mean that quarry operators and their activities will be getting faster, not slowing down, in order to satisfy the strong demand for limestone, rocks, etc. for the construction business. As the Financial Year 2013 report of IJM noted, "the quarrying division recorded higher deliveries and better prices due to strong demand" (p.73). Moreover, as the IJM website highlighted (IJM, Annual Report 2013):

In line with our expansion into international markets, we have set up our maiden quarry in Hyderabad, India in 2011. In view of the buoyant market there, we are continuing to explore more quarries at strategic locations for expansion.

This could mean the potential expansion to Orang Asli lands – as natural resources are often within traditional lands and forest areas where indigenous peoples are. Exploration and subsequent extraction will expand to those areas as well, for example quarry operations would tap into those resources for rocks and other materials for the construction business.

PART 3: SUMMARY AND RECOMMENDATIONS

On paper, Malaysia has reasonably adequate policies, regulations, guidelines and procedures on forestry-related issues, particularly on conservation of biodiversity and selected fauna and flora species. However, the major stumbling block for effective implementation, monitoring, good governance and meeting the long-term goals of sustainable forest management and conservation is political interference and control. The chief ministers of Sabah and Sarawak, for example, are besieged with corruption allegations. The overview and field reports revealed that deforestation, forest degradation and rights violations of communities are linked to concessions issued for industrial logging, large-scale oil palm plantations, etc. without applying the principle of FPIC. In addition, there are international drivers interacting with local factors, namely, international financial institutions, business communities, banks and inter-governmental organisations, including UN and regional groupings and internationally acceptable good-trade practices. The historical sketch has shown that changes in the status of the forests have occurred over a period of extended time, not just due to recent changes. Indeed, the forest laws and policies today are essentially those transferred by the colonisers and modified or amended over time.

The current trends and rates of deforestation and forest degradation in the three regions are linked to core drivers and their direct and indirect causes including:

Direct causes

- Industrial logging, both legal and illegal, causing degradation of forest resources.
- Indirect consequences of logging, such as the construction of forest roads to access the camps and temporary housing for logging workers, river pollution and damage to the forest floor, soil, vegetation, etc. by logging trucks and heavy machinery. These forest roads often open up forests to further encroachment not only by the logging companies but also migrants to clear remaining trees, etc.
- Natural forest clearance or conversion of forested lands to other land uses, usually with logging as a precursor. These other activities include: oil palm and other industrial tree plantations, agribusiness expansion, large dams, extractive industries such as mining and quarrying (e.g. open pit, blasting) and mining-related activities such as the processing facilities and the tailings, land development and other land schemes (e.g. agricultural schemes, rubber estates, and so on).
- Infrastructure and urban development projects such as construction of roads and highways, industrial plants and factories, hilltop bungalows and resorts, and other facilities related to urbanisation and demographic changes.
- Consumer demands for logs and for palm oil, particularly among food producers and the bio-diesel industry, have resulted in more forests being logged and or cleared to establish new palm plantations, also leading to increasing commodification of nature and natural resources.

Indirect or underlying drivers

Behind the direct causes are multiple indirect processes and drivers, which are usually interconnected and vary regionally within the country. The important underlying causes include:

- National and state legal and policy instruments and related contradictions arising from different levels and actors of federal and state power as well as jurisdictions over land and forestry legislation and policies. Protection of each state's power over land and forest resources often results in continued contradictions with federal government's policies, regulations, enforcement, projects, etc. However, the development choices of both federal and state governments have favoured large-scale projects such as commercial agriculture plantations, large dam projects, etc. Monitoring and enforcement of the many laws for land and forest protection is relatively weak, and inevitably the government role in tackling the many issues connected with deforestation is also weakened.
- Many of the existing land and forest laws have colonial (British) origins. These laws and policies are not only outdated, but have over time been amended and tightened by post-independent federal and state governments steadily eroding the collective customary rights of forest peoples over their lands. Pre-existing customary land rights of forest peoples are systematically ignored and overridden, which contributed considerably to unjust land acquisition and concession allocations to commercial enterprises, at the same time failing to uphold the core standard of FPIC.
- Weak or flawed forest governance reduces the provisions for full local forest community and gendered perspectives. As a result, forest governance exacerbates the disempowerment of local communities and marginalisation of women, women's rights to community resources, and creates unequal and insecure land tenure of families and forest communities.
- Ineffective governance or incorrect governance system: a non-transparent, non-accountable system of governance that allows for corrupt politicians to lease out licences for logging and then for land leases to be issued to corporations and private individuals at the expense of land owners. Yet Malaysia's "commitment" to curb systemic corruption, nepotism and political patronage in appropriation of forests and natural resources through logging, land leases and concessions, remains to be seen – especially of politically exposed persons.
- Interaction of international, national and local factors, including links with trans-border forest governance and crimes, e.g. global corruption, money laundering and tax evasion. Malaysia ranks fourth in global capital flight (GFI report, 2013). Logging concessions, permits, contracts and allocation of rights to exploit forests and state assets are often controlled or held by powerful political and economic elites and well-connected corporations. Also, unethical financial and investment culture, unsustainable trade and consumption patterns, perverse large-scale infrastructure "development" (e.g., dam-building), perverse incentives (e.g., tax breaks for foreign companies), and so on have contributed to an increase in deforestation.

Effects of deforestation and forest degradation

Deforestation affects women and men, young and old, in both material and non-material ways. Natural wealth is plundered and much of the biodiversity loss is permanent. Indigenous peoples and local forest communities dependent on the forests for livelihoods, cash income, and social-cultural and spiritual needs are arguably the most affected. Yet the profits derived from exploitative logging and other forest resources benefit only a small segment of political and economic elites, especially in Sarawak where allegations against key ministers have been plentiful over the decades. There are no signs of forest exploitation, degradation and deforestation stopping. Loss of land rights is a direct consequence of logging as the state ignores land rights to issue licences to loggers. After logging, with the infrastructures in place, logged areas are turned into plantations – oil palm and industrial trees –

for a set period of time. Even areas with minimal intact forest cover left are now at risk of being lost.

The destruction of forests and deforestation have many far-reaching consequences, including human rights violations, *inter alia*:

- Recognition of the rights of communities to native land tenure (NCR lands) weakened or removed.
- Landowners and communities' free, prior and informed consent (FPIC) is not sought or obtained.
- Local communities' and indigenous peoples' lands are acquired without due fair payment and without remedy.
- Use of violence by the authorities, police and companies in land conflicts with affected communities, including violence and abuse of women and children.¹⁵⁹
- Deprivation of traditional livelihoods and means of subsistence such as income, water sources, etc.
- Loss of indigenous knowledge, socio-cultural systems, spiritual meaning and oral traditions.
- Broader rights abuses linked to prejudice, discrimination and marginalisation, right to development, right to citizenship, gender inequality, and other disadvantages faced by indigenous peoples.
- Marginalised communities are exposed to rape and other forms of sexual violence, such as the Penans.¹⁶⁰

Extensive and permanent forest clearance for plantation development, agribusiness and infrastructure has drastically reduced the area of customary forests used by communities. With major reduction in forest areas, local resource management systems are being undermined. Forest peoples' access to or use of resources for livelihoods and incomes are also affected. As forests are logged, those communities unable to halt logging are forced to encroach into other communities' forests to seek out resource needs as the logging impacts on their ability to hunt wild game, fish and access other forest resources. With less land swidden cultivators are forced to reduce fallow periods which in turn may slow forest regrowth and or potentially lead to greater usage of chemical fertilisers to maintain yields. Environmental degradation resulting from indiscriminate large-scale development projects, including land conversion activities, worsen many natural disasters. These effects are being felt not only in the margins of logged areas, or degraded hill slope areas, but also in the suburbs and cities.

¹⁵⁹ See, Ideal (1999). *Our land is our livelihood - The undermining of indigenous land rights and the victimisation of indigenous peoples* in Sarawak. IDEAL, Sibul. This report documented a number of such cases, based on communities' testimonies and IDEAL's field researchers investigations. More recent information is available from: <http://www.sarawakreport.org/?s=melikin&lang=en>

¹⁶⁰ See, for example, National Task Force (2009) *Laporan Jawatankuasa Bertindak Peringkat Kebangsaan Bagi Menyiarat Dakwaan Penderaan Seksual Terhadap Wanita Kaum Penan di Sarawak* [Report of the National Task Force to Investigate Allegations of Sexual Abuse of Penan Women in Sarawak]. Ministry of Women, Family and Community Development, Government of Malaysia. Despite confirmation of the existence of sexual violence and exploitation as experienced by Penan women and girls, it was reported that response from both federal and state government authorities was rather unsatisfactory. Subsequently, an NGO team conducted their own independent Mission, see: The Penan Support Group, the Asian Forum for Human Rights and Development (FORUM-ASIA), and the Asian Indigenous Women's Network (AIWN) (July 2010). *A Wider Context of Sexual Exploitation of Penan Women and Girls in Middle and Ulu Baram, Sarawak, Malaysia*, SUARAM Komunikasi, Selangor.

Undisturbed forests, coral reefs and mangroves act as a buffer zone against forces of nature such as gales, tidal waves, sudden downpours of rain, etc. Where these natural buffers are destroyed or disturbed, the vulnerability of the areas and inhabitants to disasters such as flash floods, mudslides, flooding and other climatic catastrophes is increased.

Lessons learned

Main lessons

The changes triggered by past and ongoing deforestation and forest destruction have had an adverse impact on human lives, on the environment and on biodiversity. These are symptoms related to wider social factors associated with greed and economic dominance over all else:

- Powerful political and economic elites plundering the rich resources and wealth of the country for quick profits, while destructive development activities and processes continue unabated.
- Failure to respect constitutional provisions, customary adat law and other domestic laws that uphold human rights, including lack of implementation of court judgements in favour of indigenous communities, and their NCRs, to land, ancestral territories and forest resources.
- Failure to enforce many existing domestic and international agreements on human rights, the environment, and other critical areas where such actions are warranted.
- Failure to effectively tackle financial crimes like corruption, bribery and money laundering for personal monetary gain, especially involving politically exposed persons, despite existing laws and guidelines on these.
- Failure of State Parties to hold Member States to account and enforce the various applicable international instruments including the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption. In particular the United Nations Office on Drugs and Crime (UNODC) has yet to publicly show what it has done on numerous reports alleging Malaysian politically exposed persons in corruption cases, including global money laundering.

What emerges from the two sub-regional case studies on Long Itam and Kg. Sebir is the communities' perspective that:

- Encroachment into their ancestral lands and communal forests is occurring without their free, prior and informed consent.
- Severe changes, mainly negative, are being seen and felt in relation to forest resources and livelihoods.
- Negative economic, environmental and social impacts owing to these changes, including increasing gender inequalities and further marginalisation of minority groups within indigenous populations in Malaysia such as the Penan and Orang Asli.

- Increased control being exerted over land and forests by the state and state machineries/agencies, as well as increasing policies and legislation on lands and forests designed to derive benefits for political and economic elites.
- Different views of the forests and their uses between indigenous/local communities and the state/political-economic elites.
- Deforestation and the associated impact on the socio-economic, cultural and customary practices of the Penans are pressing them to practise an unknown land-use system. This is even altering the egalitarian nature of Penans and requiring them to adopt the practice of having to allocate lands to families to farm, among other changes.

Nevertheless, there are some encouraging signs:

- Several landmark court judgements and decisions recognising and affirming indigenous peoples' rights to NCR lands not just as a physical entity but applying adat and international human rights values and principles, including FPIC.
- Within the affected local forest communities and indigenous peoples, there is increasing awareness of possible community actions (such as filing land dispute cases in court, lodging complaints to relevant authorities, etc.), with support of civil society and concerned citizens as well as international NGOs, to protect their lands, territories and resources, and other rights.
- Forest communities are also increasingly ready to assert their rights by standing up for their rights to defend their livelihood, resources, space, and so on.
- There is increasing recognition that it is essential to explore and harness new energy systems which are more sustainable, such as solar, wind, small dams, etc., and utilising local resources and indigenous knowledge.
- Segments of the scientific community are focussing more attention on, and conducting studies on, issues affecting humankind such as deforestation, using multi-disciplinary approaches.
- Growing international understanding and concern about the ongoing and intensifying global forest and resources crisis opens up some spaces and fora for governments and NGOs/citizens' groups/communities to deliberate and discuss such issues and to find workable solutions. However, governments and corporations need to recognise the importance of genuine processes of multi-stakeholder participation and negotiations, and are not just 'for the record'.

Much more still needs to be done. A crucial question is whether Malaysia specifically, and the international community of inter-governmental, governmental, non-governmental and civil society more generally, want to do something in support of community efforts and to urgently address this global forest crisis. Does the political will exist or will business as usual allow this crisis to intensify? At the local level, there are some initiatives and efforts being adopted by the communities to protect their remaining forests. This is summarised on the next page.

Community initiatives and solutions for securing rights and protecting forests

- Reclaiming NCR lands in court, resulting from the growing awareness among native landowners of the need to file claims in the Malaysian courts to protect their ancestral lands and forests.
- Adopting forest-related community activities, namely the Penan Peace Park which was conceptualised and established by 18 Penan communities in Upper Baram, as a model community-managed protected area for resource sharing and conservation for the present and future generations.
- Funding their own development and social projects such as community hall and village pre-school to serve their community needs, with financial and material support from general public donations, NGOs, churches, etc. as a way to reduce or avoid depending on the logging companies and dictates of the government.
- Monitoring their remaining forest areas with forest resource assessments and documentation and community mapping, using geographic positioning systems (GPS), geographic information systems (GIS) and other community user-friendly information base systems.
- Raising and building awareness, community/gender empowerment and skills training and development increase understanding of the causes and consequences of forest degradation and loss, as sustainable alternatives to protect and manage the remaining intact forests are implemented.

Recommendations

Given today's rapid rate of logging and conversion of land use, there is an urgent need to address the problem. The main recommendations from the overall Malaysian case study are the following:

1. A human rights-based approach

- Adopt a human rights-based approach to land and forest tenure that takes into account human rights as enshrined in domestic and international law and policy; recognise indigenous peoples' adat, NCRs to land and other rights, practices and knowledge, the right of indigenous peoples and forest-dependent local communities to represent themselves through their own institutions and community-elected representative leaders, taking into account gender, age, ethnicity/minority status and other socio-economic factors that marginalise one or more groups of people and favour the other.
- Prioritise security for peoples and communities in land tenure, food and basic human needs (adequate housing, clean water, transportation, etc.), complying with international laws and standards like the Universal Declaration on Human Rights, UN Declarations on the Rights of Indigenous Peoples and the Right to Development, Vienna Declaration and Programme of Action 1993.
- Review and modify existing national and international macro-economic and trade policies and laws that contribute to escalating human rights abuses and land-grabbing.

Actors: Malaysian policymakers and national/state legislatures, Forestry departments and forest or land-related agencies, activists/IPOs/NGOs, independent media, academics/research centres and

the National Human Rights Commission of Malaysia (SUHAKAM). Internationally, actors include also inter-governmental organisations (UN and others), international NGOs, development agencies, industry and financial institutions, international research institutions (e.g., Center for International Forestry Research/CIFOR, The Forests Dialogue/TFD, International Land Coalition/ILC, Regional Community Forestry Training Center/RECOFTC), and regional political blocs (e.g. EU, ASEAN, NAFTA, etc.)

2. Laws and policies on forests and lands

- Recognition and protection of indigenous peoples' NCRs to lands and resources, in line with statutory provisions, common law and adat (customs) and including amendments to laws that are discriminatory to NCR lands
- Redress and the restitution of illegal expropriated or alienated NCR lands, forests and other resources of indigenous peoples and facilitate affected peoples' access to justice and related agencies such as the courts, lawyers, etc.
- Class Action/Citizen Suits: Allow communities/citizens and organisations to sue violators and collect damages.
- Review existing Malaysian laws and policies to make sure language and implementation explicitly recognise human rights.
- Review and ratify laws and policies passed by state and federal parliaments in Malaysia, including policies for forest management and large-scale agricultural expansion that have not given due recognition to NCR and FPIC. Important components in the process and outcome of such a review include multi-stakeholders' views and promoting a sound balance between growing crops that sustain livelihoods and that generate cash incomes.
- Land capability classification studies need to be updated to provide current information to determine the best use of land and forests for Malaysia, towards a more effective and integrated national/state land-use plan.
- Need to formulate an optimal land-use policy with full participation of indigenous peoples and local communities, rural farmers, women, NGOs, the scientific community and governmental agencies across sectors in decision-making.
- Enact a Resource Extraction Disclosure requiring businesses to report the amount of natural resources (timber, minerals, etc.) that the company has extracted and processed, particularly for export, and tighten supply-chain tracking with a non-corruptible system of verifying tags kept by forestry departments for tax/royalty payment purposes.¹⁶¹
- Adopt the Freedom of Information Act, requiring governments and large corporations, banks, investors, etc. to report on their operations in domestic and foreign countries.

¹⁶¹ An exclusive report by Sarawak Report, an online news portal on Sarawak has exposed how forestry staff were in hotels while supposedly verifying logs for the state in tax purposes. For the full article, see, <http://www.sarawakreport.org/2014/02/forestry-department-write-ground-reports-from-seaside-hotels-in-kk-exclusive-expose/>

- In general, in the Malaysian political system, ensure that public institutions are statutorily independent of the executive and accountable to parliament/legislative assembly.

Actors: Malaysian federal and state parliaments and federal and state governments

3. Responsible business, finance and trade

- Obtain FPIC for all activities planned on the customary lands and territories of indigenous peoples and on the farmlands of rural communities. Adopt voluntary regulations such as certification and a due diligence code of conduct that fully respects and recognises NCRs to lands of indigenous communities.
- Reveal detailed plans and make them available foremost to the communities, to NGOs and relevant government authorities to enable all stakeholders' participation in decision-making before the start of any project, if agreed to.
- Recognition and protection of indigenous peoples' rights to their lands, territories and resources must be made a precondition of business and bank funding.
- Land disputes and conflicts between logging and oil palm companies as well as project holders must be based on dispute resolution mechanisms according to international human rights standards, and not companies hiding behind the state and their enforcement forces such as the police.
- Respect for indigenous peoples' and indigenous women's adat, social, cultural and resource rights that are recognised in international laws and conventions, especially those that Malaysia has ratified (CBD, CEDAW) and adopted as declarations (UNDRIP, Rio Declaration and Agenda 21). Carry out thorough social and environmental impact assessments with proper processes for public full participation.
- Public education to identify and understand underlying causes of forest loss, including the links between deforestation in producer countries and unethical trade and over-consumption patterns in consumer countries.
- Ensure an inclusive, transparent and effective multi-stakeholder participation in the VPA-FLEGT process between the EU and Malaysia. Prioritise strengthening the capacity of CSOs and indigenous peoples and addressing some of the underlying causes of forest loss and bad forest governance, particularly corruption, land tenure rights of forest peoples, and unjust forest and land policies and laws. The EU and European NGOs, notably FERN, play a central role in ensuring that various civil society groups, including local communities, are involved in FLEGT and or any other mechanism, based on transparent, nurturing and respectful participatory principles.

Actors: Malaysian federal and state enforcement agencies, national and international companies/industry, investors and banks, inter-governmental organisations (UN/regional groupings, e.g., FAO, ILO, ITTO, World Bank, EU), media.

4. National and development plans

- Need to find ways to reverse unbalanced resource flows that result in the concentration of wealth among elites and the overexploitation of timber and other resources.
- Review all ongoing projects that create inequitable gaps between NCR landowners, rural local farmers and non-industry landowners on one side and political/economic elites on the other side.
- Stop issuing permits for industrial logging, oil palm plantations, large dams and other infrastructure projects and review existing ones in terms of their compliance with human rights standards, a rights-based approach and FPIC.
- Land and forest-related development schemes and projects must not cause forced evictions or resettlement and must not transfer land ownership and tenure from landowners to the state and corporations; FPIC must be applied at every step.
- All development projects, both public and private, must be independently and credibly audited with an open, transparent and accountable process for their socio-economic and environmental impacts on all Malaysians, including ripple-effects in communities outside Malaysia.
- Strengthen the capacity of government monitoring and enforcement to ensure the successful implementation of regulatory standards of practice, due diligence, and most crucially proper understanding of customary land use and tenure systems, so that they take a neutral stand between local communities and companies in any land disputes.
- Address weakness and loopholes in coordination within and across sectors, such as forestry, energy and public utilities.

Actors: Malaysian federal and state governments and various agencies and statutory bodies.

5. On good governance

- Ensure the long-term security of tenure and customary and traditional rights of indigenous and local communities. This is essential for securing livelihoods and other aspects of life.
- Stopping corruption, money laundering and nepotism must be given the highest priority.
- Stricter law enforcement on violations and faster prosecution and punishment of violators especially politically exposed persons and high-level corruption, with independent third party/international assistance when required.
- Strengthen public awareness of corrupt practices relating to resources, forests and lands and increased knowledge of reporting such cases.
- Provide funding for training on community/public awareness programmes, developing a database on traditional knowledge of forest use, especially the knowledge of traditional elders, both women and men.

Actors: Malaysian federal and state governments, Malaysian Anti-Corruption Commission (MACC), UN and other international agencies (UNODC, EU, Member States, etc.), indigenous peoples and local communities, private citizens, NGOs, development and donor agencies, international business community, investors and banks.

6. Definitional issues and questions over deforestation statistics

- On valuation of forest goods and services, communities' views of forests as a source of livelihood and existence for communities (and their traditional forest-related knowledge and non-timber forest products uses) must be taken into account. Value should not be just based on how the state and industry rank forests as primarily a source of income.
- Existing FAO and official definitions of forests and forest-related concepts, such as deforestation, forest cover and plantations, need to be redefined along with recognition of indigenous and rural communities' views and practices.

Actors: Malaysian policymakers/legislatures, forestry/land-related agencies, indigenous and forest communities, activists, independent media, inter-governmental organisations especially the FAO, development agencies, industry, international research institutions.



(Images 8/9) For many indigenous peoples, development has not brought about improved livelihoods. A Penan elder (left). Orang Asli women in a ritual performance using musical instruments made of bamboo (right).



(Images 10/11) Children whose land and forest rights are threatened.



(Image 12) The forests through the eyes of a child. Artist: 12-year-old Hashim from the indigenous Jahai tribe