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IMPACT OF MALAYSIAN LAND LAWS ON ITS GREEN ECONOMY AMBITIONS

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EXECUTIVE SUMMARY

This report highlights the critical role of Malaysia's land laws in the realisation of its green-economy ambitions:

- i. To ensure net zero greenhouse-gas emissions by 2050
- ii. To protect 20% of land area by 2025
- iii. To maintain 50% forest cover in perpetuity
- iv. To stop all forest conversion for palm oil
- v. To recognise indigenous land rights

Malaysia has developed policies, plans, and procedures that support most of these pledges. However, the implementation of the net-zero and forest-cover pledges show negative trends in practice. Malaysia's greenhouse-gas emissions are increasing and Malaysia's forest cover is declining.

There is inconsistent reporting on forest cover. The national forest policy uses the weaker term, "forest and tree cover". The national forest policy does not define "forest and tree cover". It is not clear whether the term includes non-forest tree cover such as rubber and oil palm plantations.

The report also notes that the federal government does not provide the state governments with sufficient incentives to conserve forest. This has meant that several states have allowed their forest cover to drop below 50%. Other states are set to follow a similar path.

To address these issues, the report makes recommendations for the international community, the federal and state governments and the private sector. The key recommendations for the federal and state government include:-

- The federal and state governments should adopt explicit land-cover and land-zoning targets, specifying the area of protected areas, and the area of natural forest that they wish to retain.
- The 'ecological fiscal transfer' mechanism should focus on the compensation of state governments for contributing to the 50%-forest pledge.
- The federal government should also offer states a "debt-for-nature swap". This would offset federal debt to the states, in exchange for the states increasing or maintaining forest area.
- The federal and state governments should adopt the recommendations of the National Inquiry into the Land Rights of Indigenous Peoples. This includes the establishment of an independent National Commission on Indigenous Peoples.
- The peninsular states and Sarawak should amend their state forestry enactments to require that excisions of forest reserves obtain the approval of their State legislative assembly. Sample bills to this effect have been drafted for the State of Selangor (see Annex 1) and for the State of Sarawak (see Annex 2).

INTRODUCTION

OVERVIEW

This report examines the impact of Malaysian land laws on its green-economy ambitions. The report addresses three themes, including land categorisation, the federal-state relationship in terms of land administration, and fiscal allocation for the green economy. For each theme, the report presents recommendations for achieving Malaysia's green-economy ambitions.

BACKGROUND

Malaysia is a federation of 13 states and three federal territories divided between the Malay Peninsula (on the southernmost tip of mainland Asia) and the north of the Island of Borneo (Figure 1). Malaysia has an extensive forest resource including a range of dry inland forest, peat swamp forest and mangroves. In 2020, the government reported the total forest area as 18.24 million hectares or 55.2% of the national land area.^{1,2} This represents a slight decline from 55.8% in 2015.³ The decline has stabilised following a sharp decline from 95% in 1900.⁴

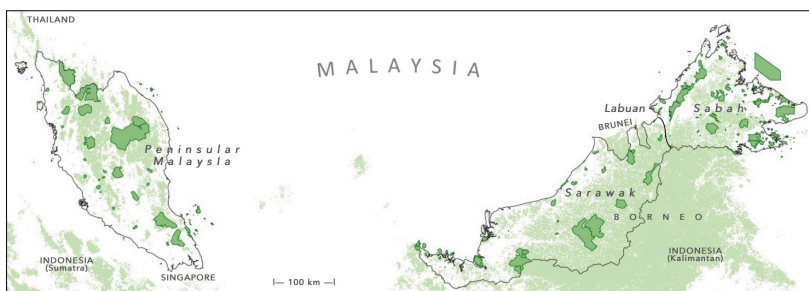


Figure 1. Extent of Malaysia's primary forest (light green) and protected areas (dark green).

Source: forest from Turubanova et al. 2018) and protected areas from World Protected Areas Database.

In accordance with Malaysia's Federal Constitution, the legislative control of land and forests is a state matter and the state governments have complete jurisdiction over their respective forest resources. However, the federal government does provide technical advice on forest management and development, undertakes research and education, and promotes development of wood-based industries and trade. A National Land Council exists to facilitate the adoption of a coordinated and common approach to land matters

¹ Malaysia's Third Biennial Update Report submitted to the United Nations Framework Convention on Climate Change in December 2020. Putrajaya: Ministry of Environment and Water.

² The 55.2% figure is for 2016 which is the key reference year used in this report. For 2017, the percentage reported was 55.0% ([https://www.epu.gov.my/sites/default/files/2020-08/SUSTAINABLE%20DEVELOPMENT%20GOALS%20\(SDG\)%20INDICATORS,%20MALAYSIA,%20202018.pdf](https://www.epu.gov.my/sites/default/files/2020-08/SUSTAINABLE%20DEVELOPMENT%20GOALS%20(SDG)%20INDICATORS,%20MALAYSIA,%20202018.pdf)).

³ Department of Statistics, Malaysia <<http://mysdg.dosm.gov.my/>>.

⁴ Aiken, S.R. 1994. Peninsular Malaysia's Protected Areas' Coverage, 1903-92: Creation, Rescission, Excision, and Intrusion. *Environmental Conservation* 21(1): 49-56.

including the utilisation of forest resources. The Borneo states of Sabah and Sarawak each have a distinct legislative framework related to land and forests. In comparison, the states of Peninsular Malaysia have relatively uniform forest and land laws.

The existing non-forest uses include around 6.06 million hectares of agricultural tree crops (including oil palm, rubber plantations and fruit orchards) and 8.67 million hectares of other land uses (see Figure 2). Under the various land and forest laws, more than three-quarters of Malaysia’s remaining forest land are designated as “permanent forest”. This is to be either retained as “protection areas” where no logging is done or “production forest” which is for growing timber under the principles of sustained yield. On this basis, much of the forest has been certified as “sustainable forest management” under the Malaysian Timber Certification Scheme (MTCS).⁵

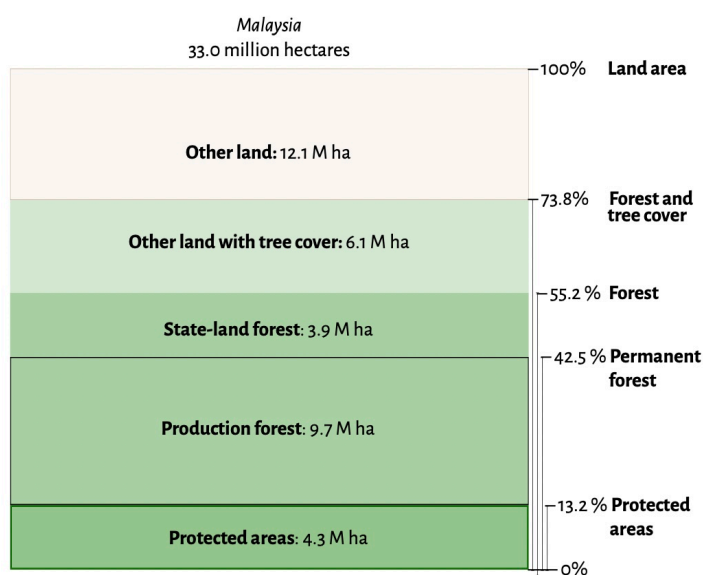


Figure 2. Forest land-use zoning in Malaysia (2016)

MALAYSIA’S GREEN-ECONOMY AMBITIONS

Malaysia is committed to the 2030 *Agenda for Sustainable Development* adopted by the United Nations. The national ambitions for the decade are contained in Malaysia’s *Shared Prosperity Vision 2030*. As part of this vision, Malaysia has developed a set of indicators that line up with the international Sustainable Development Goals (SDGs).⁶ In addition, the federal government has a specific set of 79 national ‘Green Economy Indicators’ (GEI) that were developed with the support of the United Nations Statistics Division.⁷ These goals and indicators are mentioned in Malaysia’s latest 5-year development plan, the *Twelfth Malaysia Plan, 2021–2025 (RMK12)*.

⁵ Malaysian Timber Certification Council <www.mtcc.com.my>.

⁶ Available online: <<https://www.epu.gov.my/sites/default/files/2021-02/Sustainable-Development-Goals-%28SDG%29-Indicators-Malaysia-2019.pdf>>.

⁷ *Green Economy Indicators, Malaysia* (9 March 2018); available online: <<https://www.dosm.gov.my/>>.

Malaysia's climate and environment ambitions involve (1) reducing emissions of greenhouse-gases; (2) protecting forests; and (3) recognising the land rights of indigenous people.⁸ In particular, Malaysian government officials have made five key pledges related to land use (Table 1).

Table 1. Malaysia's land-use pledges, green-economy indicators (GEI), sustainable development goals (SDG) and 12th Malaysia Plan strategies (RMK12)

Pledge	GEI	SDG	RMK12
i. To ensure net zero greenhouse-gas emissions by 2050*	2.1.1	13.2.2	A1, B3
ii. To protect 20% of land area by 2025	3.4.5	15.1.2	B1, B2
iii. To maintain 50% forest cover	3.1.5	15.1.1	B1, B3
iv. To stop all forest conversion for palm oil	3.1.4	-	B1, B3
v. To recognise indigenous land rights	-	-	C3



SDG Goals 13 and 15

*This report focuses on emissions related to land use, land-use change, and forestry ('LULUCF').

Some of these pledges date back to the first Earth Summit in 1992, when Malaysia was represented by then Prime Minister Dr Mahathir Mohamed. Additional pledges were made more recently, during COP26 of the UNFCCC, where Malaysia's environment minister was present. In addition, there was some representation from the state governments, including the young regent of Pahang, HRH Tengku Hassanal Ibrahim Alam Shah.

PROGRESS

The federal government has incorporated its green land-use pledges into national policies, plans and procedures (Table 2). However, there is limited buy-in from the state governments. None of the national pledges have been enshrined in state-level policy throughout Malaysia. This limits progress on the ground. This report describes the pledges, highlights obstacles and proposes some solutions.

Table 2. Progress of Malaysia's green land-use pledges (2012 – 2022)

Pledge	Policy	Plans	Procedures	Practice
i. To ensure net zero greenhouse-gas emissions by 2050	↗	↗	↗	↘
ii. To protect 20% of land area by 2025	↗	↗	↗	↗
iii. To maintain 50% forest cover	↗	↗	↗	↘
iv. To stop all forest conversion for palm oil	↗	-	↗	⇌
v. To recognise indigenous land rights	⇌	⇌	⇌	⇌

Key

Clearly improving	↗
Limited progress	-
Mixed developments	⇌
Clearly deteriorating	↘

'Pledges' include public position statements, and manifesto promises; 'policies' include formal commitments that have been ratified by the relevant national or state body; 'plans' include strategies, road-maps and blueprints; 'procedures' include laws, regulations and administrative directives; and 'practice' includes the actual implementation of the policies.

⁸ These are also the key climate and environmental interests of the Government of the United Kingdom in Malaysia. In particular, these priorities are related to the UK Forest, Agriculture and Commodity Trade (FACT) Dialogue that was launched in the run-up to COP26 of the UNFCCC (Murugadas T. L. pers. com., 1 Dec. 2021).

RESEARCH THEME 1: LAND-USE CATEGORIES

OVERVIEW

This section reviews Malaysia's land-use categories as they relate to the green land-use pledges. The key categories for these pledges are "protected areas", "forest cover" and "indigenous land". These pledges were mostly made in the context of international agreements (Table 3). However, the pledges need to be implemented via local plans and procedures (Table 4). It is thus appropriate to consider the categories in the context of both international and local definitions.

INTERNATIONAL DEFINITIONS

The key international land-use definitions come from the Food and Agriculture Organisation (FAO). FAO is the UN agency with responsibility for monitoring global forest resources. The FAO definitions are not part of a treaty but have been widely adopted for international reporting purposes.⁹ The FAO definitions are also referred to by treaties such as the Convention on Biodiversity.¹⁰ In addition, Malaysia does report its national statistics following the FAO framework.¹¹ The FAO provides definitions for forest, and a wide range of related land-cover and land-use categories. These include deforestation, permanent forest estate, production, protected areas, local, tribal and indigenous communities and other land with tree cover (Table 5).

The FAO land-use definitions include both land-cover and land-use elements. FAO gives specific land-cover thresholds together with constraints in terms of land use. For example, it defines "forest" as:

"Land spanning more than 0.5 hectares with trees higher than 5 meters and a canopy cover of more than 10 percent, or trees able to reach these thresholds *in situ*. It does not include land that is predominantly under agricultural or urban land use."¹²

NATIONAL AND SUB-NATIONAL DEFINITIONS

Under Malaysian law, there are variable definitions for the terms used in the FAO reporting framework (Table 6). The federal Ministry of Energy and Natural Resources (KeTSA) is responsible for reporting to FAO. However this ministry's jurisdiction over forest management is limited and its agencies are focused on Peninsular Malaysia and the Federal Territory of Labuan (i.e., excluding the states of Sabah and Sarawak) (see Figure 3).

⁹ FAO (2016). Global Forest Resources Assessment 2020: Terms and Definitions FRA 2020. Forest Resources Assessment Working Paper 188.

¹⁰ <https://www.cbd.int/forest/definitions.shtml>

¹¹ Mohd Ridza bin Awang. Global Forest Resource Assessment 2020 Report Malaysia. Rome, 2020 (<https://www.fao.org/3/cb0033en/cb0033en.pdf>)

¹² FAO (2018).

Table 3. Malaysia's green land-use pledges and policies

Pledge	Policy
<p>i. To ensure net zero greenhouse-gas emissions by 2050</p> <p>✔ “To promote sustainable management of carbon sinks, including biomass, forests and other ecosystems” (United Nations Framework Convention on Climate Change 1992 (UNFCCC), ratified by Malaysia on 11 October 1994)</p> <p>✔ “to achieve net-zero GHG emission target earliest by 2050” (Statement by the Minister of Environment and Water Malaysia, 26th Conference of Parties to UNFCCC, 9 November 2021)</p>	<p>Gap: No state has adopted policies on emissions</p> <p>✔ “Conserve and enrich carbon pools in natural ecosystems including plantations and promote rehabilitation of sensitive and degraded ecosystems through sound management practices and land use planning.” (<i>National Policy on Climate Change</i> approved by the Federal Cabinet of Malaysia on 20 November 2009)</p> <p>✔ Federal government announced a policy to stop new planting of oil palm in new peatland areas and to further tighten regulations with regard to existing oil palm cultivation on peatlands</p>
<p>ii. To protect 20% of land area by 2025</p> <p>✔ “By 2025, at least 20% of terrestrial areas ... are conserved through a representative system of protected areas and other effective area-based conservation measures” cf. (1) United Nations Convention on Biological Diversity 1992 (CBD), ratified by Malaysia on 22 September 1994; (2) Convention on Wetlands of International Importance especially as Waterfowl Habitat 1971 (Ramsar Convention) (ratified by Malaysia on 10 March 1995); (3) Langkawi Declaration on the Environment 1989; (4) Glasgow Leaders Declaration on Forests and Land Use 2021</p>	<p>✔ Adopted by <i>National Policy on Biological Diversity 2016-2025</i> (Ministry of Natural Resources and Environment, 2016); cf. <i>National Wetlands Policy 2004</i>; <i>National Policy on the Environment 2002</i>; <i>National Policy on Biodiversity 1998</i></p> <p>State-level policies:</p> <ul style="list-style-type: none"> ✔ “To gazette not less than 30% of the area of the state of Sabah as or 2.2 million hectares as TPA [totally protected areas] by the year 2025” (<i>Sabah Forest Policy</i> approved by the Sabah State Cabinet on 1 August 2018; cf. <i>Sabah Biodiversity Strategy 2012-2022</i>)
<p>iii. To maintain 50% forest cover</p> <p>✔ “To ensure that at least 50 per cent of our land area will remain permanently under forest cover” (Statement by the Prime Minister of Malaysia at the Official Opening of the Second Ministerial Conference of Developing Countries on Environment and Development, 27 April 1992; Prime Minister of Malaysia at 74th Session of UN General Assembly, 27 September 2019; and Minister of Environment and Water Malaysia, COP26, 9 Nov. 2021)</p> <p>State-Level Pledge</p> <ul style="list-style-type: none"> ✔ Selangor government has stated that it is committed to “ensuring that permanent forest reserve areas are not less than 30% (of the state’s landmass)” (government pledge in 2021) 	<p>Gap: No national or state-level policy on attaining 50% forest cover</p> <p>✔ “Malaysia is committed to maintain at least 50% of the national land area as forest and tree cover” [emphasis added] (<i>Malaysia Forestry Policy</i> adopted by the 78th meeting of the National Land Council on 29 January 2021)</p> <p>State-level policy:</p> <ul style="list-style-type: none"> ✔ “To maintain at least 50% of the area of the State of Sabah as forest reserve and tree cover” [emphasis added] (<i>Sabah Forest Policy</i> approved by Sabah Cabinet on 1 August 2018) No state in Peninsular Malaysia has adopted this policy
<p>iv. To stop all forest conversion for palm oil</p> <p>✔ “By 2020 ... halt deforestation ...” (SDG Goal 15.2, ‘Transforming our world: the 2030 Agenda for Sustainable Development’, Resolution adopted by the United Nations General Assembly on 25 September 2015; cf. Glasgow Declaration 2021)</p> <p>✔ “Malaysia will not clear more forests for palm oil plantations.” (Address by the Prime Minister of Malaysia at the Seventy-fourth Session of the United Nations General Assembly, 27 September 2019)</p>	<p>✔ “To ban conversion of all natural forest reserves, for the purpose of oil palm cultivation; to cap the total oil palm cultivation area at 6.5 million hectares” (Decision of the Federal Cabinet of Malaysia, March 2019; not yet adopted by the National Land Council)</p> <p>State-level policy:</p> <ul style="list-style-type: none"> Gap: No state has adopted this policy (e.g. Selangor converts forest for oil palm, despite a 2010 logging moratorium)
<p>v. To recognise indigenous land rights</p> <p>✔ “To recognise and support the identity, culture and interests of indigenous people” (Rio Declaration on Environment and Development, 1992)</p> <p>✔ “To give legal recognition and protection to the lands, territories and resources which indigenous peoples have traditionally owned” (United Nations Declaration on the Rights of Indigenous Peoples, 2007 (UNDRIP))</p> <p>✔ “To recognise, uphold and protect the dignity and rights of the Orang Asal of Peninsular Malaysia ... to guarantee the right of customary land of the people of Sabah and Sarawak.” (Buku Harapan: Rebuilding our Nation, Fulfilling our Hopes, Pakatan Harapan Manifesto, 8 March 2018)</p>	<p>Gap: No nation-wide policy on indigenous land recognition</p> <p>✔ “Promote the participation of indigenous people and local communities in the care, maintenance and protection of forests.” (Malaysia Forest Policy, 2021).</p> <p>State-level/Regional Policies:</p> <ul style="list-style-type: none"> ✔ “To focus on the rights of Indigenous peoples and local communities to own, use and manage their areas and resources.” (Peninsular Malaysia Forest Policy, 2021) ✔ “To alienate land to the aboriginal people in accordance with the provisions of the National Land Code 1965” (Aboriginal People Land Alienation Policy, National Land Council, 4 December 2009) ✔ “To issue native communal land grants” (Sabah Native Communal Grant Policy, 2010) ✔ “To develop plantations on native customary lands via joint-ventures with oil palm companies and the State government” (Sarawak ‘New Concept’ Policy, 1994)

Table 4. Malaysia's green land-use plans, procedures and practices

Plans	Procedures	Practices
<p>i. To ensure net zero GHG emissions by 2050</p> <ul style="list-style-type: none"> ✔ National Action Plan on Peatlands (2011) ✔ National REDD Plus Strategy (2017) ✔ 12th Malaysia Plan (2021) includes: “investing in nature-based solutions by preserving and restoring the capacity of forest ecosystems to act as carbon sinks.” · [Ongoing: Long-Term Low Emissions Development Strategy (LT-LEDS)] 	<p><i>Clearly improving</i> ✔</p> <ul style="list-style-type: none"> ✔ The Environmental Quality Act 1974 prohibits the open burning of peat soil ✔ In 2022 a framework document for the development of a Climate Change Bill has been drafted 	<p><i>Clearly deteriorating</i> ✘</p> <p>✘ GHG emissions from LULUCF increased from 3.56 Mt in 2011 to 17.8 Mt in 2016</p> <p>(Ministry of Water and Environment 2020)⁴</p>
<p>ii. To protect 20% of land area by 2025</p> <ul style="list-style-type: none"> · National Conservation Strategy (1993) · Heart of Borneo Strategic Plan of Action (2008) ✔ Protected Area Master Plan (2019) 	<p><i>Clearly improving</i> ✔</p> <ul style="list-style-type: none"> ✔ The 2019 Federal budget included RM70m for ecological fiscal transfer (EFT) to expand protected areas; this was increased and made a permanent part of the budget in 2021 ✘ The 2021 EFT budget was no longer explicitly for creating <i>new</i> protected areas 	<p><i>Clearly improving</i> ✔</p> <ul style="list-style-type: none"> ✔ The area of protected areas expanded from 9.6% (2016) to 10% (2018)
<p>iii. To maintain 50% forest cover</p> <ul style="list-style-type: none"> ✔ 4th National Physical Plan (2021) includes a plan to regain 50% forest cover in Peninsular Malaysia and ensure 50% forest nationally ✔ 12th Malaysia Plan (2021) states that “urban forests and lakes, will be expanded.” 	<p><i>Clearly improving</i> ✔</p> <p>The National Forestry Act 1984 provides for no net-loss of forest reserves</p> <p>Since 1984, Sabah has required the Legislative Assembly to oversee excisions</p> <ul style="list-style-type: none"> ✔ Since 2010, Selangor has required a public enquiry prior to excision of forest reserves 	<p><i>Clearly deteriorating</i> ✘</p> <ul style="list-style-type: none"> ✘ The area of conversion forest is declining ✘ The area of permanent forest is declining in several states (the overall area of permanent forest has plateaued at around 42.5%)
<p>iv. To stop all forest conversion for palm oil</p> <p>There is no action plan, strategy or blueprint to address this pledge.</p>	<p><i>Clearly improving</i> ✔</p> <p>Forest clearance requires environmental impact assessment (EIAs)</p> <ul style="list-style-type: none"> ✔ EIAs must be “in accordance with the development plan or physical plan approved by the relevant approving authority” (Environmental Quality (Amendment) Act 2012) 	<p><i>Clearly deteriorating</i> ✘</p> <p>Sabah and Sarawak have approved oil palm plantations inside some forest reserves</p> <ul style="list-style-type: none"> ✘ Reserves continue to be excised for oil palm ✘ The Town & Country Planning Department does not object to the clearance of forest for oil palm inside Environmentally Sensitive Areas
<p>v. To recognise indigenous land rights</p> <ul style="list-style-type: none"> ✔ The Malaysian Human Rights Commission (Suhakam) carried out a National Inquiry into the Land Rights of Indigenous Peoples (2013) and the Federal Cabinet set up a committee to implement its recommendations ✘ The committee has not been meeting for several years ✔ “To take into account the interests and rights of the Orang Asli regarding the management and development of areas within forest reserves.” Action Plan 7-2-c, <i>Peninsular Malaysia Forest Policy</i> (2021) ✔ “The ILCs [indigenous and local communities] will also be empowered in the conservation of natural areas through community-based resource monitoring and citizen science.” Strategy C3, <i>Twelfth Malaysia Plan, 2021-2025</i>. 	<p><i>Clearly improving</i> ✔</p> <ul style="list-style-type: none"> ✔ The courts have ruled that indigenous customary land rights are vested with proprietary interests. “No person shall be deprived of property save in accordance with law.” “Law” includes “any custom or usage having the force of law” (Constitution of Malaysia, 16 September 1963) ✔ Conditions on the Alienation of Land to Aboriginal People (Director of Land and Mines Selangor Circular 1/2006) ✔ In 2020, the Sarawak State Government implemented a NCR New Initiative Survey Programme and amended the Sarawak Land Code to recognise usufructuary rights over Native Territorial Domain. 	<p><i>Mixed developments</i> ⇌</p> <ul style="list-style-type: none"> ✔ Court decisions and out-of-court settlements recognised indigenous land rights in Pos Belatim and Pos Balar in Kelantan ✘ In Sabah, in 2017, the Forestry Department demolished 16 houses in Kg Bobotong, Sg Pinangah Forest Reserve. Suhakam found they had land rights applications since 1984. ✘ In Sarawak, in 2021, Penan villagers of Ulu Baram blockaded logging roads and protested against the forest & timber certification. ✘ In 2019, in Perak, Temiars of Kg Cunex, blockaded logging roads. In 2021, Temiars of Kg Kelaik, Kelantan, sued to stop logging. ✔ Under the NCR survey programme, 52,000 hectares of NCR land are being perimeter-surveyed and another 15,000 hectares are being surveyed as individual farm lots (<i>temuda</i> and longhouse areas). ✘ Most of the high forest (<i>pulau</i>) of rural communities are being excluded from the NCR survey.

¹³ Ministry of Water and Environment (2020), Malaysia's Third Biennial Update Report to UNFCCC.

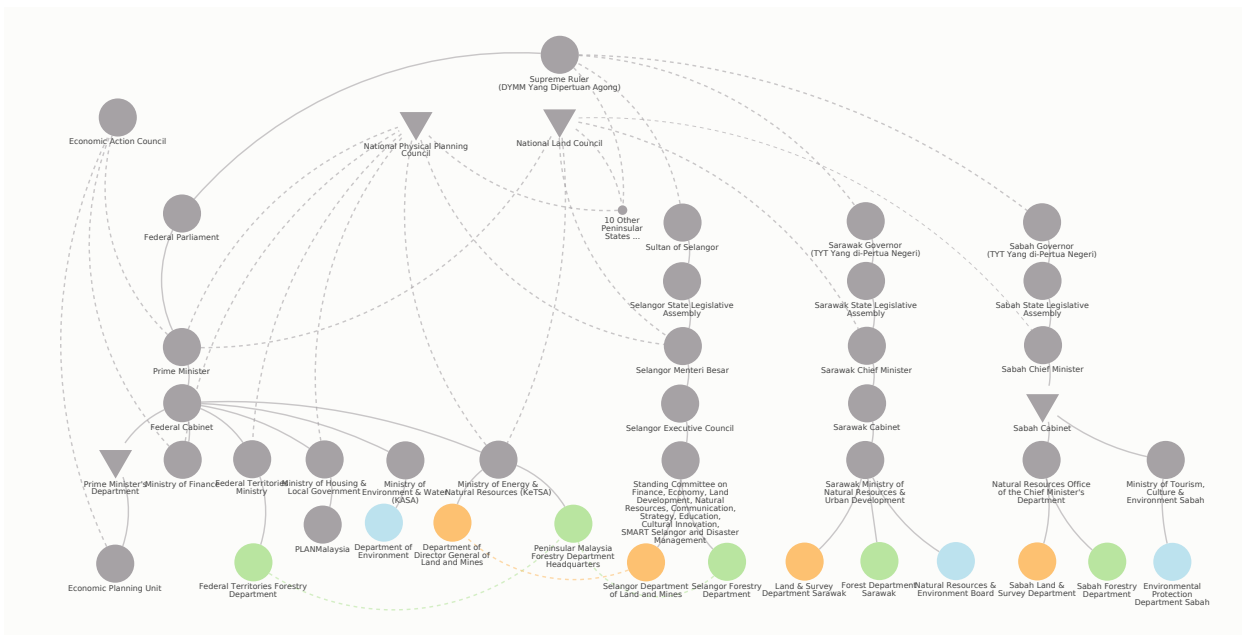


Figure 3: Institutional arrangements for land administration in Malaysia, focusing on Sabah, Sarawak and Selangor (as an example of a peninsular state). Persons are shown by circles and organisations by triangles; areas of responsibility of the agencies include forestry (green), environment (blue), and land (orange).

Forest

This division of responsibility for forest management means that the federal government has had to take certain liberties in adapting the national land-use categories to fit the FAO framework. In particular, the federal government has come up with adapted definitions for the key terms such as “forest” and “other land with tree cover”. For example, the federal government defines “forest” as:

“Land spanning more than 0.5 hectares with trees higher than 5 meters and a canopy cover of more than **30 percent**, or trees able to reach these thresholds in situ. It does not include land that is predominantly under agricultural **include rubber plantation** or urban land use.”¹⁴ [Emphasis added].

This definition follows the standard FAO 2020 definitions, with two amendments. In the first amendment, “10 percent” (canopy cover) is replaced with “30 percent” (this includes most of the climax vegetation types in Malaysia). In the second amendment, “include rubber plantation” is inserted after “agricultural” (this is discussed under the “Rubber plantations” section, below). This definition uses the same tree-height and canopy-cover thresholds that are used in Malaysia’s reporting to the UNFCCC. In the National REDD Plus Strategy (2017), “forest” is defined as:

“A minimum area of land of 0.05 hectares with tree crown cover (or equivalent stocking level) of more than 30 per cent with trees with the potential to reach a minimum height of 5 meters at maturity in situ (Kyoto Definition). For consistency and governance reasons, Malaysia will follow the National land code definition, where

¹⁴ Mohd Ridza (2020).

areas gazetted by State Governments as forest and subjected [sic] to the National Forestry Act will be considered as forest.”¹⁵

Malaysia’s FRA Report notes that the extent of “other wooded land” in Malaysia is “unknown”: “There may exist an unknown extent of other wooded land but as it could not be estimated from available data it is included under Other land”.

Table 5. Land-use and land-cover terms used globally and land-use categories used in Malaysia’s reports

Land-use and land-cover term		Land-use categories used for Malaysia’s national reporting		
Other land: All other land including built-up areas, lakes, barren land		Other land: Total land minus ‘forest and tree cover’		
Other land with tree cover: Land classified as “other land”, spanning more than 0.5 hectares with a canopy cover of more than 10 percent of trees able to reach a height of 5 meters at maturity.		Other land with tree cover: alienated land zoned for agricultural tree crops (oil palm and rubber plantations)		Forest and tree cover
Forest: Land spanning more than 0.5 hectares with trees higher than 5 meters and a canopy cover of more than 10 percent, or trees able to reach these thresholds <i>in situ</i> . It does not include land that is predominantly under agricultural or urban land use.	Forest zoned for deforestation: The conversion of forest to other land use independently whether human-induced or not.	State-land: includes forest outside of reserves and alienated land. Includes native customary land (in Sarawak)		
	Permanent Forest Estate: Forest area that is designated to be retained as forest and may not be converted to other land use.	Production: Forest where the management objective is production of wood, fibre, bio-energy and/or non wood forest products.	Production forest: land reserved for timber production; & “protected forest” (Sarawak)	Forest
		<ul style="list-style-type: none"> Forest area within legally established protected areas Protection of soil and water Conservation of biodiversity 	Protected areas: protection forest in forest reserves and totally protected areas	
Local, tribal and indigenous communities: Forest owned by a group of individuals belonging to the same community residing within or in the vicinity of a forest area or forest owned by communities of indigenous or tribal people. The community members are co-owners that share exclusive rights and duties and benefits contribute to the community development.		<ul style="list-style-type: none"> Malay reserve, aboriginal reserve, aboriginal area, and aboriginal inhabited area: For Peninsular Malaysia this is included in ‘other land’; Communal Forest: For Sarawak this included in ‘production forest’ Native Reserve: For Sabah (included in ‘other land’) 		

Source: FAO (2018)¹⁶

The statistics provided in the report to FAO are actually based on land-use data (following the national legal definition) rather than using land-cover data (such as that from a satellite or aerial analysis). In particular, the statistics for “forest” provided in the report are based on the area of forest zoned as such under Malaysia’s land-law framework rather than on the adapted FAO land-cover definition. This means that the statistics do not necessarily refer to land that is covered by trees, instead, the statistics refer to the legal status of the land.

The land-use definition used in the second sentence of the REDD Plus Strategy document requires some clarification. The definition refers to the National Land Code 1965 which is the main law governing land matters in Peninsular Malaysia. This law does not contain any definition for forest. However, it does refer to “reserved forest” and states (s5) that: ““forest produce” has the meaning

¹⁵ NRE (2017). National REDD Plus Strategy. Putrajaya: Ministry of Natural Resources and Environment.

¹⁶ As reported in Malaysia’s *Global Forest Resources Assessment 2020* report, <<https://www.fao.org/3/cb0033en/cb0033en.pdf>>

assigned to it by any law for the time being in force in the State relating to forests. The laws that are in force relating to forest in Peninsular Malaysia and Labuan are presently derived from the National Forestry Act 1984. This law provides a definition for “permanent reserved forest” (PRF) (i.e., an area constituted under the act via notification in the government *Gazette*).

Table 6. Forest land-use categories and Malaysia’s land laws

Forest category	Peninsular Malaysia & Labuan	Sabah	Sarawak
State-land forest	State land (National Land Code 1965)	State land (Land Ordinance Cap. 67)	State land (SL), includes Native Customary Land (Land Code 1957)
Permanent forest	Production forest: Timber production reserves. Permanent reserved forests (PRFs) National Forestry Act 1984 (and state enactments): selective logging, clearing allowed	Forest Enactment 1968, Forests (Constitution of Forest Reserves and Amendment) En. 1984 Production forest: Commercial Forest (Class II), Domestic Forest (Class III); Protection forest: Protection Forest (Class I); Amenity Forest (Class IV); Virgin Jungle Reserve (Class VI); Wildlife Reserve (Class VII)	Production: forest reserves, protected forests, communal forests (Forests Ordinance 2015) also known as Permanent Forest Estate (PFE) and Permanent Forests (PFs)
Protected areas	Terrestrial protected areas (PAs) reserved for a public purpose under the land laws; forest reserves classed as ‘protection forest’ under the forestry laws; totally protected areas (TPA) including national parks, state parks and nature reserves; and wildlife sanctuaries and wildlife reserves		
National parks	National Parks Act 1980 (and state enactments)	Sabah Parks Enactment 1984	National parks and nature reserves (Sarawak National Parks and Nature Reserves Ordinance 1998)
Wildlife reserves	Conservation of Wildlife Act 2010	Wildlife Conservation En. 1997 *	Wildlife sanctuaries (Wild Life Protection Ordinance 1998)

The areas explicitly mentioned in the second sentence of the REDD Plus definition are not the only areas considered as “forest” by the Malaysian government. In addition, interviews with Malaysian government officials under the present study confirm that the Malaysian national forest statistics include several other areas (listed in Table 6). These additional areas include (1) “State land”; (2) permanent forest constituted under the forestry laws of Sabah and Sarawak; and (3) protected areas (e.g., national parks and wildlife reserves).

A comprehensive definition of “forest” that is used by the Malaysian government would thus be as follows:

“All land that has been constituted as:–

- (i) permanent reserved forest under the National Forestry Act 1984 (Malaysia Act 313), the National Forestry (States of Malaysia) (Adoption) Enactment (Johor 12 of 1985), the National Forestry (States of Malaysia) (Adoption) Enactment (Kelantan 11 of 1985), the National Forestry (States of Malaysia) (Adoption) Enactment (Malacca 4 of 1985), the National Forestry (States of Malaysia) (Adoption) Enactment (Perak 3 of 1985), the National Forestry (States of Malaysia) (Adoption) Enactment (Selangor 5 of 1985), the National Forestry (States of Malaysia) (Adoption) Enactment (Kedah 2 of 1986), the National Forestry (States of Malaysia) (Adoption) Enactment (Negeri Sembilan 5 of 1986), the National Forestry (States of Malaysia) (Adoption) Enactment (Pahang 6 of 1986), the National Forestry (States of Malaysia) (Adoption) Enactment (Penang 2 of 1986), the National Forestry (States of

- Malaysia) (Adoption) Enactment (Perlis 1 of 1988), and the National Forestry (States of Malaysia) (Adoption) Enactment (Terengganu 1 of 1986);
- (ii) Forest Reserve under the Forest (Constitution of Forest Reserves and Amendment) Enactment 1984 (Sabah Enactment 4 of 1984);
 - (iii) forest reserve, protected forest, or communal forest under the Forests Ordinance 2015 (Sarawak Cap. 71);
 - (iv) state park, national park or nature reserve under the Taman Negara (Kelantan) Enactment 1938 (Kelantan Enactment 14 of 1938), the King George V National Park (Pahang) Enactment 1939 (Pahang Enactment 2 of 1939), the Taman Negara (Terengganu) Enactment (Terengganu Enactment 6 of 1360 [1939]), the National Parks Act 1980 (Malaysia Act 226), the Parks Enactment 1984 (Sabah Enactment 6 of 1984), the Terengganu State Parks Enactment (Terengganu Enactment 11 of 1986), the National Parks (Johor) Corporation Enactment (Johor Enactment 7 of 1989), the National Parks and Nature Reserves Ordinance 1998 (Sarawak Cap. 27), the Perak State Park Corporation Enactment (Perak Enactment 10 of 2001), the Selangor State Parks Corporation Enactment (Selangor Enactment 3 of 2005), and the Pahang State Parks Corporation Enactment 2021;
 - (v) bird sanctuary, turtle sanctuary, wildlife reserve, Wild Life Sanctuary, or wildlife sanctuary under the National Land Code (Malaysia Act 56), the Turtles Enactment 1972 (Kedah Enactment 10 of 1972), the Conservation of Wildlife Act 2010 (Malaysia Act 716), the Wildlife Conservation Enactment 1997 (Sabah Enactment 6 of 1997), and the Wild Life Protection Ordinance 1998 (Sarawak Cap. 26); and
 - (vi) All land that is considered to be State land under the provisions of the National Land Code 1965, the Land Ordinance (Sabah Cap. 67), or the Land Code 1957 (Sarawak Cap. 81)."

Categories (i) – (v) of the Malaysian legal definition for “forest” can be given the sub-category “permanent forest”. This does not mean that they cannot be logged. A definition for “Permanent Forest Estate” (PFE) is provided by the International Tropical Timber Organisation (ITTO) as follows:

“Land, whether public or private, secured by law and kept under permanent forest cover. This includes land for the production of timber and other forest products, for the protection of soil and water, and for the conservation of biodiversity, as well as land intended to fulfil a combination of these functions. The main categories of the permanent forest estate are protection and production.”

The categories of the Malaysian legal definition for “forest” can be further sub-categorised. Category (i) includes both “protection forest” and “production forest”; while categories (ii) – (v) are “protection forest”. Category (vi) (“State land”) is land which the government statistics includes as “forest” as it has yet to be formally approved for development via the process of land alienation. State land is considered to be a land bank for future development. The state assumes that the native vegetation on State land will be cleared once the land has been alienated. On this basis, State-land forest is not considered to be permanent forest.

Tree cover

The Malaysia Forest Policy 2021 expands the 1992 pledge to conserve 50% forest cover to include “tree cover” (Table 3, row iii).¹⁷ In this regard, “tree cover” is not defined under Malaysian law. However, Malaysia’s report to FAO does provide statistics for “Other land with tree cover”. Here, alienated land zoned for rubber, oil palm plantations, and fruit orchards are included.

It is worth noting that there are other trees on alienated land that are not included. This means that many areas that could be considered as “forest and tree cover” are not included in the national statistics. Increasing the area of “forest plantations” does not necessarily increase the area of forest cover. For

¹⁷ Dasar Perhutanan Malaysia [the Malaysian Forestry Policy] (2021). Putrajaya: Kementerian Tenaga dan Sumber Asli.

example, the federal government is providing RM 500 million for a programme named “Forest Plantation Development Loan” for developing “forest plantations” with an area of 4 hectares and above.¹⁸ However, these plantations will not increase the government’s statistics for “forest” or “tree cover”.

Similarly, tree-planting programmes have no clear link to the “forest cover” pledge. KeTSA has launched a plan to plant 100 million trees. This plan has no link to the “50% forest and tree cover” policy. Some of the trees planted under this planting campaign will be included in areas that are already considered to be forest. Other areas planted under the campaign will be on alienated land and thus will not contribute to the “forest cover” or “tree cover” statistics unless the definition is amended.

Table 7. Actual land cover that can be found within global and Malaysian land-use zones

Land cover	Global land-use & land-cover terms				Land-use zones in Malaysia's national reporting				
	Other Land	Forest & tree cover			Other Land with tree cover	Forest			
		Forest		Protected area		State land	Permanent Forest		
		Production	Protected area				Production forest	Protected area	
Built-up area									
High-rise buildings									
Oil-palm plantation									
Clear cut or young trees									
Jungle vegetation									
Wildlife habitat									
Indigenous settlement									

Rubber plantations

Malaysia’s FAO report¹⁹ states that the term “forest” does “not include land that is predominantly under agricultural include rubber plantation or urban land use.” This is taken to mean that the term “forest” does not include land that is predominantly under *agricultural land use* (including rubber plantations) or land that is predominantly under *urban land use*.

The reference to rubber plantations in Malaysia’s FAO report risks being somewhat misleading. Plantations of rubber (*Hevea brasiliensis*) that are grown for their latex on agricultural land are included in the national forest statistics as “land with other tree cover”. However, *H. brasiliensis* plantations that are grown for their timber (‘timber-latex clones’) are included as the “production forest” component of “permanent forest”. This is acceptable under the FAO definition. However, it is controversial because of concerns that natural forest rich in biodiversity is being cleared for these monoculture plantations. In 2021,

¹⁸ Twelfth Malaysia Plan 2021-2025: A Prosperous, Inclusive, Sustainable Malaysia. Putrajaya: Economic Planning Unit, Prime Minister’s Department, Malaysia. (<https://rmke12.epu.gov.my/en>)

¹⁹ Mohd Ridza (2020).

the National Land Council announced a moratorium on new timber plantations in forest reserves.

Oil palm plantations

Clear land-use definitions are particularly important in relation to Malaysia's pledge not to clear forests for palm oil plantations. This is because areas defined as "forest" include some areas that have already been cleared for palm oil plantations. The planting of oil palm inside production forest has been approved in Sabah and Sarawak on a case-by-case and conditional basis. These areas remain constituted as "permanent forest" and thus the national statistics continue to include them as "forest".

Table 8: Typical land cover within Malaysia's land-use zones

Land cover	Malaysian land-use zones						
			Forest and tree cover				
			Other land	Other land with tree cover	Forest		
	Canopy closure	Tree height			State-land forest	Production forest	Protected areas
Type of vegetation							
Built-up area with tree lines, patches	<10%	>5 m	●	•	○	○	○
Traditional indigenous settlement	<10%	>5 m	•	•	●	•	•
Oil palm (<i>Elaeis guineensis</i>)	>30%	>5 m	•	●	•	○	○
Rubber (<i>Hevea brasiliensis</i>)	>30%	>5 m	•	●	•	•	○
Acacia (<i>Acacia mangium</i>)	>30%	>5 m	•	•	•	•	○
Recent clear-felled jungle (<i>cuci mangkuk</i>)	<10%	<5 m	•	•	●	•	•
Regenerating secondary jungle (<i>belukar</i>)	>10%	>5 m	•	•	●	●	•
Logged-over jungle (<i>kawasan sudah kerja</i>)	>30%	>5 m	•	•	●	●	•
Primary, virgin jungle, climax vegetation	>90%	>20-m tall	○	○	•	•	●

● = typical • = occasional ○ = very rare/absent

Built-up area and high-rise buildings

There are also examples of buildings and golf-courses being constructed inside areas that are officially zoned as permanent forest. One example is the development of a five-star hotel in the Sungai Pulai forest reserve, Johor.²⁰ Here, a mangrove forest was cleared to make way for the 298-room Forest City

²⁰ The federal government placed the Sungai Pulai Forest Reserve on the List of Wetlands of International Importance on 31 January 2003. The area is still designated as a "Ramsar site". cf. Vinodh Pillai (2019). 'Xavier: Putrajaya can't do anything over golf course on Ramsar land in Johor'. Free Malaysia Today, February 16. Available online: <https://www.freemalaysiatoday.com/category/nation/2019/02/16/xavier-putrajaya-cant-do-anything-over-golf-course-on-ramsar-land-in-johor/>

Golf Hotel, part of a 800-hectare golf resort.²¹ This development is connected to the 'Forest City' project.²² This project has been promoted by a politically powerful local figure.²³

Another example of housing development inside a permanent forest is the case of the Bukit Cherakah forest reserve, Selangor. Here, land titles were issued inside the permanent forest, contrary to the provisions of the National Land Code 1965. The housing development commenced despite the fact that the legal process of excision of the forest reserve had not been completed.²⁴

Summary

In summary, it is clear that a land-use zone does not provide an assurance regarding the actual land cover that can be found within that zone. The designation of an area of land for a particular land-use does not always determine the activities that take place on that land. Despite this, areas zoned as "forest" are indeed typically covered with trees. Similarly, built-up areas, high-rise buildings and oil palm plantations are very rare inside areas zoned as 'permanent forest' in Malaysia. Details of the typical land-cover classes that are associated with each land-use zone are shown in Table 8).

²¹ This case has been reported as a controversy in the national press: <https://www.malaysia-today.net/2019/03/17/i-know-nothing-says-dr-m-of-golf-resort-on-ramsar-land-in-johor/>
<https://www.bharian.com.my/berita/nasional/2020/02/656356/hutan-simpan-sungai-pulai-jadi-padang-golf>

²² https://www.iseas.edu.sg/images/pdf/ISEAS_Perspective_2017_42.pdf

²³ <https://www.theedgemarkets.com/article/johor-sultan-stakeholder-forest-city-project>

²⁴ A. C. Kalidas (2021). 'Selangor Government Must Respect Due Process in Forest Reserve Excision', Malaysian Bar, Press Release 8 November. <https://www.malaysianbar.org.my/article/news/press-statements/press-statements/press-release-selangor-government-must-respect-due-process-in-forest-reserve-excision>

RESEARCH THEME 2: STATE-LEVEL LAND POLICIES, PLANS, AND PRACTICE

STATE-LEVEL IMPLEMENTATION OF THE MALAYSIA FOREST POLICY VIA THE NATIONAL PHYSICAL PLAN

Ratification of National Pledges

Once a pledge has been made by a federal government official, it only becomes binding on the government once it has been ratified by the appropriate body. This process of ratification usually results in the pledge being incorporated into an official policy document. In Malaysia, these policy documents are produced by both federal and state governments. The federal-level policies related to land use are required to be ratified or adopted by both the federal cabinet and the appropriate national-level body. Importantly, the national-level body includes representatives of the state governments (these include the National Land Council and the National Physical Planning Council).

In addition, state-level ratification is also necessary in order for a federal policy related to forest and land to be binding on the state government. In line with federal policy, all states in Malaysia have adopted policies regarding no net-loss of *permanent forest*. However, the law is not watertight and it does allow excision of such forests without replacement.²⁵ Several states have thus experienced a decline in their area of “permanent forest”.²⁶

Table 9. Relevance of Malaysia’s land-use categories to its land-use pledges

Pledge	Malaysian land-use category				
	Protected area	Permanent forest	Forest	Forest and tree cover	Indigenous land
i. To ensure net zero greenhouse-gas emissions by 2050*	●	•	•	•	•
ii. To protect 20% of land area by 2025	●	•	•	•	•
iii. To maintain 50% forest cover	●	●	●	•	•
iv. To stop all forest conversion for palm oil	●	•	•	•	•
v. To recognise indigenous land rights	○	○	○	○	●

- Categorisation is sufficient to meet pledge (assuming effective management)
- Categorisation is not sufficient to meet pledge
- Categorisation is not always relevant or sufficient to meet the pledge

²⁵ For example, section 12 of the National Forestry Act 1984 states that replacement should take place “wherever possible and ... having regard to ... the economic development of the State; and the availability of suitable land ...”

²⁶ Lim, T.W. and S. Suksuwan. (2007). An Assessment of the Status of Permanent Reserved Forests in Peninsular Malaysia, 2001-2005. Discussion Paper, WWF-Malaysia, Petaling Jaya. Available online: <https://www.academia.edu/4362532/An_Assessment_of_the_Status_of_Permanent_Reserved_Forests_in_Peninsular_Malaysia_2001-2005>.

Despite Malaysia’s international pledge, no state is committed to maintaining “50% forest cover”. Only the state of Sabah has adopted a state-level policy in support of the national policy to maintain “50% forest and tree cover”. A commitment to retaining tree cover is necessary to meet the forest-cover pledge but it is not sufficient. This is because the definition of forest goes beyond just tree cover (Table 9).

The only state government to announce a specific *forest-cover* pledge is the state of Selangor, which has committed to maintain at least 30% of its land area as permanent forest. However, Selangor is only committed to retaining its permanent forest. It is not committed to retaining its State land forest. Instead, Selangor has been actively clearing its State land forest for oil palm plantations and other uses.²⁷

When the Selangor state government approved the clearance of Kuala Langat North, it did reserve a replacement area of State land forest elsewhere in the state. This is in accordance with the requirements of section 12 of the National Forestry Act 1984. This meant that there would be no net-loss in terms of permanent forest. But there would still be an overall loss in terms of *forest cover*. This is significant because Malaysia depends on State land forest in order to meet its “50% forest cover” ambitions (Figure 2).

In addition to being zoned as forest in the Selangor State Structure Plan, and the Kuala Langat District Local Plan, Kuala Langat North is also zoned as forest in the National Physical Plan. The National Physical Plan is approved by the National Physical Planning Council, which includes representatives from the state governments as well as from the federal government.

The National Physical Plan

The latest National Physical Plan includes a strategy for maintaining 50% forest cover.²⁸ This plan involves an ambitious target of restoring forest in Peninsular Malaysia back up to 50%, while ensuring that forest in Sabah and Sarawak was maintained at a “2019” reference level (Table 10). This plan has been approved by the National Physical Planning Council.

Table 10. Malaysia’s forest-area targets

	Sarawak	Sabah	Pen. M’sia	Total
Total land area (hectares)	12 397 311	7 431 050	13 181 197	33 009 558
Current’ forest area (hectares in 2019)	8 034 000	4 435 990	5 734 082	18 204 072
Current percentage forested	64.8%	59.7%	43.5%	55.1%
Target forest area (hectares in 2040)	8 034 000	4 435 990	6 590 599	19 060 589
Target percentage forested	64.8%	59.7%	50.0%	57.7%

Source: *National Physical Plan 4*, 2021.



²⁷ The Vibes (2021). KLNFR saga: NGOs cry foul over Selangor agency’s destruction of replacement forest. September 5, <<https://www.thevibes.com/articles/news/40590/klNfr-saga-ngos-cry-foul-over-selangor-agencys-destruction-of-replacement-forest>>.

²⁸ PLANMalaysia (2021) *National Physical Plan 4*, October 2021 <myplan.planmalaysia.gov.my>.

Despite their crucial position in this strategy, interviews under the present study found that the governments of Sabah and Sarawak were not consulted on this matter. The National Physical Plan is not applicable to Sabah and Sarawak. Neither Sabah or Sarawak have endorsed the forest targets in the National Physical Plan.

STATE-LEVEL COMMITMENT TO PROTECTED AREAS

As with forests, the national pledge to protect 20% of Malaysia's land area by 2025 has yet to be adopted by most of the state governments. Unlike the forest pledge, the national pledge on protected areas is clearly stated in the *National Policy on Biological Diversity 2016-2025* (Ministry of Natural Resources and Environment, 2016). In addition, the federal government has published a *Master List of Protected Areas in Malaysia*²⁹ which categorises the following areas as "Protected Areas":

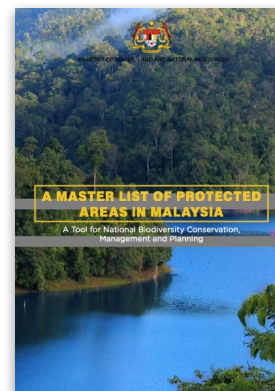
1. Marine protected areas under the marine laws;
2. Areas reserved for a public purpose under the land laws;
3. Protection forests under the forestry laws;
4. National parks, state parks and nature reserve under the relevant park/forestry laws; and
5. Wildlife sanctuaries or wildlife reserves under the wildlife laws.

There are three issues related to Malaysia's protected-areas pledge. These include (1) incomplete adoption of the policy; (2) slow progress to implement the policy; and (3) management effectiveness of the protected areas.

The protected-areas policy has been approved by the Federal Cabinet but, to date, only one state (Sabah) has adopted the policy of permanently protecting a portion of its land area. The National Land Council has made no commitments regarding the protected-area percentage.

The existing protected-area coverage of Malaysia is thus subject to protected-area downgrading, downsizing, and degazettement (PADDD) without replacement. In 2019, 6000 hectares were excised from the Rompin-Endau National Park for oil palm plantations.³⁰ Similarly, in Selangor, the East Klang Valley Expressway is being constructed in the State Heritage Park.³¹

In terms of progress to implement the policy, the *PA Master List* states that the terrestrial protected-area coverage was 13.2% (as of June 2016). There are limited fiscal incentives to maintain or increase this coverage (see Research Theme 3, below). Notably, certain areas that the Malaysian government has pledged to protect have not yet been formally constituted as protected areas.



²⁹ *A Master List of Protected Areas in Malaysia: A Tool for National Biodiversity Conservation Management and Planning* (2019). Putrajaya: Ministry of Water, Land and Natural Resources, Malaysia (KATS). [Following its publication, the Ministry withdrew this document from distribution. An updated version is in the process of being produced.]

³⁰ Hutanwatch (2019). Taman Negeri Endau-Rompin: A Quiet 6000-ha Excision. <<https://www.hutanwatch.com/single-post/2019/04/01/Taman-Negeri-Endau-Rompin-A-Quiet-6000-ha-Excision>>.

³¹ <https://dapmalaysia.org/en/statements/2014/07/04/18847/>

One such example is the Sungai Pulai Wetlands in Johor, mentioned above as a Ramsar site but has not been gazetted as a protected area.

Finally, protected areas contribute to Malaysia's pledge to carbon neutrality. Since logging is prohibited, protected areas are not a significant source of anthropogenic greenhouse gases. Some protected areas, such as peat-swamp forests, can be significant carbon sinks.

However, PADDD means that climate benefits of protected areas are not always guaranteed. Therefore, the federal government has considered safeguarding protected areas by acquiring them from the states. They considered this in order to improve the long-term conservation of the sites. In 2018, in order to implement this strategy, the Barisan Nasional government drafted a 31-page "National Heritage Bill" (Rang Undang-Undang Amanah Negara). This draft legislation provides for the establishment and empowerment of a National Trust. The National Trust would own and manage protected areas, somewhat along the lines of the British model. However, following political changes in government, the bill has yet to be brought to parliament.

STATE POLICY ON OIL PALM REPLACING FOREST

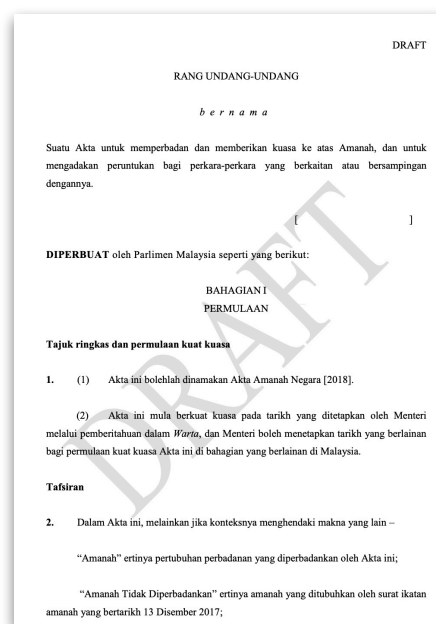
The FAO land-use definitions consider oil palm plantations to be 'agriculture' and not 'forest'. Similarly, in Malaysia's national statistics palm plantations on alienated land are classed as, 'Other land with tree cover'. In Malaysia, the National Land Council has yet to adopt a policy regarding oil palm inside permanent forest. As noted above, both Sabah and Sarawak have officially permitted forest in a portion of their permanent forest to be converted to oil palm plantations.

In 2004 the Sabah Forestry Department approved the conversion by Yayasan Sabah of 109,600 ha of natural forest inside Kalabakan Forest Reserve and Gunung Rara Forest Reserve for oil palm plantation due to the industry's relatively attractive "economics and financial returns".³² Similarly, in 2007, the Sabah Environmental Protection Department approved an environmental impact assessment (EIA) for planting oil palm on 10,389.62 ha inside Bonggaya Forest Reserve, Sandakan, Sabah.³³ In Sarawak, the Forests (Planted Forests) Rules 1997 allows 20% of a licence area to be planted with oil palm for one cycle of 25 years.

In Peninsular Malaysia, oil palm is not officially allowed inside permanent forest. Nevertheless, there are some cases where oil palm has been planted inside forest reserves, usually without the authorisation of the state forestry departments. More significantly, permanent forests in the Peninsula continue

³² Chemsain (2005). Special Environmental Impact Assessment (SEIA) for "Proposed Oil Palm Plantation (OPP) and Industrial Tree Plantation (ITP) Development At Benta Wawasan I and Benta Wawasan IIC, Yayasan Sabah Forest Management Area, Kalabakan and Gunung Rara Forest Reserves, Tawau District, Sabah". Jabatan Perlindungan Alam Sekitar, Kota Kinabalu, 2005. Chemsain Konsultant Sdn. Bhd CK/EV103-370/04., p. C1-1.

³³ Lim T.W. (2013). "Malaysia: Illegals in Forest Clearance for Large-Scale Commercial Plantations." Forest Trends, Washington, DC. <http://www.forest-trends.org/documents/index.php?pubID=4195>



to be excised for conversion to oil palm plantations. Only the state of Selangor has adopted a policy or law that prohibits the excision of permanent forest for oil palm.

One question relates to the legality of the conversion to oil palm of areas that are zoned as forest in the National Physical Plan. In Pahang, an area of 8,498.58 hectares (21,000 Acres) has been excised from Lesong Forest Reserve for the development of an oil-palm plantation.³⁴ The question of its legality is addressed by the Environmental Impact Assessment (EIA) of this project.³⁵ One of the requirements for EIA reports is that they be “in accordance with the development plan or physical plan approved by the relevant approving authority” (Act 127, section 34A (4)(a) [Act A1441, Environmental Quality (Amendment) Act 2012]). In this regard, the EIA mentions four development plans. These four plans and their approving authorities are as follows:

- (i) *National Physical Plan* (National Physical Planning Council);
- (ii) *Central Forest Spine Master Plan* (Department of Town and Country Planning, Peninsular Malaysia);³⁶
- (iii) *State of Pahang Structure Plan 2050* (State Authority of Pahang); and
- (iv) *Rancangan Tempatan Daerah Rompin (Pengubahan) [Rompin District Local Plan] 2015* (Majlis Daerah Rompin).

While mentioning these four plans, the EIA states that the project is in line with certain aspects of the plans related to the promotion of the palm oil industry. However, the EIA does not explicitly state that the project is in *accordance* with any of the plans. On the contrary, the EIA finds that, “The current zoning and land use for the Project site is forest.” The Malaysian Standard for geographic information states that oil palm plantations are classified as “crop land” and not as “forest”.³⁷ The conversion of forest to oil palm plantations is thus not in accordance with the zoning of land as “forest”.

STATE POLICIES ON INDIGENOUS COMMUNITIES' LAND

There is no Malaysia-wide policy regarding the indigenous communities' land. The individual states have varying policies related to the land rights of indigenous communities. Indigenous communities have traditional land claims over several categories of land that are recognised by the government.

³⁴ <https://says.com/my/news/why-is-the-pahang-government-logging-down-a-jungle-as-huge-as-cyberjaya>

³⁵ Eco Synergy Solutions Sdn Bhd and entitled “Second Schedule Environment Impact Assessment Report: The Proposed 8,498.58 Hectares (21,000 Acres) of Logging, Oil Palm Plantation and Agroforestry Development in Private Land Bukit Batu Putih (PT12227), Mukim Keratong, District of Rompin, Pahang Darul Makmur”.

³⁶ Central Forest Spine: Pelan Induk Rangkaian Ekologi [Master Plan for Ecological Linkages] (2010). Kuala Lumpur: Department of Town and Country Planning, Peninsular Malaysia.

³⁷ MS 1759:2004. Malaysian Standard for Geographic Information/Geomatics – Features and Attribute Codes. Department of Standards Malaysia. Available online: <<http://www.salis.sabah.gov.my/PublicDownload/MS1759-Malaysian%20Feature%20and%20Attribute%20Code%20Standard.pdf>>.

These include land where indigenous rights are officially recognised and land where the rights are not recognised by the state. The degree of recognition varies from site to site and from state to state. In particular, Sabah and Sarawak have distinct sets of laws related to indigenous land rights. Indigenous communities claim customary rights over most forest land in Malaysia (including protected areas, PFE and conversion forest). Only a small portion of these claims have been recognised by the government.

The courts have recognised indigenous land rights in several cases. The category “State-land forest” includes land held under what the courts in Peninsular Malaysia have referred to as “customary title” (and what in Sarawak, is known as ‘native customary land’).³⁸ The common law principle recognising *lex non scripta* (unwritten law) provides for the recognition of uncodified customs. In Peninsular Malaysia, there have been numerous court judgements that have upheld this principle with regard to *adat* rights to land. These judgements date back to the nineteenth-century case of *Sahrip v Mitchell*.³⁹ In particular, in the case of *Adong bin Kuwau*, the courts have held that Orang Asli have rights inside forests that are above and beyond the rights that have been explicitly recognised by the state; and in the case of *Mohamad Bin Nohing* the courts held that these rights can persist even in areas that the government has reserved for other purposes.⁴⁰

Court judgements have also led to consent orders that have recognised the rights of local communities to continue to occupy and carry out activities within forest reserves. There are two particular examples, the cases of Pos Balar (*Hanan Anjang*) & Pos Belatim (*Mohamad Bin Nohing*).⁴¹ In the former case, the state of Kelantan and the Temiar Orang Asli of Pos Balar reached a consent agreement in 2017. This agreement effectively acknowledged the rights of the community to play an active role in the management of parts of the Sungai Betis and Sungai Perias forest reserves. The agreement explicitly admitted that the Temiar community of Pos Balar had the following rights:

- (i) the rights to hunting, fishing and foraging in their local forest reserve;
- (ii) for their cultivated lands to be recognised as ‘aboriginal areas’;

³⁸ Report of the National Inquiry into the Land Rights of Indigenous Peoples (2013). Kuala Lumpur: National Human Rights Commission Of Malaysia.

³⁹ Lim, T.W. (2011). A Critical Review of Forest Regulatory Frameworks and their Implementation in Malaysia: The Impact of Recent Reforms on Forest-Dependent People, with Special Reference to Revisions of the Sarawak Land Code 1958. pp. 51-57. In: Scheyvens, H. (ed). Critical Review of Selected Forest-Related Regulatory Initiatives: Applying a Rights Perspective. Institute for Global Environmental Strategies (IGES), Japan. https://www.researchgate.net/publication/357838938_A_Critical_Review_of_Forest_Regulatory_Frameworks_and_their_Implementation_in_Malaysia_The_Impact_of_Recent_Reforms_on_Forest-Dependent_People_with_Special_Reference_to_Revisions_of_the_Sarawak_Land_C

⁴⁰ Wook, I. (2017). Acknowledging Land Rights Of The Orang Asli: A Historical Perspective Of Laws In Peninsular Malaysia. IIUM Law Journal, 25(1): 93-120.

⁴¹ SAM and JKOASM. (2016). Encroachment on Orang Asli Customary Land in Peninsular Malaysia: Causes & Solutions. Sahabat Alam Malaysia and Jaringan Kampung Orang Asli Semenanjung Malaysia. 335 pp.

- (iii) that the state will issue no permits for outsiders to log in these areas;
- (iv) 28 key areas will be protected, including 23 areas for water catchment.⁴²

POLITICAL-ECONOMIC DRIVERS OF FOREST LOSS

In practice, a wide array of political-economic drivers influence the implementation of state and Federal green economic development plans. Some drivers push towards forest loss, while others push towards conservation (Figure 4).

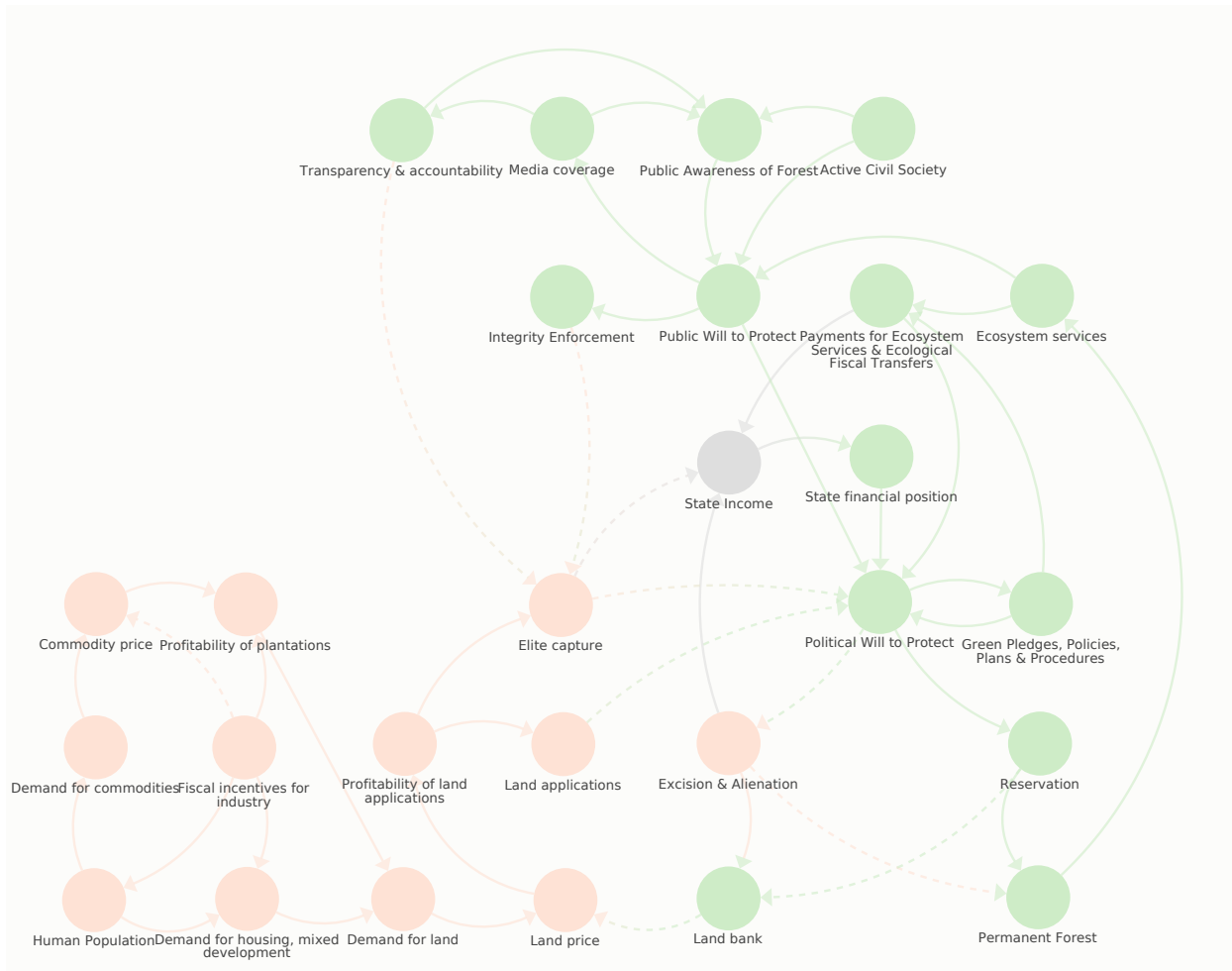


Figure 4. Political-economic drivers that influence the loss ('alienation') and gain ('reservation') of permanent forest, including threats (pink) and safeguards (green) (dashed arrows show drivers in the opposite direction)

⁴² Vun, J. (ca. 2018). Pos Balar: the Preservation of Native Ancestral Lands. KH Koh, Jeremiah Vun and Tan Hooi Ping (eds.) LHAG Celebrates 25th Anniversary [1993-2018]: Pro Bono Stories. Kuala Lumpur: Lee Hishammuddin Allen & Gledhill.

RESEARCH THEME 3: ECONOMIC VALUATION AND FISCAL ALLOCATION

OVERVIEW

This section examines how the Malaysian government values its natural resources (natural resource valuation), how it keeps track of changes in natural resources (natural resource accounting) and how it allocates finances to states to conserve these natural resources (fiscal allocation).

There is no official methodology for the economic valuation of land and natural resources in Malaysia. Similarly, there is no requirement for the state or federal government to report on the financial or economic value of its natural capital (whether land, timber, or minerals). For this reason, neither the state nor federal governments carry out regular appraisals of these assets. Land is valued on an ad-hoc basis, such as when land is to be acquired. However, such valuations focus on the market value of the land. Such valuations do not attempt to assess the economic value of the land.

Over the last 10-20 years, several new land valuation methodologies are being explored by the Malaysian government. These new methodologies aim to account for the indirect economic benefits of ecosystems such as forests. These methodologies include “Payment for Ecosystem Services” (PES) as well as carbon and climate financing. This section reviews the extent to which these methodologies are being applied and the degree to which they facilitate Malaysia’s green-economy ambitions.

In terms of fiscal allocation, this section examines an innovative federal programme known as Ecological Fiscal Transfer for Biodiversity Conservation (EFT). It considers whether EFT and other fiscal allocation mechanisms could allow the federal government to persuade the state governments to adopt and implement Malaysia’s national green-economy ambitions.

PAYMENT FOR ECOSYSTEM SERVICES

Payments for Ecosystem Services (PES) schemes aim to offset some of the opportunity cost associated with keeping an area of land as protected forest. It may also be possible to gain financial benefit from avoiding deforestation through PES schemes.

A couple of existing PES schemes in Malaysia involve payments made by hydropower companies. One such PES scheme is located in a permanent forest in the state of Perak.⁴³ Here, the state government negotiated an agreement with a small hydro-electric generation company. The company agreed to pay the state 0.25% of its profits in exchange for the state agreeing not to allow

⁴³ Zaiton, S., Marina T.I. and Hazandy, A. H. 2020. Payment For Ecosystem Services (PES) In Watershed Area: Bintang Hijau Forest Reserve, Perak. *Malaysian Forester* 83(1): 38-47.

logging in the catchment area of the scheme.⁴⁴ The scheme is projected to generate revenues of around RM 300,000 a year. Another similar example is the hydroelectric dam in Kenyir, Terengganu, where the national electricity company (TNB) pays the government for the rights to use the land for hydroelectric generation. Finally, the federal Economic Planning Unit (EPU) and WWF Malaysia have investigated the possibilities for water-based PES in forest sites that are under-threat from logging, such as Ulu Muda in the state of Kedah.

There is no specific legal framework for PES in Malaysia. In Sabah, the State Water Resources Enactment 1998 has provisions whereby the state can charge for the taking of raw water, however it has yet to exercise these provisions.

In terms of evaluating the potential for PES, there is an ongoing British initiative. This involves the Toolkit for Ecosystem Service Site-based Assessment (TESSA). TESSA uses an open-source software package to identify the existing ecosystem services provided by a site and to compare them with the services provided by alternative sites (Figure 5).

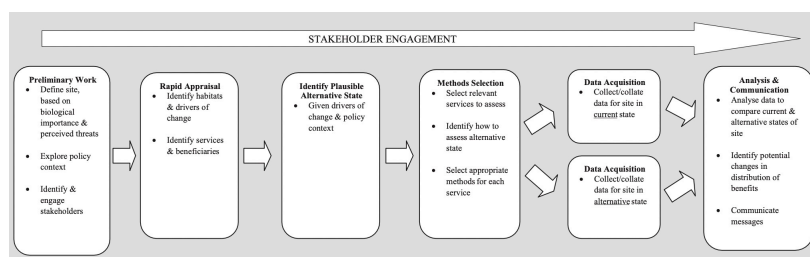


Figure 5. Toolkit for Ecosystem Services Assessment (TESSA) methodological framework identifying habitats at the site, ecosystem services delivered by the site and by a plausible alternative site.⁴⁵

In Malaysia, the UK's Royal Society (South East Asia Rainforest Research Partnership) is working with the Peninsular Malaysia Forestry Department to evaluate whether TESSA can be used by federal and state governments to identify, prioritise and assess ecosystem services. In December 2021, a workshop was held that explored the application of TESSA in Pahang.

Respondents under the present study reported that the TESSA methodology was of interest in several forest sites throughout Malaysia. For example, the Shah Alam Community Forest in Selangor is planning to carry out an ecosystem-services assessment.

CARBON & CLIMATE

On 9 November 2021, Malaysia's Minister of Environment and Water announced the goal of achieving carbon neutrality. The Minister's statement

⁴⁴ UNDP-GEF 2014. Project Document: Improving Connectivity in the Central Forest Spine (CFS) Landscape - IC-CFS. Malaysia-United Nations Development Programme-Global Environment Facility.

⁴⁵ Peh, K.S.H., Balmford, A., Bradbury, R.B., Brown, C., Butchart, S.H., Hughes, F.M., Stattersfield, A., Thomas, D.H., Walpole, M., Bayliss, J. and Gowing, D., 2013. TESSA: A toolkit for rapid assessment of ecosystem services at sites of biodiversity conservation importance. *Ecosystem Services*, 5, pp.51-57.



specified the ambition, “to achieve net-zero GHG emission target earliest by 2050, pending the completion of its Long-Term Low Emissions Development Strategy by 2022.”⁴⁶ In line with this objective, Malaysia has begun to take account of the economic value of carbon sequestration.

The Malaysian government has recently finalised a REDD Plus Finance Framework (RFF). This aims at reducing emissions from deforestation and forest degradation and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks. International carbon markets can be accessed if it can be demonstrated that a company, or government, has managed to avoid planned carbon dioxide emissions by deliberately avoiding deforestation or forest degradation. The quantity of carbon credits depends on the stock of carbon in the particular area of forest being protected.

The government framework is geared towards generating credits in the compliance and non-compliance markets under the UNFCCC. Article 6 of the 2015 Paris Agreement aims to establish a mechanism for the international transfer of carbon credits between countries. This could lead to the development of compliance markets for carbon credits. In compliance markets, governments would set a cap on emissions for each economic sector. Companies must then stay within the cap or purchase carbon credits to offset their emissions.

In addition to the government framework, carbon credits can also be sold on the international voluntary carbon market. This market is worth around USD 200 million per annum.⁴⁷ In 2021, the Malaysian government agreed for Bursa Malaysia to develop a Voluntary Carbon Market (VCM).⁴⁸ And there are already several voluntary-carbon projects underway.

In Sabah, the Innoprise Face Foundation Rainforest Rehabilitation Project (INFRAPRO) is rehabilitating 25,000 hectares of logged-over forest. The project received validation from the Voluntary Carbon Standard (VCS) in 2011. The project has a crediting period of 30 years from 2007 to 2036.⁴⁹ In 2017, the Kelantan state government announced it would protect 396,000 hectares of forest in the hopes of obtaining income from carbon credits under REDD.⁵⁰

In March 2021, KeTSA announced the formation of the “Malaysia Forest Fund”. This fund is a special fund for implementing the REDD Plus Finance Framework (RFF). State governments may access the fund for projects related to forestry, conservation, as well as socio-economic upgrading of indigenous

⁴⁶ Statement by Mr. Tuan Ibrahim Tuan Man, Honourable Minister of Environment and Water Malaysia for COP-26/CMP-16/CMA-3 Resumed High-Level Segment, 9-10 November 2021, Glasgow, Scotland, United Kingdom.

⁴⁷ See latest market reports by Forest Trends (e.g., Hamick et al. 2015).

⁴⁸ <https://bursasustain.bursamalaysia.com/droplet-details/news/government-agrees-to-voluntary-carbon-markets-development>

⁴⁹ REDD Desk 2019.

⁵⁰ Free Malaysia Today 2017.

communities.⁵¹ The fund will make use of Forest Conservation Certificates (FCC) and Forest Carbon Offsets (FCO) following the guidelines of the UNFCCC. This fund has yet to be operationalised but will be linked to Malaysia's Domestic Emissions Trading Scheme (DETS).

In addition to these private-sector and Malaysian government initiatives, there are also public-private partnerships. One such initiative is the MySDG Trust Fund, a multi-donor funding platform open to public donations. This fund was set up in 2022 in collaboration with the United Nations in Malaysia. The Government of Malaysia provided seed funds of RM 20 million. The objectives of the fund are to support the attainment of the Sustainable Development Goals.⁵²

BIODIVERSITY OFFSETS

While there is no national policy on biodiversity offset, the Sabah Forest Policy 2018 states that there shall be no-net-loss/net-gain in biodiversity. This policy opens the door for a market for biodiversity credits analogous to the market for carbon. Under such a policy, an entity succeeding in proving it has avoided deforestation could show benefits in terms of biodiversity as well as in terms of carbon. Such benefits could then theoretically be used to offset losses elsewhere in Sabah. The Sabah government has yet to pass legislation that prescribes a measuring, reporting and verification (MRV) system for biodiversity offset.

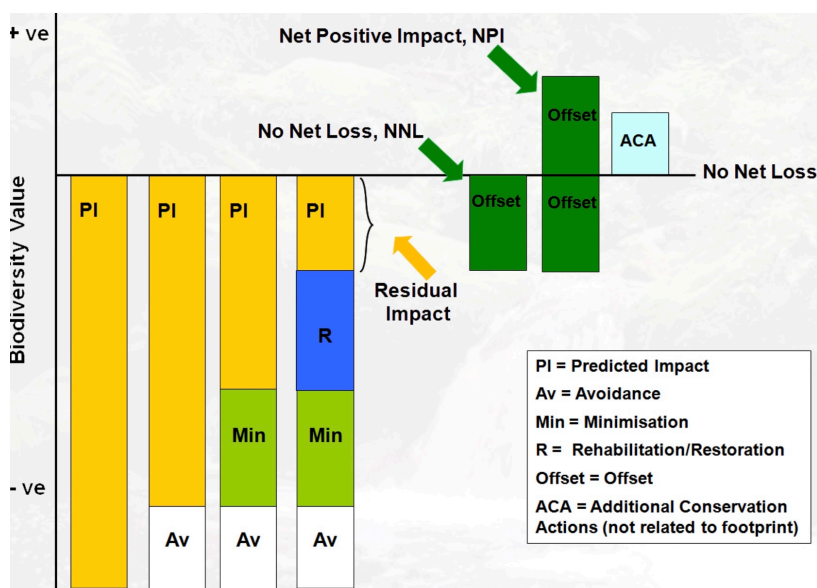


Figure 6. The role of biodiversity offsets in the impact mitigation hierarchy.⁵³

⁵¹ Kenyataan Media Menteri Tenaga Dan Sumber Asli, 21 Mac 2021.

⁵² <https://www.mof.gov.my/portal/en/mysdg>

⁵³ Source: BBOP - Business and Biodiversity Offset Programme of Forest Trends. www.forest-trends.org/bbop

Biodiversity offsets play a role in the impact mitigation hierarchy (see Figure 6). Under this hierarchy, a project proponent reduces the predicted impact of a development project by avoiding and minimising impacts, restoring a site and then offsetting any residual impact to ensure a net gain in biodiversity value.

There has already been an attempt at implementing a biodiversity credit scheme in Malaysia. This scheme is known as the Malua Biobank and covers part of a permanent forest in Sabah. The scheme sold credits on the basis of a somewhat-arbitrary USD 10 per 100 m² of forest land.⁵⁴ However, this scheme was launched during the global financial crisis of 2007-2008 and the scheme has yet to be successful financially. The scheme has also been criticised as putting an excessive emphasis on the impact of indigenous communities on biodiversity.

Apart from the Malua Biobank, there has been little private-sector interest in biodiversity offsets in Malaysia. Nevertheless, there are trends that suggest that interest in environmental offsets (both carbon and biodiversity) may be increasing.

This interest is reflected in Bank Negara Malaysia's *Financial Sector Blueprint - 2022-2026*.⁵⁵ This document aims to position the financial system to facilitate the transition to a greener, climate-resilient economy. This includes a plan for the "mandatory disclosure of climate risks". And the goal that 50% of new financing be for "climate supporting and transitioning activities" by 2026. "Transitioning" refers to harmful activities that are offset by "climate change mitigation" and "remedial efforts".⁵⁶

Similar to this blueprint, individual members of the Malaysian financial sector have begun to adopt their own systems to ensure that they do not finance unsustainable developments.⁵⁷ However, these existing offset systems remain rudimentary. Regulatory mechanisms are needed before credible environmental offsetting becomes established in Malaysia.⁵⁸

⁵⁴ Chin, M. Y. L. 2008. Nature For Sale But Who is Buying? Biodiversity Banking in Malua, Sabah. Master's diss., Lund University.

⁵⁵ <https://www.bnm.gov.my/publications/fsb3>

⁵⁶ Climate Change and Principle-based Taxonomy: C1, C2 and C3 <<https://www.bnm.gov.my/documents/20124/938039/Climate+Change+and+Principle-based+Taxonomy.pdf>>

⁵⁷ See, for example, the environment and social governance commitments that requires Maybank to screens against funding "Activities that could have a significant adverse impact on the environment" (https://www.maybank.com/iwov-resources/corporate_new/document/my/en/pdf/Maybank-ESG-Commitment.pdf). Similarly, CIMB reports according to the framework of the Task Force on Climate-related Financial Disclosures (TCFD) and the Nature-Based Financial Disclosures (Nbfd) (https://csc.capitalmarketsmalaysia.com/wp-content/uploads/2021/07/CSC_article-3.pdf). Finally, international banks such as HSBC and Standard Chartered have subscribed to the Equator Principles (<https://equator-principles.com>).

⁵⁸ Agama, A., Michael Crowe, Amrei von Hase, Kerry ten Kate and Teckwyn Lim. 2015. Policy and Regulations Assessment for Implementing Net Gain of Biodiversity in Sustainable Multiple-Use Forest Landscape, Sabah, Malaysia. Report 3: Recommendations for achieving Net Gain of biodiversity in Sabah. 29 September 2015. Forest Trends for Sabah Forestry Department. UNDP/GEF Project 'Biodiversity Conservation in Multiple-Use Forest Landscape, Sabah, Malaysia'.

ECOLOGICAL FISCAL TRANSFER

Overview

Ecological fiscal transfer (EFT) is a mechanism for transferring public revenue between governments within a country based on ecological indicators. Over the last 10 years, EFT payments around the world have increased from USD 0.35 billion in 2007 to USD 23 billion in 2020.⁵⁹ Well-designed EFTs can incorporate aspects of biodiversity offsetting.

Existing Federal-State Fiscal Transfers

Malaysia's Federal Constitution provides for the federal government to transfer funds to the state governments. Article 109 of the constitution specifies a "capitation grant", a grant for road maintenance, and allows for grants "for specific purposes".

The federal government revenue is more than 10 times the combined revenue of all of the individual state governments (Figure 7). The federal government allocates grants to the state governments under a scheme known as TAHAP (an acronym for Economic Development, Infrastructure and Livelihood). In the 2022 budget, the government increased the allocation under the TAHAP scheme to all state governments from RM 350 million to RM 400 million.

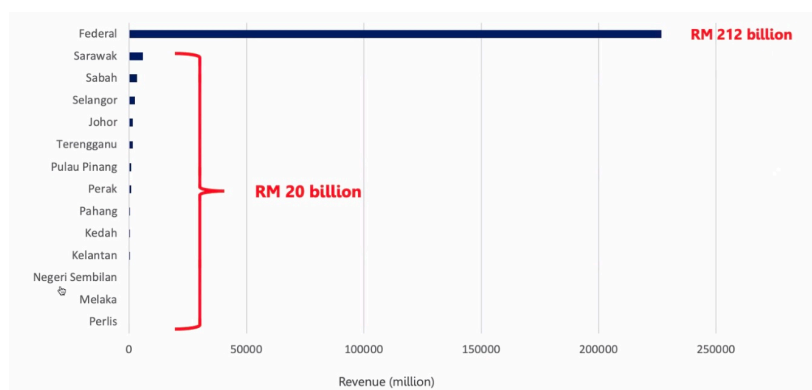


Figure 7. Federal versus state revenue in Malaysia (2018).⁶⁰

In Budget 2022, out of a total development expenditure of RM 56 billion, Sabah and Sarawak received a development expenditure allocation of RM 5.16 billion and RM 4.67 billion respectively.⁶¹

The state with the greatest revenue is Sarawak. This state earns around RM 10 billion per year. Of this sum, only around 4% comes from forestry activities, and 2.5% comes from land premium. In 2020, Federal grants and reimbursements to Sarawak (excluding development expenditure) were

⁵⁹ Busch, J., Ring, I., Akullo, M., Amarjargal, O., Borie, M., Cassola, R.S., Cruz-Trinidad, A., Droste, N., Haryanto, J.T., Kasymov, U. and Kotenko, N.V., 2021. A global review of ecological fiscal transfers. *Nature Sustainability*, 4(9), pp.756-765.

⁶⁰ ERE Consulting Group Sdn Bhd, Subang Jaya, Malaysia (2018). *Financing Forest & Biodiversity Conservation in Malaysia - Re-aligning Incentives & Enhancing Partnerships*.

⁶¹ <https://www.theborneopost.com/2021/11/14/sabah-sarawak-the-biggest-recipients-of-budget-2022-2/>

around RM 239 million (around 2.4% of the state's total income). In 2022, the federal budget allocated RM 4.6 billion for development expenditure in Sarawak, bringing the total budget for development projects in the state to almost RM 12 billion.

The most prominent issue related to federal-state fiscal transfer is the issue of royalties for the off-shore extraction of petroleum. Here, the federal government has a monopoly. The national petroleum company, Petronas, has paid the states of Kelantan, Terengganu, Sabah and Sarawak around 5% of the value of petrol and natural gas extracted. This is considered as good-will payments, in lieu of royalties.

In the case of Kelantan, the adequacy of the good-will petroleum payments was contested in a legal battle that lasted from 2010 to 2019.⁶² In 2019, the federal government increased the annual good-will payments to Kelantan from RM 28 million to RM 200 million.⁶³ This is in addition to the RM 2.39 billion allocated to Kelantan for development projects in 2022.

Federal-State Ecological Fiscal Transfer

In 2019, the federal government put in place a budget of RM 60 million ringgit, "to help fund specific projects by the state governments to protect and expand our existing natural reserves." This budget line is known as "Ecological Fiscal Transfer" (EFT).⁶⁴ In 2021 an additional allocation of RM 70 million was made. In 2022, the Prime Minister announced that RM 130 million had been disbursed to the state governments. The amounts disbursed varied from RM 1.4 million to the smallest state of Perlis in 2021 to RM 5.83 million to the larger state of Kedah in 2019.⁶⁵

The 2022 budget allocation included an additional RM 70 million to be a permanent part of the annual federal budget. The EFT mechanism involves the federal government *reimbursing* expenses made by the state government that are related to conservation criteria set by KeTSA. The payments follow the Treasury guidelines for TAHAP.⁶⁶

These criteria for the EFT payments include the ratio of the states' total land area that has been constituted as permanent forest and marine protected area. However, interviews under the present study reveal that the EFT payments are not contingent on the states committing to the 50%-forest pledge or the 20%-protection pledge.

⁶² Musa, N., Nawi, M. M., & Alias, N. (2014). Malaysian Federalism and Equal Wealth Distribution – A Case Study on the State Kelantan. *Proceedings of the World Congress of Constitutional Law*.

⁶³ <https://www.msn.com/en-my/news/national/kelantan-received-more-than-rm400-million-oil-royalty-in-2-years/ar-AASPtOm>

⁶⁴ Preetha Sankar and Gan Pek Chuan (2021). Ecological Fiscal Transfer - Getting the Incentives Right. UNDP Malaysia, Singapore & Brunei Darussalam <<https://www.my.undp.org/content/malaysia/en/home/news-centre/articles/ecological-fiscal-transfer-getting-the-incentives-right.html>>.

⁶⁵ Hansard Dewan Rakyat 2020 <<https://parlimen.gov.my/files/jindex/pdf/1DR06082020.pdf>>.

⁶⁶ Treasury Circular 3.5 (Pekeliling Perbendaharaan 3.5 - Garis Panduan Pemberian TAHAP).

Unlike the 2019 budget prescription, the present EFT allocations are not tied to expanding forest protection. The 2022 EFT budget does not mention that the purpose of the funds are expanding nature reserves. The 2022 budget states that the funds are “allocated for the purpose of Ecological Fiscal Transfer activities as an additional incentive to the State Government to ensure the sustainability of the country’s biodiversity”. The existing EFT mechanism has limited scope for monitoring and evaluation and it has not been designed to stop the loss of forest and tree cover. One respondent noted that in the state of Terengganu, the EFT funds were transferred into the state’s consolidated fund without adequate links to ecological conservation.

It may be necessary to create specific legislation to prescribe criteria for EFT. There is a precedent for fiscal transfer being tied to specific criteria. The Revenue Growth Grants Act 1977 allows the federal government to make payments to the states on the basis of the population of the states.⁶⁷ In a similar manner, EFT could require that payments be tied to the creation of protected areas. For example, annual payments could be made that were based on the state’s net increase in protected areas for that year.

Ecological Fiscal Transfer for Malaysia’s Forest Pledge

As noted, in the previous section, the National Physical Plan (RFN4) acknowledges the need for the states to contribute to the 50%-forest target. The plan also acknowledges the need for a fiscal mechanism to compensate the states in this regard. A key strategy for the implementation of the plan states that there is a need, “To urgently implement a fiscal incentive mechanism for states which conserve or expand the area of forest cover via suitable mechanisms and rules.”⁶⁸

As noted above, the maintenance of 50% forest will require turning the existing State-land forest into permanent forest. A total of 3.9 million hectares of land (12% of Malaysia’s land area) are presently designated as State land - and can be cleared for non-forest uses.

Logging and land development are important sources of revenue for the poorer state governments.^{69,70} Existing federal fiscal transfers may be insufficient to meet the development plans of some of these states. However, in order to implement the 50%-forest plan of the RFN4, land development must be confined to non-forested areas. In particular, the following conditions must be met:

- (i) all remaining State-land is constituted as permanent forest;
- (ii) there is no net-loss of existing permanent forest; and

⁶⁷ Preetha Sankar (2019). ‘Ecological Fiscal Transfers (EFT): Opportunities for Environmental Grant making in Malaysia’, presentation at MEA 12MP Kick-Off Conference. Economic Planning Unit, Malaysia <rmk12.epu.gov.my>.

⁶⁸ Rancangan Fizikal Negara Ke-4 (2021).

⁶⁹ Jomo, K.S., Chang, Y.T. and Khoo, K.J., 2004. *Deforesting Malaysia: the political economy and social ecology of agricultural expansion and commercial logging*. London: Zed Books.

⁷⁰ Leigh, M., 1998. Political economy of logging in Sarawak, Malaysia. In: Hirsch, P. and Warren, C. eds., 1998. *The politics of environment in Southeast Asia*. London: Routledge. pp.93-105.

- (iii) approximately 825,000 hectares of alienated land are acquired and constituted as permanent forest.

This plan would entail considerable costs in terms of (i) the opportunity cost of not developing any further land; (ii) the financial cost of acquiring the land; and (iii) the increased cost of managing the permanent forest. The magnitude of the per hectare cost for each of these would vary from case-to-case. Nevertheless, a rough estimate of the order of magnitude of these costs can be calculated using an average rate.

One rate that has been used for such calculations in Peninsular Malaysia is RM350 per 1000 m² per year (RM3500/ha). This is the rate used for calculating the cost of forest use-permits in Terengganu. This rate is similar to the average profitability of rubber and palm oil (2010-2020): RM3000/ha and RM5722/ha, respectively.⁷¹ Using this rate, the opportunity cost for retaining land under forest cover (as opposed to developing for plantations) would be in the order of RM17.5 billion per year (Table 11).

Another approach would be to pay the states a lump sum for the protection of their permanent forests. In 2019, the Pahang Menteri Besar stated that the state's opportunity cost for forest protection was RM17.1 billion. Pahang has asked that the federal government deduct this amount from the state government's debt of RM3.17 billion. In response, the federal minister for natural resources questioned the feasibility of making such a payment.⁷² In late 2021, the Prime Minister announced that the federal government agrees to compensate states for maintaining forest reserves.⁷³

Table 11. Cost of achieving Malaysia's 2040 forest-area targets

	Sarawak	Sabah	Peninsular Malaysia	Total
Total land area (hectares)	12 397 311	7 431 050	13 181 197	33 009 558
Permanent forest in 2019*	4 832 293	3 815 394	5 401 985	14 049 672
NPP4 forest target (hectares)	8 034 000	4 435 990	6 590 599	19 060 589
NPP4 forest target (%)	64.8%	59.7%	50.0%	57.7%
Target increase in permanent forest	3 201 707	620 596	1 188 614	5 010 917
Cost (Malaysian Ringgit billion/year)**	RM 11.2	RM 2.2	RM 4.2	RM 17.5

* Forest Department Sarawak (2020), Sabah Forestry Department Annual Report (2019), Forestry Department Peninsular Malaysia (2019).

** Based on the forest use-permit rate of RM350 per 1000 m² per calendar year or part thereof (Forest Rules 1986)

⁷¹ These figures are based on calculations that exclude the cost of land rental.

⁷² Anne Muhammad (2019). Xavier on Pahang's RM17b request: Feasibility is another issue. Malaysiakini <<https://www.malaysiakini.com/news/472998>>, 20 April.

⁷³ Malay Mail (2021). <https://www.malaymail.com/news/malaysia/2021/11/21/fed-govt-agrees-to-compensate-states-that-maintain-forest-reserves-says-pm/2022579>

The federal announcement was welcomed by the state governments.⁷⁴ However, interviews with representatives of the state governments under the present study indicate that the federal government has yet to make any specific offer to the states. Indeed, there is so far no formal engagement between the state and federal governments on this issue.

Any scheme that involves the transfer of large sums of money involves the risk of attracting rent-seekers and reduce economic efficiency. There are already indications of rent-seeking in connection with payments for ecosystem services in Malaysia. Questionable public-private carbon-trading schemes have been announced in the states of Kelantan and Sabah.⁷⁵

There are some approaches that would avoid rent-seeking. One such approach would be to promote a federal-state “debt-for-nature swap”. There is approximately RM35 billion in federal debt to the states, mostly for water infrastructure. The potential for making a deal to offset some of this debt should be explored.

The concept of debt-for-nature swaps comes from international conservation finance. In that context, a debt-for-nature swap involves debt-equity conversion involving the purchase of a developing country’s debt, at a discounted value in the secondary debt market. In that scenario the outstanding debt is then canceled in exchange for conservation action by the nation which held the debt.⁷⁶

One recent debt-for-nature swap involved USD 21.6 million in sovereign debt of the government of the Seychelles. Here, private philanthropic funding and loan capital raised by The Nature Conservancy (TNC) was used to buy the debt at a discount. The loans were repaid into a local special-purpose trust. In return, the trust repays loan capital over ten years. Over a 20-year period, the trust will fund marine conservation and climate adaptation activities, and also supply an endowment to fund similar activities in perpetuity.⁷⁷

In the Malaysian context, a debt-for-nature swap could involve the federal government writing off part of a state government’s debt. Recent precedents for writing off debt include RM 699 million owed by the state of Kedah.⁷⁸ In 2021, the federal government also agreed to write off RM 8.3 billion of Felda

⁷⁴ <https://www.nst.com.my/news/nation/2021/11/747722/kedah-lauds-move-compensate-states-maintaining-forest-reserves>

⁷⁵ Free Malaysia Today, 2017. Malaysia’s first carbon credit firm to offset CO2 emissions. February 1 <<https://www.freemalaysiatoday.com/category/nation/2017/02/01/malaysias-first-carbon-credit-firm-to-offset-co2-emissions/>>.

Oswald Supi. 2021. Now NCA faces legal challenge. Daily Express (East Malaysia) <<http://www.dailyexpress.com.my/news.cfm?NewsID=183296>>.

⁷⁶ Pearl Rains-Hewitt (2014), North Western Research Institute <<https://nwri.org/what-is-debt-for-nature-swapping/>>.

⁷⁷ <https://ocean.economist.com/blue-finance/articles/seychelles-swaps-debt-for-nature>

⁷⁸ <https://www.malaymail.com/news/malaysia/2021/03/04/govt-writes-off-kedahs-rm699-million-rural-water-supply-debt-says-minister/1954953>

settlers' loans.⁷⁹ In this context, a debt-for-nature swap could involve the debtors agreeing to set aside a portion of their land for nature conservation, for conserving natural forest or for retaining forest reserves.

CONCLUSION & RECOMMENDATIONS

OVERVIEW

This report highlighted the critical role that Malaysia's land laws play in the realisation of its green-economy ambitions. The report highlighted several issues related to land categorisation, difficulties related to the federal-state relationship, and challenges in fiscal allocation for the green economy. This final section of the report makes recommendations on steps that can be taken to achieve Malaysia's green-economy ambitions. The recommendations are targeted at the government of Malaysia, the state governments, and the private sector.

NET ZERO EMISSIONS

- Malaysia's Long-Term Low Emissions Development Strategy (LTLEDS) must address the issue of emissions from deforestation and the drainage of peatlands. In particular, it must ensure that there are sufficient fiscal incentives for states to maintain the carbon-sequestration value of their forests and peatlands. The degree of compensation should take into account the full costs to the states, including the opportunity costs. In particular, the forgone revenue from limiting agricultural expansion should be considered. Without such incentives there is a risk that the remaining forests will be insufficient to ensure that sequestration offsets emissions. The key constraint will be developing a mechanism that is acceptable to the state governments and within the financial capacity of the federal government.
- The international community should continue to provide technical assistance related to Malaysia's net-zero ambitions. This should include assistance in developing techniques to measure, report and verify the sequestration of carbon by forests and the emission of carbon from peatlands. This technical input is important to ensure that Malaysia's emissions strategy is perceived as credible internationally. One challenge will be to develop forest reference levels that take account of the range of forest types and disturbance regimes in Malaysia.
- The state governments should develop state-level policies and strategies related to the national pledge on carbon neutrality. The national commitment to net-zero emissions will fail without the support of the states. One challenge will be to revise the land-use plans of the states to ensure that existing forest cover is maintained or expanded. Another challenge will be to ensure that the states commit to reducing emissions from the drainage of peatlands.

⁷⁹ <https://www.nst.com.my/business/2021/07/706060/govt-relinquish-rm83-billion-felda-settlers-loan>

PROTECTED AREAS & FOREST COVER

- The National Land Council should adopt distinct targets for the proportion of Malaysia to be maintained as “protected areas”, as “*natural forest*”; as “forest” generally; and as “tree cover” more broadly (e.g., including rubber and oil palm plantations). Having distinct targets is critical because the present target for “50% forest and tree cover” allows the expansion of non-forest tree cover. One challenge here is the fact that the definitions for “protected areas” and “forest” are largely about land-use zoning, while the definitions for “natural forest” and “tree cover” are about actual vegetation mapping.
- Each state government should adopt explicit and distinct targets for protected areas, for natural forest, for forest cover and for tree cover. Since the power over land is at the state level, it is critical that each of the states make individual commitments in this regard. There will be distinct challenges in (i) persuading the poorer states to maintain forest cover; and (ii) persuading the richer states to increase forest cover.
- The federal government should maintain a register of protected areas. This register should be updated following the publication of relevant *Gazette* notifications. This is important in order to provide a basis for Ecological Fiscal Transfer. One challenge will be ensuring that the register reflects all the relevant *Gazette* notifications from all of the states. Another challenge will be linking the register to a up-to-date geographic information system that contains maps of the protected areas.
- The federal government should enact Ecological Fiscal Transfer (EFT) legislation that makes federal grants to the states based on the following land-use zonation:
 - (i) the extent of protected areas;
 - (ii) the extent of natural forest; and
 - (iii) the extent of forest cover.Distinct rates of payment should be given for each zonation, with the highest payments made for protected areas and natural forest, and lower payments made for forest cover generally. Such legislation is important as an incentive to encourage the states to implement the Malaysia Forest Policy. One challenge will be to ensure that the grants are attractive enough to influence the states.
- The federal government should offer states a “debt-for-nature swap”. This would offset federal debt to the states, in exchange for the states increasing the extent of protected areas, natural forest and forest cover. This is important as a supplement to the EFT mechanism. One challenge will be ensuring that adequate safeguards are in place to ensure that the states keep their land-use commitments.
- The peninsular states and Sarawak should amend their state forestry enactments so that excisions of forest reserves obtain the approval of the State legislative assembly. A sample Bill to this effect has been drafted for the State of Selangor (Annex 1) and Sarawak (Annex 2). This is important to increase transparency and accountability regarding forest management. It

will be a challenge to overcome the resistance that the state governments have expressed regarding such measures.

- The state governments should commit to halting the clearance of natural forest for oil palm plantations. This is important for the federal pledges regarding forests and oil palm. However it will be challenging to achieve because so far no state government has been willing to give such a commitment.
- Companies in the private sector, particularly financial institutions, should commit to halting the clearance of natural forest for oil palm plantations. This is important because it is the private sector that asserts pressure on the state governments to develop the land. It will be challenging because the current commitments are weak (e.g., the existing Bank Negara guidelines allow the financing of deforestation, even after 2026).

INDIGENOUS LAND RIGHTS

- The federal government should adopt the recommendations of the National Inquiry into the Land Rights of Indigenous Peoples, in particular, the recommendation to establish an Independent National Commission on Indigenous Peoples. The formation of such a body is critical to coordinate reforms related to Indigenous Peoples. This will be challenging as there is no federal ministry championing such a move.
- The state governments should adopt the recommendations of the National Inquiry into the Land Rights of Indigenous Peoples. This is critical because land matters are under the jurisdiction of the state governments. It will be challenging because the state governments are reluctant to accept many of the recommendations. In addition, the federal government is not putting any pressure on the states at present.
- The Sabah State Government should consider the notification of rights and privileges of Indigenous People in forest reserves in Sabah (see Annex 3). This is important because there remain several cases where there are settlements of Indigenous People inside forest reserves. It will be challenging because in many cases the local people demand land titles and the excision of the forest reserve.

ANNEX 1: DRAFT BILL FOR SELANGOR

[DRAFT BILL FOR SELANGOR STATE LEGISLATIVE ASSEMBLY]

An Enactment to amend the National Forestry Act (Adoption) Enactment 1985.

ENACTED by the Legislature of the State of Selangor as follows:

Short title and commencement

1. (1) This Enactment may be cited as the National Forestry Act (Adoption) (Amendment) Enactment 2022.

(2) This Enactment comes into operation on the date to be appointed by His Royal Highness the Sultan by notification in the *Gazette*.

Amendment of section 13

2. The National Forestry Act (Adoption) Enactment 1985 [*Enactment No. 5/1985*], which is referred to as the “principal Enactment” in this Enactment, is amended in section 13 by inserting after subsection 13(2) the following subsection—

“(3) Provided that such a notification shall not be published in the *Gazette* unless a draft of the notification has been laid before the Legislative Assembly and approved by a resolution of the Legislative Assembly.”

EXPLANATORY STATEMENT

The proposed National Forestry Act (Adoption) (Amendment) Enactment 2022 (“the Enactment”) seeks to provide for the law to require the notification and approval of the Legislative Assembly prior to the excision of any land from a forest reserve.

2. *Clause 1* seeks to provide for the short title and commencement of the Enactment.

3. *Clause 2* seeks to provide that the notification and approval of the Legislative Assembly be required prior to any excision of land from a forest reserve.

FINANCIAL IMPLICATIONS

The Enactment will not involve the Government in any extra financial expenditure.

ANNEX 2: DRAFT BILL FOR SARAWAK

[DRAFT FORESTS (AMENDMENT) BILL FOR SARAWAK STATE LEGISLATIVE ASSEMBLY]

A BILL

intituled

An Ordinance to amend the Forests Ordinance [Cap. 71 (1958 Ed.)]

[]

ENACTED by the Legislature of State of Sarawak—

Short title and commencement

1. This Ordinance may be cited as the Forests (Amendment) Ordinance, 2022, and shall come into force on such a date as the Minister may, by notification in the *Gazette*, appoint.

Amendment of section 13

2. Section 29 of the Forests Ordinance **[Cap. 71 (1958 Ed.)]** (in this Ordinance referred to as the “Principal Ordinance”) is amended by inserting after subsection (3) the following subsection—

“(4) Provided that such a notification shall not be published in the *Gazette* unless a draft of the notification has been laid before the Legislative Assembly and approved by a resolution of the Legislative Assembly.”

EXPLANATORY STATEMENT

This Bill seeks to amend the Forests Ordinance **[Cap. 71 (1958 Ed.)]**.

Clause 1 provides the short title of this Bill and provision on the commencement of the proposed Ordinance.

Clause 2 amends section 29 to provide that the notification and approval of the Legislative Assembly be required prior to any excision of land from a forest reserve or protected forest.

FINANCIAL IMPLICATIONS

This Bill will not involve the State Government in extra financial expenditure.

ANNEX 3: PROPOSAL FOR SABAH

Proposal for the Notification of Rights and Privileges in Forest Reserves in Sabah

Introduction

This paper proposes a procedure that the Sabah State Government could use to give recognition to the rights and privileges of local communities living inside forest reserves. The procedure focuses on communities living inside forest reserves that were first constituted under the Forest (Constitution of Forest Reserves and Amendment) Enactment 1984 (Sabah En. 4/84). The procedure is based on existing laws and does not require any additional legislation.

Background

Sabah En. 4/84 came into force on 15 March 1984. Sabah En. 4/84 consolidated the constitution of many existing forest reserves and secured their future by ensuring that no reserves would be excised or revoked save by enactment (s 3). However, Sabah En. 4/84 also constituted a number of new forest reserves on land that was at the time occupied by native communities.

The constitution of forest reserves under Sabah En. 4/84 by-passed the provisions regarding the admission or concession of rights and privileges contained in the Forest Enactment 1968 (Sabah En. 2/68) (referred to below as “the principal Enactment”). A situation was thereby created whereby some genuine rights and privileges communities within the new forest reserves were not explicitly recognised by the government – thus leading to uncertainty and ambiguity regarding the exercise of such rights or privileges.

The principal Enactment does contain provisions for the remedy of such ambiguous situations with respect to communities inside forest reserves. These are contained in section 14 of Sabah En. 4/84 which states:-

14. Modification and extinction of privileges, etc.

(1) After such enquiry (if any) as he may deem necessary, the Yang di-Pertua Negeri may, by notice in the *Gazette*-

(a) admit rights or concede privileges not previously admitted or conceded in respect of any Forest Reserve; or

(b) rescind, modify or add to any admitted right or conceded privilege or special condition governing the reservation of a Forest Reserve,

and subsections (4) and (6) of section 12 of this Enactment shall apply to such rights and privileges accordingly.

(2) Where it is shown to the satisfaction of the Yang di-Pertua Negeri that any admitted right or conceded privilege has not been exercised for a continuous period of more than three years, the Yang di-Pertua Negeri may, by notice in the *Gazette*, annul permanently such right or privilege.

Developments

Since 1984 the Forestry Department has engaged local communities living in and around forest reserves to cooperate in a number of joint management projects. The first of these projects was with the Kg Minusoh community living north of the Mangkuwagu Forest Reserves. Projects have also been carried out in the Bengkoka, Kelawat and Lingkabau Forest Reserves. Despite this, there remains conflict with some communities such as Kampung Bobotong, located within the Sungai Pinangah Forest Reserve.

Procedure

To address the status of genuine communities within forest reserves, section 14 of the principal Enactment can be invoked to provide statutory assurance. The law can be used for admitting rights or conceding privileges inside forest reserves that were first constituted under Sabah En. 4/84.

In forest reserves that were first constituted under Sabah En. 4/84, there will have been no previous admissions, concessions or conditions notified under section 12(2)(b) or (c). This means that *Gazette* notifications under section 14 will invariably be new rather than modifications or extinctions of existing notifications. In this regard, a number of the usual provisions of the principal Enactment will not have been implemented:-

- (i) *Gazette* notification of proposal to constitute the forest reserve (s 6);
- (ii) Publication of notice of intention by the District Officer (s 8);
- (iii) Enquiry by the District Officer (s 9); or
- (iv) Report by the District Officer (s 10).

In consideration of the above, the Yang di-Pertua Negeri would be advised that the “enquiry” under section 14(1) be deemed necessary in the case of forest reserves first constituted by Sabah En. 4/84. The procedure for a section-14 enquiry is not elaborated upon by the principal enactment. However, with some amendments, it would be appropriate for such an enquiry to follow the procedure used for a standard enquiry that is given in sections 8-10 of the principal Enactment, viz:-

1. Notice by District Officer or Collector.

As soon as practicable after the publication of the Schedule to the Forest (Constitution of Forest Reserves and Amendment) Enactment 1984 and any amendments thereof, the District Officer or Collector of the District in which any land has been constituted as a Forest Reserve for the first time shall publish, in convenient places on or in the vicinity of such land and at such other places as he may deem expedient, a notice in the English and Malay languages, and in such other languages as he may in any particular case consider desirable to ensure that the local inhabitants of the area may be aware of its contents-

- (a) specifying as nearly as possible the situation and extent of the land concerned;
- (b) explaining the consequences of the reservation of such land; and
- (c) fixing a period of not less than three months from the date of first publication of such notice and requiring every person who applies to exercise any right or privilege which is being or has been exercised in or over any part of such land, within such period either to present to such District Officer or Collector a written statement specifying, or to appear before the District Officer or Collector and state orally, the extent and nature of such right or privilege, and any such oral statement shall be reduced into writing by the District Officer or Collector.

2. Enquiry by District Officer or Collector.

(1) At the expiration of the period fixed the District Officer or Collector shall make enquiry, in such manner as he may think fit-

- (a) into all applications made;
- (b) into the propriety of conceding in and over the area concerned any right or privilege which to his knowledge is being or has been exercised but in respect of which no such application has been made.

(2) In any enquiry under this section, the District Officer or Collector shall consider and record any opinion which the Director or any forest officer nominated by the Director for the purpose, may express as to any privileges or rights claimed or proposed to be conceded in respect of the area concerned.

(3) For the purposes of an enquiry under this section, a District Officer or Collector shall have and may exercise all the powers vested in the Court of a Magistrate for compelling the attendance of witnesses, and the production of documents, in a civil suit.

3. Report by District Officer or Collector.

As soon as practicable after the completion of the enquiry, the District Officer or Collector shall forward to the Minister, through the Director -

- (a) a statement of rights and privileges claimed;
- (b) a statement of any other right or privilege considered by him;
- (c) the record of any opinion given by the Director or any forest officer nominated by the Director for the purpose;
- (d) his comments and recommendations, and, in forwarding the same to the Minister, the Director may make such observations and recommendations as he may think desirable.

4. Notification of Privileges, etc.

(1) After consideration of the above-mentioned documents, the Yang di-Pertua Negeri may admit rights or concede privileges in respect of the Forest Reserve by notice in the *Gazette*.

(2) The notice shall:-

- (a) specify name, class and Enactment number of the Forest Reserve, the F.D. Map No., the L.S. Plan No. and the approximate area (hectares);
- (b) set forth the rights and the privileges which the Yang di-Pertua Negeri thinks it just to admit or concede within the Forest Reserve, or any portion thereof, to any person or group of persons;
- (c) prescribe, as far as possible, the quantity, whether by reference to the amount or the number of persons or groups of persons who may exercise any such right or privilege, and the type of any forest produce which may be taken or received in the exercise of such right or privilege; and
- (d) state that the exercise of any such right or privilege shall be subject to the control of the Director and to such orders as he may from time to time make to regulate the manner in which and, with the approval of the Minister, the local limits within which, such right or privilege may be exercised;
- (e) state that save as otherwise expressly provided by the principal Enactment, all rights and privileges other than admitted rights or conceded privileges shall be extinguished.

Conclusion

This procedure is in compliance with the provisions of section 14 of the principal Enactment. No additional legislation is required to enable the implementation of this procedure.