

A cleared peat forest to be developed into an oil palm plantation in Betong Division, Sarawak.



social justice,  
forests &  
agrofuels

# malaysian palm oil - green gold or green wash?

a commentary on the sustainability claims of malaysia's  
palm oil lobby, with a special focus on the state of sarawak

october 2008 | [issue 114](#)





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## executive summary

# malaysian palm oil - green gold or green wash?

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Sarawak was the focus of the international tropical timber trade campaign from the late 1980s to the mid-1990s when the Penan and its other indigenous communities blockaded logging roads to stop logging companies from destroying their forests and called upon the international community to support their cause. The European Parliament back then responded by passing several resolutions, calling upon Malaysia to stop destructive logging and human rights violations against its indigenous peoples.

Despite this, Europe remained a ready customer for Malaysian tropical timber, no matter how it was produced or how the industry failed to take into account the rights of local communities. In Sarawak today, indigenous communities, especially the Penan, are more impoverished than ever, while forests are disappearing quickly. In 2008, no credible forest certification is in place.

This report puts the focus once again on Sarawak. Having overexploited its timber resources resulting in the depletion of its forests, Sarawak has now embarked on the development of large-scale monoculture plantations. The main players in this sector are often the same business groups that operate in the logging industry. A decisive role is played by the Malaysian oil palm lobby, which supports the massive large-scale corporate-driven development, and aggressively markets Malaysian palm oil abroad.

At the same time, an additional market for edible oils is being created by European and American ambitions for bio-energy. Increasing quantities of palm oil are being used along with other oils to provide feedstock for fuel, heat and electricity production. This is a major driver of plantation expansion in Malaysia. Vast areas of forests, including peat lands and native customary territories, foremost in the state of Sarawak, are being converted to establish new oil palm plantations that will supply future markets for bio-energy.

Right now, policy makers in Europe are drafting new legislation to increase the use of biofuels in road transport to 10 per cent by 2020. While these targets will do little to prevent climate change, replacing one unsustainable raw material with another, they also fail to address the underlying causes of wasteful

practice and unsustainable levels of consumption in European transport. Necessary steps, such as tough legislation on car engine efficiency, investment in public transport and the reduction of transport needs, have been postponed or abandoned. The transition to a low-carbon economy is delayed.

As it stands, the EU's reluctance to admit that the biofuel targets for 2020 were a mistake is coupled by the Malaysian government's reluctance to acknowledge and address serious sustainability issues in the palm oil sector.

The Malaysian palm oil lobby tours Europe and other markets to make decision makers, buyers and customers believe that "*Malaysian palm oil is sustainable*". The Malaysian Palm Oil Council appears to have little hesitation in resorting to questionable claims in order to discredit doubts about destructive practices in its palm oil sector.

With this report, Friends of the Earth groups from Malaysia and Europe are confronting the misleading claims of the Malaysian palm oil lobby and informing decision makers about the serious sustainability challenges the sector faces on the ground.

We call upon the Malaysian government and in particular the Sarawak State government to take on board concerns and criticisms, and put in place better policies that honor the rights and wishes of Sarawak's indigenous peoples and the need for a better protection of the environment.

At the same time, Friends of the Earth is asking Europe to accept its responsibility and realise the dangers of increasing demand for biofuel feedstock like palm oil to fundamentally unsustainable levels.

Most expansion of oil palm plantation in Malaysia takes place in the State of Sarawak.



Deforestation for plantation expansion, (South of Miri) Sarawak, July 2008.

## executive summary

Biofuels are promoted as a viable way of reducing the world's dependency on fossil fuels. It is claimed that biofuels contribute to net reductions of greenhouse gas (GHG) emissions in the transport sector, relative to fossil fuel. However, scientific studies demonstrate that biofuel production can trigger volumes of GHG emissions that are well beyond emissions saved from replaced fossil fuels, especially when biofuel crops replace, either directly or indirectly, forests or are grown on peat lands. It is critical that the benefits of biofuels are also weighed against the impacts on local communities, the environment, and governance in the countries where biofuel crops are grown.

Government decision makers in Europe, the United States and elsewhere are currently considering mandatory volume targets for the use of biofuels in transport. They are being vigorously lobbied by a variety of producer and trade organisations who wish to see governments drive demand by setting very high targets.

One such lobby is organised by the Malaysian Palm Oil Council (MPOC), a hybrid of Malaysian government and palm oil producer interests. MPOC strives to make Malaysian palm oil the leading oil in the global oils and fats market. Aware that the environmental and social sustainability of palm oil is questioned by scientists, NGOs and policy makers, MPOC goes a long way in its pursuit to overturn what it considers "misguided perceptions" into a conviction that "Malaysian palm oil is sustainable".

This Friends of the Earth report challenges MPOC's "green" claims, so as to prevent decision makers, including consumers, from being misled. Under present conditions, an acceptance of Malaysia's palm oil claims will legitimise further tropical deforestation, human rights violations against indigenous peoples and suppression of public participation in government decision making. All that could happen – and has happened – under the banner of "sustainable palm oil" and "green energy".

It is not the first time that Friends of the Earth has challenged MPOC's public claims. In January 2008, the UK Advertising Standards Authority (ASA) ruled that an MPOC television commercial "had not provided substantiation to show that all palm oil plantations in Malaysia met criteria for sustainable production (..)" and "was likely to mislead." MPOC ignored the ASA ruling, and instead stepped up its marketing, promotion and lobby campaign with more, and bolder claims.

Friends of the Earth has examined a large number of public statements made by MPOC, the Minister of Plantation Industries and Commodities and State politicians in the local and international media. Grouped under five main headings, each has been tested against the reality on the ground or as seen from satellite imagery. The main findings are as follows:

**1. open burning to clear (peat) land** The Malaysian palm oil lobby has claimed that "zero-burning is strictly enforced by Malaysia's laws". This claim is false. Sarawak has in place its own environmental laws, which allow plantation companies to practice open burning to clear land for planting, even on peat soils. Open burning is regularly practiced in Sarawak and contributes to the regional air pollution (haze) problem and promotes faster release of GHGs into the atmosphere. The legislation in Sarawak is independent of the Malaysian Federal law, and runs counter to the spirit of the ASEAN Transboundary Haze Agreement, to which Malaysia is a key signatory.

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**MEMORANDUM (Form 1)**

**APPLICATION FOR AN OPEN BURNING PERMIT UNDER SECTION 16(1)(a) AND (c) OF THE NATURAL RESOURCES AND ENVIRONMENT ORDINANCE (For Plantation only)**

**PART A: PARTICULARS OF COMPANY**

1. Name of Company: \_\_\_\_\_  
 2. Postal Address: \_\_\_\_\_ 3. Co. Reg. No.: \_\_\_\_\_  
 \_\_\_\_\_ 4. Tel. No.: \_\_\_\_\_  
 \_\_\_\_\_ 5. Fax No.: \_\_\_\_\_

6. Type of Plantation: \_\_\_\_\_ 7. Mineral/Peat Soil \* \_\_\_\_\_

**PART B: PARTICULARS OF APPLICATION (Attach map and mark site for burn)**

8. Location of Plantation: \_\_\_\_\_  
 9. Site for Burn (Block No. / Phase or Corner): \_\_\_\_\_  
 10. Area of Block: \_\_\_\_\_ 11. Total Area for Burn: \_\_\_\_\_  
 12. Purpose of Burn: \_\_\_\_\_

© Natural Resources and Environment Board Sarawak

**2. deforestation** The Malaysian palm oil lobby has claimed that "forests are not converted for oil palm expansion in Malaysia". This claim is false. There is an overwhelming body of evidence that oil palm plantations are being expanded at the expense of tropical forests. In Sarawak, peat swamp forests are particularly targeted for expansion and for this purpose at least 400,000 ha of Permanent Forest Estates were allocated for the conversion into agriculture plantations, mostly oil palm. A recent call by Malaysia's Prime Minister on the country's state governments to end this practice was swiftly brushed off by the Chief Minister of Sarawak, indicating that the state will continue to allocate more forestlands for oil palm expansion.

**3. indigenous peoples** The Malaysian palm oil lobby has claimed that the Penan indigenous communities in Sarawak were given large tracts of virgin forests to sustain their nomadic way of life. This claim is false. The “Biosphere Reserves” promised to the Penan have no legal basis and have never materialised. Under the limited interpretation of land rights legislation by the Sarawak state authorities, the nomadic Penan communities are often denied full recognition of their traditional land rights. Now that logging companies have degraded much of the tropical forest on which they depend and plantations are expanding, the Penan have become more impoverished than ever. This situation, which is applicable to other indigenous groups in Sarawak as well, is in clear violation of the UN Declaration on the Rights of Indigenous Peoples, to which Malaysia is a signatory.

**4. environmental impact assessments** The Malaysian palm oil lobby has claimed that EIA studies “ensure wise development”. This claim is false and potentially misleading. It fails to mention that in Sarawak, the public is denied the right to participate in the EIA process. The Sarawak state authorities have even insinuated that public participation would render uneducated rural communities susceptible to manipulation by non-governmental organisations opposing development plans.

The standard overall recommendation of plantation EIAs in Sarawak is that the projects should go ahead. The bias towards affirming government policy, combined with numerous technical weaknesses and the denial of public participation is out of line with international guidance on best practices in EIAs, such as those of the International Association for Impact Assessment (IAIA). Plantation EIAs in Sarawak do not ensure that impacts are adequately identified or addressed.

**5. carbon debt** The Malaysian palm oil lobby has claimed that “oil palm absorbs almost as much carbon dioxide as tropical forests do”. The claim is based on a nine-year old study that did not take into account the GHG emissions released from deforestation or drainage of peat lands. There is growing international consensus that the GHG emissions from such sources must be taken into account when determining if a biofuel delivers a net “carbon credit”, or “carbon debt” (and is thus good or bad for the climate). In the case of palm oil, the carbon debt is huge if the plantation is developed on peat soils and/or at the expense of forests. The debt can be small if the plantation was developed on mineral soil without forest cover. At present, most new plantation developments in Malaysia are established on peat land and/or forested land.

### the scale of the problem

The scale of the sustainability challenges in Malaysia's palm oil industry is significant. Sarawak has licensed hundreds of companies to more than double the State's oil palm acreage from 2007 levels to 1.3 million hectares by 2010. The State government has furthermore licensed nearly a quarter of the State's land mass (2.8 million hectares) to a dozen or so logging groups to convert natural tropical forests into plantations (at least 290,000 hectares of which will be developed as oil palm plantations for a single rotation). As a result of these plantation projects, Sarawak will be seeing very high rates of deforestation in the coming decade, and all the environmental impacts and social conflicts that come along with it.

Although not all companies burn to clear land, satellite imagery and field observations suggest that the larger plantation groups do practice open burning. Although not all plantations are developed in forest areas, many are and the State continues to release Permanent Forest Estates for conversion. Although not all communities oppose oil palm, many object to the manner in which plantation projects are forced upon them, the principle of free, prior and informed consent is lacking, and the wishes of those who oppose oil palm, are not generally respected. EIA studies vary in quality, and the majority of the EIA reports seem to prioritise government policy interests and tend to sacrifice objectivity. Lastly, while not all oil palm plantations in Malaysia are net emitters of GHGs many will be, for many decades to come.

*In conclusion, the generic claim of the Malaysian palm oil lobby that “Malaysian palm oil is sustainable” is false and potentially misleading.*

To address the serious sustainability challenges of the oil palm sector, the EU and Member States should limit additional demand for palm oil products by halting the use of edible oils for energy purposes, and especially by abandoning the 10 per cent EU target for biofuels.

The Malaysian Federal Government and the Sarawak State Government should acknowledge the sustainability challenges in the palm oil sector and engage in open and meaningful dialogue with all stakeholders to develop and implement policies to address the sustainability problems. The government should especially recognise the full nature and stature of Native Customary Rights of its indigenous peoples.



After the first burn, Sibul, 11 July 2008.

## executive summary

continued

### recommendations

To address the serious sustainability challenges of the oil palm sector in Malaysia:

The EU and Member States should:

1. Limit additional demand for palm oil products by halting the use of edible oils for energy purposes;
2. Abandon the 10% EU target for biofuels and all incentives for the use of palm oil for energy purposes;
3. Engage in critical discussion with the Malaysian Government and Sarawak State government about plantation expansion at the expense of Native Customary Rights land, forest reserves and peat land and
4. Promote and support efforts to improve transparency and establish business systems that apply best practices in dealing with sustainability challenges in the sector, including its implications on local communities, the environment and the labour force, whether or not the actors involved are member to any certification process.

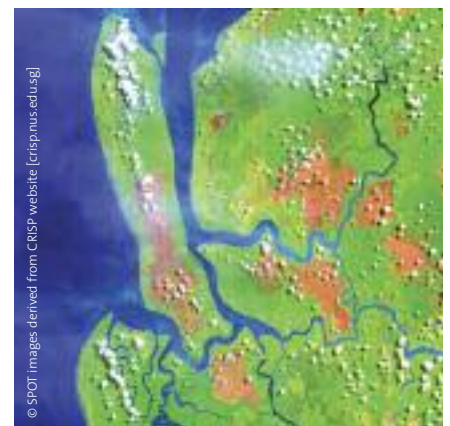
The Sarawak State Government and the Malaysian Federal Government should:

1. Recognise the full nature and stature of Native Customary Rights (NCR) of its indigenous peoples as accorded by the law, including fundamental principles of natural justice, in the Federal and State Constitutions, federal, state and local legislation and provisions, and the common law. Amongst others, the executive agencies of the state and federal governments and others must recognise that native territorial boundaries are comprised of farms and communal forested land and that the principles of common law respect the pre-existence of native laws and customs, which do not owe their

existence to modern statutes or legislation; further, that positions and obligations committed to internationally through conventions and treaties are honoured and reflected locally;

2. Establish a system of joint-boundary demarcation with native communities to demarcate native territorial boundaries and claims, which uses mechanisms that will enable people to demonstrate corroborative evidence of their rights and which include fair arbitration procedures and the free, prior and informed consent process;
3. Ensure that licensed access and rights to the resources within demarcated native territorial boundaries, including Provisional Leases for the purpose of establishing monoculture plantations in Sarawak, can only be obtained with the written free, prior and informed consent of affected communities that is preceded by inclusive consultations;
4. Cease the issue of 'provisional leases' (PL) for NCR land currently under dispute in the court of law, with immediate effect or suspend the status of the same and bring about a lasting solution to the more than 135 pending cases in the Sarawak court.
5. Strictly enforce a zero burning policy for commercial plantation development.
6. Acknowledge the sustainability challenges in the Malaysian palm oil sector and engage in open and meaningful dialogue with all stakeholders, including local communities and local, national and international NGOs;
7. Put in place a moratorium on the conversion of forests and peat land into oil palm and tree plantations;
8. Allow and facilitate public participation in Environmental Impact Assessments prior to the approval and commencing of project activities.

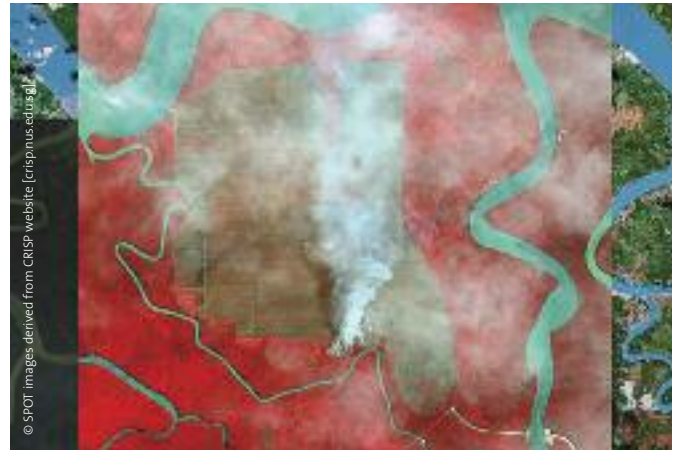
Deforestation for oil palm in Pulau Briut and Matu Daro, December 2002, August 2006, May 2008.



© SPOT images derived from CRISP website [crispplus.usg]

The Malaysian oil palm industry, and its customers and investors should:

1. Acknowledge the sustainability challenges in the sector and ensure that all the parties involved are committed to addressing them through the applications of the most rigorous social and environmental standards;
2. Fully respect native territorial boundaries and claims in their operations and apply the principle of free, prior and informed consent when dealing with such rights;
3. Adhere to a moratorium on the conversion of forests and peat land into plantations;
4. Avoid being associated with unsubstantiated sustainability claims.



Vegetation fires in the Lower Rejang Oil Palm Plantation (Sarawak, 24 June 2008).

Johor in West Malaysia.



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## list of abbreviations

API	Air Pollutant Index
ASA	(UK) Advertising Standards Authority
ASEAN	Association of Southeast Asian Nations
BLD	Bintulu Lumber Development
CBIPH	CB Industrial Product Holding
CDC	British Commonwealth Development Corporation
CPFR	Constituted Permanent Forest Reserves
CPO	Crude Palm Oil
ECPT	Ecosystem Carbon Payback Time
EIA	Environmental Impact Assessment
FAO	United Nations Food and Agriculture Organization
FDS	Forests Department Sarawak
FELCRA	Federal Land Consolidation and Rehabilitation Authority
FELDA	Federal Land Development Authority
FSC	Forest Stewardship Council
GHG	Green House Gas
HCV	High Conservation Value
IAIA	International Association for Impact Assessment
IPOC	Indonesian Palm Oil Council
IPOSC 2008	International Palm Oil Sustainability Conference 2008
KLK	Kuala Lumpur Kepong
LCDA	Land Custody and Development Authority (Sarawak)
MEOMA	Malaysian Edible Oil Manufacturers' Association
MEP	Member of European Parliament
Mha	Million hectares
MP9	9th Malaysia Plan
MPOA	Malaysian Palm Oil Association
MPOB	Malaysia Palm Oil Board
MPOC	Malaysian Palm Oil Council
MPOPC	Malaysian Palm Oil Promotion Council
MPOWCF	Malaysian Palm Oil Wildlife Conservation Fund
MT	Metric tonnes
MTC	Malaysian Timber Council
MTCC	Malaysian Timber Certification Council
MTIB	Malaysian Timber Industry Board
NASH	National Association of Smallholders
NCR	Native Customary Rights
NGO	Non-Governmental Organization
NREB	Natural Resources and Environment Board (Sarawak)
PF	Planted Forests
PFE	Permanent Forest Estate
POIC	Palm Oil Industrial Cluster
POMA	Palm Oil Millers' Association
PORAM	Palm Oil Refiners Association of Malaysia
PORIM	Malaysian Palm Oil Board (former name)
RFA	(UK) Renewable Fuels Agency
RSPO	Roundtable on Sustainable Palm Oil
SALCRA	Sarawak Land Consolidation and Rehabilitation Authority
SAM	Sahabat Alam Malaysia / Friends of the Earth Malaysia
SCORE	Sarawak Corridor of Renewable Energy
SPA	Sarawak Penan Association
SUHAKAM	Malaysian Human Rights Commission
THP	Tabung Haji Plantations
UDHR	Universal Declaration of Human Rights
UNIMAS	University Malaysia Sarawak

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## one introduction

### introduction

#### malaysia's lobby efforts to change public perceptions of palm oil

Decision makers, be they government institutions, the purchasing divisions of private companies or even individual consumers are often persuaded that "Malaysian Palm Oil is Sustainable".<sup>1</sup> This lobby effort is spearheaded by the Malaysian Palm Oil Council (MPOC), which is proactively working to change decision makers' perceptions in favour of (Malaysian) palm oil.

#### box 1: a quick guide to understanding the Malaysian palm oil lobby

Audiences targeted by the Malaysia's palm oil lobby are typically shown an overwhelming flow of facts, figures and examples to demonstrate that issues of legality and sustainability of the Malaysian palm oil industry have since long been settled. Substantial focus is placed on the role of palm oil to feeding the world, giving it significance in contrast to the small role that palm oil plays in the global vegetable oil market. There is little self criticism and all is green, safe and sound in Malaysia.

Comments, questions and views may be invited, but critical questions are either diverted or left unanswered. Depending on the audience, the NGO community would be discredited for making "unfounded allegations" on environmental and social issues or for having supposed "commercial ties" with the competing soy industry. In further discussions the "mirror tactic" is used, whereby any criticism of Malaysia's palm oil is deflected by highlighting the (lack of) sustainability of palm oil competitors, such as soy and rapeseed, or by comparing Malaysia's extensive forest cover with that of palm oil importing countries etc. Ultimately, critics are painted as hypocrites.<sup>2</sup>

The list of tactics applied by the Malaysian palm oil lobby is diverse, but ultimately serves only a single goal, and that is to change your perception in favour of Malaysian palm oil, regardless of valid concerns over its sustainability. palm oil that Malaysia provides.

While it is normal that parties with "vested" commercial interests undertake marketing and lobby, it is critical that policy decision makers and purchasing managers in consumer markets know about the realities on the ground in Malaysia. This is particularly crucial in view of the development of bioenergy (fuel, heat and electricity) policies in Europe (in particular the Renewable Energies Directive and the Fuel Quality Directive), the United States and elsewhere.

Government policy makers are currently making decisions about volume targets for biomass use. Similarly, energy companies and financial institutions are continuously reviewing the source of biofuels that they intend to use, or invest in. The decisions that are being made on biofuel policies can have major and long term implications for tropical forests, indigenous peoples and the climate.

Consumers in Europe, the United States and elsewhere expect their governments to develop policies that reduce fossil fuel dependency, and that do not create new environmental and social problems, most certainly not with their tax payers' money. Public funds have already been used to subsidise biofuel projects in several European countries in recent years, and several of these projects have triggered a public outcry resulting in policy makers' embarrassment when it surfaced that there were no credible grounds for claims that these publicly sponsored biofuel projects were environmentally friendly or meaningful contributions to tackling the climate change problem.

#### palm based biomass

Palm oil emerged as an attractive raw material for bioenergy (for fuel, heat and electricity), primarily because of its favourable price (rather than because of its sustainability). Crude Palm Oil (CPO) can be processed into biodiesel or can be burnt to generate electricity. Various companies in Europe have done so over the past few years.<sup>3</sup> However, when world market prices for Crude Palm Oil skyrocketed in 2007 and government subsidies were restricted, the demand for palm oil as a source of biomass quickly evaporated.

Prior to this, electricity producer Essent used 200,000 tonnes of palm oil annually and (misleadingly) marketed its electricity as "green energy", triggering the company to seriously review its purchasing policy. Electrabel in the Netherlands ordered another 50,000 tonnes of CPO, but stopped this in 2006 after questions were raised about the sustainability of palm oil production. These developments largely explain the slump in Malaysian palm oil exports to the Netherlands in 2007 (see Figure 1). Similar decisions were made by bio-energy producers in other European countries. Overall, Malaysian CPO exports to Europe fell by 17% between 2006 and 2007.<sup>4</sup>

FIGURE 1

THE NETHERLANDS' BUYING TREND OF MALAYSIA PALM OIL (2004-2007).<sup>5</sup>

Source: UMSEF-SAYDS.

The extent to which the current bearish CPO prices will bring about a return to the biofuel market's near blind enthusiasm for palm oil is as yet uncertain. However, large scale biofuel installations are being built across Europe, and palm oil very much remains in the picture. Whether or not palm oil becomes a major feedstock for biofuel producers in Europe depends on key decisions to be made by the European Union this year.

Concerns over the sustainability of biofuel feedstock production have already been taken on board by various key policy makers in Europe, a trend termed as "the European backlash" by MPOC's Global Oils and Fats Business Magazine (Box 2).

**box 2: the malaysian palm oil lobby's views on the "european biofuel backlash"**

*"The stage is set for some serious bargaining between producing and non-producing countries, with national governments under scrutiny from often hostile media and NGOs and increasingly sceptical public opinion.*

*"It is a more sceptical group of Members of European Parliament (MEPs) that must now amend and eventually give the green light to the two key legislative proposals (Renewable Energies Directive and the Fuel Quality Directive). Key MEPs take a harder line than the EC, opposing the 10% target and advocating more stringent sustainability criteria. Acting as a weather vane for public opinion, they will continue to reflect civil society's concerns.*

*"And while most recognize that there are good and bad bio-fuels, it will be up to the industry to make its case to an institution which can afford to set the bar high since it will not have to implement the new rules.*

*"The (European) Parliament will be a major battleground for bio-fuels this year."<sup>6</sup>*

**considerations for appropriate decisions**

The palm oil industry is very much a supplier's market, which reduces the influence of governments, retailers and investors in pushing for or promoting better, and more sustainable practices in palm oil producer countries. Decision makers in the market place are also more dependent on the information given to them by distant suppliers.

When facing a supplier's market, consumer market decision makers have tended to adopt "step-wise approaches", "minimum criteria" and "benchmarks", which are based on the assumption that improvements will be made while trade and investment remain unaffected. Such models may emerge as a "reasonable middle ground" for palm oil as well. Unfortunately, such step-wise approaches can fail to deliver the expected improvements and mislead consumers in believing that they contribute to sustainable practices.

For example, the UK Renewable Fuels Agency (RFA) already says that it has issued Renewable Transport Fuel Certificates for all the palm oil imported from Malaysia and it reported that it met the Agency's "Qualifying Standards" (QS), which means that the majority of the environmental and/or social standards - the RFA's "meta-standards" had been met. The RFA says this palm oil has been "reported as meeting the Roundtable on Sustainable Palm Oil (RSPO) standard".<sup>7</sup> What this really meant was that Malaysian palm oil had been prematurely certified and marketed in the UK as "responsible" on the basis of an assumed outcome prior to a due procedure to determine that this was indeed true.<sup>8</sup>

In August 2008, the Malaysian government declared the intention that some 700,000 ha of Malaysian oil palm plantations (about 16% of the total planted area), producing 3 million tonnes of CPO (about 19% of total production), will be RSPO certified.<sup>9</sup> But, as of September 2008, only one per cent of Malaysia's crude palm oil (CPO) production was certified by the RSPO.<sup>10</sup> The intention to have 700,000 ha certified under RSPO is not tied to a time limit and there are no consequences if the commitment is not met. It also implies that some 3.6 million hectares (Mha) of Malaysian oil palm plantations and 80% of Malaysia's CPO production may not be certified and hence continue to nurture public debate about the sustainability of palm oil production.

Decision makers must consider that "step wise approaches" can trigger a race to the bottom rather than excellence. This is what has happened in the tropical timber trade. After the EU pressured Malaysia to address the destructive impact of logging on the country's forests and its indigenous peoples in the late 1980s, Malaysia promoted such a "step-wise approach" to sustainable forest management.

## one introduction

continued

Two decades later, after the European Parliament first called for sustainability in Malaysia's forestry sector, the European Union is still haggling with the Malaysian government over what comprises legal timber, while sustainable timber from Malaysia remains a distant hope. The fate of the Penan and other indigenous communities in Sarawak remains unchanged. They still need to blockade roads to stop logging companies from entering their forest.

There is a real risk that step-wise approaches to biofuel feedstock supply will deliver similar disappointing end results, whereby complex mechanisms are put in place that ultimately protect trade and investment while the fundamental issues that undermine the industry's sustainability and credibility remain unaddressed.

The Malaysian palm oil industry enjoys very decent profit margins and can, if forced by resolute policies and market demand, afford to not open up more ecologically valuable (forest) areas and contested community lands. There is ample cash flow in the sector to settle old conflict cases amicably, to restore valuable ecosystems that have been lost or degraded and to implement a range of other innovations.

The problem is that biofuel feedstock producers, such as Malaysian palm oil companies, are not given the incentives to take such measures and are instead protected by the Malaysian palm oil lobby's efforts to persuade the world that Malaysian palm oil is (already) green, responsible and/or sustainable.

### objectives of this report

The objective of this report is to inform decision makers about the serious sustainability challenges in Malaysia's palm oil sector and to call up on them to take appropriate actions to address these challenges. The report is particularly important for governmental decision makers who are considering biofuel policies and incentive schemes. Similarly, this report will be of value to private sector (or semi-governmental) decision makers who are considering buying or investing in (Malaysian) palm oil as a source of sustainable bio-energy.

As a result of this report, Friends of the Earth hopes the Malaysian government and palm oil industry will finally acknowledge and address the sustainability and governance problems they face so as to resolve the injustice done to local communities and other stakeholders who are affected by plantation policies and projects.

### testing malaysia's own claims on sustainability

The Malaysian palm oil lobby, primarily via MPOC, is extremely active. It is ever-present at international palm oil, oilseeds, food and biofuel conferences, and actively lobbies foreign governments and legislators to support its cause. The lobbyists, often led by the Plantation Industries and Commodities Minister Peter Chin, frequently appear in the national and international media, as well as producing vast numbers of position papers, presentations and video material. Friends of the Earth selected five groups of claims from these materials for this report. The selected claims refer to sustainability issues in Malaysia's oil palm sector that have a very real impact on the environment, on Malaysia's forests and on indigenous peoples. The claims may be summarised as follows:

- *"Forests are not converted for oil palm expansion in Malaysia"*
- *"Zero-burning is strictly enforced by Malaysia's laws"*
- *"A settlement has been made for the Penan indigenous communities in Sarawak"*
- *"Oil palm absorbs almost as much carbon dioxide as tropical forests do"*
- *"Environmental Impact Assessments ensure wise development"*

To maintain the focus on the situation in Malaysia, this report does not address the claims made by the Malaysian palm oil lobby when it compares the virtues of palm oil with other vegetable oils or biofuels, or the comparisons made between Malaysia's forest cover and that of other countries.<sup>11</sup>

### focus on sarawak

The objective of this report is to inform decision makers about the serious sustainability challenges in Malaysia's palm oil sector and to call up on them to take appropriate actions to address these challenges. The report is particularly important for governmental decision makers who are considering biofuel policies and incentive schemes. Similarly, this report will be of value to private sector (or semi-governmental) decision makers who are considering buying or investing in (Malaysian) palm oil as a source of sustainable bio-energy.

The main focus of this report is the East Malaysian State of Sarawak (see Figure 3), which has been a member state of the Malaysian Federation since 1963. It is Malaysia's largest state in terms of land territory, and the state where oil palm plantations are being most vigorously expanded so far.

The claims made by the Malaysian palm oil lobby are typically generic, applying to the whole Malaysian nation and its whole industry (“Malaysian palm oil is sustainable”). The lobby’s audiences would thus perceive the claims to apply to all Malaysian states, including Sarawak. It is thus justifiable to test the Malaysian palm oil lobby’s claims against the policies and practices of oil palm expansion in Sarawak.

### structure of this report

Following an introduction to oil palm development in Sarawak (Chapter 2), the report looks at the five groups of sustainability claims.

Chapter 3 counters the claim from the Malaysian palm oil lobby that zero-burning practices are strictly enforced in Malaysia. Claims that no forests are cleared for oil palm expansion in Malaysia are challenged in chapter 4. Chapter 5 describes what has happened to promises made to the nomadic Penan, Sarawak’s most vulnerable indigenous community. A case study describes the reality of the impact of oil palm expansion on the Penan in the Bakun watershed area. Chapter 6 looks at the role of Environmental Impact Assessments and chapter 7 addresses the issue of palm oil and “carbon debt”. Finally, chapter 8, analyses responses to MPOC’s “Anti Palm Oil Campaign” and considers the assertion that that the campaign might be doing more harm than good to the image of Malaysia’s palm oil industry.

FIGURE 2

MAP OF MALAYSIA AND ITS STATES



# two oil palm and plantation expansion in sarawak

## oil palm and plantation expansion in sarawak

### 2.1 introduction

As in Sabah and Papua New Guinea, it was the British Commonwealth Development Corporation (CDC) which initiated large-scale oil palm plantations in Sarawak. In 1968, CDC and the Sarawak State government entered into a joint venture to form Sarawak Oil Palm which established the first large scale (20,000 ha) commercial planting of oil palm in Lambir, Miri Division (see Figure 3).

In the 1970s, several State government agencies followed suit, namely the Sarawak Land Development Board or SLDB (1971), Sarawak Land Consolidation and Rehabilitation Authority or SALCRA (1976) and the Land Custody and Development Authority or LCDA, locally known as Pelita (1980). Two federal agencies, the Federal Land Consolidation and Rehabilitation Authority (FELCRA) and the Federal Land Development Authority (FELDA) also began cultivating oil palm in Sarawak.<sup>13</sup>

From the 1980s onwards, private sector companies from Peninsular Malaysia started to develop oil palm plantations in Sarawak, followed by the larger Sarawak based timber based corporations which began to diversify into oil palm in the late 1990s. By 2007-2008, the 18 largest plantation groups alone held a combined land bank of 650,000 ha (see Table 1).

FIGURE 3

MAP OF ADMINISTRATIVE DIVISIONS IN SARAWAK<sup>12</sup>



TABLE 1

LAND BANKS OF THE LARGER OIL PALM COMPANY GROUPS IN SARAWAK (2007-2008).<sup>14</sup>

COMPANIES FROM PENINSULAR MALAYSIA (>10,000 HA)	LAND BANK (HA)
Tradewinds Plantation	75,000
Sime Darby (formerly Golden Hope)	48,000
Wilmar (formerly PPB Oil Palm)	22,000
Boustead Holdings	20,000
TH Plantations	11,000
<b>Sub-total</b>	<b>176,000</b>
COMPANIES FROM SARAWAK (>10,000 HA)	LAND BANK (HA)
Jaya Tiasa	83,000
Shin Yang (Sarawak Oil Palm)	67,000
Ta Ann Holdings	55,000
Sarawak Land Consolidation and Rehabilitation Authority (SALCRA)	45,000
Double Dynasty	44,000
Bintulu Lumber Development (BLD)	43,000
Federal Land Consolidation and Rehabilitation Authority (FELCRA)	38,000
Sarawak Plantation Agricultural Development	33,000
Rimbunan Sawit	21,000
WTK Holdings	12,000
Ekran Plantations	11,000
Imbok Enterprise	11,000
Glenealy Plantations	11,000
<b>Sub-total</b>	<b>474,000</b>
<b>Total</b>	<b>650,000</b>

**Note:** Rounded, gross land banks. This table excludes numerous smaller individual private estates.

<sup>12</sup> Map obtained from Ministry of Environment and Public Health website [moeswk.gov.my].

<sup>13</sup> Based on Sarawak Ministry of Land Development website [mlds.sarawak.gov.my].

<sup>14</sup> Primarily based on company annual reports.

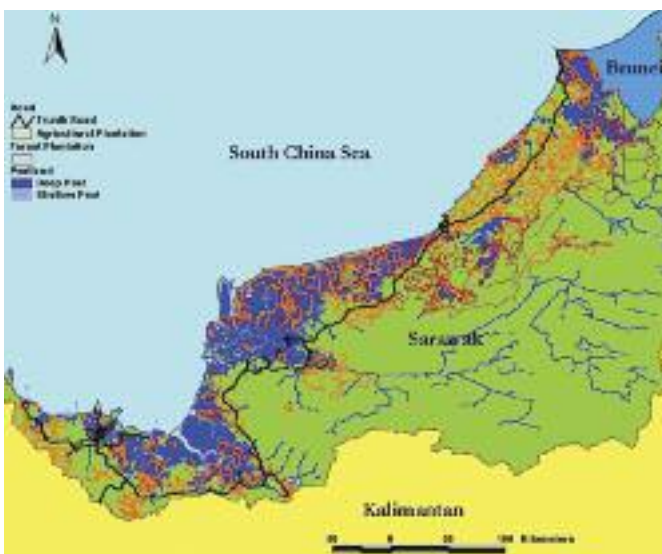
## 2.2 oil palm planting targets and realization

The Sarawak State government aims to have 1.29 million hectares of fully developed oil palm plantations by the year 2010.<sup>15</sup> It is estimated that some 250 plantation companies had already been allocated land to meet the target.<sup>16</sup>

Until recently, Miri and Bintulu were the dominant oil palm growing divisions of Sarawak. At present, expansion is taking place in most other divisions as well, notably in Mukah and Dalat, Betong, Sri Aman and Samarahan. Figure 4 shows the areas allocated for (commercial) agricultural development in Sarawak as of 2002. Several new areas have since been allocated to plantation companies, for example in Pulau Bruit (see paragraph 3.7).

FIGURE 4

AGRICULTURE DEVELOPMENT AREAS IN SARAWAK (2002).<sup>17</sup>



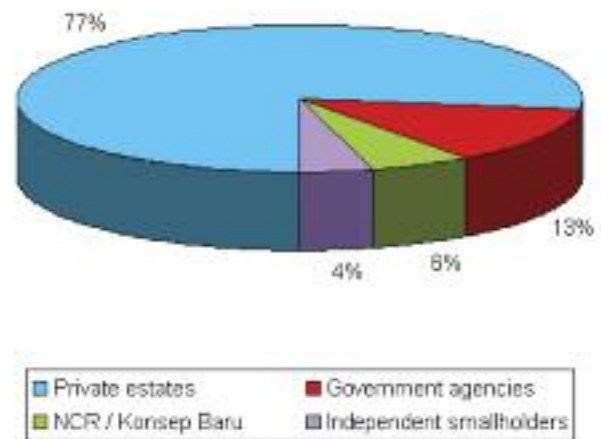
**Note:** blue: peat land, green: mineral soil, red lines: agricultural development (mostly oil palm).

By the end of 2007, the total area planted with oil palm in Sarawak had reached 682,000 ha. Within that total, the majority was held by private estates with 527,000 ha, followed by government agencies with 87,000 ha, while 39,000 ha is Native Customary Rights land under Konsep Baru (a scheme for indigenous communities with recognized NCR claims). The balance, 29,000 ha, is owned by independent smallholders.<sup>18</sup> Figure 5 illustrates the dominance of plantations owned by the private sector.

In 2007, Sarawak had 41 Crude Palm Oil mills with an aggregate production capacity of almost 9 million tonnes per year.<sup>20</sup> At least five companies, including Sarawak Plantation Bhd. and Golden Hope, plan to build biodiesel factories in Sarawak.<sup>21</sup>

FIGURE 5

OWNERSHIP OF PLANTED OIL PALM ESTATES IN SARAWAK (END OF 2007).<sup>19</sup>



To further accelerate the development of a downstream palm oil industry, Sarawak is scheduled to develop its own palm oil industrial cluster (POIC).<sup>22</sup>

## 2.3 sarawak's planted forests policy

In addition to the "regular" oil palm plantation projects, further expansion of oil palm plantations is realised with the Sarawak Forests Department's 1997 Planted Forests (PF) policy. Through an amendment of the Forests Ordinance, the policy puts in place "specific provisions that would encourage the establishment of such plantation estates and to protect or safeguard the interests of those who are prepared to invest in tree plantations in the State".<sup>23</sup>

By mid 2008, the State government had issued some 40 licences for Planted Forests to a dozen Sarawak-based logging corporations (see Figure 6). These licences cover natural forest areas that typically range from 5,000 to 150,000 ha each and are valid for 60 years. In total, 2.8 million ha have been licensed, representing almost one-quarter (23%) of Sarawak's total land area.<sup>24</sup>

The Planted Forests policy will result in the conversion of large tracts of natural tropical forests into tree plantations, which is seen as a strategy for the survival and growth of Sarawak's timber industry. With the Planted Forests policy, log production in Sarawak is targeted to double to 25 million m<sup>3</sup> by 2020.<sup>25</sup>

## two oil palm and plantation expansion in sarawak

continued

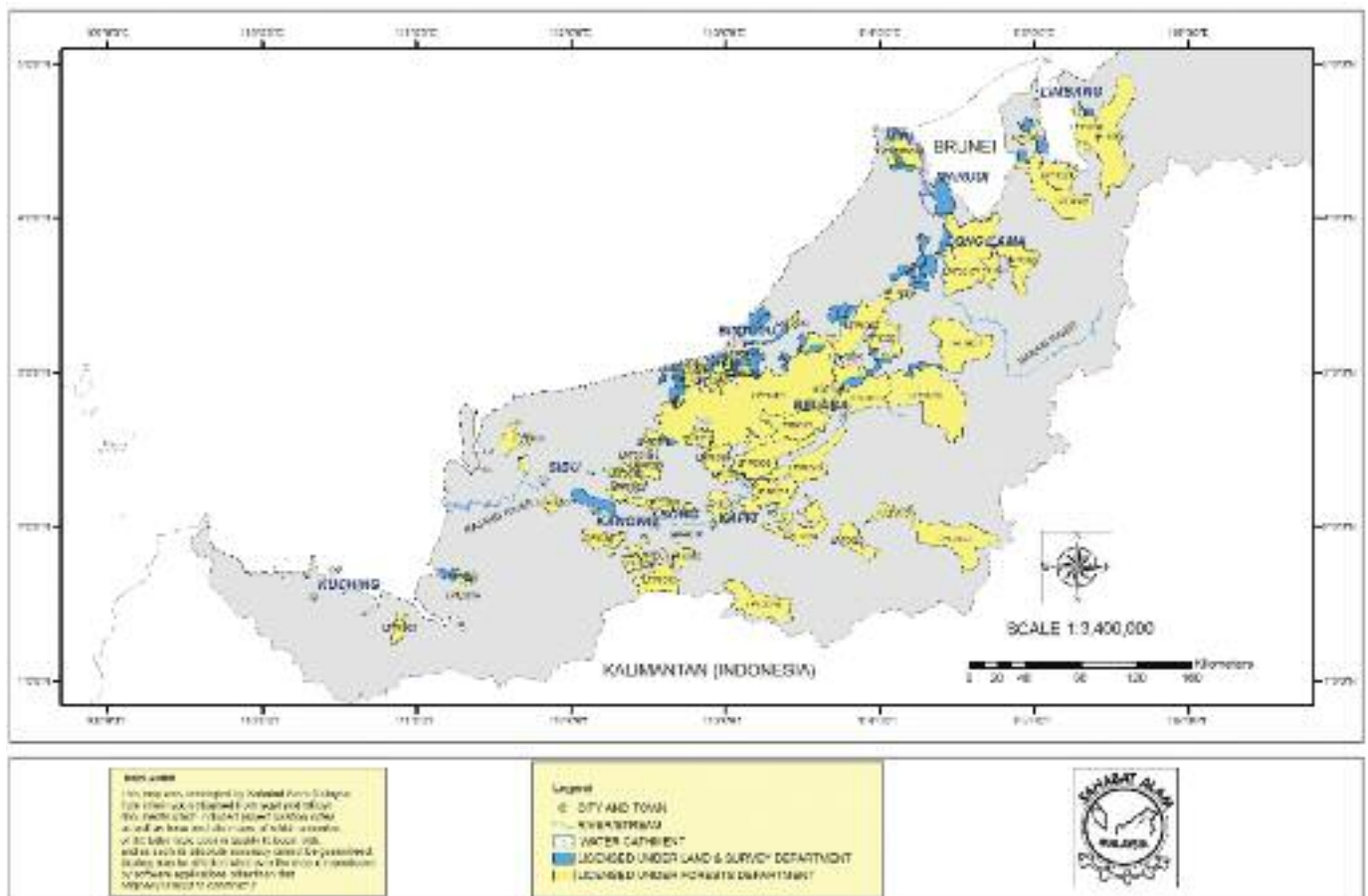
Most projects will involve planting three to ten exotic or indigenous tree species, but based on information provided in the EIA (Environmental Impact Assessments) reports, the companies may also request permission to devote a portion of their total Planted Forests area to grow oil palm for one single rotation (25 years), so as to generate early revenue for establishing tree plantations (see Table 2 for additional details). Through fifteen projects, eight company groups will thereby develop oil palm plantations within their Planted Forests license areas, covering a total gross acreage of at least 290,000 ha. This would make these logging and timber groups, such as Samling, Rimbunan Hijau, Ta Ann, WTK and KTS, dominant palm oil producers in Sarawak.

As well as allowing oil palm to be planted in part of the Planted Forests license areas the forestry companies may apply for

support from a RM 1 billion (€ 200 million at current exchange rates) nation wide Forest Plantation soft loan scheme, was launched to subsidize the planting of acacia, rubber and other tree species<sup>26</sup>, the Planted Forests policy also stipulated very low prices for land rents. The published official land rent rates in the Planted Forest Rules (1997) are RM 0.10 to 0.05 per hectare per year for PFE and State Land respectively. Based on these figures, it is estimated that all Planted Forests licensees would jointly pay a total sum of land rent amounting to RM 5.4 to 12.6 million (€ 1.1-2.5 million at current conversion rates) over the full 60 year validity period of the PF licences.<sup>27</sup> Although land rent may be adjusted by the Forests Department Director, it is obvious that the dozen or so company groups that were granted Planted Forest licences, covering almost a quarter of Sarawak's land area, were given a "sweet deal".<sup>28</sup>

FIGURE 6

FOREST PLANTATION PROJECTS IN SARAWAK, 2007.



Note: (see Table 2 for details on each project).



**TABLE 2** SARAWAK FORESTS DEPARTMENT'S PLANTATION LICENCES, 2007<sup>14</sup>

LPF* NO.	PROJECT & DIVISION	PROJECT PROPONENT	CROP	NO. OF VILLAGES	PERMANENT FOREST ESTATE (PFE)	TOTAL AREA (HA)	NET PLANTABLE AREA (HA)
001	Planted Forest (Pulp and Paper), Bintulu	Sarawak Forests Department [Contracted to Grand Perfect Sdn. Bhd: A consortium made up by KTS, Samling & Ta Ann business groups]	Pulp trees	240		490,000	150,000
002	Zurnida Sdn. Bhd. <i>Location unknown</i>	Unknown	N.A.**	N.A.	N.A.	6,570	5,500
003	Daiken Tree Plantation, Bintulu	Daiken (Swak) Sdn. Bhd.	Fast-growing wood trees	N.A.	N.A.	5,503	5,000
004	Kuala Baram Forest Plantation, Miri	Samling Reforestation (Btu) Sdn. Bhd transferred to Jupiter Nation Sdn. Bhd. transferred to Woodman Kuala Baram Estate Sdn. Bhd. (linked to the Samling business group)	75% for oil palm for first 25-year cycle 25% for fast growing wood trees To be continued by fast-growing wood trees.	7	Lower Baram Forest Reserve	40,900	24,000
005	Kanaya Forest Plantation, Limbang	Samling Reforestation (Btu) Sdn. Bhd.	Fast-growing wood trees	23	Kota Forest Reserve Kanaya Forest Reserve	140,200	67,400
006	Lana Forest Plantation, Nanga Merit – Punan Bah Area, Bintulu - Kapit	Samling Reforestation (Btu) Sdn. Bhd. or Timor Enterprise Sdn. Bhd (Belaga)	30% for oil palm 70% fast-growing wood trees	18	Bah Sama Forest Reserve	81,900	50,000
007	Jelalong Forest Plantation, Bintulu	Samling Reforestation (Btu) Sdn. Bhd.	N.A.	N.A.	N.A.	74,510	36,915
008	Marudi Plantation, Miri	Samling	N.A.	N.A.	N.A.	59,650	35,040
009	Samling Plantation at Kuala Tatau, Bintulu	Samling Reforestation (Btu) Sdn. Bhd. or Woodman Plantation Sdn. Bhd (Tatau)	Oil palm for one 25-year cycle, to be continued with fast-growing wood trees	17	Tatau Forest Reserve	10,850	8,830
010	Pasin & Tekalit Forest Plantation, Sibit - Kapit	Ta Ann Plywood Sdn. Bhd.	20% for oil palm for one 25-year cycle 80% for fast-growing wood trees	1,734 persons	Naman Forest Reserve	102,881	75,210
011	Tutuh Forest Plantation, Miri	Pusaka-KTS Forest Plantation Sdn. Bhd.	14,293 ha for fast-growing wood trees 36,433 ha for enrichment planting of residual trees 22,027 ha for oil palm for one 25-year cycle. To be continued with yet undecided tree species.	20	Telang Usan Protected Forest	90,427	70,753

**Note:** List compiled by Sahabat Alam Malaysia  
\*Licence for Planted Forest \*\* Information not available.

## two oil palm and plantation expansion in sarawak

continued

TABLE 2

SARAWAK FORESTS DEPARTMENT'S PLANTATION LICENCES, 2007<sup>14</sup>  
*continued*

LPF NO.	PROJECT & DIVISION	PROJECT PROPONENT	CROP	NO. OF VILLAGES	PERMANENT FOREST ESTATE (PFE)	TOTAL AREA (HA)	NET PLANTABLE AREA (HA)
012	Kakus Tree Plantation, Bintulu	Pusaka-KTS Forest Plantation Sdn. Bhd	35,737 ha for fast-growing wood trees 52,507 ha for enrichment planting of residual trees	13		89,346	88,244
013	Belaga Forest Plantation, Bintulu - Kapit	Pusaka-KTS Forest Plantation Sdn. Bhd.	24,220 ha for oil palm 62,021 ha for fast-growing wood trees and enrichment planting	22		98,988	86,241
014	Segan Forest Plantation, Bintulu	Samling Manufacturing Plantation Sdn. Bhd	Fast-growing wood trees	23	Segan Forest Reserve Buan Forest Reserve	10,800	8,000
015	BPP Forest Plantation in Tatau, Bintulu	Borneo Pulp and Paper Sdn. Bhd. (Asia Pulp and Paper & Sarawak Timber Industry Development Corporation)	Fast-growing softwood plantation of acacias	19	Tatau Forest Reserve	13,721	13,720
016	Indigenous Forest Plantation at Buan FR, Bintulu	Goodmatch Sdn. Bhd.	Indigenous trees [560 ha dedicated for Sarawak Indigenous Tree Centre (SITC) for conservation and research]	29	Buan Forest Reserve	12,565	6,433
017	Long Lama Forest Plantation, Miri	Shin Yang Forestry Sdn. Bhd.	Fast-growing wood trees	8		65,178	31,389
018	Penyuan & Plieran Forest Plantation, Bintulu - Kapit	Shin Yang Forestry Sdn. Bhd.	30% (30,436 ha) for oil palm for one 25-year cycle 70% (62,370 ha) for fast-growing wood trees	7	Probably Belaga Forest Reserve Bakun HEP Catchment	155,930	92,806
019	Selangau & Tatau Forest Plantation, Bintulu	Shin Yang Forestry Sdn. Bhd.	Fast-growing wood trees	21	Anap Forest Reserve	36,840	20,500
020	Layun Forest Plantation (To the East of Long Lama), Miri	Samling Reforestation (Btu) Sdn. Bhd.	Fast-growing wood trees	9	Tutoh Forest Reserve, Merigong Protected Forest	52,000	33,753
021	Paong Forest Plantation, Miri	Samling Reforestation (Btu) Sdn. Bhd.	Fast-growing wood trees	10	Nakan Kelulong Forest Reserve	101,000	25,000
022	Bukit Raya Tree Plantation, Kapit	Immense Fleet Sdn. Bhd. (linked to the WTK business group)	Fast-growing wood trees	6		64,000	35,235
023	Merirai-Balui Forest Plantation, Kapit	RH Forest Corporation Sdn.Bhd. (linked to the Rimbunan Hijau business group)	Fast-growing wood trees	4	Mujong Merirai Protected Forest Bahau Protected Forest Bakun HEP Catchment	55,860	28,425

TABLE 2

SARAWAK FORESTS DEPARTMENT'S PLANTATION LICENCES, 2007<sup>14</sup>  
*continued*

LPF NO.	PROJECT & DIVISION	PROJECT PROPONENT	CROP	NO. OF VILLAGES	PERMANENT FOREST ESTATE (PFE)	TOTAL AREA (HA)	NET PLANTABLE AREA (HA)
024	Bahau-Linau Forest Plantation, Kapit	RH Forest Corporation Sdn. Bhd. (linked to the Rimbunan Hijau business group)	Fast-growing wood trees	2	Linau Protected Forest Bahau Protected Forest Bakun HEP Catchment	108,235	59,710
025	Balingian Forest Plantation (To the North of Ulu Batang Mukah), Sibu - Bintulu	Rejang Height Sdn. Bhd. (linked to the Rimbunan Hijau business group)	Fast-growing wood trees	12	Mukah Hills Protected Forest	16,020	7,550
026	Rejang-Pelagus Forest Plantation (To the North of Batang Rajang, Kanowit to Nanga Merit), Kapit	Rejang Height Sdn. Bhd. (linked to the Rimbunan Hijau business group)	Fast-growing wood trees	40	Mukah Hills Protected Forest Anap Protected Forest Pelagus Protected Forest	88,888	43,165
027	Medamit Forest Plantation, Limbang	Billion Venture Sdn. Bhd.	6,329 ha for oil palm 15,934 ha for fast-growing wood trees	9	Limbang Protected Forest	32,584	22,263
028	Guanaco Maujaya Forest Plantation, at Upper Sg. Gaat-Sg. Mengiong, Kapit	RH Forest Corporation Sdn. Bhd. (linked to the Rimbunan Hijau business group)	Fast-growing wood trees	1	Baleh Protected Forest	71,700	41,460
029	Loba Kabang Oil Palm Plantation, at Batang Lassa, Sibu – Mukah	RH Forest Corporation Sdn. Bhd. (linked to the Rimbunan Hijau business group)	Oil palm for one crop 25-year cycle. To be continued by wood trees.	42	Batang Lassa Protected Forest Loba Kabang (North) Protected Forest Loba Kabang (South) Protected Forest Bawang Assan Forest Reserve	30,050	21,200
030	Garu Skyline Forest Plantation, Kapit	RH Forest Corporation Sdn. Bhd. (linked to the Rimbunan Hijau business group)	Fast-growing wood trees	56		62,700	39,425
031	Unknown, Sarikei	Rejang Height Sdn. Bhd. (linked to the Rimbunan Hijau business group)	N.A	N.A	N.A	16,830	14,955
032	Oya-Kanowit-Katibas Forest Plantation, Sibu	Immense Fleet Sdn. Bhd. (linked to the WTK business group)	5,240 ha for oil palm	80	Mukah Hills Forest Reserve	67,157	36,520
033	Pandan-Belaga Forest Plantation, Kapit	WTK Reforestation Sdn. Bhd	36,520 ha for fast-growing wood trees	37	Kakus-Pandan Forest Reserve	13,315	12,661
034	Saribas Oil Palm Plantation in Pusa-Saratok, Betong	RH Forest Corp. Sdn. Bhd. (linked to the Rimbunan Hijau business group)	Oil palm for one 25-year cycle. To be continued with wood trees		Saribas-Kalaka Protected Forest Rimbis Forest Reserve	11,450	6,034

## two oil palm and plantation expansion in sarawak

continued

TABLE 2

SARAWAK FORESTS DEPARTMENT'S PLANTATION LICENCES, 2007<sup>14</sup>  
*continued*

LPF NO.	PROJECT & DIVISION	PROJECT PROPONENT	CROP	NO. OF VILLAGES	PERMANENT FOREST ESTATE (PFE)	TOTAL AREA (HA)	NET PLANTABLE AREA (HA)
035	RH. Simunjan Oil Palm Plantation, Samarahan – Sri Aman	Rejang Height Sdn. Bhd. (linked to the Rimbunan Hijau business group)	Oil palm for one 25-year cycle. To be continued with wood trees.	20	Sebuyau Protected Forest	15,580	10,475
036	Koyan Forest Plantation, Bintulu – Kapit	Rejang Height Sdn. Bhd. (linked to the Rimbunan Hijau business group)	Fast-growing wood trees	15	Belaga Protected Forest Kebulu Protected Forest Pesu Pelung Protected Forest	43,645	21,023
037	Baram Tinjar Forest Plantation in Batang Tinjar and Sg. Apoh Areas, Miri	Rejang Height Sdn. Bhd. (linked to the Rimbunan Hijau business group)	4,773 ha for oil palm 14,247 ha for fast-growing wood trees	11	Lemiting Protected Forest	34,115	19,020
038	Limba Jaya Forest Plantation, Limbang	Limba Jaya Sdn. Bhd. (linked to the Lee Ling business group)	8,829 ha for oil palm for one 25-year cycle 41,771 ha for tree plantation	43	Limbang Protected Forest	143,206	50,600
039	Muput Tree Plantation (MFMA) T/3417, Bintulu  <i>Project established following ITTO Mission in 1989/1990</i>	Zedtee Sdn. Bhd.	Fast-growing wood trees	6	Anap Protected Forest	14,970	13,050
040 – T/4317	Melekun-Raplex Forest Plantation, Kapit	Ta Ann Plywood Sdn. Bhd.	Fast-growing wood trees	96	Baleh Protected Forest	197,250	75,487
<b>TOTAL</b>						<b>2,827,314</b>	<b>1,492,992</b>

**Notes:**

1. Concessions that do not overlap with the boundaries of any components of the PFE are mostly categorised to be under Stateland Forests.
2. Existence of any of the PFE components within a plantation concession does not necessarily indicate that the entire concession is covered by the PFE. Parts of the concession may still be categorised as Stateland Forests.
3. Fast-growing wood trees would often refer to softwood trees such as those from the acacia or eucalyptus species.
4. Many of the proposed wood plantations which intend to cultivate fast-growing trees will also be including, to a lesser extent, the cultivation of trees from different species with slower growth rates.
5. Village refers to settlements that may possibly be directly or indirectly affected by the project concerned.

**DISCLAIMER:**

Information in this document was obtained from various legal and official sources dated between 1999 and 2006, some of which may not be entirely well-clarified while inconsistencies and differences may appear in different sources which refer to the same information unit. Although attempts have been made to cautiously manage such diverse sources of information, the total accuracy of this document cannot be guaranteed.

Date of release: August 2008.

## 2.4 peat lands and peat forests in sarawak

Sarawak has about 1.6-1.7 Mha of peat swamp, which is almost two-thirds of all the peat land in Malaysia (see Figure 7).<sup>29</sup> Located mostly in low lying coastal areas, these waterlogged wetlands were formed over a period of thousands of years as a result of the accumulation of organic material (dead trees and leaf litter from the peat swamp forests). Most peat soils in Sarawak are considered “deep peat”, i.e. > 2.5 meters, with some domes holding up to 20.7 meters of peat.

FIGURE 7

DISTRIBUTION OF PEAT SOILS IN SARAWAK.<sup>30</sup>



In the 1970s, almost all the peat forest in Sarawak had either been logged or licensed for logging. Just 2% (19,000 ha) of the original virgin peat swamp forest now remains and previous yields of commercially attractive timber species like ramin and light red meranti can no longer be sustained. Overall there is probably less than 1 Mha of (mostly logged) peat swamp forest left in Sarawak today.<sup>31</sup>

## 2.5 oil palm expansion in deep peat

It is estimated that 3.38 Mha (27%) of Sarawak's total land area is marginally suitable for oil palm cultivation. This figure includes 1.55 Mha of peat land, and of which 89% is deep peat.<sup>32</sup> Peat soils are considered “problem soils” because of a variety of constraints to agriculture development, including:

- Surface subsidence due to shrinkage, soil compaction, decomposition, leaching, irreversible drying and loss of peat material during reclamation.
- Flooding and shallow water table hazards due to low elevation, topographic situation and heavy rainfall.
- Low soil bearing capacity and poor trafficability due to the presence of woody un-decomposed and partially decomposed materials in the soil, thus hampering mechanized land clearing and estate management.
- Low fertility, highly acidic conditions and root anchorage problems for the top-heavy perennial crops.
- Low pH, especially after drainage and oxidation (pH5-6 will drop to less than pH 3.5).<sup>33</sup>

While these constraints make oil palm development on peat soil costly, higher palm oil prices have made it economically viable. As a result of this and the Sarawak State government's aim of developing 2 Mha of land in the coastal zone for agricultural development, the expansion of agriculture, especially oil palm, has been accompanied by the loss of peat swamp forest. Between 1970 and 2000, 400,000 ha of peat swamp forest were lost to shifting agriculture, agricultural plantations, aquaculture and settlement.<sup>34</sup> By 1999, about 470,000 ha of peat land was under cash crop cultivation, primarily oil palm (300,000 ha) and by April 2007, 500,000 ha of deep peat had reportedly been planted with oil palm.<sup>35</sup>

By June 2004, the State government had released over 408,000 ha of peat forests from the Permanent Forest Estate, primarily for oil palm expansion.<sup>36</sup> Studies conducted by the Netherlands-Malaysia Joint Working Group have strongly recommended that “further agri-conversion must be stopped and no further area of peat swamp forest in the Permanent Forest Estate should be excised for agricultural or other development.”<sup>37</sup> Malaysia's Prime Minister affirmed a similar call in July 2008, but his appeal was put aside by the Sarawak State government (see Chapter 4).

## 2.6 conclusions

After an initial slow start, Sarawak's oil palm acreage is now expanding rapidly. To achieve its 1.3 Mha oil palm target by 2010, the Sarawak State government has issued hundreds of oil palm development licences with some 682,000 ha already planted by the end of 2007. Many of the new plantations are located on deep peat, and come at the expense of some 400,000 ha of peat swamp forest, or more. In addition, almost one quarter (2.8 Mha) of Sarawak's land area has been allocated to a dozen logging corporations for the development of tree and oil palm plantations under the Planted Forests policy.

## three open burning

### open burning

#### 3.1 introduction

The use of fire to clear land prior to planting oil palm has been a common practice in the plantation business for many decades. Open burning clears land faster, more cheaply and also fertilises the soil at no extra cost.<sup>38</sup> But, these days it is no longer considered an environmentally friendly practice because it contributes to air pollution, poses the risk of wildfire and speeds up the emission of greenhouse gases into the atmosphere.<sup>39</sup> In 1997/98, when Southeast Asia experienced an exceptionally prolonged dry season, millions of hectares of forest and peat land were destroyed as a result of open burning and wild (peat) fires, causing the whole region to be covered in a thick haze of air pollution for months, at great economic cost. Ever since, the region continues to be plagued by regular haze episodes. Every time, Malaysian politicians have been quick to blame Indonesia for its alleged unwillingness and incompetence in addressing the transboundary haze problem.

FIGURE 8

HAZE ABOVE SELANGOR ON A "CLEAR DAY", AUGUST 2005.



It is, however, not entirely true that Indonesia has not taken action. For example, in 2001/2002, a manager of a Malaysian plantation company was reportedly convicted for illegal open burning in Riau province. The company involved was PT Adei Plantations, a 95% subsidiary of the Malaysian company group Kuala Lumpur Kepong (KLK), whose chief executive Dato' Lee Oi Hian is also the Chairman of Malaysian Palm Oil Board of Trustees.<sup>40</sup>

How about Malaysia itself? Are there no fires there, and is open burning for oil palm expansion prohibited in Malaysia?

#### 3.2 malaysia's palm oil lobby claims

FIGURE 9

MPOC: "ZERO-BURNING, IS ENFORCED BY MALAYSIA'S LAWS."<sup>41</sup>



*"For years, fires ignited by oil palm plantation workers in Indonesia to get rid of oil palm wastes had contributed to the spread of cross-boundary haze. Malaysia, a few years ago, banned these burnings in its plantations."<sup>42</sup>*

**Minister of Plantation Industries and Commodities Peter Chin on 15 August 2006.**

*Role model: Sime Darby senior vice-president II Syed Mahdhar Syed Hussain concedes that "open burning is illegal and zero-burning is in line with the country's laws."<sup>43</sup>*

**The Star, 29 April 2008.**

*"Through the years, scientific enhancement has led to further improvements in good agricultural practices leading to sustainable production of Malaysia Palm Oil. One such practice is zero-burning, which is enforced by our country's laws."*

**Malaysia Palm: Golden Oil from Green Agriculture. Video released by the Malaysian Palm Oil Council (MPOC), launched in Kota Kinabalu, May 2008.**

### 3.3 the reality

Although the Malaysian palm oil lobby claims that zero burning practices are enforced throughout Malaysia, the reality is that this is not the case in Sarawak. This can be verified by a visit to the website of the Sarawak Natural Resources and Environment Board (NREB), where documents are posted that clearly demonstrate that open burning for plantation expansion, even on peat soils, is legalized in Sarawak.<sup>44</sup>

In July 2004, the Sarawak State government launched a special "Fire Danger Rating System Order 2004" (the "Open Burning Order") within its Natural Resources and Environment Ordinance that allows plantation companies to burn land after land clearing, provided that a permit from the NREB is obtained (Figure 10).

Malaysia's Federal law, through the amended 2003 Environmental Quality Act, (implicitly) prohibits open burning for large-scale oil palm expansion and replanting, although the EQA does allow open burning for oil palm smallholder replanting, the planting of paddy fields, sugar cane and pineapple plantations, and for shifting cultivation. In no instance, however, is open burning allowed on peat soils.<sup>45</sup>

However, Sarawak has been enforcing its own environmental law, the Natural Resources and Environment Ordinance, which is under the authority of the Sarawak NREB for a host of activities and other related environmental management practices since 1994. It is only in some areas of environmental governance and activities that the Federal Government's Environmental Quality Act 1974 applies and the Federal Department of Environment retains its legal jurisdiction. Thus while the country is subject to the Environmental Quality Act, Sarawak is not.<sup>46</sup>

In 2004, Sarawak's Chief Minister Taib Mahmud justified the regulation because of a "unique situation" in Sarawak, where forests are converted into plantations and large volumes of debris and biomass need to be removed. The "Open Burning Order" is based on a digitalized "Fire Danger Rating System" developed with the assistance of the British Columbia Forestry Department and would assure that smoke/haze emissions are controlled and reduces fire risks.<sup>47</sup>

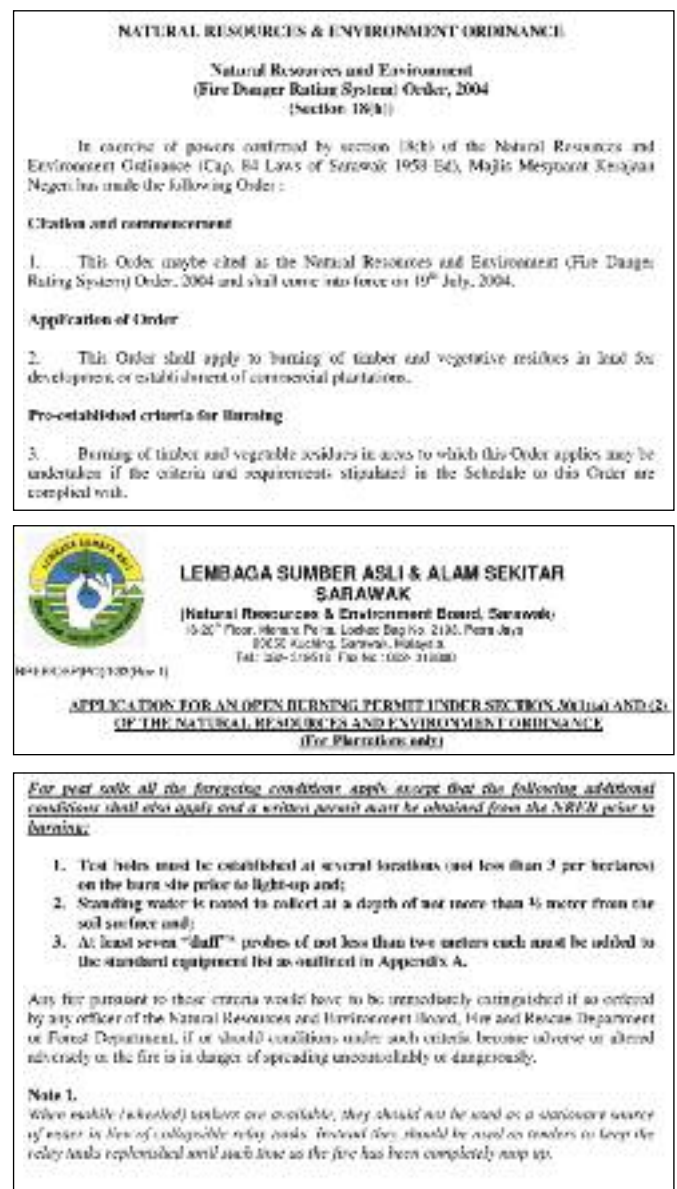
In fact, Sarawak has never had legislation in place or enforced a mandatory zero-burning policy for the oil palm plantation industry. Most Environmental Impact Assessment reports dating from before Sarawak's "Open Burning Order" describe how land clearings are best burnt.<sup>48</sup> One EIA consultant even proactively prescribes what is known "a good classical burn", as it is also known in the planters' world.

*The classical method of slash and burn would be the most effective way of site preparation. Mechanisation in site preparation seems to have limited use in Sarawak where rainfall is high and terrain steep. Further, tropical trees have deep roots and heavy buttresses making the use of machines impractical.*

**Pasin & Tekalit Forest Plantation (Ta Ann Plywood) EIA report by Plantacia (1999).**

FIGURE 10

EXCERPTS FROM THE "FIRE DANGER RATING SYSTEM ORDER 2004" AND LICENSE APPLICATION.



## three open burning

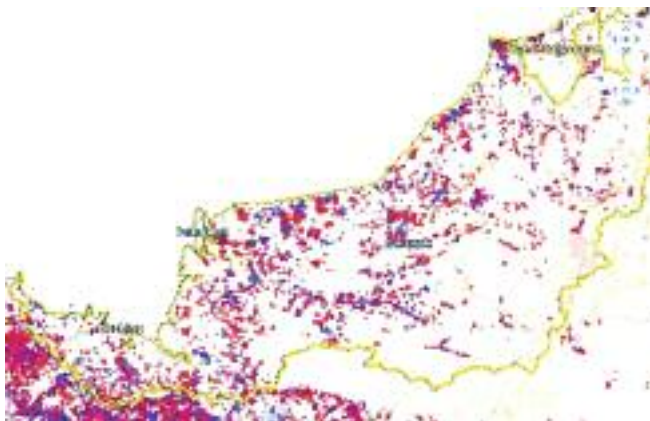
continued

### 3.4 fire hot spots in sarawak

The Sarawak Fire Danger Rating System produces maps for the whole of Sarawak, indicating the fire risk based on an assessment of a series of factors. However, one thing is clear, and that is that the Fire Danger Rating System has not reduced the occurrence of fires in Sarawak. It may even have promoted the wider use of fire to clear land for plantation expansion. A comparison of the fire hot spot maps for the period 2001-mid 2004 (when the Order came into effect) and the period mid 2004-2008 suggests that more and larger fires appear to have been burning in Sarawak (see Figure 11). Roughly half of all fire hot spots appear to occur on peat lands, and detail overlays of hot spot maps with concession maps suggest that many, but not all, plantation companies may be using fire to clear land (see Figure 13).

FIGURE 11

FIRE HOT SPOTS IN SARAWAK 2001-MID 2008.<sup>49</sup>



*Note:* Blue: fire hotspots recorded between January 2001 and June 2004; Red: fire hot spots between 16 July 2004 and 19 July 2008.

### 3.5 case: burning and haze around sibu

Over the past decade, it is likely that the Sarawak NREB has allowed various companies with concessions close to the town of Sibu (population 260,000) to practice open burning on peat lands. These may include Ta Ann Naman Oil Palm Plantation (10-20 km south of Sibu), BLD Oil Palm Plantation (20-25 km north of Sibu) and RH Forest Corporation's Loba Kabang and Victoria Square Oil Palm Projects (15-25 km northwest of Sibu).

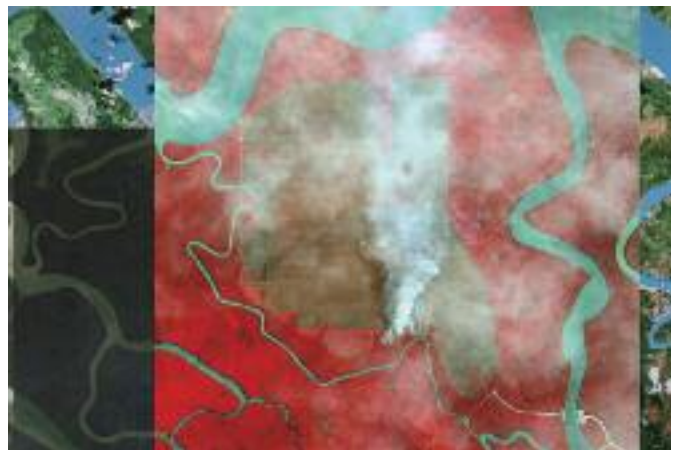
The RH Forest Corporation is a company owned by Tiong Tai King, the younger brother of Tiong Hiew King who is the founder and chairman of the Rimbanan Hijau Group. It owns several oil palm and Planted Forests concessions in the coastal zone, including the Saribas Planted Forest project near Sarikei and Pusa, north of the Saribas River and the Victoria Square oil palm project and three blocks belonging to the Loba Kabang Planted Forest project,

northwest of Sibu. The Lower Rajang Oil Palm Plantation, a sister company, is divided in two blocks located further south.

In June 2008, a satellite captured a clear image of active fires in one of the Lower Rajang Oil Palm Plantation blocks (see Figure 12). The area comprises deep peat and, according to all available maps from the Forests Department (2001, 2004, 2008), falls within the Permanent Forest Estate.

FIGURE 12

VEGETATION FIRES IN THE LOWER RAJANG OIL PALM PLANTATION (24 JUNE 2008).<sup>50</sup>



An overlay of a concession map for the area northwest of Sibu (Loba Kabang) and fire hotspot maps shows that numerous fire hotspots coincide with the plantation concessions (see Figure 13).

FIGURE 13

FIRE HOTSPOTS AROUND LOBA KABANG (2001- MID 2008).<sup>51</sup>





As recently as July and August 2008, the MODIS satellite recorded several fire hotspots in the RH Forest Corporation areas. On July 2008, a Sibu resident took an image of the fires (see Figure 14).

FIGURE 14

SMOKE FROM OPEN BURNING ON PEAT LAND.



The smoke plumes are alleged to have originated from land clearing in the Victoria Square oil palm plantation (image taken on 5 July 2008).

FIGURE 15

AFTER THE FIRST BURN, SIBU, 11 JULY 2008.



The clearing shown is the access corridor to the Loba Kabang Planted Forest concession and the Victoria Square oil palm project.

By the end of July and early August 2008, Sibu town was shrouded in a thick haze (see Figure 16). In view of the close vicinity of the RH Forest Corporation areas, it is highly likely that the land clearing fires on the peat soils in the company's estates contributed to the haze in the area, which was compounded by transboundary haze from fires in Indonesia. Sarawak's Minister of Environment and Public Health told Sarawakians that the haze represented "no cause for concern for now" but on August 6, NREB Sarawak finally froze all burning permits to plantation companies.<sup>52</sup> The fires were indeed doused, but on 18 August 2008 new fire hot spots were recorded in the Victoria Square concession. Around the same time Sibu was temporarily shrouded in haze once again.<sup>53</sup>

FIGURE 16

HAZE OVER SIBU, FIRST WEEK OF AUGUST 2008.<sup>54</sup>



Picture from The Borneo Post.

The haze episode of last July and August was not merely an isolated incident. A year earlier, in the first week of August 2007, The Star reported that open burning of agriculture waste in plantation areas had resulted in numerous incidents of wildfires in central and northern Sarawak and shrouding Kapit and the southern parts of Miri in haze.<sup>55</sup>

Sarawak NREB chief enforcement officer Dania Goyog acknowledged that plantations were carrying out open-burning activities.

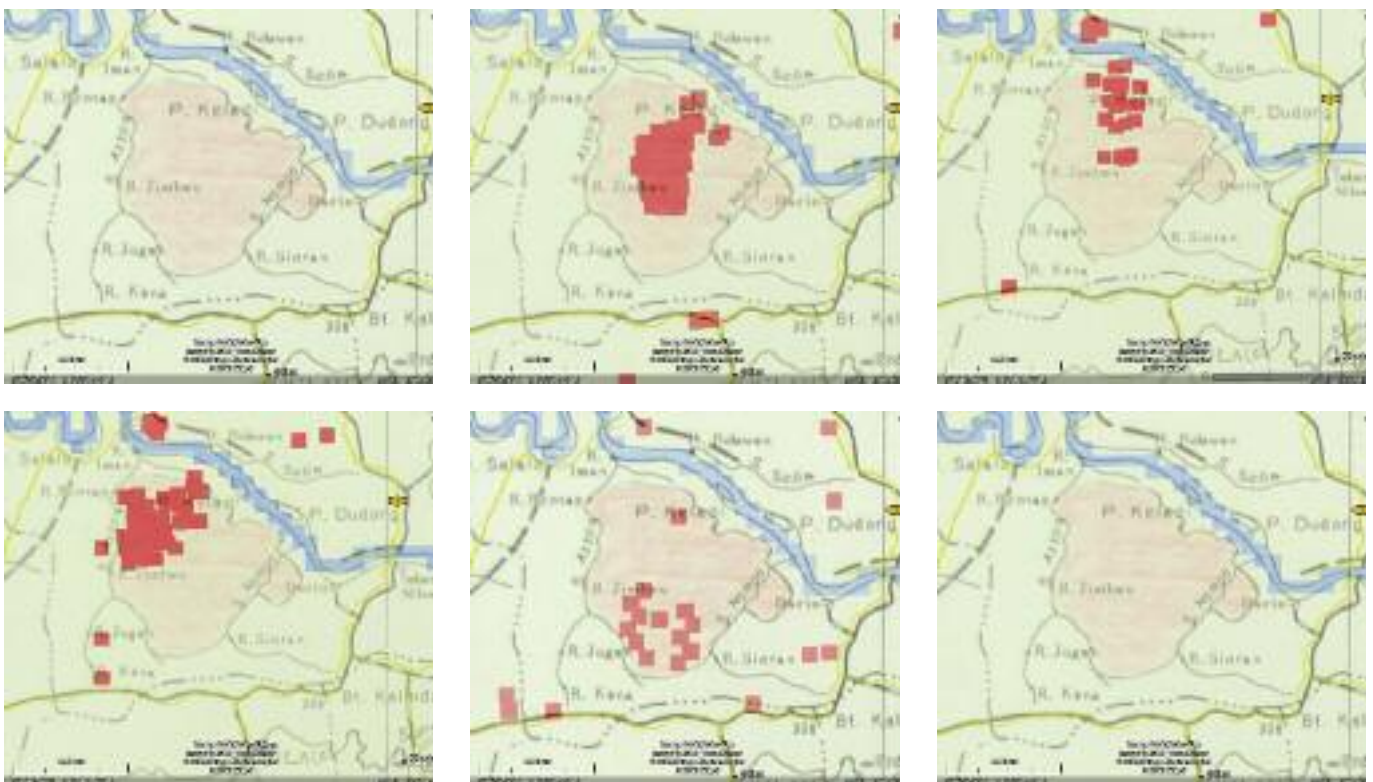
*"These plantation companies had recently applied for permits from the NREB to burn their waste products. When we issued them the permits, the weather conditions throughout the state were good and there was no danger of haze or serious air pollution. The permits issued to them were for controlled burning on a limited scale. If the air pollutant index (API) reached an unhealthy level at the specific area NREB would call for a total halt on open burning."<sup>56</sup>*

## three open burning

continued

FIGURE 17

TIME SERIES OF FIRE HOTSPOTS IN TA ANN'S NAMAN PLANTATION CONCESSION.<sup>57</sup>



**Notes:** (f.l.t.r. top: 2000-2002; bottom 2003-2005). Hot spots: red; concession area: pink.

Another plantation project in the vicinity of Sibu town is Ta Ann's Naman Planted Forests project which is also planted with oil palm. The land was cleared for the Ta Ann Naman project between 2001 and 2004 using fire, as can be seen from a fire hotspot time series for the area (Figure 17).

The Ta Ann Naman concession overlapped with a Japanese funded research site, which was the only place in Sarawak where long term research is conducted on the endangered tree species ramin (*Gonostylus* spp.).

The company retained two small blocks of intact peat swamp forest but researchers assess that it is inevitable that ramin will slowly disappear from the area because the disturbance caused by the oil palm establishment seems to have triggered high rates of mortality.<sup>59</sup>

### 3.6 the asean transboundary haze agreement

Advanced as Sarawak's Fire Danger Rating System may be, it still poses a fire risk, as well as contributing to carbon emissions and the haze problem. Open burning is no longer considered an acceptable, modern or environmentally friendly practice in the plantation industry. Malaysian Minister of Plantation Industries and Commodities, Peter Chin, labeled such practice as an "unacceptable method" to clear areas for oil palm.<sup>60</sup> The Roundtable on Sustainable Palm Oil has also ruled out open burning as a certifiable practice. In addition, the ASEAN Transboundary Haze Agreement, to which Malaysia is a signatory, strongly discourages open burning.

Despite the openings left, the ASEAN Transboundary Haze Agreement is clearly designed to put an end to large-scale open burning for plantation development rather than to allow the continuation thereof through "controlled burning", such as what is commonly practiced in Sarawak.

FIGURE 18

SATELLITE IMAGE OF THE TA ANN NAMAN OIL PALM PLANTATION (2003).<sup>58</sup>



### 3.7 conclusions

The Malaysian palm oil lobby cannot claim that zero-burning is enforced by law in the entire country when Federal laws do not apply to the country's largest state in this case. Open burning, even on peat land, is routinely allowed and appears to be commonly practised by plantation companies in Sarawak. Apart from the risk of wildfire, open burning speeds up carbon emissions and the air pollution resulting from open burning is a public nuisance and health threat. While the Fire Danger Rating System provides some controls, the Sarawak's "Open Burning Order" is not in line with the spirit of the ASEAN Transboundary Haze Agreement, to which Malaysia is a key signatory.

#### box 3: the asean transboundary haze agreement: an empty shell

Malaysia has been highly critical of its neighbour Indonesia for not signing up to the ASEAN Transboundary Haze Agreement, which it signed together with seven other ASEAN member states on 10 June 2002, and ratified on 5 March 2003. At present, it is not expected that Indonesia will join the "Haze Pact" anytime soon. Indonesian lawmakers again refused to ratify in early 2008, arguing that the pact should be broadened to include the environmental impact of other Southeast Asian countries on Indonesia's territory, for example through illegal logging and illegal fishing.<sup>61</sup>

Even if the Haze Pact was signed by Indonesia, Indonesians and Malaysians would still be exposed to local air pollution from open burning because the agreement merely aims to prevent and control transboundary haze pollution. It does not end open burning and haze within the signatory countries' own boundaries.<sup>62</sup>

In 2003, ASEAN published a booklet "Guidelines for the Implementation of the ASEAN Policy on Zero-Burning" which describes how forestland should be cleared for (oil palm) plantations using zero-burning techniques. However, these guidelines leave wide open the opportunity for the signatories to not apply zero-burning techniques when "not entirely appropriate circumstances" apply. These "circumstances" include "steep terrain where mechanical deforestation and stacking of debris "can be" problematic" and deep peat areas "where access by heavy machinery is difficult" and "non-availability of heavy machinery to carry out zero-burning operations."<sup>63</sup>

## four deforestation

# deforestation

### 4.1 introduction

Malaysia ranks 14th on the list of 17 mega-diverse countries which have 70%, or more, of the planet's biodiversity.<sup>64</sup> The conservation of the ecosystems that harbor this natural wealth is of global concern because the world is losing more species faster and faster. Much of Malaysia's biodiversity is forest dependent, and is thus easily affected by logging and forest conversion for plantations. Malaysia's biodiversity is not safe and sound. The IUCN lists 143 Malaysian animals as threatened with extinction in the near future and 22 species are listed as "critically endangered", the highest threat classification.<sup>65</sup> IUCN lists a further 1,500 Malaysian plants as threatened, with 199 "critically endangered".<sup>66</sup> The contribution of palm oil consumption, for food or biofuel alike, on deforestation in Malaysia is therefore a valid concern for the global community as well as the Malaysian public.

### 4.2 malaysia's palm oil lobby claims

*"The best way to improve your golf is to chop down the rainforest... We get too much rain in Sarawak... it stops me from playing golf"*

**James Wong, Sarawak's Minister of Environment and Tourism (and at the time logging concession holder) on deforestation and climate disruption at a meeting between Wong and an international mission on native rights and rainforests (1988).**<sup>67</sup>

*"In Malaysia, the expansion of oil palm plantations over the last decade came from conversion of other economic crops, i.e. rubber, cocoa and coconut, while the balance came from logged-over forests of areas zoned for agriculture."*

**Yusof Basiron, director Malaysian Palm Oil Council, 2006.**<sup>68</sup>

*"By 1990 we have stopped approving new jungle areas to be covered under plantations."*

**Yusof Basiron, director Malaysian Palm Oil Council, 19 May 2006.**<sup>69</sup>

*"We are not cutting down forests. Most plantations are in their second or third planting cycle, so we are planting on the same plot of land."*

**Michael Dosim Lunjew, Ministry of Plantation Industries and Commodities Secretary-General, 15 May 2007.**<sup>70</sup>

*"We will not use virgin jungle and forest reserves for oil palm cultivation. So the issues written by the foreign press and non-government organizations on deforestation are not occurring in Malaysia."*

**Peter Chin, Minister of Plantation Industries and Commodities, 28 August 2007.**<sup>71</sup>

*"The government will not allow the clearing of forest areas for any new oil palm plantations. We don't have to reduce the protected forests to increase new oil palm plantations."*

**Prime Minister Abdullah Ahmad Badawi, 25 June 2008.**<sup>72</sup>

*"Sarawak is not facing the destruction of its forests and ecosystem as a result of the cultivation of oil palm." (...)*

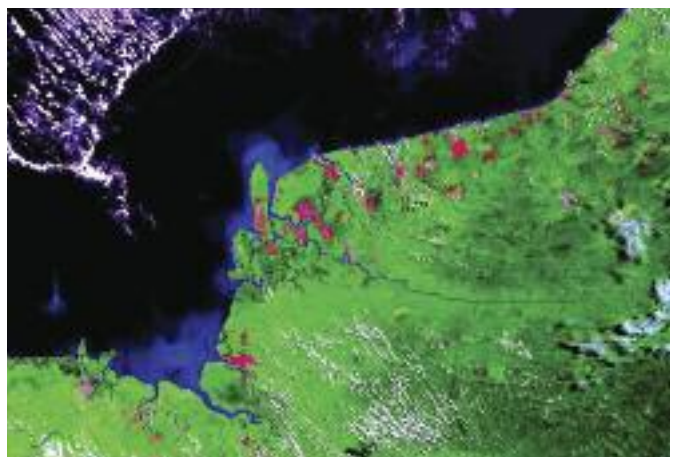
**Abdul Taib Mahmud, Sarawak's Chief Minister, 26 June 2008.**<sup>73</sup>

### 4.3 the reality

Oil palm expansion may not be the only cause of natural forest loss in Malaysia but it plays a principal role. Especially in Sarawak, large tracts of peat swamp forest are being converted for oil palm plantations. While most forests were previously logged before conversion, this does not necessarily mean that their conservation, environmental or social functions were lost. Deforestation in Malaysia is not merely an unfortunate outcome of uncontrollable events or sheer poverty; it is actively legalized by State authorities and some appear to be within the Sarawak's Permanent Forest Estate.

FIGURE 19

DEFORESTATION IN SARAWAK (AUGUST 2008).<sup>74</sup>



**Note:** deforestation in the past 1-3 years. EIA reports suggest that most areas highlighted in pink are oil palm developments.

#### 4.4 the contribution of oil palm to deforestation in malaysia

MPOC claims that oil palm plantations in Malaysia were mostly planted on former rubber, cocoa and coconut plantations. They argue that between 1990 and 2005, the total oil palm area increased by some 2 Mha, while the total area of rubber, cocoa and coconut plantations declined with 1.14 Mha and they thus argue that only the balance is planted on (logged over) forest areas (see Table 3).<sup>75</sup>

Interestingly, the new area opened up for oil palm plantations in the 1990-2005 period (929,000 ha) nearly matches the reported natural forest cover loss in Malaysia over the same period (913,000 ha). So, following MPOC's line of argument, it might well be argued that all deforestation in Malaysia can be attributed to oil palm expansion.<sup>76</sup>

**TABLE 3** CHANGES IN LAND USE OF SELECTED TREE CROPS IN MALAYSIA 1990-2005.<sup>77</sup> in 1.000 ha

LAND USE / CROP	1990	2005	CHANGE
Oil palm	1,980	4,050	2,070
Rubber	1,823	1,250	-573
Cocoa	416	33	-383
Coconut	315	130	-185
<b>Rubber + cocoa + coconut</b>	<b>2,554</b>	<b>1,413</b>	<b>-1,141</b>
<b>New land opened up</b>	<b>4,534</b>	<b>5,463</b>	<b>929</b>
<b>Natural forest cover (FAO)</b>	<b>20,553</b>	<b>19,640</b>	<b>-913</b>

*Note:* According to a detailed 1991 study by the World Bank, Malaysia's forest area amounted to 18.5 Mha in 1990.<sup>78</sup> The natural forest cover data exclude rubber plantations.

Similarly, it is also possible to look forward using Malaysia's national development plan, MP9 which schedules the following agricultural land use changes for the period 2005-2010:

**TABLE 3** PLANNED CHANGES IN LAND USE OF AGRICULTURAL CROPS IN MALAYSIA 2005-2010. <sup>79</sup> in 1.000 ha

CROP	2005	2010	DIFFERENCE
Oil palm	4,049	4,555	506
Rubber	1,250	1,179	-71
Cocoa	33	45	12
Coconut	180	180	0
Other	870	932	62
<b>Total / change</b>	<b>6,382</b>	<b>6,891</b>	<b>509</b>

The land use changes scheduled in MP9 for 2005-2010 show that for this period, the Malaysian palm oil industry can no longer rely on the conversion of significant areas of rubber, cocoa and coconut plantations (these crops would decline in area by 69,000 ha only, whereas oil palm would expand by 506,000 ha). Almost all new land development in Malaysia over the 2005-2010 period, primarily for oil palm, will depend on the conversion of natural forest, and possibly Native Customary Rights land where a variety of crops are grown that remain unrecorded in the agricultural statistics presented in the 9th Malaysia Plan.

Based on the above data, Malaysia will have cleared some 1,400,000 ha of natural forest (including peat swamp forest) for oil palm expansion over the 1990-2010 period, equal to 70,000 ha per year.<sup>80</sup>

**FIGURE 20** OIL PALM EXPANSION AROUND THE LAMBIR NATIONAL PARK BOUNDARY.



Lambir National Park: spotted area (top); planted oil palm: within white lines (roads). While much of Lambir National Park remains as a magnificent virgin forest, its ecology is badly affected by land clearing around, and hunting within its boundaries. Six of the park's seven species of hornbills have disappeared since 1980, while the number of carnivore, raptor, and primate species has also declined significantly. At least 11 mammal species and 23 bird species have been lost from Lambir. Image: June 2002.<sup>81</sup>

## four deforestation

continued

### 4.5 clearing of virgin forests for oil palm plantations

Virgin or primary forests are made up of native species, they show no clear indications of human activity and ecological processes are not significantly disturbed.<sup>82</sup> Despite some notable cases where virgin forest has been cleared to make way for oil palm<sup>83</sup>, it is unlikely that virgin forests are still cleared for oil palm expansion in Malaysia on a significant scale, merely because most forests have already been logged, at least once. When the Malaysian palm oil lobby says that no virgin forests will be converted “unless they are logged” it is implied that the industry has the right to clear the bulk of Malaysia’s remaining forest as it has already been logged.

In any case, a logged forest (i.e. where trees suitable for trading have been harvested) does not by definition qualify as degraded. Even when the forest’s timber production capacity is degraded by over-felling, the logged over forest often still fulfils crucial environmental and economic functions that are mostly lost when converted into oil palm. Equally important, such forests may still be utilised by indigenous communities who claim rights over them.

When it is suggested that logged over forests may be converted to oil palm plantations (because they are degraded from a logger’s point of view), an inconsistency surfaces with claims made by the Malaysian timber lobby who claims across the board sustainability in the forestry sector:

*“Our efforts towards sustainable forest management have been on-going for 100 years since 1901. Since then, our forests have been managed in a sustainable manner (...).”*

**Plantation, Industries and Commodities Minister Chin, 4 January 2005.<sup>84</sup>**

If this was true, there should not be any degraded forest in Malaysia.

Shifting cultivation has not been a major cause of forest loss in Sarawak since the 1980s.<sup>85</sup> Indeed, from an indigenous farmer’s point of view forests that are subject to traditional shifting cultivation cycles are not degraded.

The reality is that logging in Malaysia, and especially in Sarawak, has in many places been excessive to the point that the natural forest’s timber production regeneration capacity can not be economically sustained: after 2-3 logging operations, all merchantable timbers have been removed. Many of the Planted Forests Environmental Impact Assessment reports state that forests in the project areas studied were “heavily exploited”, “severely degraded” and “devoid of forest” as a result of logging:

*As the site has been harvested for timber for many years, vegetation cover is highly irregular, with some areas nearly devoid of any forest land due to logging damage.*

**Tutoh Forest Plantation EIA, Pusaka KTS, 2000.**

Although such statements must also be seen in the context of EIA consultants’ acceptance that they have to work with plantation projects that have already been licensed out by the Forests Department, EIA consultants occasionally also make desperate appeals for greater conservation efforts:

*The peat swamp forest in Sarawak is declining at an alarming rate as more and more areas are converted to oil palm plantations, resulting in the permanent loss of biodiversity. The retention of any peat swamp forest in areas not subjected to plantation development should be given due consideration. Large-scale destruction of this forest would have long-term ecological impacts on the coastal environment, which will become evident only at a later date.*

**Woodman Kuala Baram Plantation EIA, 2005.**

FIGURE 21

COMPARING MALAYSIA’S  
“SUSTAINABLE FORESTRY”  
WITH BRUNEI.



**Note:** The image illustrates the impact of logging in Sarawak (bottom half) as compared to the virgin forest of Brunei (upper part). White lines represent logging roads and the yellow line represents the national border between Malaysia and Brunei, according to Google Earth. .

### 4.6 clearing forest reserves for oil palm

About one quarter of Malaysia’s land area is categorized as being under the Permanent Forest Reserve/Estate, which comprises forest reserves and protected forests that are managed by the respective Forests Department of individual states.<sup>86</sup> The word “permanent” is misleading because, the PFE in practice is meant to be reserved and protected for production purposes, mostly timber. As such, the Permanent Forest Estate is by and large, production forests.<sup>87</sup>

In addition, contrary to claims from the Malaysian palm oil lobby, numerous plantation projects in Sarawak appear to overlap with “Permanent” Forest Reserves/Estates.

The conversion of Permanent Forest Reserves/Estates into oil palm plantations recently made the headlines in Malaysia when Prime Minister Abdullah Badawi stated that the government was going to prohibit forest clearing for the establishment of oil palm plantations. He stated that the industry should focus on enhancing productivity, and only areas zoned for agriculture would be allowed to be converted (see also Annex I).<sup>88</sup> A day later, Minister Chin of Plantation Industries and Plantations clarified the Prime Minister's statement, hinting that the Federal government was only making a moral appeal as *"states have jurisdiction over their land, we request they do not approve applications to convert permanent forests for agriculture use, especially for oil palm plantations"*.<sup>89</sup>

Three days later, Sarawak's Chief Minister Taib Mahmud responded by saying that Sarawak would continue plantation development because *"our orangutans are safe and we will continue to develop land for oil palm because there's no reason why we should not."*<sup>90</sup>

With Malaysia's Prime Minister's call being contradicted by Sarawak's Chief Minister's statement, the clearing of the Permanent Forest Estate, and the deforestation associated with it, is set to continue in Malaysia.

FIGURE 22

DEFORESTATION FOR PLANTATION EXPANSION, (SOUTH OF MIRI), SARAWAK. JULY 2008.



It is a hard fact that Permanent Forest Estate in Malaysia have been and are deforested for oil palm expansion (see also Figure 23 and Figure 25 further below). In spite of calls from Malaysia's Prime Minister to end this practice, the Sarawak State government seems determined to continue doing so in the future.

FIGURE 23

PLANTATION EXPANSION IN THE PERMANENT FOREST RESERVE (BALINGAN – KUALA TATAU).



**Note:** deforested up to March 2008; light green: still forested; dark green: still forested and inside the Constituted Permanent Forest Reserve (as of 2001). Boundaries shown by dark lines. Oil palm projects in forest reserves are commonly allocated to local companies with no or limited track record in the industry.

#### 4.7 case: deforestation and score

The Sarawak Corridor of Renewable Energy (SCORE) programme is one of the five regional development corridors being developed across Sarawak and Sabah. SCORE aims to boost economic development in Sibul, Bintulu, Mukah, Sarikei and Kapit (the Central Region). The program aims to attract energy intensive industries, which will be using hydropower (28,000 MW), coal (1.46 billion tonnes), and natural gas (40.9 trillion square cubic feet), timber and palm oil resources.<sup>91</sup> In conjunction with SCORE, various joint ventures and foreign investment has been announced in the biofuel industry.<sup>92</sup> The SCORE programme is likely to provide a further drive to the conversion of large tracts of forests in the Central Region, for example in the Rajang Delta. Located in the Divisions of Mukah and Dalat this coastal zone is mostly made up of forested deep peat swamps (4-9m) and mangrove areas. Although most forests have been logged over at least once, tree cover has remained fairly intact due to the limited accessibility in the area. This will change dramatically over the next 5 to 10 years, as oil palm plantations start to dominate the landscape.

Concession maps show that over the past decade large tracts of peat swamp forests in Pulau Briut and Matu Daro have already been licensed to be converted into oil palm plantations (Table 5).

Some 17 plantation projects, covering almost 140,000 ha of peat land, have been allocated to seven different company groups. With 75,000 ha, the RH Forest Corporation and Jaya Tiasa Group are the biggest players in the region, followed by BLD Resources (14,000 ha) and Tradewinds (11,000 ha).

## four deforestation

continued

TABLE 5 PLANTATION PROJECTS IN PULAU BRIUT AND MATU DARO (RAJANG DELTA).

#	PROJECT & DIVISION	AREA	AREA (IN HA, ESTIMATED)	CROP	LAND STATUS*	MOTHER COMPANY
1	Retus Plantation	Retus	4,020	Oil palm	Partly PFE	Tradewinds (60%)
2	LCDA (PELITA) Holdings and Kenyalang Borneo	Siong	8,000	Oil palm	State Land	State government
3	Majestic Vest	Siong	7,500	Oil palm	PFE	Unknown
5	Fame Majestic	Igan	6,000	Oil palm	PFE	Unknown
6	Senandung Masyur	Igan	5,000	Oil palm	State Land	Tradewinds (80%)
7	Lemasan	Daro	1,640	Oil palm	Partly PFE	Tradewinds (70%)
8	Multi Maximum	Daro	4,040	Oil palm	PFE	Ta Ann (85%); LAKMNS (15%)
9	Bintulu Lumber Development (BLD) OPP	Kabang	14,000	Oil palm	PFE	BLD Plantation
10	Hua Seng OPP	Btg Lassa - Btg Lebaan	7,000	Oil palm	PFE	Hua Seng Group
11	KTS Agriculture (to be transferred to BLD)	Rumah Jala	6,245	Oil palm	PFE	KTS Group
12	Lower Rajang OPP	Btg. Paloh - Sungai Lebaan	5,000	Oil palm	PFE	RH Forest Corporation
	Lower Rajang OPP	South of Daro	9,000	Oil palm	PFE	RH Forest Corporation
14	RH Reforestation (Block A)	Batang Lassa	21,300	Oil palm	PFE **	RH Forest Corporation
	RH Reforestation (Block B)	Loba Kabang	2,700	Oil palm	PFE **	RH Forest Corporation
	RH Reforestation (Victoria Square Devt) (Block C)	Bawang Assan	6,050	Oil palm	PFE **	RH Forest Corporation
15	Wealth Houses Development	Pulau Briut	6,000	Oil palm	PFE	Jaya Tiasa
16	Eastern Eden	Pulau Briut	15,000	Oil palm	PFE	Jaya Tiasa
17	Poh Zen	Pulau Briut	5,000	Oil palm	Partly PFE	Jaya Tiasa
19	LDCA (Pelita) Daro	Daro	4,500	Oil palm	State Land	State government
	<b>Total</b>		<b>137,995</b>			

**Note:** Constituted PFE as of 2001; \*\* Planted Forests projects; # refers to the numbers on Figure 25.

### deforestation in permanent forest estate

The PFE maps that have been made public by the Forests Department of Sarawak clearly show that most oil palm projects in Pulau Briut and Matu Daro overlap with Permanent Forest Estate. In fact, no less than 16 out of 17 oil palm projects listed in Table 5 either fully or partially overlap with Permanent Forest Estates. Only three per cent of the oil palm expansion in the area is clearly not located in the Constituted PFE.

The conversion of the peat and mangrove forests is closely linked to logging operations which have gradually removed the best commercial timber from the forest. There are still some

licensed logging operations going on in the area, and the timber that is released from deforestation will allow the sawmills to carry on, until log supplies completely dry up in a few years from now (see e.g. Figure 24 and Figure 27).

After oil palm and the Loba Kabang Planted Forests licenses were issued, deforestation in the former "Permanent" Forest Estates began, especially after 2005. A time series of satellite images (Figure 26) clearly illustrates this process.



FIGURE 24

FINAL LOGGING ROUND IN THE PEAT FOREST OF THE BLD OIL PALM PROJECT AREA.



**Note:** Image: 21 September 2003. As of 2007, this peat area had been cleared and burnt.

FIGURE 25

OIL PALM PROJECTS IN THE CONSTITUTED PFE IN PULAU BRIUT AND MATU DARO.<sup>94</sup>



**Note:** Fat lines with coloured content: Constituted Permanent Forest Estates as of 2001; thin black lines with numbered blocks: oil palm plantations. White areas: State Land.

FIGURE 26

DEFORESTATION FOR OIL PALM IN PULAU BRIUT AND MATU DARO.<sup>95</sup>



**Note:** (f.l.t.r. Dec. 2002, August 2006, May 2008). Red/pink: newly cleared forest lands. Light green: previously cleared and planted with agricultural crops. Dark green: peat forest.

## four deforestation

continued

### pulau briut

Pulau Briut is an island off the coast of Daro that qualifies as a wetland of international importance, especially as it provides a prime habitat for migratory shorebirds and resident water birds such as herons, egrets and storks. It meets 3 out of 4 Important Bird Areas criteria under the Ramsar Convention on the Conservation of Wetlands.<sup>96</sup>

Most of Pulau Briut was mapped as Constituted Permanent Forest Estate in 2001, and as Permanent Forest Reserve in 2004<sup>97</sup> and 2008 (SFD/Alterra 2004, SFD 2008). However, it now seems that only the northern tip of the island, comprising mudflats, will remain in its natural state as a wildlife sanctuary. In 2005/2006, the larger part of the island was licensed out to Jaya Tiasa's "Eastern Eden" project. In 2005, Jaya Tiasa also acquired the oil palm license held by Poh Zhen in the north, and entered into a joint venture with Wealth Houses Development in the south (6,000 ha).<sup>98</sup> In July 2000, Jaya Tiasa proposed its Eastern Eden project to its shareholders as follows:

*"The Proposed Acquisition is in line with JTHB group's intention to venture into Tree Planting activities. This also serves to prove the Group's commitment to support the Government's effort in achieving sustainable forest management. Furthermore, since the Group's core business is wood-based, hence it is only appropriate to embark on this project to ensure continuous supply of timber to sustain our future downstream activities."<sup>99</sup>*

However, in the company's announcements to shareholders in June 2004 and January 2005, the project had rather mysteriously become an oil palm project, without any further explanation or justification.

### 4.8 conclusions

Contrary to denials from the Malaysia palm oil lobby, there is an overwhelming body of evidence that Malaysia's tropical forests (including peat swamp forests and forests where native communities claim their customary rights) have been, and will continue to be cleared for oil palm expansion. Based on statistics supplied by the Malaysian government, it is estimated that the average loss of natural forest in Malaysia for oil palm expansion amounts to 70,000 hectares per year in the 1990-2010 period. Last June 2008, Malaysia's Prime Minister announced that this practice would be prohibited, but the response from the Sarawak Chief Minister, appeared to contradict this statement since he clarified that Sarawak would continue to release forest reserves for further oil palm expansion.

FIGURE 27

THE FINAL YIELD



**Note:** The last batches of merchantable timber from Sarawak's peat swamp forest are stockpiled while deforestation commences. Sibul, July 2008.

## five indigenous peoples

### indigenous peoples

#### 5.1 introduction

Of the 2.5 million people in Sarawak, roughly half belong to over 40 indigenous groups including various Dayak groups. Their identification with, and dependency on their ancestral land, the natural forest, rivers and marine resources still remains strong today. However, logging, roads, oil palm plantations and other forms of development have brought many changes to the traditional way of life of Sarawak's indigenous peoples. Many local communities experience development as something that is forced upon them, and conflicts between local communities and plantation companies are widespread. Almost all conflicts are related to land rights, poor consultation, environmentally destructive logging and plantation development.

The Sarawak Land Code recognises ancestral land through Native Customary Rights (NCR) land, but only if such land had been lawfully created prior to 1 January 1958. Because the State government takes a far more limited interpretation of the Land Code than that of most communities' customary laws and practice, the Courts of Sarawak have been flooded with over 135 NCR related cases filed between 1995 and 2008 by indigenous communities whose land and forest has been or is about to be logged by timber companies or developed into tree plantations. The Sarawak Courts are slow in addressing such cases and most remain pending for a decade or more.<sup>100</sup>

The position of the Penan communities in Sarawak is particularly precarious. These communities were nomadic hunters and gatherers until quite recently and so have no history of settled agriculture (temuda). Claims to their territorial boundaries within which they move about in a season-based cyclical fashion ("penurip") are often denied, even though they are recognized as one of the State's indigenous communities.<sup>101</sup> The Penan can only gain access to land through Native Communal Reserves, but this only at the discretion of Sarawak's Chief Minister and only on the condition that they settle down.<sup>102</sup>

The population of the Penan communities is 15,000, and more than 8,700 of them are concentrated in Baram (Miri Division), with around 3,000 in Belaga (Kapit Division), 1,600 in Miri and 1,200 in Bintulu and 400 in Limbang.<sup>103</sup> Some 21% have permanently settled, but some 75% are considered to be semi-settled, leaving their permanent homes for the forest from time to time. Some 500 Penan (around 5%) chose to maintain their nomadic way of life.<sup>104</sup>

This section reviews the fate of the Penan communities struggle for land, forest and respect for the right to self determination.

FIGURE 28

NOMADIC PENAN (1989)



#### 5.2 malaysia's palm oil lobby claims

*"They are renegades. They are outcast by Penans themselves."*<sup>105</sup>

**Sarawak Chief Minister Taib Mahmud dismissing calls from the Sarawak Penan Association, which represents Penan tribal chiefs, for native customary rights to be recognized for the indigenous Penans, 13 August 2005.**

*"The State government is not only concerned about the environment but also the human needs. Referring to the Penan community in Sarawak, Taib said the state government had "developed a settlement for them."*<sup>106</sup>

**Sarawak Chief Minister Taib Mahmud, 28 June 2008.**

*"The state has established a 30,000 ha reservation for them (the Penan) even though there are fewer than 500 of them."*<sup>107</sup>

**Sarawak Chief Minister Taib Mahmud, 29 July 2008.**

## five indigenous peoples

continued

### 5.3 reality

The cited “settlement” that the Sarawak State government says it has made for the Penan might refer to some longhouses for those Penan groups who have since the 1960s adopted agriculture or to the small number of Penan Service Centres established in the 1990s after Sarawak was criticised worldwide over its logging practices. Yet these villages and Service Centres have not significantly improved their quality of life. Many of the settled and semi-settled Penan communities still live in sub-standard housing conditions with little access to clean water, electricity, medical care, education, or productive agricultural land and forest resources.

A little history must be sketched as context for the “plantation tsunami” that the Penan communities say they now face.

In the early 1980s, logging gathered pace in Sarawak. It has often been alleged that logging concessions were being given out as part of the political patronage system. New legislation were continuously enacted or existing ones, amended, characterised by the progressive circumscription of NCR by the relevant state statutes on forests and land. Some of the recent legal developments have progressively concentrated the decision-making process on matters concerning land and forests in the hands of the Minister of Planning and Resource Management or the senior officers of the state agencies concerned. In some cases, the legal moves have deliberately relocated the power of the judiciary into the executive.<sup>108</sup> It is also widely perceived that such legislative changes were undertaken in order to make it easier for the government to issue logging licenses and there was little or no consultation with indigenous communities.<sup>109</sup>

In the late 1980s, the Penan and other indigenous groups started blockading logging roads in a desperate attempt to save the forests on which they depended. When the blockades attracted international media attention and consumer countries considered restrictions to tropical timber imports, the Malaysian government responded by pouring money into a counter-PR campaign. In addition, several Malaysian NGO leaders were detained due to their work with the local people. Many Malaysian human rights activists remain banned from entering Sarawak to date. The Sarawak State government also retaliated with legal force. It amended the Forests Ordinance so as to criminalize anybody present at a road blockade at the penalty of 2 years imprisonment and a RM 6,000 fine. In 1989, 126 Penan were arrested under the amended Forests Ordinance.<sup>110</sup>

Around the same time, the Sarawak State government promised various special settlements for the nomadic Penan: • *In 1987, the Malaysian government promised to create the Magoh Biosphere Reserve for the nomadic Penan.*<sup>111</sup>

- *In 1990, Chief Minister Taib Mahmud announced that the government had set aside 20,000 ha of forest in the Ulu Melana Forest Reserve for the nomadic Penan.*<sup>112</sup>

- *In 1992, Chief Minister Taib Mahmud announced that 30,000 ha of virgin forest in Ulu Melanak (Limbang Division) had been earmarked for the nomadic Penan. There would be no logging in the area.*<sup>113</sup>
- *In April 1993, Sarawak's State Forests Department Director Leo Chai announced that 52,000 ha of Gunung Mulu National Park and 12,000 ha of Ulu Melana protected forest, as well as the proposed 160,000 ha of Pulong Tau National Park had been identified as biosphere reserves for the nomadic Penan.*<sup>114</sup>
- *In October 1993, Chai told the media that 55,700 ha of virgin forest in Ulu Magoh (5,600 ha), Ulu Tutoh (2,200 ha), Adang Wildlife Sanctuary (5,000 ha) and Ulu Seridan (1,400 ha) would be set aside for the nomadic Penan.*<sup>115</sup>

FIGURE 29

“BIOSPHERE RESERVES” PROMISED TO THE NOMADIC PENAN

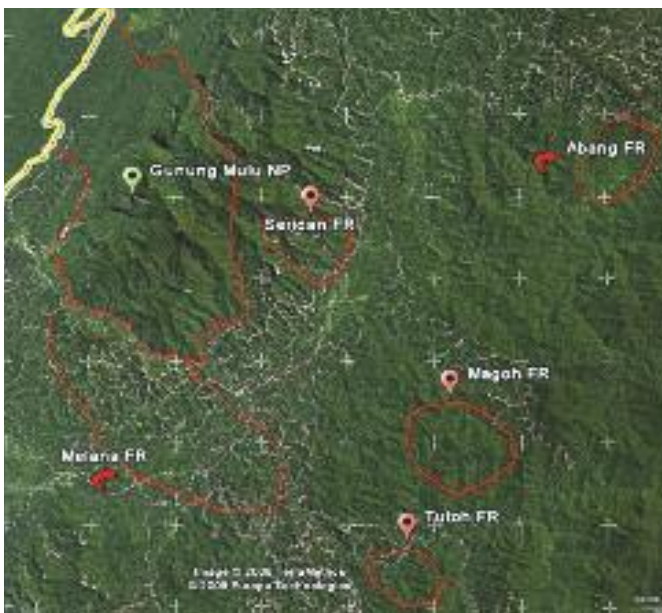


In actual fact, none of these Biosphere Reserves and “special side-aside forests” carry any legal weight under the Sarawak Forests Ordinance. Legally, they do not exist. Rights to forests can only be secured if Native Communal Reserves are established through the Land Code or if Communal Forests are gazetted under the Forests Ordinance for the communities.

The total area of Communal Forest in Sarawak has in fact declined since 1975, with just 5,300 ha throughout Sarawak by 1990.<sup>116</sup> To date it is unclear to what extent new applications for Communal Forests, including those filed by the Penan communities, were either considered or awarded.

Several large blocks of so-called “Protection Forest” exist in the Baram – Tutoh region, but this sub-category of the Permanent Forest Estate only “grants natives regulated rights for forest produce collection for their own domestic use”. Plantation concessions have already allocated some of these areas, such as e.g. Samling’s Layun Planted Forest Plantation, which overlaps with the Melana Forest Reserve.<sup>118</sup>

FIGURE 30

THE PROMISED PENAN BIOSPHERE RESERVES AS OF 1991<sup>117</sup>

**Note:** Red lines: approximate location of the proposed Penan Biosphere Reserves overlaid with a 1991 satellite image. The image clearly shows that Melana Forest Reserve had already been heavily logged at that time. The other Forest Reserves were logged over in subsequent years, leaving only Gunung Mulu National Park as pristine rainforest.

This was supposedly one the “virgin forests” to be set aside for the nomadic Penan, but even when the promise was made, the forest reserve had already been heavily logged (see Figure 30).

In April 2001, Encik Juwin Lehan, president of the Sarawak Penan Association (SPA) wondered what the Penan Reserves were all about:

*“We only hear about the reserves from stories told by locals and tourists we meet in the street. The government never discusses their existence and we of course only ever witness the logging activities in and around our land.”<sup>119</sup>*

Chief Minister Taib Mahmud would later describe the Sarawak Penan Association (SPA) as a bunch of “renegades” (see quote above).

Apart from the Biosphere Reserves, the Sarawak State government also promised to set up a Special Panel on the Penan Community, a Cabinet Task Force Committee on the Penan, a Penan Volunteer Corp, Service Centres and to allocate an annual budget of RM 1 (€ 200,000 at current exchange rates) million for Penan affairs. Despite these promises, the Penan are currently more impoverished than ever. Because of the loss of virgin forest, the nomadic Penan find it harder to gather food and hunt game in the wild, leaving them hungry. Soil erosion causes rivers to become filled with silt and mud and the wild sago on which they depend for carbohydrates are often damaged by the loggers.

While logging continues to further degrade the forest and undermine the Penan’s way of life, the next phase of “development” that the Sarawak State government has in stall is what the Penan refer to as the “plantation tsunami”. Without land rights and the near complete removal of the natural forests on which they depend, the Penan are now deeply worried that the planned oil palm and tree plantation projects linked to companies such as those linked to timber business groups Rimbunan Hijau, KTS, Shin Yang and Samling will take even what little is left for them.

**box 4: malaysia: the need to meet up with expectations**

Canada, Australia, New Zealand and the United States have refused to sign, but Malaysia is one of the 143 signatories to the United Nations Declaration on the Rights of Indigenous Peoples, which was finally signed on September 13, 2007 after more than 20 years of negotiations.

The Declaration recognises the wide range of basic human rights and fundamental freedoms of indigenous peoples. Among these are: the right to unrestricted self-determination, an inalienable collective right to the ownership, use and control of lands, territories and other natural resources, their rights in terms of maintaining and developing their own political, religious, cultural and educational institutions along with the protection of their cultural and intellectual property.

The Declaration highlights the requirement for prior and informed consultation, participation and consent in activities of any kind that impact on indigenous peoples, their property or territories. It also establishes the requirement for fair and adequate compensation for violation of the rights recognised in the Declaration and establishes guarantees against ethnocide and genocide.<sup>120</sup>

While the Declaration on the Rights of Indigenous Peoples is not legally binding, Malaysia’s signature carries moral force and expectations. The embarrassing NCR land conflicts between the Sarawak State government and the State’s indigenous peoples, not least the (semi) nomadic Penan, appear to sharply contrast with Malaysia’s signatory under this landmark UN Declaration.

The situation has already been observed by Malaysia’s Human Rights Commission, SUHAKAM, who recommended in 2007, that the terms of Section 5 (3) of the Sarawak Land Code 1958 which extinguishes native customary land rights, be reviewed as the current provision increases the vulnerability of the indigenous communities’ right to land ownership.

Malaysia’s Human Rights Commission (SUHAKAM) stated that the (Sarawak State) government is obliged to ensure its citizens enjoy human rights, including the right to land. It recommended that in the spirit of ensuring compliance with the government’s human rights obligations, the grievances and complaints of the Penans be looked into and be protected – in particular their rights to native customary land, to education, employment, documentation and healthcare as well as other rights as enshrined in the Universal Declaration of Human Rights (UDHR).<sup>121</sup>

## five indigenous peoples

continued

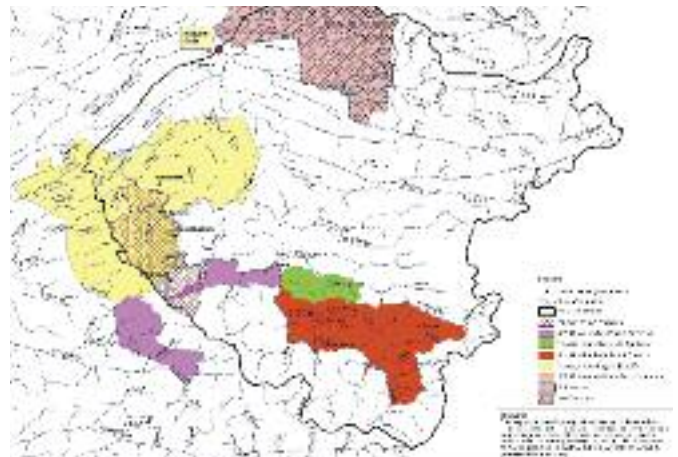
FIGURE 31

ONE OF THE MOST FAMOUS IMAGES OF THE PENAN ROAD BLOCKADES IN THE 1980S.



FIGURE 32

BAKUN CATCHMENT AREA AND SURROUNDING LARGE-SCALE PLANTATION PROJECTS.<sup>126</sup>



### 5.4 case: deforesting penan territory in the bakun watershed

Few hydroelectric projects have been the subject of as much domestic and international controversy as the 2,400 MW Bakun Dam in the Balui River, in the very heart of Sarawak. The dam will be 750 m wide and 205 m high. If completed in 2010, Bakun will be Asia's second largest dam after China's Three Gorges Dam, and will result in the flooding of 70,000 ha of land. The hydroelectric plant will generate power well in excess of present and expected future demand for electricity in Sarawak. Its economic viability hinges on the construction of an aluminium smelter by Rio Tinto in Bintulu and/or the construction of 700km underwater transmission cables that would feed into the grid of Peninsular Malaysia.<sup>122</sup>

When a natural landscape the size of Singapore is deforested and flooded for a single dam, it would be sensible to protect the forests in the watershed feeding into the massive reservoir as upstream development in a tropical environment is likely to trigger heavy soil erosion, and silting which would then reduce the life span of the Bakun Dam. Acknowledging this risk, several Federal ministers have promised that the Bakun watershed would be given protected status to conserve the forest and protect the investment in the dam. In March 1996, the Deputy Prime Minister at the time, Anwar Ibrahim, stated that "we should realize that we will be gazetting [protecting] a catchment area covering 1.5 million hectares which may not have been created if the Bakun project is not implemented."<sup>123</sup>

Twelve years down the line, construction of the Bakun dam is still not complete but 23,000 ha of forest in the reservoir area have been cleared. In the Sungai Asap villages where 10,000 affected people were forcibly relocated between 1999 and 2000, the people are now left to deal with poor housing, poor

roads and inadequate drainage, delays and disputes in compensation payments, lack of mobility, a shortage of farming land and the loss of access to the surrounding forest areas and the income they represent. And the forests in the watershed area are still not protected.<sup>124</sup> In fact, upstream logging has continued, seriously increasing the sediment load in the catchment area.

Between 1999 and 2002, three plantation projects, which are largely located within the Bakun catchment, have been approved by the Sarawak state government. The three licenses are held by RH Forest Corporation and Shin Yang Forestry. The Environmental Impact Assessment (EIA) reports for these projects were approved between 2000 and 2003 (see also Annex II).<sup>125</sup>

The project Environmental Impact Assessment reports delivered the standard justification for the plantation projects ("no significant long term adverse impacts on the environment") and no public consultation was carried out.

The EIA for Shin Yang's Penyuan-Plieran oil palm-tree plantation project failed to recognise that Penan communities had land claims over the land to be developed and that the area allocated to Shin Yang encompasses the traditional territory of the Penan of the Belaga, Seping, Plieran and Danum rivers. In fact, the consultant's EIA report stated:

*No permanent local settlements are found within the site. There is no legal claims of NCR land within the land.*

**JB Agricultural Management Services. Penyuan Plieran FP (Shin Yang) EIA report. January 2000.**

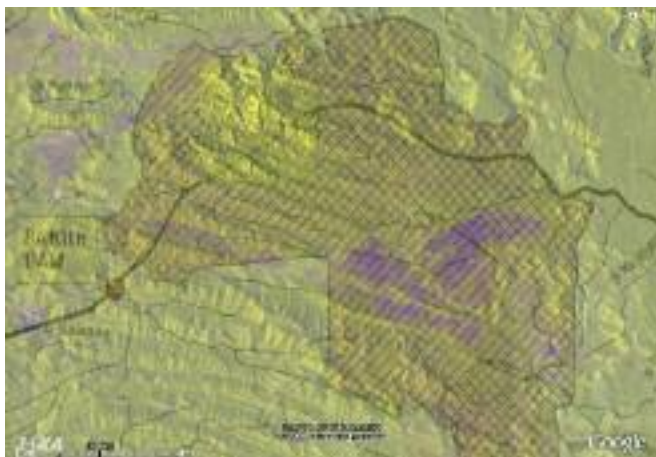
The 60 year licence (LPF/0018) issued to Shin Yang Forestry was issued by the Forests Department of Sarawak on November 19, 1999. The EIA report for the project was submitted in 2000 and approved by the Natural Resources and Environment Board (NREB) without amendments.<sup>127</sup>

When Shin Yang Forestry started clearing land for its single rotation oil palm project in 2001, the Penan community of Long Singu, which has inhabited the Plieran area in the Upper Rajang river for many generations saw its fruit trees and protected forests being cleared without the community's consent. The blatant misjudgement in the EIA report surfaced only in 2006, when two Penan settlements in the area filed a complaint to the Malaysian Human Rights Commission (SUHAKAM), who followed up with an in-depth fact finding mission involving all stakeholders. A briefing note by an independent contributor to the SUHAKAM study, Khoo Khay Jin, shows that the Licensee and/or his appointees:

1. Failed to conduct a competent EIA, specifically on the social component, hence
2. Failed to observe the native customary rights of the people, specifically the Penan, in the area, and
3. Effectively dispossessed the Penan of their basic human, social and economic rights.<sup>128</sup>

FIGURE 33

## THE SHIN YANG PENYUAN-PLIERAN CONCESSION.



**Note:** EIA map overlaid with IAXA imagery as of mid 2007. Deforested areas shown in purple.

The EIA report stated that there were no villages or longhouses within or near the project boundary, but in actual fact eight longhouses fell within the project boundary at that time. They are all Penan villages.<sup>129</sup> The company who commissioned the EIA must have been well aware of this, as one of the Penan communities lives beyond a gate set up by the company, and another of the communities had its longhouse constructed by a subsidiary of the company, also a timber operator in the area, around 1992.<sup>130</sup>

The Shin Yang EIA report shows the importance of public participation in Sarawak's development planning. But after the SUHAKAM investigation was completed, Sarawak's NREB controller of Environmental Quality Penguang Manggil stated publicly:

*"The uneducated rural communities could be easily manipulated by certain non-governmental organizations to oppose development plans. The government is satisfied with the existing system, which is fairly adequate to address environmental issues."*<sup>131</sup>

**Penguang Manggil, Sarawak's NREB controller of Environmental Quality, October 2007.**

## 5.5 conclusions

The present government's interpretation on the nature, stature and extent of the Sarawak's native rights land rights legislation is in conflict with both the people's interpretation and recent judicial decisions of Malaysia's highest court. Thus, the competition over land between local communities with valid customary claims over large parts of Sarawak, and the present Sarawak State government who pursues development through a handful of Sarawak based logging and plantation business groups continues today. The resulting conflicts have been fought out in courts and through international media, but Sarawak's indigenous communities have clearly been on the losing end of this battle.

Particularly hard hit are the Penan communities, whose rights to land, forest resources and self determination have been structurally denied by the Sarawak State government. Step by step, their livelihoods are being undermined by logging and a series of new plantation and dam projects. While no one would deny the Penan the voluntary choice to settle, the present situation is in sharp contrast with the United Nations Declaration on Indigenous Peoples, to which Malaysia is a signatory since 2007 and may well contravene the judicial decisions of the Malaysian courts themselves.

## six environmental impact assessments

# environmental impact assessments

### 6.1 introduction

The International Association for Impact Assessment (IAIA) defines an Environmental Impact Assessment (EIA) as *"the process of identifying, predicting, evaluating and mitigating the biophysical, social, and other relevant effects of development proposals prior to major decisions being taken and commitments made."*<sup>132</sup>

EIAs can provide important information for decision makers that help them to weigh negative and positive impacts, consider mitigation measures to reduce negative impacts and to identify where mitigation is not possible (residual impacts). The value of the exercise depends on the expertise and independence of the EIA consultants, the timing and scope, etc. Public participation is critical in the EIA process, just as is the condition that an EIA is done prior to major decision making so that "zero-option" (no project) remains an option.

In Federal Malaysia, EIAs were introduced via article 34A of the Environmental Quality Act of 1974. Agricultural estates and plantations with an area exceeding 500 hectares have been subject to an obligatory Environmental Impact Assessment since 1994.<sup>133</sup>

In Sarawak, the government body responsible for policy development, implementation and monitoring of EIAs is the Natural Resources and Environment Board (NREB).<sup>134</sup> Generally, EIA regulations in Sarawak require a project proponent to first discuss the scope and depth of an EIA with NREB. Once the EIA report is complete, the company submits the report to the NREB for review. The Board may then accept, amend or refute the report, including its recommendations for mitigation measures. Once the study has been approved, the project developer is expected to start work within a time limit (3 months) and report back to NREB every quarter. The NREB has the power to order a halt to activities on the ground if conditions are violated. In the case where a project (eg. a plantation) is sold to another party, the EIA and conditions set by NREB remain in force, unless the scope of the project is adjusted, such as through additional expansion. Between 1994 and 2006, the NREB handled some 800 environmental reports, mainly for agriculture projects (48% of total).<sup>135</sup>

### 6.2 malaysia's palm oil lobby claims

*"We realize that sustainability is not just about pacifying environmental pressure groups, it is also about ensuring the economic sustainability of our industry and hence our future. We practice sustainable production. The environmental issues associated with plantations in Malaysia are merely perceptions from parties with their own agenda. (...)"*

*There are compulsory Environmental Impact Assessments, or EIAs, to ensure that development is carried out in a wise manner."*

**Peter Chin, Minister of Plantation Industries and Commodities, 24 July 2006.**<sup>136</sup>

*"An Environmental Impact Assessment (EIA) (...) takes into consideration the views expressed by the various parties involved."*

**"Deforestation Watch", 6 March 2008.**<sup>137</sup>

### 6.3 the reality

EIAs do not generally ensure that (oil palm) plantation development in Sarawak is carried out in an environmentally or socially responsible manner. Some of the main weaknesses and concerns about the EIA process and its implementation are raised below:

**Post hoc assessment** From a study of EIAs, it is clear that many of the EIAs were only carried out after the Forests Department Sarawak had issued the Planted Forests licences to the companies. Once licences are awarded (and presumably paid for), there is effectively no option of stopping the project. Indeed, if the option is considered at all, it is generally dismissed as "unrealistic" on the superficial basis that without the project, there would be no development in the area.

**"Copy and paste"** Of the 37 Planted Forests EIAs collected by Friends of the Earth, the majority (24) had been written by the Ecosol Consultancy, with the other 13 carried out by five other consultancies.

When the same consultancy conducts a lot of EIA studies, it gains valuable experience, but it also has the advantage of knowing the format for approved reports - and there is a risk that these can be used as a template for future studies. This is known as the "copy and paste" practice, which has given EIAs a poor reputation among many stakeholders and specialists in Malaysia and Indonesia. Such practices undermine the credibility of EIAs because it is no longer clear which sections are based on actual new assessment work, and which have been copied.

A typical "copy and paste" phrase found in the Planted Forests EIAs compiled by Ecosol Consultancy is the following:

*"The people interviewed were generally not aware of the proposed Project. Once the Project was explained to them, the people generally had no misgiving or uneasiness about it. However, they want to be consulted first on any sensitive issues that may crop up from time to time. One of their main concerns was that the Proponent would come in and take away their*



lands. Other than that, the people generally welcome the proposed Project as they see this as a chance of having decent jobs in the area and better infrastructure.”

**Ecosol 2002. Bahau Linau PF project, EIA report for RH Forest Corporation.**

This exact same paragraph was found in the summaries of 10 different Ecosol Consultancy EIA reports, with another six reports essentially saying the same, with minor variations.

*The people interviewed were generally not aware of the proposed Project. Once the Project was explained to them, the people generally had no misgivings or uneasiness about the proposed Project. One of their main concerns was that the Proponent would come in and take away their lands. Other than that, the people generally welcome the proposed Project as they see this as a chance of having decent jobs in the area and better infrastructure.*

**Ecosol 2003. Lana PF project, EIA report for Samling Reforestation.**

**Subjectivity** Many EIA reports reflect the assumptions of the EIA consultants or the policies of the Sarawak State government. As a result, the assessment is mixed with subjective views. Most of the time, these reflect the consultants' support for the proposed project.

For example, the 1997 EIA study prepared for Rinwood Pelita Oil Palm Plantation in Middle Tinjar (now owned by IOI Corporation) mentioned concerns that the land of local people would be expropriated and that their resource base would be reduced, and then went on to make an appeal to the company management to employ the local people as “we have a moral responsibility to help our less-fortunate fellow mankind to improve himself”. The consultancy, PSS Resources, also had a moral message for the affected communities. “Like it or not, change is the modern way forward.”<sup>138</sup>

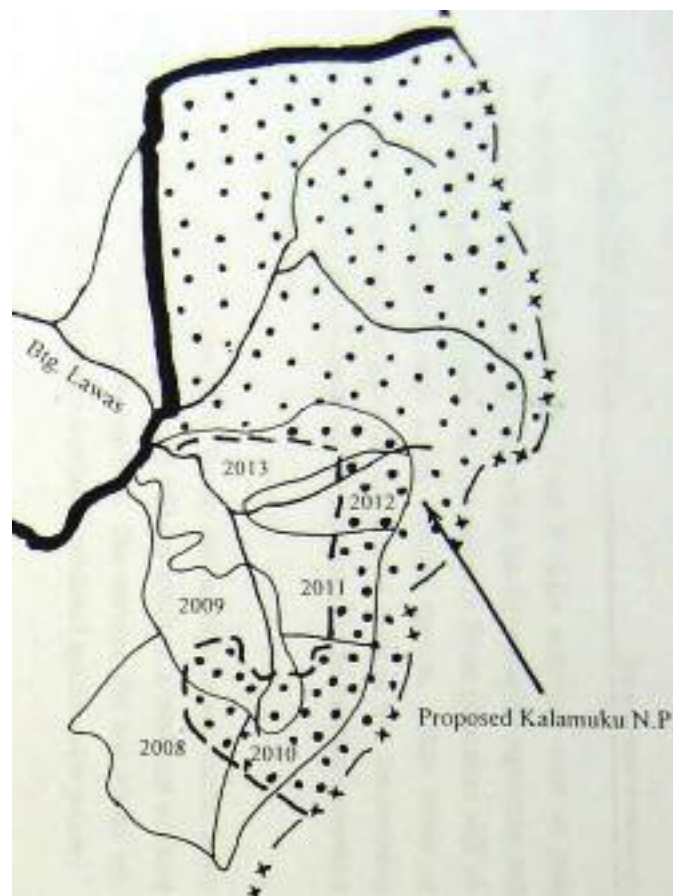
NREB approved the EIA study in June 1997, but the Berawan and Kayan communities apparently did not agree with the “modern ways” imposed on them, and each filed law suits against the company and State agencies. In the view of the Kayan communities, the Provisional Lease was issued without regard to their Native Customary Rights (NCR) over the land. There was no prior extinguishment of their rights; no provision for compensation and no payment of compensation to the plaintiffs according to the law.<sup>139</sup>

**Overlapping land use categories** The way in which the Sarawak State government identifies the size, shape and location of logging, oil palm and tree plantation license areas is not transparent to the general public and potentially affected communities. Often large licence areas typically overlap with other land categories and land uses, and it is left to the EIA consultants to identify these overlaps and recommend appropriate measures.

Numbers indicate years in which compartments are scheduled to be cleared and planted. Dotted area represents the Proposed Kalamuku NP.

FIGURE 34

OVERLAP OF KANAYA FOREST PLANTATION AND PROPOSED KALAMUKU NATIONAL PARK.<sup>140</sup>



In some instances, licensed Planted Forests concessions do overlap with proposed Totally Protected Areas. For example, the proposed Kalamuku National Park and Ulu Sebuang Nature Reserve were found to be located within Samling Reforestation's proposed Kanaya Forest Plantation project site in Limbang. Although the EIA consultant noted the overlap, the EIA study, did not pursue this issue further, merely concluding that “it is inevitable that increasing areas under natural forest will have to be cleared for land development”.

Most of these areas are forested areas. Some fall within forests that have not been gazetted into any legal categories i.e. State Land Forests and thus technically lack any legal impediment to prevent its conversions into other land uses including plantations. However, in such forests, claims of customary rights have a very strong legal foundation to continue to exist, unless separate proclamations made under the Sarawak Land Code 1958 to extinguish the NCR are put into effect.

## six environmental impact assessments

continued

On the other hand, many licensed Planted Forests areas overlap within forests that have been gazetted into the Permanent Forest Estate. The constitution of the Forest Reserves and Protected Forest within the PFE by virtue of the Sarawak Forests Ordinance 1953, explicitly extinguishes any remaining land rights over such lands.

As such, the conversion of land status through these gazetting processes will in fact have major consequences for indigenous peoples because this conversion extinguishes their very NCR, a process which is typically done without proper information disclosure and a free, prior and informed consent process. The EIA studies did not identify this issue.

The EIA consultants are also expected to identify and sketch out potential NCR claims in the Planted Forests license areas. This too has far reaching consequences, which will be discussed below.

**Flaws in the identification of potential ncr land** The EIA consultants need to identify potential NCR claims within the Planted Forest concession boundaries, because these should be excluded from the project area until the Lands and Surveys Department has established whether these claims are genuine and legal.<sup>141</sup> On the surface, this would appear to be a constructive effort to protect local communities' rights. But the way in which potential NCR claims are identified by the EIA consultants is often technically flawed and heavily influenced by the State government's limited interpretation of the Sarawak Land Code.

- *Most Planted Forest EIA reports do not adequately describe how many communities in the project areas were consulted, who was consulted, when, how and in the presence of whom. This leaves questions about whether the EIA findings can be considered representative. A poor assessment has major consequences for the people living in the project areas. In the case of the Penyuan - Plieran Forest Plantation, the EIA consultant completely overlooked eight Penan longhouses, which became apparent only after the company started clearing their land and the Malaysian Human Rights Commission investigated the case (see paragraph 4.3).*
- *In addition, many Planted Forest EIA reports mention that local communities were unaware of the (already licensed) project at the time that the consultant approached them. Only when the communities' opinions are needed about the project, the EIA consultants end up explaining the projects to the communities. For example, the consultant who conducted the EIA for the proposed Tutoh Planted Forest project surveyed only 10% of the local population. Yet, the EIA report concluded that "none of the respondents were aware of the project. After explaining the project to them 64.5% were generally agreeable (jobs and general development in the region); 19.1% were against and 16.1% had no opinion." None of the EIA reports provide details about what information is given to the communities before they are asked to give their opinions.*
- *Although the EIA consultants undertake field work and interviews with local communities, the assessment of*

*potential NCR claims is not done by proper participatory mapping techniques. Not a single EIA study makes it clear if local communities were requested to give their consent to draft maps or given copies of the final draft maps that are presented to NREB for formal approval.*

- *Another serious weakness in the EIA studies is that potential NCR claims are merely sketched out on the basis of the Sarawak State government's limited interpretation of the Sarawak Land Code. The Land Code already limits claims for NCR land as claimants must prove use before the 1st of January 1958. Land is only eligible if it is cultivated or farmed, locally referred to as "temuda", according to the State. However, most indigenous communities in Sarawak rely and lay claim to land and forests beyond the "temuda". Their territorial boundary claims include the "temuda" but also the communal forested areas including old secondary forest and some primary forest ("pulau").<sup>142</sup> The EIA studies identified potential NCR claims on the basis of the State's limited interpretation, ie. only the "temuda" are included. Future conflicts are likely when the EIA is approved and the companies start clearing the communities' "pulau".*

*The State government's limited interpretation of the Land Code has come in question in view of the decision of the Court of Appeal in the case of Superintendent of Lands & Surveys, Bintulu v Nor Anak Nyawai & Ors & Anor Appeal [2005] 3 CLJ 555. In this case, the High Court had first ruled (contrary to the Sarawak State government's policy) that the NCR extends to both cultivated areas and non-cultivated areas. This position was not overturned in the Court of Appeal.<sup>143</sup>*

### box 5: orangutans expected to move on

One Planted Forest EIA study reported that there were orangutans in Block F of Ta Ann's Forest Plantation in Rajang, near the Indonesian border. The EIA report recommends no specific mitigation actions to protect the orangutans, which are a Totally Protected species in Sarawak, other than for the company to educate its workers not to hunt them. The EIA report hinted that the remaining orangutans would be displaced but could either find refuge in Lanjak Entimau wildlife reserve, or otherwise migrate to Indonesia:

*"There are 8 totally protected mammals, including Orang Utan which is found in Area F, but are confined to areas adjacent to the Lanjak Entimau Wild Life Sanctuary and the Indonesia border. Other totally protected mammals are the Bornean Gibbon...."*

*"Clearing of land should be staggered or undertaken in a progressive way in order to allow migration of animals to adjacent forested areas. Care must be taken to ensure that rare and endangered species have moved out of an area before clearing begins."*

**Plantacia, 1999. EIA study for the Pasin & Tekalit Forest Plantation (LPF0010) for Ta Ann Plywood.**

**Sub-standard mitigation measures for protected species** Most Planted Forest EIAs are carried out by forestry specialists with some knowledge of flora and fauna, but with limited experience of ecology or the social sciences. Most EIAs identify “protected” or “totally protected” animal and plant species within the project areas under the Sarawak Wildlife Protection Ordinance (1990). Generally land clearing in stages is suggested as a mitigation measure, providing an opportunity for wildlife to migrate to adjacent forest areas. Such recommendations accommodate the companies’ normal operational practice, and are of little value to immobile species, however endangered or protected. And, as concession maps show, those adjacent areas are often also developed into plantation projects, where EIAs again recommend that wildlife “moves on”.

The EIA studies recommend that forests on steep slopes should be set aside and that riparian buffers be retained along rivers. This is good in theory and implies that of the 2.8 Mha of land leased out, perhaps 50-70% will be deforested. But most EIA studies remain vague and do not specify how the retention areas should be managed.

#### **Lack of transparency and absence of meaningful consultation**

Public participation has considerable significance for how effectively the EIA system works.<sup>144</sup> In Sarawak, EIA reports are not subject to public consultation during the review period, unless the project developer chooses so.<sup>145</sup> Instead, EIA reports are only evaluated by a panel of experts drawn primarily from State government ministries and departments. The review panel’s decision, including possible changes to the project or EIA report, is not made public. Only once the EIA is approved, the reports are kept in the NREB office where they may be viewed by interested parties at the discretion of the responsible NREB officer.

In 2006, a representative of Sarawak’s NREB recommended that “the insights of successful public involvement (in other) countries should be considered to be integrated into Malaysia’s EIA programs.”<sup>146</sup> Following the embarrassing case of the Penyuan-Plieran Planted Forest project (see paragraph 5.4), raised by SAM and followed with the formal investigation by Malaysia’s Human Rights Commission (SUHAKAM), this view was dramatically overhauled by the NREB Controller of Environmental Quality Dr. Penguang Manggil when he was cited in a newspaper as saying:

*“If the EIA study goes for public review, then it might be difficult for the project to proceed.”*

Manggil added that public participation was dangerous as evidenced by cases of locals, such as the Penans, being manipulated and used by NGOs, who claimed to champion their rights in the past.<sup>147</sup>

**EIAs for “regular” oil palm plantation projects** The analysis of EIAs in Sarawak discussed in this chapter so far was mostly based on the EIA reports prepared under the Planted Forest policy. A four-year study by the University Malaysia Sarawak (UNIMAS) identified many similar weaknesses in EIAs prepared for “regular” oil palm projects (i.e. not limited to a single rotation). The study involved examining 68 EIA reports and other documents related to peat land development; field visits to selected plantations; and interviews with developers, environmental consultants and plantation personnel. UNIMAS concluded:

- *Many EIA reports were not able to quantify environmental impacts as the history of large-scale development on peat land in Sarawak was very recent and published data on the impacts of similar development elsewhere were not readily available. Thus the EIA reports were generally descriptive in nature and the cumulative and indirect impacts of peat land development could not be assessed.*
- *The study indicated that the compliance with proposed mitigating measures (as stipulated in the EIA report or approval conditions) were generally poor especially with respect to retention of riparian buffer, land drainage, conservation of water supply source, use of agrochemicals, and monitoring of peat subsidence and ground water level.*
- *For EIA studies on major projects on peat land, the two most important issues requiring detailed consideration were potential land dispute/compensation matters and the drainage of the peat land to be developed.<sup>148</sup>*

#### **6.4 conclusion**

Environmental Impact Assessments for plantation projects in Sarawak are often flawed, in part because of the EIA consultants’ lack of technical capacity but, primarily because the assessments are heavily influenced by the State government’s political views on “wise development”. The fact that numerous plantation projects have triggered legal action from affected communities, in spite of the fact that EIAs were carried out, is a clear sign that the EIA studies fail to meet the objective to ensure wise development.

Public and local community participation in the EIA process could significantly help improve the EIAs’ quality and hence, reduce the projects’ negative impacts but in Sarawak, the State government continues to deny granting the public the right to participation in the process, thereby blocking the necessary checks and balances that are so crucial to sustainable or “wise” development. The State government’s view of public participation counters international and Federal policy and practice, and adversely affects the credibility of the EIA process.

## seven carbon debt

### carbon debt

#### 7.1 the carbon and debt debate

As already mentioned, much of Malaysia's oil palm expansion is now taking place on Sarawak's peat lands. This involves almost entirely removing the remaining peat swamp forest, and in many instances the land is burnt to reduce the land clearing debris. Drainage canals are built to lower the water table, to allow the oil palms to grow.

Although it has been known for many years that drainage causes irreparable soil subsidence due to peat decay, and is associated with carbon dioxide emissions, limited attention was paid to this issue until a market for palm oil biofuel emerged. Motivated by the need to address climate change as well as geopolitical interests, governments all over the world developed incentive packages (binding targets, subsidies) to encourage the growth of the biofuels industry. Attractive commodity pricing has made palm oil a preferred source of biodiesel and biomass feedstock for electricity generation. Having invested in palm biofuel for many years, Malaysia saw an attractive new business opportunity emerge.<sup>149</sup>

The idea that any palm oil could be used to reduce global warming was crushed in November 2006 when Wetlands International published a landmark study on the climate impact of drainage and burning of tropical peat soils in Southeast Asia. The study concluded that:

*"Deforested and drained peat lands in SE Asia are a globally significant source of CO2 emissions and a major obstacle to meeting the aim of stabilizing greenhouse gas emissions, as expressed by the international community. It was found that current likely CO2 emissions caused by decomposition of drained peat lands amounts to 632 Mt/y (between 355 and 874 Mt/y). This emission will increase in coming decades unless land management practices and peat land development plans are changed, and will continue well beyond the 21st century. In addition, over 1997-2006 an estimated average of 1400 Mt/y in CO2 emissions was caused by peat land fires that are also associated with drainage and degradation. The current total peat land CO2 emission of 2,000 Mt/y equals almost 8% of global emissions from fossil fuel burning."<sup>150</sup>*

#### 7.2 malaysia's palm oil lobby claims

The Malaysian Palm Oil Council (MPOC) responded by referencing to a 1999 study, "Environmental Characteristics of Oil Palm Plantations" by I.E. Henson, a researcher with the Malaysian Palm Oil Board (MPOB). Based on his study, MPOC argues that palm oil is almost as beneficial for the climate as (Malaysia's) tropical rainforest.<sup>151</sup>

*"Oil palm plantations absorb almost as much carbon dioxide as our rainforests do."*

**Malaysia Palm: Golden Oil from Green Agriculture. Video released by the Malaysian Palm Oil Council (MPOC), launched in Kota Kinabalu, May 2008.**

FIGURE 35

PALM OIL MILL IN SELANGOR, WEST MALAYSIA.



FIGURE 36

"OIL PALM PLANTATIONS ABSORB ALMOST AS MUCH CARBON DIOXIDE AS OUR RAINFORESTS DO."<sup>152</sup>



## 7.2 the reality

When citing Henson's paper MPOC does not mention that the PORIM researcher did not take into account carbon losses from forest conversion and/or carbon emissions that are released from peat subsidence in existing plantations.<sup>153</sup> It is exactly these emissions that the world is concerned about, and for good reasons.

At the time of Henson's study (1999), it was not yet widely acknowledged that carbon emissions from the full oil palm development process must be taken into account to claim carbon credits, and the various market incentives that come along with them. But along with the rise of biofuel markets a change in international perspectives emerged as well.

FIGURE 37

PERSPECTIVES ON THE RESPONSIBILITY FOR PALM OIL RELATED CARBON EMISSIONS.<sup>154</sup>

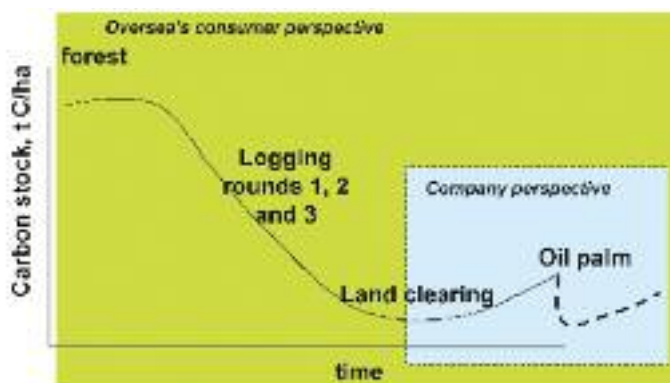


Figure 37, compiled by Van Noordwijk (2008), illustrates how most players in the oil palm industry perceive their own responsibility for carbon stocks in their plantations. Just as in Henson's study, their limited view begins with an empty (readily deforested) "greenfield" and then considers the carbon balance from that point onwards (blue field). The outside world, however, holds the oil palm producers accountable for the carbon balance of the full land use transition from virgin forest to oil palm plantation (green field + blue field).

Whether or not the palm oil producer should take the full brunt of the carbon emissions that result from the gradual forest conversion process could be subject to debate but, in the end, such debate will make little difference to the final result of the deforestation process, ie. the loss of significant carbon stocks originally stored in natural forests and peat soils.<sup>a</sup> For this reason, this report takes a broader perspective in discussing the carbon balance of oil palm plantations below.

Several recent international scientific reviews reaffirm the findings of the Wetlands International study that oil palm plantations are a net source of carbon emissions when grown on land which was

deforested for the plantation, and especially when plantations are established on drained peat soils.<sup>155</sup> These studies also found that oil palm plantations can be a net carbon sink when developed in the right place (mineral soils, no forest). Fagione et al. introduced the term carbon debt to describe this phenomenon.<sup>156</sup>

Carbon debt can be explained using the example of palm oil biodiesel from Malaysian peat land. Carbon (C) is stored in the vegetation of peat forest and in the soil. In a steady state, intact peat forests absorb carbon at a rate of 0.59 – 1.45 ton C per year.<sup>157</sup> At the same time, peat soils may emit the powerful greenhouse gas methane (CH<sub>4</sub>) as a result of micro-bacterial activity.<sup>158</sup> In the short term the overall climate effect of intact peat forests is more or less neutral, but over periods of thousands of years these ecosystems have stored substantial amounts of carbon which may be rapidly released when peat forests are degraded: deforested, drained and/or burned.

### box 6: the ecological importance of peat wetlands

Worldwide, peat lands cover over 400 million hectares of land, which is only about 3% of the global surface of land and fresh water. However, they store huge quantities of organic material, equivalent to up to 2 billion tonnes CO<sub>2</sub>; comparable with 70 years of the current emissions of fossil fuels.<sup>159</sup>

- Peat lands are the most extensive natural wetland ecosystems in Southeast Asia covering 27 million ha;
- Peat lands are of global significance for carbon storage, climate regulation and biodiversity;
- Degradation of peat lands in the region has led to a loss of natural benefits as well as significant problems with fire, local and transboundary smoke haze and major greenhouse gas (GHG) emissions;
- In Malaysia about 10% of the planted area in 2006 was on peat, but this share is set to significantly increase due to expansion in Sarawak;
- In Indonesia about 20-25% of all palm oil is currently on peat, and over 50% of new concessions are planned on peat lands;
- The total carbon stock held in Southeast Asia's peat is estimated at 42.3 billion tonnes, about 12% of the global carbon stock in peat soils in Southeast Asia.<sup>160</sup>

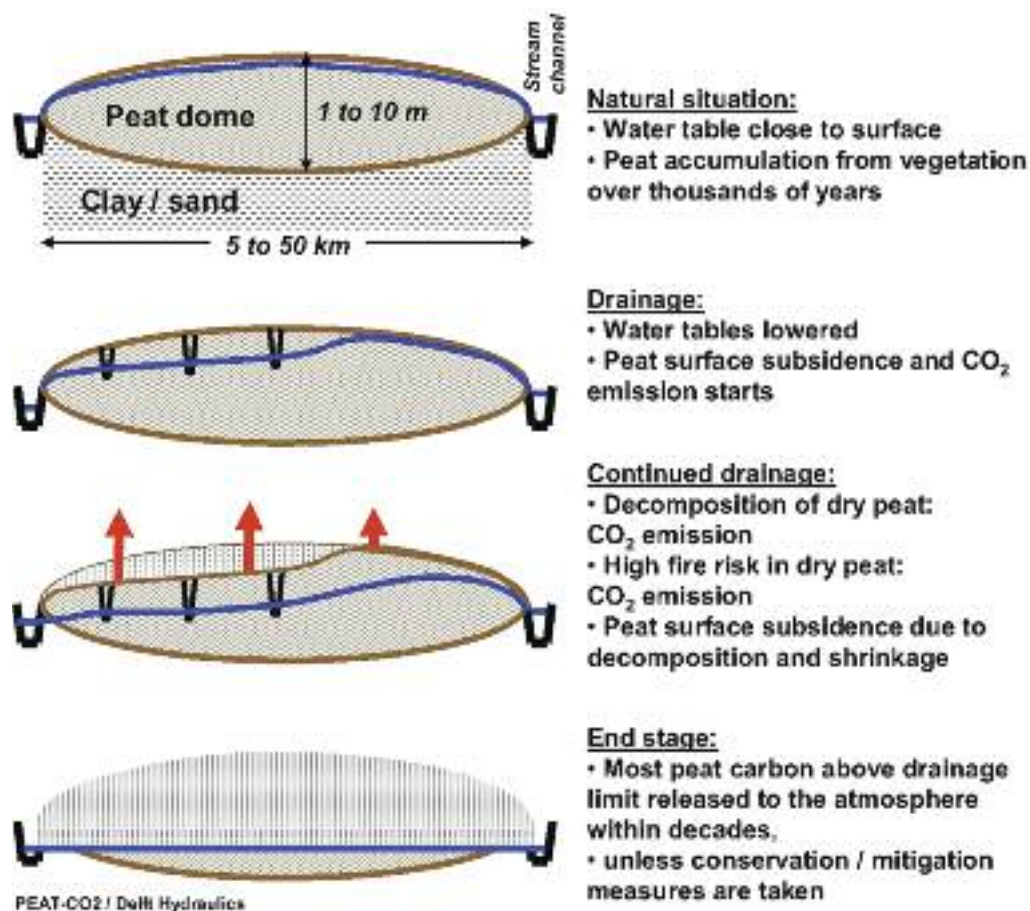
<sup>a</sup> Malaysia has not so far raised the argument that the oil palm industry cannot be held responsible for the loss of virgin forests for oil palm, although it vehemently denies that such forests are converted for oil palm plantations. If it raised the issue, it would imply that Malaysia – the world's second largest tropical timber exporter – would also have to account for the carbon balance of its timber production. The issue becomes even more complicated when it is considered that a good share of oil palm companies were logging companies previously, but also that the use of timber in construction in the market place is often argued for a positive contribution to the carbon balance.

## seven carbon debt

continued

FIGURE 38

THE IMPACT OF DRAINAGE ON A PEAT DOME.<sup>167</sup>



Converting a peat forest into an oil palm plantation unleashes a large part of the carbon that was stored in the forest. During land clearing, the carbon contained in the biomass (trees, shrubs, etc) of the natural peat forest (254 – 290 ton C/ha) is released into the atmosphere, more quickly when burnt and more slowly with zero-burning techniques. The total volume of carbon thus released is much higher than the volume of carbon accumulated in an oil palm plantation (31 – 101 ton C/ha for the latter).<sup>163</sup> Ultimately, the net carbon release ranges from 152 – 259 ton C/ha (or 564 – 962 ton CO<sub>2</sub>/ha). Of course, much of the carbon stored in the plantation (notably the palms) will also be released during replanting, about 25 years later.

In addition, CO<sub>2</sub> is released from the soil either through peat fires and/or drainage. Oil palm does not grow well in waterlogged soils, so drainage is necessary for oil palm cultivation on peat land. This causes the stored carbon to oxidize and form CO<sub>2</sub>. The thickness of the average peat layer is at least three metres in Malaysia<sup>162</sup>, and one hectare of peat contains 1,800 tons of carbon.<sup>163</sup> Peat land drainage between 60-100 cm<sup>164</sup> results in annual emissions of 50-90 ton CO<sub>2</sub>

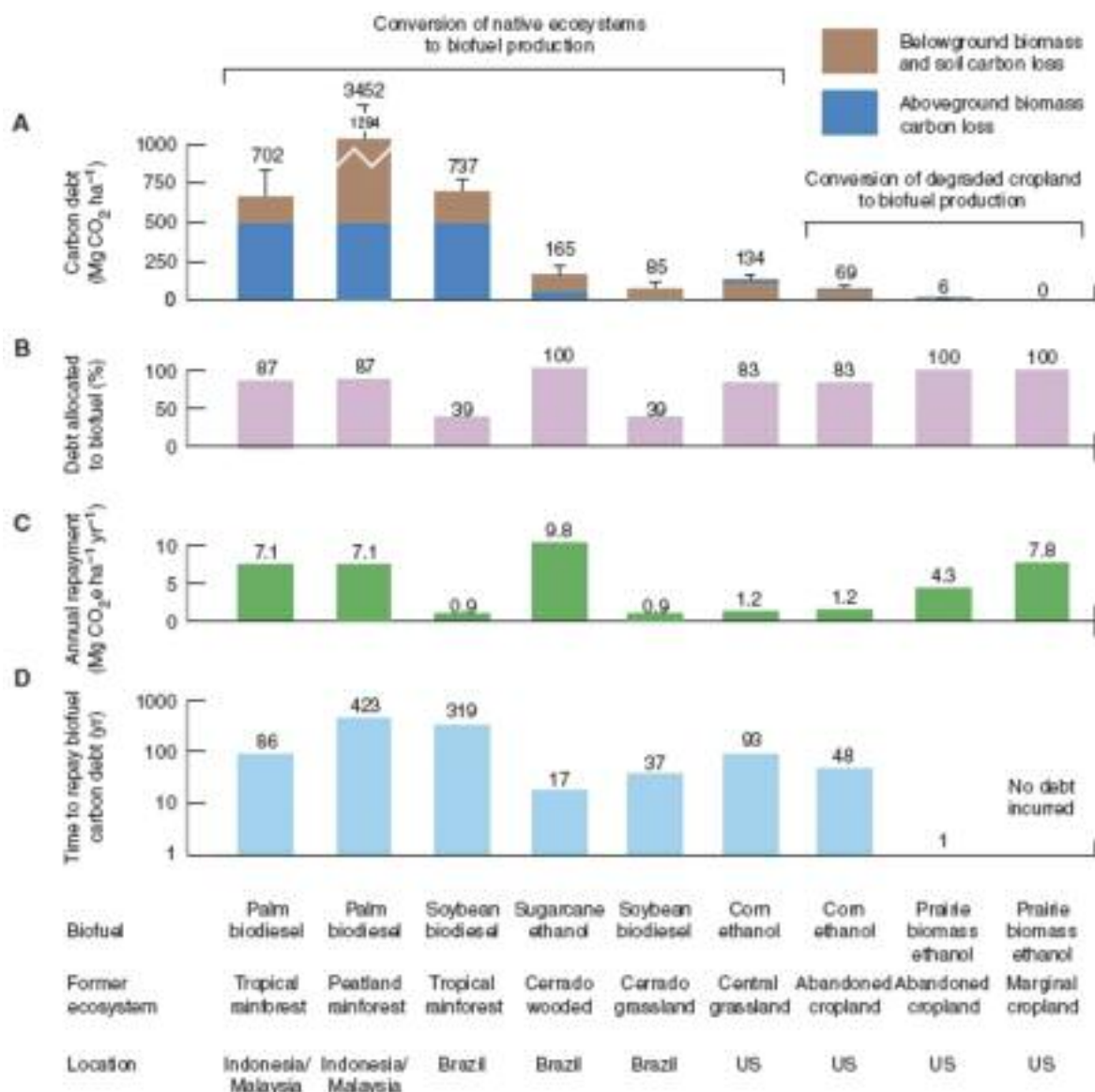
per ha per year.<sup>165</sup> These soil carbon emissions will continue as long as the peat is drained and the carbon oxidizes, and as long as the peat decomposes, the plantation manager will need to deepen drainage canals so as to keep water tables up to standard.<sup>166</sup>

The carbon emissions resulting from converting natural peat forest into an oil palm plantation can be offset by carbon savings from substituting fossil diesel by biodiesel. Fagione estimates that oil-palm biodiesel produced on one hectare of land saves 7.1 tonnes of CO<sub>2</sub>.<sup>168</sup> The comparison of the amount of CO<sub>2</sub> emitted due to peat land conversion and drainage and the annual CO<sub>2</sub> savings gained from biodiesel results in the carbon debt. This is the number of years needed to offset the CO<sub>2</sub> emissions that result from biofuel production, including land development.

Fagione et al. calculated that it takes 420 years to repay the carbon debt for biodiesel from converted natural peat forests. Another study by Gibbs et al. found the carbon debt may be in excess of 900 years.<sup>169</sup> The carbon debt for palm-oil-based

FIGURE 39

TIME REQUIRED TO REPAY CARBON DEBTS FOR VARIOUS BIOFUEL FEEDSTOCK SCENARIOS.<sup>170</sup>



biodiesel from converted non-peat forests is estimated at 86 years. Palm-oil biodiesel from peat forest appeared to be the biofuel with the worst CO<sub>2</sub> performance of all (see Figure 39).

Fagione et al. and Gibbs et al. also point out that if oil palm is planted on degraded land or cropland (on mineral soils), the plantation delivers a carbon credit very soon after planting. Together with sugarcane, oil palm is the highest yielding tropical biofuel crop and potentially provides the greatest carbon offsets. The net carbon effect depends on the type of ecosystem or landscape that is removed to plant oil palm.

Compared to other crops, the carbon debt for palm oil has a broad range, with on the one side of the spectrum palm oil which has a short carbon debt, and at the other end, palm oil which has a (very) long term carbon debt. While palm oil that is grown on degraded mineral soils can deliver carbon credits within a few years; palm oil grown on peat and palm oil grown at the expense of forests will have a long term debt. In the case of Sarawak, there is not a lot of empty or suitable land and therefore inevitably a large part of the oil palm expansion is planned in the forested peat lands and forested (including NCR) lands on mineral soils.

# seven carbon debt

continued

FIGURE 40

THE 'CARBON PAYBACK' TIME FOR BIOFUEL CROP EXPANSION PATHWAYS ACROSS THE TROPICS.<sup>171</sup>

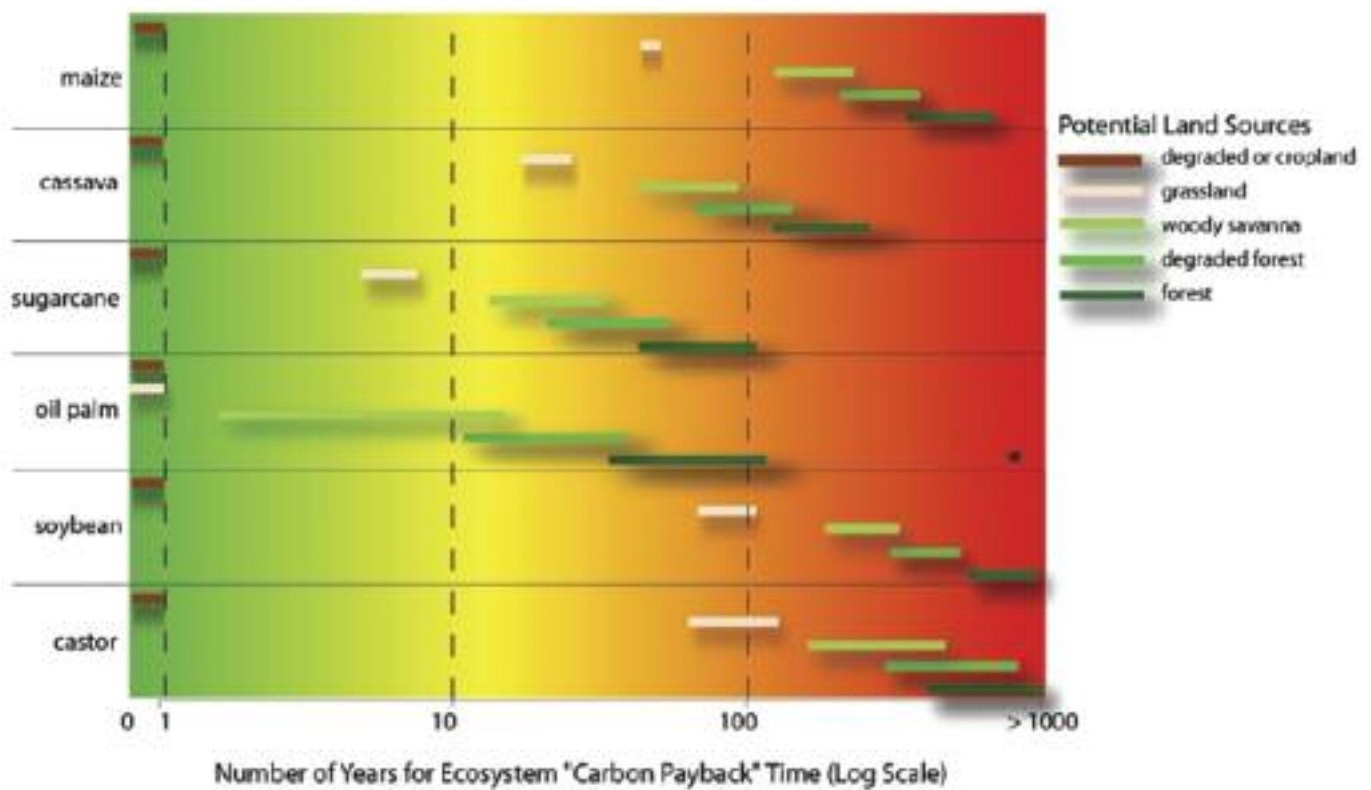


FIGURE 41

DEFORESTED AND BURNT PEAT IN BINTULU (2006).



Fagione et al. concluded that increasing yields of oil palm plantations in peat land has no significant impact on the carbon debt: a rise of 10% yield reduces the carbon debt merely from 918 years to 587 years.

### 7.4 Conclusions

The Malaysian palm oil lobby's claim that palm oil absorbs almost as much carbon as the tropical rainforest is misleading. If oil palm is grown on deforested land, especially peat soils, it will take decades and even centuries, to compensate for the carbon emissions before carbon credits can be claimed. If oil palm is grown on "empty" non-peat land, palm oil can generate carbon credits within years. Unfortunately for Sarawak, much of its oil palm expansion is taking place in deep peat lands and there is little non-forested, unused and truly degraded alternative land available.



## eight mpoc and other responses to the “anti-palm oil campaign”

### mpoc and other responses to the “anti-palm oil campaign”

#### 8.1 introduction to mpoc

The Malaysian Palm Oil Council (MPOC) is “charged with spearheading the promotional and marketing activities of Malaysian palm oil in the effort to make it the leading oil in the global oils and fats market”. Its mission is to promote the market expansion of Malaysian palm oil and its products by enhancing their image and creating better acceptance through awareness of various techno-economic advantages and environmental sustainability of palm oil.<sup>172</sup>

In 2007, MPOC's income totalled RM 28 million (€ 5.8M at current exchange rates), 99% of which is contributed by the Malaysian Palm Oil Board (MPOB).<sup>173</sup> MPOB is a government body that reports to the Minister of Plantation Industry and Commodities, Peter Chin.<sup>174</sup>

MPOC has the same legal structure as the Malaysian Timber Certification Council (MTCC) and is registered as a company limited by guarantee. MPOC was previously known as the Malaysian Palm Oil Promotion Council (MPOPC).<sup>175</sup> Like MPOB and MTCC, MPOC ultimately reports to the Ministry of Plantation Industries and Commodities.

*“We will present accurate facts to all those who are against palm oil, whether for economic reasons, or due to concerns over global warming or because they are agents to palm oil competitors.”*

**Malaysian Plantation Industries and Commodities Minister Peter Chin, Kota Kinabalu, 3 May 2008.**<sup>176</sup>

#### 8.2 key players of the mpoc

After having moved through various other semi-governmental palm oil bodies, Tan Sri Datuk Dr. Yusof Basiron was appointed Chief Executive Officer of the MPOC in March 2006.<sup>177</sup> During his first appearance in the media in his new function, he put forth his personal commitment to MPOC's cause as follows:

*“For me, this (anti palm oil campaign) is economic sabotage of the highest order. They are not far from the current group who are labelled as terrorists. Palm oil is our lifeline and they are keen to destroy this”.*

**Tan Sri Dr. Yusof Basiron, Chief Executive Officer of MPOC, 4 March 2006.**<sup>178</sup>

MPOC has 40 employees, including a 14 member Board of Trustees whose composition includes the chairman Lee Oi Hian (CEO of Kuala Lumpur Kepong), 3 representatives of the Ministry

of Plantation Industries and Commodities, 2 government owned or managed companies (Felda, SALCRA), 3 representatives for the Malaysian Palm Oil Association (UP, IOI and Sime Darby), 4 for other trade and smallholder associations and, through Pasir Gudang Edible Oils, the world's largest palm and lauric oils trader Wilmar International (see for details Annex III).

#### 8.3 mpoc's activities

MPOC groups its activities within three main activity programs:<sup>179</sup>

1. *Anti Palm Oil Campaign*
2. *Promotion and Branding*
3. *Wildlife Conservation Fund*

**“Anti Palm Oil Campaign”** Odd as MPOC's campaign's name may seem for an organisation that aims to promote palm oil, MPOC's “Anti Palm Oil Campaign” is intended to counter industry critics. So, it should really be considered an “Anti-Anti Palm Oil Campaign”. The campaign depicts the Malaysian palm oil industry as a victim of a conspiracy between Western non-governmental organisations and the soy industry, which are accused of having overlapping “commercial” interests.

*Revealing this today, Malaysian Palm Oil Board director-general Datuk Dr. Yusof Basiron said the smear campaign, which linked the palm oil industry with the alleged destruction of orangutan's habitat in Sarawak, was the latest tactic employed by those such as members of the soy bean oil industry. “This has actually been going on for quite a while, involving among others the use of the Internet to spread lies about the palm oil industry.”*

**Yusof Basiron, DG MPOB, 21 December 2002.**<sup>180</sup>

MPOC is supported by various large PR firms such as Perception Management and TBWA-ISC to assist it in its counter campaigns. In November 2006, MPOC reportedly launched a £500,000 PR-services tender from its office in Britain.<sup>181</sup> In December 2007, a full service contract was won by Omnicom Group's TBWA-ISC.<sup>182</sup>

TBWA's Malaysian office designed the MPOC Promotion and Branding Campaign so as to “re-educate” misinformed consumers. Aaron Cowie, chief operating officer of TBWA-ISC's Malaysian office, puts it plain: *“We tell consumers that Malaysian palm oil is good for nature and humans”.*<sup>183</sup>

## eight mpoc and other responses to the “anti-palm oil campaign”

continued

**Promotion and Branding Campaign** MPOC produces a vast number of glossy reports, info-advertorials, television-commercials, websites and on-line videos that portray Malaysian palm oil as an environmentally-friendly product and as a healthy vegetable oil. MPOC also regularly organises trade promotion missions to convince policy makers in major markets such as the European Union and the United States that “*Malaysia palm oil is sustainable*”.

### box 7: mpoc's efforts to garner supportive partners

MPOC not only hopes to convince its target groups to accept its claims, it also actively lobbies to mobilise media institutions, government bodies and legislators to take on the palm oil industry's critics. Through its various offices in Brussels, the USA and elsewhere, MPOC lobbied for support from, among others, the New Straits Times Press<sup>191</sup>, the Asian Development Bank<sup>192</sup>, the EU<sup>193</sup> and the Indonesian government.

In Indonesia, MPOC works with the Indonesian Palm Oil Council (IPOC), a hybrid Indonesian industry-government palm oil lobby organisation comparable to MPOC. Malaysia and Indonesia have so far launched their anti palm oil / counter NGO campaigns twice. These campaigns are reportedly worth hundreds of thousands of Euros.<sup>194</sup> After a joint Malaysia – Indonesia press conference in May 2007, the Indonesian Minister of Agriculture was quoted in a statement that was remarkably close to the favoured line of the Malaysian palm oil lobby:

*“The allegations by NGOs were baseless because Indonesia does not destroy its natural forest and they only plant on land already earmarked for agriculture.”*

**Indonesia's Minister of Agriculture Anton Apriyantono, May 2007.**<sup>195</sup>

### The Malaysian Palm Oil Wildlife and Conservation Fund (MPOWCF)

Like the launch of the joint Malaysian – Indonesian NGO counter campaign, the launch of MPOC's conservation fund has also become one of MPOC's annual media events. It was first launched in 2006, again in 2007 and again in 2008.<sup>196</sup>

With the fund, MPOC copies the work of conservation organizations that publicize information about the relationship between oil palm plantations and wildlife, both positive and negative. But the objective of the MPOWCF, as described by MPOC, is to highlight only positive news about palm oil and wildlife. The fund's goal is to finance organizations and studies that “*help portray a good image for Malaysian palm oil by providing assurance that its cultivation does not cause deforestation or loss of wildlife and their habitat*”. Supported projects would need to “*take into consideration the overall impact (of conservation measures) on the palm oil industry*.”<sup>197</sup> In July 2008, the first project funded by the MPOWCF came out with news that nicely fitted the fund's goals: “*Orang utans survive in forests within estates*”.<sup>198</sup>

### 8.4 MPOC ignorance of the UK Advertising Standards Authority (ASA) ruling

In 2007, Friends of the Earth Europe challenged MPOC through the UK Advertising Standards Authority (ASA) by filing a formal complaint regarding MPOC's “*Gift from Nature, Gift for Life*” television commercial produced by TBWA for MPOC, which was broadcasted by the BBC in 2007. The commercial claimed: “*Malaysia palm oil. Sustainably produced since 1917.*” After due review, which including hearing MPOC's arguments, ASA ruled in favour of Friends of the Earth Europe and recommended that the BBC no longer broadcast the misleading commercial.<sup>199</sup>

*“MPOC had not provided substantiation to show that all palm oil plantations in Malaysia met criteria for sustainable production (not least because those criteria were not yet in existence), we concluded that the claim “sustainably produced” was likely to mislead.”*

*“The ads should not reappear in their current form.”*

**UK Advertising Standards Authority, 9 January 2008.**

MPOC's 2007 Annual Report applauds the perceived positive impact of the media campaign on BBC World, Euronews and CNN, which includes the TV commercial, but does not mention the fact that several formal complaints were filed with the ASA in 2007. The Annual Report also does not make any reference to ASA's final ruling.<sup>200</sup> The “*Gift from Nature, Gift for Life*” commercial can still be viewed on the MPOC website.<sup>201</sup>

### 8.5 MPOC's palm oil labeling ambitions

Earlier in 2008, the Roundtable on Sustainable Palm Oil (RSPO) adopted national standards for responsible palm oil production on the basis of a broad multi-stakeholder process. Several Malaysian palm oil companies subsequently requested audits of their estates. At the time of completion of this report only one Malaysian company (United Plantations) was RSPO certified. Some others may follow in the coming months. These companies are likely to have experienced firsthand that meeting responsible management standards is not that easy, and they are unlikely to support the view that what they achieved is in fact already practised by all other Malaysian companies. Yet, in July 2008, MPOC's director Yusof Basiron prematurely stated in a blanket statement that:

*“The planting of oil palm trees has always been carried out legally and responsibly.”*

**Yusof Basiron, MPOC, 7 July 2008.**<sup>202</sup>

These companies' answer to this question is critical because MPOC's chief executive has announced his intention to launch MPOC's own palm oil label. The question arises as to whether those companies which are both members of RSPO and direct or indirect members of the MPOC Board of Trustees (United Plantations, KLK, Felda, IOI, Tabung Haji Plantations, Wilmar and Sime Darby) support the MPOC's CEO statement above in view of his claim which is even more sweeping than the claim than the

claim which the ASA had ruled was misleading. These companies' answer to this question is especially critical because MPOC's CEO went a step further and (for the second time) announced his intentions to launch MPOC's own palm oil label:

*"We'll embark on a nationwide exercise in which planters in Malaysia can go through a certificate of assurance with the MPOC (Malaysian Palm Oil Council) and MPOB. This certification assures edible oil buyers all over the world that Malaysian palm oil is produced legally and responsibly on agriculture land, just like soy and rapeseed oils. Such a verification scheme can be backed by law as every plantation is licensed and registered with the MPOB."*

**Yusof Basiron, MPOC, 7 July 2008.**<sup>203</sup>

It is now imperative for MPOC to shed light on the criteria and verification mechanisms that would provide the basis for the MPOC/MPOB labelling scheme.

Based on experience with a similar scheme launched by the Malaysian Timber Council Certification (MTCC) in the earlier part of this decade, this certification of assurance for oil palm, is unlikely to improve the realities on the ground. The MTCC scheme attempted to develop some advanced mechanism that would allow Malaysian forest managers and timber exporters to claim sustainability. However, the MTCC certification scheme has been and continues to be widely criticized for a variety of reasons, most notably for its lack of sincere stakeholder consultation, weaknesses in the scope of the system, for its inability to adequately address the NCR and for claiming that the MTCC scheme is in line with the standards of the international Forest Stewardship Council (FSC) without approval of the latter.

The launch of an MPOC/MPOB label also has implications for the Malaysian Palm Oil Association (MPOA) and the seven companies which are directly or indirectly represented in MPOC's Board of Trustees and which are also RSPO members. When these companies applied for RSPO membership, they signed up to RSPO's Code of Conduct, including Article 2.1 which stipulates that: *"Members will not make any misleading or unsubstantiated claims about the production, procurement or use of sustainable palm oil"*.<sup>204</sup> MPOC's claims cited above could be seen as a breach of the RSPO's Code of Conduct.

It is also unclear how the MPOC chief executive's plan to launch an MPOC/MPOB label relates to a statement made by Malaysia's Plantation Industries and Commodities Minister last June 2008, who was quoted as saying that *"RSPO is a forward-looking scheme between the planters and consumers. As long as both parties have a clear path on maintaining sustainability, this should be the way for the industry. Eventually, those who want to come into this industry would have to comply with RSPO standards"*.<sup>205</sup>

## 8.6 MPOC's credibility

Following the accumulation of a number of incidents, such as MPOC's efforts to discredit NGOs during the 5th RSPO Roundtable meeting and the ASA ruling MPOC may have to confront its

crumbling credibility as a result of growing concerns within the palm oil industry itself that MPOC might be doing more harm than good.

Such was the sentiment of participants after MPOC's own International Palm Oil Sustainability Conference 2008 (IPOSC 2008) in Kota Kinabalu in April 2008. Following a series of constructive discussions on sustainability issues in the palm oil industry, MPOC launched a new version of its promotional video *"Malaysia Palm Oil: Golden Oil from Green Agriculture"* that repeated the claim that *"Malaysia Palm Oil is Sustainable"*. This particular video clip was endorsed by the Malaysian Ministry of Plantation Industries and Commodities and the Malaysian Palm Oil Association (MPOA).<sup>206</sup>

According to Rhett Butler of the conservation information website Mongabay.com, IPOSC conference participants from the industry expressed some concerns about MPOC's promotional line:

### box 8: mpoc's credibility questioned by industry players.

*"MPOC must get rid of that video,"* said a senior executive with a major plantation firm. "A few of the statements are so blatantly untrue that it undermines our credibility. It doesn't matter that some of the video is accurate. Environmental groups are going to focus on the obvious fallacies and use them against us."

*"Dr. Basiron's comments are a liability,"* said a senior researcher with an agrochemicals firm. *"Most of what he said was accurate but when he makes ridiculous claims on biodiversity loss and deforestation, it only serves to help the greensies and tarnish the image of the MPOC."*

An executive from another plantation company said he was surprised that the MPOC made the same mistakes with the new video as it did with a previous advertisement that was labeled misleading by Britain's Advertising Standards Authority (ASA).

*"Basiron should avoid the provocative but inaccurate statements,"* said one executive with a medium-sized plantation firm. *"It does nothing for our reputation."*

*"Dr. Basiron's comments threatened to undermine any goodwill that was achieved by the conference,"* said a representative from a subsidiary of an American company. *"The MPOC video is perfect ammunition for NGOs in that it gives them material for attacking us."*<sup>207</sup>

After the conference, MPOC published the video on its website and on PalmoilTV.com. After Mongabay published the above quotes, a "staff writer for the Palm Oil Truth Foundation", Jon Tomczyk, retaliated with an article: *"Mongabay.com: A Legitimate Environmental Site?"*<sup>208</sup> Readers may judge for themselves:

- <http://palmoiltruthfoundation.com> (see also Box 9)
- [www.mongabay.com](http://www.mongabay.com)

## eight m poc and other responses to the “anti-palm oil campaign”

continued

### box 9: “palm oil truth foundation” and “deforestation watch”

In addition to MPOC’s public strategies, we believe it is also important to highlight some recent developments on particular strategies that, despite their anonymity, are difficult to be de-linked from the entire body of the oil palm lobby. Such strategies include the establishment of what is often termed as “false flag operations”, usually a euphemism for “covert operations conducted by governments, corporations, or other organizations, which are designed to appear as though they are being carried out by other entities. The name is derived from the military concept of flying false colors; that is, flying the flag of a country other than one’s own.”<sup>209</sup>

In this case, the highlight is on the Palm Oil Truth Foundation and Deforestation Watch.

In the course of 2007, the “Palm Oil Truth Foundation” and “Deforestation Watch”, two self-proclaimed “international non-governmental organizations” appeared on the Internet.<sup>210</sup> Set up to address the problem that “*Malaysian palm oil today comes frequently under attack from well meaning but sadly misinformed NGO’s and environmental lobby groups*”<sup>211</sup>, these two websites published a phenomenal amount of papers and responses to those papers that promote the virtues of Malaysian palm oil and depict NGOs as liars, hypocrites, etc. The “Palm Oil Truth Foundation” and “Deforestation Watch” websites do not provide information about their owners, founders, funders and whether or not they are a legal entity.

MPOC, who considers it as one of its core tasks to respond to negative news articles on palm oil on the Internet<sup>212</sup>, has never publicly acknowledged its relationship with the anonymous “Palm Oil Truth Foundation” although the MPOC website presented hyperlinks to the “Palm Oil Truth Foundation” and “Deforestation Watch” as “palm supporters” as of September 2008.<sup>213</sup>

The “Palm Oil Truth Foundation” and “Deforestation Watch” websites are believed to be linked to a Malaysian brand promotion consultant associated with “London Brand Magic”, one L.S. Sya.<sup>214</sup> Sya claims to have founded the Asia Pacific Brands Foundation and The Brand Laureate.<sup>215</sup> He also regularly contributes articles on branding for MPOC’s “Global Oils and Fats Business Magazine”.<sup>216</sup> In November 2006, the Brand Laureate stated that Deputy International Trade and Industry Minister Datuk Mah Siew Keong, who launched The Brand Laureate and Branding Malaysia, had noted that the (Malaysian) government had allocated RM 200 million (€ 400,000 at current exchange rates) for the brand development grant.<sup>217</sup>

Whether or not the “Palm Oil Truth Foundation” is linked and supported by the Malaysian state-sponsored oil palm lobby can only be clarified by Malaysian authorities themselves, including the MPOC. However, what is clear is that both the Palm Oil Truth Foundation and Deforestation Watch are set up to further promote Malaysian palm oil and dismiss its critics.

As to whether or not both websites are doing more harm than good for the Malaysian oil palm lobby, is a question that the Malaysian palm oil industry should consider.

### 8.7 Conclusions

In its efforts to portray Malaysian palm oil as responsible and sustainable, MPOC has often resorted to questionable claims. MPOC nevertheless appears to have chosen to ignore a strong signal from the UK Advertising Standards Authority that its misleading environmental claims can be banned from the media. MPOC continued to make claims that could deliver similar rulings and now seems to have reached a point where the Council’s own industry backers are beginning to consider that MPOC’s work might be doing more harm than good.

The Malaysian plantation companies who are members of both the MPOC Board of Trustees and the RSPO appear to support contradictory standards. On the one hand, they are associated with MPOC’s sweeping sustainability claims and on the other hand they have signed up to the RSPO Code of Conduct which specifies that RSPO members shall refrain from misleading or unsubstantiated claims about the production or procurement of sustainable palm oil.

Acknowledgement of sustainability challenges in the Malaysian palm oil sector is a critical precondition to resolving the very real and serious problems on the ground, such as in Sarawak.<sup>218</sup>

## annex I plantation development, deforestation and nNative customary rights (ncr)

PRESS RELEASE

AUG 6, 2008

### **Plantation development in Sarawak, deforestation and Native Customary Rights (NCR)**

Malaysian government officials have often asserted that plantation development in Malaysia does not involve deforestation. On July 5, 2007, the Minister of Plantation Industries and Commodities stated that Malaysia has not cleared the rainforest for palm oil production in the past 10 years. A year later on June 24, 2008, the Prime Minister himself reiterated that oil palm plantations would no longer involve forest conversions.

However, such claims are contradicted by Sahabat Alam Malaysia's recent discovery that from 1997 to 2004, the Sarawak Forests Department has licensed out some 2.8 million ha of largely forest land for 40 plantation concessions of mainly oil palm and fast-growing pulpwood trees. Since the plantable areas of concessions tend to vary depending on its local conditions, around 1.5 million of these will end up being cultivated.

This figure shows that today at least 23 % of Sarawak land mass is currently under the Forests Department's plantation concession. This is larger than the size of the Perak state.

It appears that approvals for the projects' Environmental Impact Assessments (EIA) were issued by the Sarawak Natural Resources and Environment Board (NREB) in stages, up until 2006. These licences are typically tens of thousands in size and do not involve the controversial Konsep Baru development concept that entails joint-ventures between investors and native land owners. They range from 5,000 ha to the largest at 490,000 ha, the latter of which, a pulp and paper project, has Sarawak Forests Department itself as its project proponent. It is believed that Grand Perfect Sdn. Bhd., a consortium of three timber companies, is contracted to work on the concession's plantable areas of 150,000 ha.

This deforestation process appears to be confirmed by the June 29, 2008, statement of the Sarawak Chief Minister that the state would continue to open up more land for oil palm as Sarawak already "has proper conservation measures to protect its forests". This admission also came with the claim made by Sarawak's Second Planning and Resource Management Minister that the state would not approve projects that could affect permanent forest or protected areas. The latter also acknowledged that Sarawak had since approved 2.8 million ha for reforestation.

However, in light of such disclosures, we are now left with only more questions.

First, we urge the State Government to clarify if the 2.8 million ha for the reforestation is really made up by the said plantations. Second, EIA information on the 40 concessions above appear to show that many of them are indeed falling within Protected Forests and Forest Reserves which form part of Sarawak's Permanent Forest Estate (PFE) as well as on Stateland Forests. If a forest has been cleared and cultivated with oil palm or pulpwood trees, it should no longer be categorised under the PFE or a forest at all. There is no such thing as a planted forest. Plantations are not forests.

In relation to this, we would like to highlight the fact that many of the EIA reports for these 40 projects, also appear to suggest that a major reason plantation development is promoted today in the state is linked to issue that Sarawak forests are no longer able to provide the timber industry with a sufficient supply of timber. It is thus not surprising that most of these concessionaires belong to the timber business groups themselves. How can this be if timber harvesting for Dipterocarp forests within the PFE is supposedly done under the Selective Felling System that operates on a 25-year cutting cycle? If it is indeed true that our timber has been depleted in just 30 years, we can no longer claim to be practising sustainable forestry management.

We are deeply troubled that the Sarawak State Government appears to be oblivious to the criticisms that its development policies are lacking in transparency and good governance. Its EIA process is still done without public participation, information on forestry matters can be difficult to obtain and the plantation licensing process continues to exclude the consent of communities' who exercise Native Customary Rights (NCR) in these areas.

Additionally, we have also learnt that the Department of Lands and Surveys is also overseeing hundreds of smaller plantation developments of largely oil palm that range between hundreds of hectares to a few thousand, categorised as agriculture projects. They appear to be located outside of the PFE, although some may well still be forested areas. We believe that some of these projects may have been designated for the Konsep Baru development. Indeed, the Sarawak Chief Minister has also indicated that Sarawak plans to develop 1 million ha of land into oil palm plantations under its new NCR land development concept by 2010.

As with logging operations, plantation-affected communities also tend to discover that their land would be affected only after work commences on the ground. Plantations will have very harsh environmental and social impacts. After having their land clear cut, the people may be affected by environmental impacts that range from disturbances in the water, soil nutrient and ecological cycles, in addition to erosion, river sedimentation, and threats of fire and pollution from agrochemicals and processing mills.

We thus call for the Sarawak State Government to review its decisions on its forestry licensing process and halt further forest conversions. Sarawak also urgently needs to improve its transparency and information-disclosure in its decision-making process. Equally important, it must accord full recognition on the NCR – both on cultivated and forest areas. The encroachments of NCR land must be put to a stop.

Finally, in light of the many controversies surrounding the forestry industry in Sarawak, we call for a Commission of Inquiry to be instituted to look into all existing allegations against the logging and plantation industry and ascertain why forestry governance in Sarawak remains a closed process, the beneficiaries from such policies and of the industry as well as the full range of the social and environmental impacts of the industry.

**S.M. Mohamed Idris,**

**President Sahabat Alam Malaysia**

## annex II plantation projects in the bakun catchment area

PRESS RELEASE

JUNE 21, 2007

### **Approval of Plantation Projects in the Bakun Catchment Area between 1999 and 2002: SAM Calls for Transparency and Accountability in Sarawak**

SAM is shocked to learn recently that between 1999 and 2002, three huge plantation projects, which are largely located within the Bakun catchment, have been approved by the Sarawak state government. The Environmental Impact Assessment (EIA) reports for the projects were approved between 2000 and 2003.

In an effort to counter mounting criticisms against the Bakun Hydroelectric Project, from 1995 to 2001, several of our Federal ministers have promised that the 1.5 million ha Bakun Catchment Area, a mostly forested region, will soon be gazetted in order to protect the dam. As a matter of fact, our then Deputy Prime Minister himself was widely quoted by local newspapers on March 13, 1996 stating that “we should realise that we will gazette a catchment area covering 1.5 million hectares which may not have been created if the Bakun project is not implemented.”

However today, three projects have been approved in the catchment – the Shin Yang Forest Plantation located in the Murum river basin (155,930 ha), the Bahau-Linau Forest Plantation (108,235 ha) and the Merirai-Balui Forest Plantation (55,860 ha). Both Bahau-Linau and Merirai-Balui, owned by a subsidiary of Rimbunan Hijau, will be establishing pulp and wood tree monocultures while Shin Yang, owned by Shin Yang Forestry, is also undertaking oil palm cultivation. Actual cultivation areas of such plantations will typically cover between 50 and 60 percent of the total concession areas.

The Bakun reservoir catchment comprises some 20 sub-catchments. The main river draining the catchment is the Balui, which in turn is fed by the Murum, Bahau and Linau Rivers. According to the Bakun EIA reports themselves, the annual sediment load in the catchment had jumped from 11 to 29 million tonnes between 1983 and 1993 alone, which can largely be attributed to the advent of timber harvesting activities in the area.

Thus the establishment of plantations in the upstream reaches of Bakun will surely spell a disaster for the dam since such plantations will entail clear-cutting and periodic harvesting and an increase in erosion and siltation rates. Fast growing wood trees would involve cropping cycles of between 10 and 25 years while oil palm will reach its maximum productivity level after 25 years.

The approval of the plantation projects not only violates the promises made by government officials since 1995, but it also contradicts the many recommendations made by the Environmental Impact Assessment (EIA) reports for Bakun.

The Environmental Management Plan (EMP) for Bakun, attached as Appendix 6 to the EIA reports, notes that in areas where rapid forest regrowth is expected, future logging should be controlled to reduce siltation and the sediment load reaching the reservoir. The same also applies to the largest source of sediment associated with land clearing in the catchment above the reservoir

inundation limit. In the long-term, prudent land use management for the catchment must be introduced, one which is based on the principle that the highest and best use of the catchment is the uninterrupted supply of quality water to the reservoir. This is also the fundamental position recommended in the Annex 4 of the EIA for Reservoir Preparation, which details the rationale and requirements for the catchment management of the dam.

Further, a Catchment Management Plan is supposed to have been developed by the project owner, a guide document to address the requirements for the optimum and sustainable utilisation of the catchment resources, emphasising the priority of securing the supply and storage of water.

Hence, how these projects for the plantations were approved in the first place remain a mystery.

All these bring us to the question of the transparency in land and forest governance matters in Sarawak. The Bakun EIA process itself was approved amidst much controversy in 1995 when it was discovered that the Federal Environmental Quality Act 1974 (EQA) was retrospectively amended to allow the authority of the EIA approval for certain projects in Sarawak to be transferred to the Natural Resources and Environment Board (NREB) which is subject to the Sarawak Natural Resources and Environment Ordinance 1994 (SNREO).

Unlike the EIA requirements in Peninsular Malaysia, the law in Sarawak excludes public participation in the EIA process, unless the project proponent so desires. As a result of this exclusion, today, the nature of the EIA process in Sarawak is non-transparent and contrary to good governance, as there is no right given to the public to give feedback prior to EIA approvals.

This is also the case in relation to the EIA approval for the three plantation projects above. Unsurprisingly, we had found several shortcomings in them.

Although all three reports mention their close proximity to the dam, they do not devote serious attention to the matter other than offering some mitigation measures. Reports for both of the Rimbunan Hijau projects while confident that their mitigation measures will be able to reduce sediment load to the dam, also casually notes that it would be almost impossible to accurately predict the magnitude of soil erosion that will occur when the plantation is harvested in 15 to 20 years. The reports also briefly mention that the question of allowing plantation developments in the catchment area is a policy matter that only the Sarawak Chief Minister who is also the Minister of Planning and Resource Management could decide. Thus, it is then assumed that if the projects have been approved, then all such concerns must have been adequately considered, in spite of the flawed EIA process mentioned above.

Meanwhile the Shin Yang project, which is located only 13 km above the dam, makes the gross error of boldly stating that there are no permanent settlements within their project area. SAM has managed to document the existence of at least five Penan settlements in the vicinity, which include Long Peran/Menapa, Long Singu, Long Luar, Long Tangau and Long Pelutan. The existence of several Penan communities in the area

## annex III mpoc board of trustees 2007

can easily be verified by official records of the Belaga District, the Bakun EIA reports, anthropological studies and even the famed Oxford University Expedition to Sarawak in 1955. Today, the affected peoples' livelihoods and access to clean water have been severely threatened with the degradation of their land.

We therefore demand an explanation from both the Federal and State authorities as to how these plantation projects were approved contrary to the previous promises made and the recommendations contained in the Bakun EIA reports.

Further, given the lack of transparency in the issuance of forestry licences and approval of plantation projects in sensitive ecosystems, as well as the lack of public consultation prior to all

EIA approvals, we call upon the Sarawak state government to amend the existing law relating to the EIA process and allow for public participation and scrutiny prior to the approval of the EIA reports in the state, especially for logging and plantation projects. It is scandalous that the Sarawak EIA process does not follow that which exists in the Peninsula. It is time that this is rectified, in the light of the approvals given to the plantation projects in the Bakun Catchment Area.

S.M.Mohamed Idris,

President Sahabat Alam Malaysia

### ANNEX III

### MPOC BOARD OF TRUSTEES 2007

#	MEMBERS	MEMBER REPRESENTING	FUNCTION IN BOARD OF TRUSTEES	OTHER FUNCTIONS
1	Lee Oi Hian	Chairman of MPOC Board of Trustees (2006)	Chairman of the Board of Trustees	• CEO of Kuala Lumpur Kepong (KLK) (member of RSPO)
2	Yusof Bin Basiron (Basiran)	Ministry of Plantation Industries and Commodities	Chief Executive Officer	• Independent non-executive chairman to the board of TH Plantations (member of RSPO) • Director of TH Ladang (Sabah & Sarawak) • Board member of Felda Holdings and two subsidiaries (member of RSPO) • Non-Independent Non-Executive Chairman of CB Industrial Product Holding (CBIPH)
3	Mohd Basri Bin Wahid	Ministry of Plantation Industries and Commodities		• Director General Malaysian Palm Oil Board (MPOB)
4	Nurmala Binti Abd Rahim	Ministry of Plantation Industries and Commodities	General Affairs and Finance Committee	
5	Ramli Putih	Federal Land Development Authority (FELDA)	Technical and Promotions Committee (Middle East)	• Manager of FELDA Holdings (member of RSPO)
6	Vasco Sabat Anak Singkang	Sarawak Land Consolidation and Rehabilitation Authority (SALCRA)		• Member of the Board of Directors of Sarawak Fertilizer Sdn. Bhd.
7	Mazlan Haji Jamaludin	National Association of Smallholders (NASH)	Technical and Promotions Committee (Americas)	
8	Lee Yeow Chor	Malaysian Palm Oil Association (MPOA)		• Executive Director of IOI Corporation (member of RSPO)
9	Sabri Bin Ahmad	Malaysian Palm Oil Association (MPOA)	Technical and Promotions Committee, Regional Market Committee (Africa)	• Former Chairman of the Board of Sime Darby/Golden Hope Plantations
10	Carl Bek Nielsen	Malaysian Palm Oil Association (MPOA)	Technical and Promotions Committee, Regional Market Committee (Europe)	• Vice Chairman, Non-Independent Executive Director of United Plantations (member of RSPO)
11	Er Kok Leong	The Palm Oil Refiners Association of Malaysia (PORAM)	Technical and Promotions Committee, General Affairs and Finance Committee	• Shareholder in Paos Holdings Bhd (2001), Pacific Mas (2006) and Kawan Food Bhd. (2006)
12	Low Mong Hua	Palm Oil Millers' Association (POMA)	Chairman of General Affairs and Finance Committee	• Non-Independent Executive Chairman / Managing Director of Southern Acids
13	Muhammad Hakim See Bin Abdullah	Malayan Edible Oil Manufacturers' Association (MEOMA)		
14	Kwok Kian Hai	Pasir Gudang Edible Oils	Technical and Promotions Committee, Regional Market Committee (Asia Pacific)	• Executive director Wilmar International (member of RSPO) • Shareholder in Kerry Group and Shangri-La Asia

## endnotes

1 See e.g. various materials posted on the MPOC website: [mpoc.org.my].

1 See e.g. Chandran, M.R. 2007. RSPO: Affirmative Approach to Sustainability Concerns. Oils & Fats Synergy in Food and Fuel Applications. 5th Global Oils and Fats Forum. Available at: [americanpalmoil.com/5thgoffprogram2.html]; Ministry of Plantation Industries and Commodities (Malaysia). 2007. Key note address by Y.B. Datuk Peter Chin Fa Kui, Minister of Plantation Industries and Commodities at the closing session of the 5th Roundtable on Sustainable Palm Oil (RTS). A range of papers that reflect the style and approaches described can be found on the MPOC website [mpoc.org.my].

3 Various by products of palm oil production, such as palm kernels, can be used as biofuels. Relative to CPO, however, such by products have limited potential on the international biofuel market at this time.

4 MPOC, Annual Report 2007.

5 Dutch players buy less palm oil due to subsidy cut, Business Times Online, 12 December 2007.

6 Biofuels Back-lash in the EU: Food and sustainability issues are gaining ground. Global Oils and Fats Business Magazine. Vol. 5, Issue 2, 2008.

7 Email NFA to Friends of the Earth EWNI, 2 September 2008; Renewable Fuels Agency (RFA). Monthly report - April/May 2008.

8 The basis on which Renewable Transport Fuel Certificates are issued is fantastically complicated and requires interested parties to delve into stacks of documents to capture how the system works. It is a fact, however, that the palm oil imports that RFA reported on (April – May 2008) were not RSPO certified at the time. The RSPO Board had not made such decision until August 28, 2008.

9 Sustainability Certification Will Cover 700,000 Hectares of Oil Palm Plantation in Malaysia. Bernama, 26 August 2008.

10 Control Union Certifications, 2008. RSPO Assessment Report United Plantations Bhd. Peninsular Malaysia. Total CPO production at the time of certification was 183,000 tonnes (excluding palm kernel oil).

11 It could also be noted that Friends of the Earth is not exclusively interested in the issue of palm oil or the situation in Malaysia. See e.g. the websites of Friends of the Earth England, Wales and Northern Ireland [foe.co.uk], Vereniging Milieudefensie [milieudefensie.nl], Friends of the Earth International [foei.org] and Sahabat Alam Malaysia [foe-malaysia.org.my], or [surforever.com/sam/intro.html]. Also search the internet "Friends of the Earth" with key words such as "soy", "rapeseed", "UK landscape" or "biofuel" etc.

12 Map obtained from Ministry of Environment and Public Health website [moeswk.gov.my].

13 Based on Sarawak Ministry of Land Development website [mlds.sarawak.gov.my].

14 Primarily based on company annual reports.

15 Cash crops for food or fuel? The Borneo Post, 2 December 2007; Ministry of Land Development Sarawak website [mlds.sarawak.gov.my/background/b\_1.htm]. Of the total area, 400,000 ha would be Native Customary Rights (NCR) land and 600,000 ha would be State Land. The Land Custody and Development Authority (LCDA) mentions that 490,000 ha of NCR land would be developed into oil palm [LCDA / PELITA website [pelita.gov.my/ncr.html]].

16 Take, for example, the number of EIAs for agricultural projects handled by NREB between 1994 and 2006 (Jok Jau Emang 2006). The total number is 384 EIAs. If we take an average land holding of 4,300 ha per project and assume that two thirds of all agricultural projects are oil palm projects, then a total area of 1.09 million hectares for oil palm projects was already in the EIA process by 2006.

Jok Jau Emang, J. 2006. Public Participant in EIA Process in Sarawak. Any Room for Improvement? Natural Resources and Environment Board, Sarawak. Presentation given at the Fourth Sabah-Sarawak Environmental Convention.

17 Ten, W. P. 2002. An assessment of the environmental impacts of peat land development in Sarawak. M. Env. Sc. Dissertation. Faculty of Resource Science & Technology, Universiti Malaysia Sarawak (UNIMAS) in: Wösten, H. undated. Strategies for implementing sustainable management of peatlands in Borneo. European Commission INCO-Dev.

18 Foreign smear against oil palm ill-conceived. Borneo Post, 8 June, 2008. Under the so-called Konsep Baru, the 'New Concept', native land owners are expected to surrender their lands to the State for 60 years to be developed as joint ventures with private companies, in which the State acts as a Trustee on behalf of the customary owners. (Colchester et al, 2007. Land is Life. Land rights and oil palm development in Sarawak. Sawit Watch and Forest Peoples Program). Of all oil palm planted on NCR land, one third is under the Konsep Baru. Based on data from LCDA / PELITA website [pelita.gov.my/ncr.html]. As of August 2008, about 42,905 hectares of native customary rights (NCR) land had been developed into oil palm plantations in Sarawak, while a land bank of about 300,700 hectares had been created for the purpose. In: The government is serious about desire to develop land. The Borneo Post, 8 August 2008.

19 Foreign smear against oil palm ill-conceived. Borneo Post, 8 June, 2008.

20 Number and capacities of palm oil sectors June 2008 (tonnes/year). MPOB.

21 RM300m integrated palm oil complex to be built in Sarawak. The Star, 6 September 2006; GHope Dutch biodiesel plant may start ops by year-end. New Straits Times, 28 June 2007; Sarawak Plantation plans big expansion. The Star, 8 August 2007; Cash crops for food or fuel? The Borneo Post, 2 December 2007.

22 9th Malaysia Plan (2006-2010). Economic Planning Unit, Federal Government of Malaysia.

23 Forests Department Sarawak. The Forests Ordinance. The Forests (Planted Forests) Rules, 1997.

24 Based on research by Sahabat Alam Malaysia. See Approval of Plantation Projects in the Bakun Catchment Area between 1999 and 2002: SAM Calls for Transparency and Accountability in Sarawak. Sahabat Alam Malaysia (SAM). Press release, 21 June 2007; Plantation devt to continue: Taib The Borneo Post, 29 June, 2008.

25 Sarawak to double timber production. The Star, 1 November 2007; ITTO 2007. Country profile Malaysia [tto.or.jp/live/Live\_Server/1241/Malaysia.e.pdf].

26 Sarawak May Get Bulk of Fund. New Straits Times, 8 October 2007; RM1b fund to ensure applicants are committed. New Straits Times, 10 October 2007.

27 The Forests (Planted Forests) Rules (1997). Sarawak Government Gazette, Part II, 12th February 1997. The land rents are specified in Part IV "Fees, Cess, etc." The Rules authorize the Forestry Director to revise the land rents. This calculation is based on the following: 2.8 Mha PF licenses were issued. The low estimate assumes that half the area is State Land and the other half PFE, and that 60% of the total area will be developed and that the land rent tax applies only there. The high estimate is based on 100% land rent over the full concession area.

28 Compare the possible turn over generated by a single 10,000 ha oil palm plantation with a 30T/hr Crude Palm Oil mill in Malaysia. Assuming the cost of the mill at RM 35 million, a yield of 23T/ha and an oil extraction rate of 20%, the plantation would yield 1 million tonnes of CPO. With a CPO price of RM 3,000/tonne, turn over amounts to RM 3 billion, almost 10 times return on investment. Land development, infrastructure and wage cost excluded.

29 Sarawak Department of Irrigation and Drainage [did.sarawak.gov.my/peat/peat\_main.html].

30 Sarawak Department of Irrigation and Drainage website [did.sarawak.gov.my/peat/peat\_main.html#7].

31 Van der Meer, P. et al, 2005. Sustainable Management of Peat Swamp Forests of Sarawak with special reference to Ramin (*Gonystylus bancanus*). Completion report. Alterra and Forests Department Sarawak; Dibor, L. and S. Tan. 2004. An overview of ramin project in Sarawak. Joint Working Group Netherlands – Malaysia. Legal production of Ramin peaked in 1989, with almost 600,000 m3, but fell below 100,000 m3 after 2000. See: Lim, T.W., Soehartono, T. and Chen, H.K. (2004). Framing the picture: An assessment of ramin trade in Malaysia, Indonesia and Singapore. TRAFFIC Southeast Asia.

32 PORIM (now Malaysian Palm Oil Board) quoted in: Murtedza, M. 2005. Contribution to: Strategies for implementing sustainable management of peatlands in Borneo". ICA4-CT-2001-10098. European Commission INCO-DEV Final Report.

33 Jamaludin Bin Jaya, 2002. Sarawak: Peat Agricultural Use, STRAPEAT Peat agricultural use. MARDI Malaysia.

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35 According to Melling (1999), 467,097 ha of peat land were being utilized for large-scale agricultural development in Sarawak (306,042 ha for oil palm; 111,615 ha for forest plantation; 40,568 ha for sago; and the rest for rubber, paddy, pineapple, tapioca, etc.). In addition, 67,588 ha were used by smallholders for the cultivation of mainly oil palm, sago and rubber. Thus, some 534,685 ha or about 32% of the total peat land had, by 1999, been converted into agricultural land. In: Murtedza, M. 2005. Contribution to: "Strategies for implementing sustainable management of peatlands in Borneo". ICA4-CT-2001-10098. European Commission INCO-DEV Final Report.

Sarawak opening up more peat soil land for oil palm cultivation. The Star, April 18, 2007.

36 Chai, P. 2005. Management Plan for Maludam National Park Betong Division Sarawak. Joint Working Group Malaysia – The Netherlands. Alterra and Forestry Department Sarawak.

37 Van der Meer, P. et al, 2005. Sustainable Management of Peat Swamp Forests of Sarawak with special reference to Ramin (*Gonystylus bancanus*). Completion report. Alterra and Forests Department Sarawak.

38 For example, burning debris from deforested peat is attractive because the ash raises the pH to levels that makes the acidic soils suitable for oil palm growth, while saving the cost of alkaline fertilizer.

39 Bin Jaya, J. 2005. Malaysian Agricultural Research and Development Institute (MARDI), Malaysia. In: Contribution to: "Strategies for implementing sustainable management of peatlands in Borneo". Contract No.: ICA4-CT-2001-10098. European Commission INCO-DEV Final Report.

40 PT Adei was acquired by Kuala Lumpur Kepong in 1996 (see: [klk.com.my/ci\_m\_1996.htm]). In 2002, the manager of PT Adei Plantation was reportedly convicted by the Indonesian High Court for open burning offences committed in 2000 and fined 100 million rupiah. (Two Malaysian firms under probe. New Straits Times, 11 August 2005). See for further details also: (Pembakar Laham di Riau Divonis Dua Tahun Riau, Kompas, 2 October 2001; Malaysian plantation firm to pay 1.1 million dollars over Indonesia haze. AFP, May 1, 2003; Kementerian Lingkungan Hidup, 2003. Laporan Langkah Langit Penanganan Kasus PT Maspion Unit I Sidoarjo; Plantation pays \$1.1 million fine for burning land. The Jakarta Post, 1 May 2003).

41 See MPOC website: [mpoc.org.my/main\_mediacenter.asp].

42 Zero open burning agreement. The Star, August 15, 2006. Report by The Star based on a press conference.

43 Setting a good example. A plantation firm undergoes checks to verify that its operations are green. The Star, 29 April, 2008.

44 See [nreb.gov.my/main\_legis.html]. The Natural Resources and Environment Board Sarawak is tasked with the responsibility of protecting and managing the environment and the conservation of the natural resources of the State based on the principles of sustainable development. The board is chaired by the Sarawak Chief Minister [nreb.gov.my/main\_about.html].

45 Environmental Quality Act 1974 [ACT 127]. P.U. (A) 460/2003; Environmental Quality (declared activities) (open burning) order 2003, 18 December 2003.

46 The amendment of the Federal law to exclude Sarawak from the jurisdiction of the Federal law on environmental matters, although upheld as valid by the Court of Appeal (Ketua Pengarah Jabatan Alam Sekitar & Anor v Kajing Tubek & Ors & Other Appeals [1997] 4 CLJ 253) was nevertheless regarded as highly controversial by many within the Malaysian legal circles and the concerned public. This is because the amendment to the Federal Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) (Amendment) Order 1995 retrospectively excluded the operation of the Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 1987 Order to Sarawak. This was associated with the initial motivation to transfer the jurisdiction over the EIA process of the controversial Bakun Hydroelectric Project in Sarawak from the Federal to the state level. A glaring difference between the Federal and state law is that, the latter excludes mandatory public participation. As such this transfer effectively resulted in the Bakun EIA reports to be approved without public consultations when many concerned parties at this particular juncture, were in fact eagerly waiting to participate in the process.

47 Fire Danger Rating System: Effective Prescribed Burning for Commercial Land Developers. Rakan Sarawak, June-August 2004.



- 48 Media have also reported about Sarawak's burning policies before the Fire Danger Rating System was launched in June 2004. See e.g. Staggered open burning to reduce haze. *The Star*, May 30, 2003.
- 49 Firemapper: Justice, C.O., Giglio, L., Korontzi, S., Owens, J., Morisette, J.T., Roy, D., Descloitres, J., Alleaume, S., Petitcolin, F., and Kaufman, Y. (2002). The MODIS fire products. *Remote Sensing of Environment* 83, 244-262. The map was produced by overlaying two maps for the two periods.
- 50 SPOT satellite image © CNES (24 June 2008), acquired by CRISP, NUS Posted on CRISP website [crisp.nus.edu.sg].
- 51 Firemapper op cit. overlaid with the regional overview map from the Hua Seng EIA.
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- 53 Based on an overlay of fire hot spot maps for the August 6-18 period with various regional EIA maps for the area, and personal communication with a resident based in Sib. Fire hotspots were recorded by MODIS, processed by Firemapper: Justice, C.O., Giglio, L., Korontzi, S., Owens, J., Morisette, J.T., Roy, D., Descloitres, J., Alleaume, S., Petitcolin, F., and Kaufman, Y. (2002). The MODIS fire products. *Remote Sensing of Environment* 83, 244-262.
- 54 Open burning in Sarawak contributing to haze. *The Star*. 9 August 2007.
- 55 Open burning in Sarawak contributing to haze. *The Star*. 9 August 2007.
- 56 Open burning in Sarawak contributing to haze. *The Star*. 9 August 2007.
- 57 Firemapper op cit.
- 58 Ikonos Satellite Image © CRISP, NUS (2003), published by DigitalGlobe.
- 59 Van der Meer, P. et al, 2005. Sustainable Management of Peat Swamp Forests of Sarawak with special reference to Ramin (*Gonystylus bancanus*). Completion report. Alterra and Forests Department Sarawak.
- 60 The Official Opening of PICOP 2005. Speech by Y.B. Datuk Peter Chin Fa Kui, Minister of Plantation Industries and Commodities Malaysia. 26 September 2005.
- 61 Haze efforts at a standstill. [todayonline.com], 15 March 2008.
- 62 Article 9a of the ASEAN Agreement states:  
"Each Party shall undertake measures to prevent and control activities related to land and/or forest fires that may lead to transboundary haze pollution, which include:  
a. Developing and implementing legislative and other regulatory measures, as well as programmes and strategies to promote zero burning policy to deal with land and/or forest fires resulting in transboundary haze pollution and  
g. "Ensuring that legislative, administrative and/or other relevant measures are taken to control open burning and to prevent land clearing using fire."
- 63 ASEAN secretariat, 2003. Guidelines for the Implementation of the ASEAN Policy on Zero-Burning. In 2004, the ASEAN secretariat also published a "Controlled Burning Guidelines" document, which may apply if open burning is approved under "national environmental legislation". But these guidelines do not apply to large-scale plantation companies.
- 64 Megadiverse website.[megadiverse.org], viewed 10 January 2004.
- 65 IUCN 2002 Red List of Threatened Species.
- 66 IUCN 1997 Red List of Threatened Plants.
- 67 The New Internationalist, January 1988. Cited by: A. Muhammad and S. Nizam. Malaysian Politicians say the darndest things.Vol.1, 2007.
- 68 MPOC 2006. Consumers Misled on Palm Oil. MPOC response to CSPI report.
- 69 Only 4m ha under oil palm in M'sia. Daily Express News, 19 May 2006. This claim was also made in MPOC's defense to Friends of the Earth's complaint filed against MPOC's "Gift of Nature" TV-commercial. UK Advertising Standards Authority (ASA), 2007.
- 70 Turning food to fuel may not be the answer to the world's energy woes and global warming, after all. *The Star*, 15 May 2007.
- 71 High CPO price to stay until next year. *New Straits Times*, 28 August 2007.
- 72 PM: No clearing of forests for oil palm plantations. *New Straits Times*, 25 June 2008.
- 73 Sarawak oil palm plantations not disturbing forests, ecosystem - Taib. *Bernama*, 25 June 2008.
- 74 SarVision Wageningen University, 2008. Pan-tropical forest monitoring programme. Based on MODIS 250m satellite imagery: "NASA/University of Maryland, 2002. MODIS Hotspot / Active Fire Detections. Data set. MODIS Rapid Response Project, NASA/GSFC [producer], University of Maryland, Fire Information for Resource Management System [distributors]. Available on-line [http://maps.geog.umd.edu].
- 75 Basiron, Y. Sustainable Palm Oil Production in Malaysia. Paper presented at: Symposium on Sustainable Development, London, 18 July 2006; FAO, 2006. Global Forest Resource Assessment 2005. Food and Agriculture Organization, Rome.
- 76 Of course, not all deforestation can be attributed to oil palm expansion because natural forests were also lost in Malaysia as a result of other causes (e.g. dam construction, highways, tree plantations and urban development). Most likely, a larger area of forest was lost than what was reported by Malaysia to the FAO for the period at hand.
- 77 Basiron, Y. Sustainable Palm Oil Production in Malaysia. Paper presented at: Symposium on Sustainable Development, London, 18 July 2006; FAO, 2006. Global Forest Resource Assessment 2005. Food and Agriculture Organization, Rome.
- 78 Quoted in: Jomo, K.S. et al, 2004. Deforesting Malaysia. The Political Economy and Social Ecology of Agricultural Expansion and Commercial Logging. UNRISD.
- 79 Adjusted from: Ninth Malaysia Plan, 2006. Economic Planning Unit.
- 80 It is important to note that there is a flaw in the calculation because the final outcome leaves no space for other causes of deforestation in Malaysia (notably dams and reservoirs, highway construction, highlands development and urban expansion. A reliable (independent, verified, clearly defined and over a series of years) set of forest cover data is not publicly available, while the data that Malaysia supplied to FAO for the FRA are most likely incorrect and over-represent Malaysia's forest cover.
- 81 Hunting, deforestation wipe out 6 of 7 hornbill species in Borneo park. mongabay.com, 14 June 2008. No detailed maps of the National Park boundaries could be obtained for this study and thus an informal map was used. The overlay shows the best possible fit of the national park map with Google Earth (June 2002) and was verified through comparison with subsequent IKONOS images. The overlay suggests that oil palm may have encroached up to 250 meters within the park boundaries over a 2.5 km length (southwest boundary). While the overlay may not be perfect, the oil palm planted in the boundary area is positively incongruent with the National Park's (previous?) boundary shape in the area.
- 82 FAO 2006. Forest Resource Assessment 2005. Rome. In FAO's definition of primary forests "some trees may have been removed". It is not clear, however, what are "some" trees. It is remarkable that Malaysia, after several decades of intensive logging in virgin forests and ranking as the number one tropical timber exporter in the world, reported to FAO that its primary forest area had not declined between 1990 and 2005. According to the data, Malaysia had 3,820,000 ha of primary forests in 1990 and maintained this area up to 2005.
- 83 A well documented case is Ladang UMNO in Pahang. Much controversy shrouds the allocation of this apparently politically loaded logging/oil palm concession within the Permanent Forest Estate virgin peat swamp forest. The facts were already presented to MPOC in the ASA complaint procedure (see: [foeurope.org/corporates/pdf/MPOC%20Complaint\_incl.annex.pdf]. MPOC has yet to respond to this case.
- 84 Chin, P. 2005. Penyampaian Siji Majlis Pensuikan Kayu Malaysia (MTCC). Kepada Samling Plywood (Baramas) Sdn. Bhd. 4 January 2005.
- 85 Jomo, K.S. et al, 2004. Deforesting Malaysia. The Political Economy and Social Ecology of Agricultural Expansion and Commercial Logging. UNRISD.
- 86 In Peninsular Malaysia, such permanent forests are usually termed as Permanent Forest Reserve while in Sarawak such forests are often referred to as Permanent Forest Estate, although at the national level, for the purpose of statistics production, the terms Reserve and Estate are often used interchangeably. In Sarawak, the PFE comprises three legal categories of forests i.e. Forest Reserves, Protected Forests and Communal Forests. Communal Forests are gazetted to be utilized by individual native communities although as a policy, it does appear that the state is no longer actively gazetting them, which resulted in the total size of such forests to be negligible within the PFE, standing at less than 1 percent today.
- 87 The Permanent Forest Estate should not be confused with Totally Protected Areas or Protection Forests i.e. a legal category of forests that are designated for pure conservation, recreational, representative, restricted research and education forest zones. These comprise National Parks, Wild Life Sanctuaries, Nature Reserves and other legal designations that may be termed slightly differently based on the legislation and statutes binding on each region i.e. Peninsular Malaysian states, Sabah and Sarawak. Based on different government statistics, Friends of the Earth Malaysia - Sahabat Alam Malaysia (SAM) estimated that in 2003, there is only slightly over 3 million hectares of Totally Protected Areas in the entire country or between 10 and 12 percent of its total land area. See SAM (2007) Logging in Malaysia, Some Key Issues. Briefing Paper I. Submission for the European Union Delegation for FLEGT. January 15.
- 88 PM: No clearing of forests for oil palm plantations. *The News Straits Times*, 25 June 2008.
- 89 Stop clearing forests, states told. *New Straits Times Online*, 26 June 2008. DPM Najib is the chair of the National Forestry Council, which is made up of the Chief Ministers of all 13 states and seven Federal ministers, The NFC only has an advisory function.
- 90 Malaysia: Plantation devt to continue: Taib. *The Borneo Post*, 29 June 2008.
- 91 SCORE website [sarawakscore.com.my].
- 92 In 2006, four plantation companies (Tradewinds Plantation, Rimbanan Hijau group, Multi Maximum (a subsidiary of Ta Ann Holdings) and Bintulu Lumber Development) teamed up with the Sarawak Timber Industry Development Corp (STIDC) in a joint venture to build a palm oil refinery together with a kernel crusher plant in Tanjung Manis. The development of other palm oil downstream facilities, like bio-diesel and oleo-chemical plants, is likely to take place later when there is more supply of crude palm oil (CPO) in the central region. In: RM300m integrated palm oil complex to be built in Sarawak. *The Star*, 6 September 2006.
- In 2008, it was announced that Carbon Capital Corporation and Japan Carbon Mercantile Co. Ltd would develop a multi-feedstock diesel plant in Tanjung Manis, 100,000 ha of jatropha and oil palm plantations and biogas projects. In: Malaysian-Japan JV In RM1 Bln Biodiesel, Jatropha & Biogas Deal In Sarawak. *Bernama*, 12 February 2009.
- 93 BLDP, Circular to investors. 3 January 2008.
- 94 SDF Constituted Permanent Forest Estate map (2001) overlaid with the Regional overview map for Victoria Square Development (RH Reforestation) EIA.
- 95 SPOT satellite image © CNES (2002, 2006, 2008), acquired by CRISP, NUS CRISP website [crisp.nus.edu.sg].
- 96 Edwards,P.J. & Parish,D. 1988. The distribution of migratory waders in south-west Sarawak. *Wader Study Group Bull.* 54: 36-40.
- 97 In the Sarawak Forestry Department / Alterra map of 2004 (Thie 2004), the southern part of Pulau Bruit is marked as agricultural development area (now Wealth Houses Development).
- 98 Poh Zhen was taken over by Jaya Tiasa on 6 January 2005. Jaya Tiasa website [http://jayatiasa.listedcompany.com/?page=newsroom.html/cat/270/year/-1]: Jaya Tiasa Tinjau Sawit Sebagai Bidang Pertumbuhan Dan Penyumbang Masa Depan. *Bernama*, 22 September 2005. In September 2007, Jaya Tiasa and Wealth Houses Development entered into a joint venture. Jaya Tiasa eyes oil palm as future contributor and growth area. *Daily Express News*, 23 September 2005.
- 99 Jaya Tiasa website [http://jayatiasa.listedcompany.com/?page=newsroom.html/cat/270/year/-1].
- 100 Equally important is that the Malaysian Courts have largely clarified the full nature, stature and extent of these rights. The Federal Court has ruled that the principles of common law respect the pre-existence of customary laws. Despite this recognition, NCR land may nevertheless also be extinguished by the State under certain conditions (Superintendent of

## endnotes

continued

- Land & Surveys Miri Division & Anor v Madeli Salleh [2007] 6 CLJ 509.
- 101** SUHAKAM's report on Penan in Ulu Belaga: Right to land and socio-economic development. SHM/PENAN\_UB/39/07. Suruhanjaya Hak Asasi Manusia/Human Rights Commission of Malaysia. Kuala Lumpur, 2007.
- 102** Referring to Section 6(1) of Land Code Sarawak State Attorney General Fong argues that the Minister may declare, by Gazette Notification, "any area of State land to be a Native Communal Reserve for the use of any community having a native system of personal law". Native communal reserve can therefore be declared for the Penans when they agree to settle. In: Fong, J.C. (undated). Land Laws And Creation of Native Customary Rights (NCR). Sarawak State Attorney General office. However, to date Sahabat Alam Malaysia is unclear whether the state government has in fact been actively gazetting such land for the exercise of such rights by the Penan communities. Further, the state government is also empowered to gazette such forests as Communal Forests through the Forests Ordinance but likewise, there appears to be little indication that the state has actively chosen to do so. It would seem to be the law that nomadic Penan can claim NCR under the laws of Sarawak if they can prove "occupation" of an area, since time immemorial. At the moment there is no direct decision on this matter for the Penan, but two cases are now pending in the High Court of Sarawak, pertaining to this very issue. In: Bian, B. 2007. Native Customary Rights (NCR) over land in Sarawak.
- 103** Fong, J.C. (undated). Land Laws And Creation of Native Customary Rights (NCR). Sarawak State Attorney General office.
- 104** Baram's Penan Community - Hungry, Poor And Sick. Utusan Konsumer magazine, 1 May, 2002.
- 105** Malaysian indigenous people protest oil palm, logging. AFP, 13 August 2005.
- 106** Sarawak Oil Palm Plantations Not Disturbing Forests, Ecosystem – Taib. Bernama, 28 June, 2008.
- 107** Sarawak to open more land for oil palm. New Straits Times, 29 July 2008.
- 108** Please see SAM (2007) Modern Forest and Land Legislation and Native Customary Rights in Sarawak. Briefing Paper II. Submission for the European Union Delegation for FLEGT. January 15.
- 109** IDEAL, 1995. Not development, but theft. The testimonies of Penan communities in Sarawak.
- 110** After a court hearing, they were found not guilty, but their land had already been logged over.
- 111** Like the Adang Reserve (1993), Magoh Forest Reserve was logged by Samling and Limbang Trading – the latter belonging to Datuk James Wong, Sarawak's (former) Minister for the Environment at the time. Harmon Snow, K. Bruno Manser: Lakei e'h metat "man who has disappeared".
- 112** 50,000 Acres of Forest Land Reserved for Penans. People's Mirror, 15 November 1990; Biosphere reserve for Penans to be established. New Straits Times, November 15, 1990.
- 113** Biosphere for Penans. Borneo Post, march 28, 1992. The State government proceeded efforts to convince another 1,000 semi-settled Penan to also move to the biosphere reserve. In: 30,000 Acres Allocated for Penans. People's Mirror, March 25, 1992; Sarawak Tribune, March 25, 1992. Plan to persuade Penans to live in biosphere reserve.
- 114** IDEAL, 1995. Not development, but theft. The testimonies of Penan communities in Sarawak.
- 115** Special forests for Penans. New Straits Times, 19 October, 1993; Sarawak govt sets aside forests for use of Penan. The Straits Times, October 20, 1993.
- 116** Jomo, K.S. et al. 2004. Deforesting Malaysia. The political economy and social ecology of agricultural expansion and commercial logging.
- 117** Lansat satellite image acquired by Bruno Manser Fund.
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- 120** International Working Group for Indigenous Affairs website [iwgia.org/sw356.asp].
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- 123** Viability of Bakun Dam project threatened. Aliran, 11 October 2007.
- 124** In Malaysia, dams for the boys. Inter Press Service, 12 October 2006.
- 125** Approval of Plantation Projects in the Bakun Catchment Area between 1999 and 2002: SAM Calls for Transparency and Accountability in Sarawak. Sahabat Alam Malaysia (SAM). Press release, 21 June 2007; Malaysian Activists Decry Plantations. Associated Press, 21 June 2007.
- 126** Map produced by Sahabat Alam Malaysia.
- 127** Viability of Bakun Dam project threatened. Aliran, 11 October 2007.
- 128** Khoo Kay Jin. Briefing Paper to SUHAKAM on The Penan and the EIA for Shin Yang Forest Plantation (p.108) in: SUHAKAM's report on Penan in Ulu Belaga: Right to land and socio-economic development. SHM/PENAN\_UB/39/07. Suruhanjaya Hak Asasi Manusia / Human Rights Commission of Malaysia. Kuala Lumpur, 2007.
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- 130** Viability of Bakun Dam project threatened. Aliran, 11 October 2007.
- 131** Still beneficial? When completed, will the Bakun hydroelectric scheme be able to produce the power expected of it? The Star, October 30, 2007.
- 132** IAlA (International Association for Impact Assessments) 1999. Principles of Environmental Impact Assessment Best Practice.
- 133** Stærdahl, J. et al, 2004. Environmental Impact Assessment in Malaysia, South Africa, Thailand, and Denmark: Background, layout, context, public participation and environmental scope. The Journal of Transdisciplinary Environmental Studies vol. 3, no. 1, 2004.
- 134** There are significant differences in requirements between the Federal Environmental Quality Act [EQA 1974] and Sarawak Natural Resource and Environment Ordinance [NREB 1994] that have far reaching impacts on the conduct, transparency and objectives of EIA exercises. For one, there is no mandatory public participation on the Sarawak EIA process, which is only undertaken if the project proponent desires so.
- 135** Jok Jau, J. 2006. Public Participant in EIA Process in Sarawak. Any Room for Improvement? Natural Resources and Environment Board, Sarawak. Presentation given at the Fourth Sabah-Sarawak Environmental Convention.
- 136** Keen on Sustainability. Interview with Peter Chin, Minister of Plantation Industries and Commodities. Malaysian Palm Oil Council website, 24 July 2006.
- 137** Environmental Impact Assessment of Oil Palm Cultivation. Deforestation Watch websit, 6 March 2008.
- 138** Preliminary report on environmental impact assessment for the proposed development of Rinwood Pelita Oil Palm Plantation at Long Tabeng, Tinjar, Miri Division, Sarawak. March 1997.
- 139** In October 1997, four Kayan of Long Teran Kanan representing 92 families (including the Kenyah) filed a suit in the Miri High Court, naming LCDA, Rinwood Pelita Plantation Sdn Bhd and the state government of Sarawak as the first, second and third defendant respectively. Trial began in the last quarter of 2006. In the middle of trial, the community proposed an out of court settlement but Rinwood rejected their demands for compensation. The trial ended in May 2007. As of August 2008, there has been no judgment from the court.
- In June, 2007 a suit was brought by three Berawan representing four settlements i.e. Long Jegan, Long Teran, Long Tabeng and Long Takong. The defendants are IOI- Pelita Plantations Sdn Bhd, the Superintendent of Lands and Surveys and the State Government of Sarawak. The trial has yet to begin but IOI has approached the Berawan to settle the matter out of court.
- 140** Section from map 4.2 by: Ecosol Consultancy (2000). Kanaya Planted Forests EIA.
- 141** This is based on the Planted Forests policy. "Where native customary rights are claimed over any land proposed to be covered by the license, no license shall be issued until claims to such rights by the natives have been settled or extinguished in accordance with the Ordinance or the Land Code and a document of title is issued for the land under the Land Code." Source website Sarawak Forestry Department [forestry.sarawak.gov.my].
- 142** Bian, B. 2007. Native Customary Rights (NCR) over land in Sarawak.
- 143** In this case, the High Court ruled that NCR extends to both cultivated areas and non-cultivated areas of traditional territories of communal forests where hunting and gathering activities by the communities take place. The High Court affirms the meanings ascribed to the exercise of rights through native terms like pemakai menoa (distinct territorial domain held by a longhouse village where customary rights to land and resources were created by pioneering ancestors) which includes temuda (farmland), pulau galau (preserved forest) for the community's hunting and gathering activities. Although the decision of the Court of Appeal cites Samsing Tasi in defining the limits to aboriginal rights and its proprietary interest to the area that forms their settlement, and not to the jungles at large where they used to roam to forage for their livelihood in accordance with their tradition, the size of the area of the settlement is a question of fact in each case. The Court of Appeal does not dispute the validity of the aforementioned customary descriptions of temuda, pulau galau and pemakai menoa that constitute the Iban traditional land. The decision does not take issue with the respondents' assertion of customary rights on the disputed area through the claim that their ancestors had cleared [it] for cultivation, accessed [it] for fishing, hunting and to gather forest produce, all rights associated with 'temuda' and 'galau' and that they came within the 'pemakai menoa' but instead it rules that unfortunately credible supporting evidence was lacking for such assumption.
- 144** Stærdahl, J. et al, 2004. Environmental Impact Assessment in Malaysia, South Africa, Thailand, and Denmark: Background, layout, context, public participation and environmental scope. The Journal of Transdisciplinary Environmental Studies vol. 3, no. 1, 2004; Boyle, J. 1998. 'Cultural influences on the implementation of EIA: Insights from Thailand, Indonesia and Malaysia'. Environmental impact assessment review, Vol. 21, pp 95–113.
- 145** Memon, A. Devolution of environmental regulation: EIA in Malaysia. In McCabe, M. and B. Sadler UNEP (undated). EIA Training Resource Manual. Case studies from developing countries; Jok Jau, J. 2006. Public participation in the Preliminary and Detailed Assessment has become mandatory for Federal projects through a new rule from the Department of Environment specifying that (per 1 April 2008) summaries of all EIA reports processed shall be displayed on its website.
- 146** Jok Jau, J.E. 2006. Public Participant in EIA Process in Sarawak: Any room for improvement? Natural Resources and Environment Board, Sarawak. Fourth Sabah-Sarawak Environmental Convention.
- 147** EIA studies subjected to external review. The Borneo Post, 9 October 2007.
- 148** Murtedza, M. 2005. Contribution to: "Strategies for implementing sustainable management of peatlands in Borneo". Contract No. ICA4-CT-2001-10098. European Commission INCO-DEV Final Report.
- 149** See e.g. Basiron, Y (2007). The palm-oil advantage in biofuel. The New Straits Times, 24 February 2007.
- 150** Hooijer, A., Silvius, M., Wösten, H. and Page, S. 2006. PEAT-CO2, Assessment of CO2 emissions from drained peatlands in SE Asia. Delft Hydraulics report Q3943 (2006).
- 151** Henson, I.E. (1999). 'Comparative ecophysiology of oil palm and tropical rain forest', in Singh, G., Huan, L. K., Leng, T., and Dow, D. L., eds, Oil Palm and the Environment – A Malaysian Perspective, Malaysian Oil Palm Growers' Council, Kuala Lumpur, pp 9–39. In addition, the Palm Oil Truth Foundation came out with an article titled "Palm oil, Deforestation and Global Warming: Junk Theory" lashed out against Marcel Silvius "a so-called climate expert at Wetlands International in the Netherlands" [palmoiltruthfoundation.com/index.php?Itemid=300&id=434&option=com\_content&task=view]. LS Sya also openly attacked Silvius in "Brand Malaysia under attack", New Straits Times, 7 July 2007.
- 152** Image from: Malaysia Palm: Golden Oil from Green Agriculture. Video released by the Malaysian Palm Oil Council (MPOC), launched in Kota Kinabalu, May 2008.

- 153** Henson, I.E., 1999. Comparative Ecophysiology of oil palm and tropical rainforest. Palm Oil Research Institute Malaysia. The forest plot that was used for comparison was Pasoh Forest Reserve in Negeri Sembilan. This forest is located on mineral soils, and has partially been logged. According to Henson's calculations, which comprehensively take into account the carbon balance in existing forests and plantations but not the development stage of oil palm plantations, the net carbon uptake of "well managed" (heavily fertilized) oil palm plantations would even exceed that of Pasoh Forest Reserve. His estimates of carbon expenditures in plantation management were based on an unpublished paper prepared for the Germany fertilizer company, Henkel.
- 154** Van Noordwijk, M. 2008. Climate change & Agro-biodiversity: Limits to adaptation? ICRAF SEA Bogor. [<http://agrobiodiversity2008.com/ppt/Van%20Noordwijk2.pdf>].
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- 157** Turunen, J. (2003), Past and Present Carbon accumulation in undisturbed boreal and subarctic mires: a review. *Suo*: 54(1).
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- 165** Hooijer et al (2006)
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- 172** MPOC, 2006. Annual Report.
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- 174** Malaysian Palm Oil Board (MPOB) website [[mpob.gov.my](http://mpob.gov.my)].
- 175** Companies Commission of Malaysia. Company abstract Malaysian Palm Oil Council, December 2007.
- 176** Malaysian palm oil struggles to promote 'green' image. *AFP*, 3 May 2008.
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- 178** MPOC Going Aggressive, Backed With Scientific Findings, *Bernama*, 4 March 2006.
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- 180** Latest smear campaign against palm oil products rivals' doing. *New Straits Times*, 21 December 2002.
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- 192** Self regulate, to counter anti-palm oil lobby, says state minister *The Star*, 4 October, 2007. Sabah State Industrial Development Minister Datuk Ewon Ebin said that the BIMP-EAGA grouping with some help from institutions like the Asian Development Bank could send a "loud and clear" message that sustainability is the key to the longevity of the oil palm industry.
- 193** Call to enlist EU help on palm oil. *Daily Express News*, 15 June 2007.
- 194** Indonesia, Malaysia launch joint move to defend palm oil industry. *The Jakarta Post*, 19 July 2006; KL Jakarta team up to repel anti-palm oil moves. *New Straits Times*, May 26 2007; Joint Communique the third joint committee meeting on bilateral cooperation on commodities between the Government of Malaysia and the Government of the Republic of Indonesia, Bali, 25 April 2008.
- 195** KL Jakarta team up to repel anti-palm oil moves. *New Straits Times – Business Times*. May 26, 2007.
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- 197** MPOC Annual Report 2007.
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- 199** Friends of the Earth Europe. Submission to the UK Advertising Standards Authority; ASA ruling: MPOC response to ASA complaints, MPOC 2007; M'sian palm oil ads 'misleading'. *Malaysiakini.com*, 10 January 2008.
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- 201** The MPOC Chairman's Statement says: "In 2007, MPOC embarked on major electronic media campaigns to address anti-palm oil campaigns. The Ministry of Plantation Industries and Commodities approved a special fund to counter the attacks made on palm oil by the NGOs. The delivery of the communication messages in the campaign were carried out 'effectively and efficiently' by presenting the core message, 'Malaysia Palm Oil – A gift from nature, a gift for life'. The commercials were aired on BBC World, EuroNews (covering Europe, the Middle East and Asia) and CNN (covering the USA)." MPOC Annual Report 2007. MPOC estimates that some 50 million people viewed the commercial.
- 202** See e.g. [[malaysiapalmoil.org/media/default.asp](http://malaysiapalmoil.org/media/default.asp)].
- 203** Malaysia Sows the Seed of a Better Life, *New Straits Times*, 7 July 2008.
- 203** Malaysia Sows the Seed of a Better Life, *New Straits Times*, 7 July 2008.
- 204** See article 2.1 of the RSPO Code of Conduct [[rspo.org/RSPO\\_Code\\_of\\_Conduct.aspx](http://rspo.org/RSPO_Code_of_Conduct.aspx)].
- 205** Higher CPO production for Malaysia. *The Edge Daily*. 25 July 2008. Minister Chin reiterated his concerns about smallholders: "Where the RSPO certificate is concerned, my only worry is that the smallholders have to be given time to catch up, which I am sure they could, because the plantation industry is moving in this direction (to produce certified palm oil)."
- 206** See: [[palmlantations.com.au/palm-oil-tv/palm-oil-tv.htm](http://palmlantations.com.au/palm-oil-tv/palm-oil-tv.htm)] and [[americanpalmoil.com/video-goldfromgreen.html](http://americanpalmoil.com/video-goldfromgreen.html)]
- 207** The International Palm Oil Sustainability Conference, Kota Kinabalu, Malaysia from April 13-15, 2008. Sustainability conference reveals a rift in the Malaysian Palm Oil Council *mongabay.com* May 1, 2008.
- 208** Tornczyk, J. *Mongabay.com: A Legitimate Environmental Site? Palm Oil Truth Foundation* [[palmoiltruthfoundation.com/index.php?option=com\\_content&task=view&id=961&Itemid=896](http://palmoiltruthfoundation.com/index.php?option=com_content&task=view&id=961&Itemid=896)].
- 209** See [[http://en.wikipedia.org/wiki/False\\_flag](http://en.wikipedia.org/wiki/False_flag)] and also [<http://en.wikipedia.org/wiki/Astroturfing>]. Astroturfing is "a tool for formal public relations campaigns in politics and advertising that seek to create the impression of being spontaneous, grassroots behavior." See also Frost, S. *Astroturfing for Palm Oil?* *CSR Asia*, 4 May 2007.
- 210** See: [[palmoiltruthfoundation.com](http://palmoiltruthfoundation.com)] and [<http://deforestationwatch.org>]. Another anonymous website that recently appeared on the internet is "Palm Oil Consumer.com" [<http://palmoilconsumer.com>]
- 211** See: Palm Oil Truth Foundation website: [[palmoiltruthfoundation.com/index.php?option=com\\_content&task=view&id=226&Itemid=209](http://palmoiltruthfoundation.com/index.php?option=com_content&task=view&id=226&Itemid=209)].
- 212** MPOC Annual Report 2007.
- 213** On MPOC's mission to respond to negative news items on oil palm, see MPOC Annual Report 2007. The Malaysian Ministry of Plantation Industries and Commodities previously featured a link to the website on its own portal, but this link was removed early 2007. The American Palm Oil Council (APOC) also removed the hyperlink to the Palm Oil Truth Foundation.
- 214** When the POTF website was launched the page info referred to the site's author being "L.S. Sya". This information was later removed. The page info for Deforestation Watch referred to the author as "Sherri Sya". L.S. Sya recently published various articles wherein his association with Deforestation Watch is no longer hidden. See e.g. [[articleh.com/authors/404/L.S.-Sya](http://articleh.com/authors/404/L.S.-Sya)]. For Sya's connections to Brand Magic: [[brandchannel.com/features\\_profile.asp?pr\\_id=200](http://brandchannel.com/features_profile.asp?pr_id=200)].
- 215** L.S. Sya in: *Brand Malaysia Under Attack*, *New Straits Times*, 7 July 2007;
- 216** E.g. "A Natural Urge" in: *Global Oils & Fats Business Magazine* Vol. 4, Issue 4, 2007; "Stories of Commodities" in: *Global Oils & Fats Business Magazine* Vol. 3, Issue 3, 2006; "Branding a Commodity" in: *Global Oils & Fats Business Magazine* Vol. 3, Issue 2 2006.
- 217** See: [[acume.ws/Training/Co-inhouse/Getha/2006-05-18/01.htm](http://acume.ws/Training/Co-inhouse/Getha/2006-05-18/01.htm)].
- 218** If such acknowledgment were made, one challenge that would immediately surface is the fact that the institutions and companies who are driving Malaysia's palm oil lobby have limited representation in Sarawak, and have limited influence over plantation policies there. With only seven members (Boustead, PPB, KKL, IOI, Sime Darby, Felda and THP) from its 107 membership having plantation estates in Sarawak, MPOA are not heavily represented in the East Malaysian state, (based on MPOA's latest publicly available membership list of July 2004). MPOA presence in Sarawak largely overlaps with RSPO and MPOC Board of Trustees presence in Sarawak. Similarly, the Federal government has no control over land management matters in Sarawak, which has jurisdiction to determine its own ordinances and policies over such matters, many of which fall sadly short of international environmental and human rights standards.

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