






Centralized National Risk Assessment for Malaysia

FSC-CNRA-MY V1-0 EN

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Risk assessments that have been finalized for Malaysia

Controlled Wood categories		Risk assessment completed?
1	Illegally harvested wood	YES
2	Wood harvested in violation of traditional and human rights	YES
3	Wood from forests where high conservation values are threatened by management activities	YES
4	Wood from forests being converted to plantations or non-forest use	YES
5	Wood from forests in which genetically modified trees are planted	YES

Risk designations in finalized risk assessments for Malaysia

Indicator	Risk designation (including functional scale when relevant)		
	Controlled wood category 1: Illegally harvested wood		
	Peninsular	Sabah	Sarawak
1.1	Specified risk	Specified risk	Specified risk
1.2	N/A for Alienated Land and Agricultural Land Specified risk for Permanent Reserved Forest and State Land	N/A for Agricultural Land Specified risk for Permanent Reserved Forest, State Land and Alienated Land	N/A for Alienated Land and Agricultural Land Specified risk for Permanent Reserved Forest and State Land
1.3	N/A for Alienated Land Low risk for Permanent Reserved Forest of the six states with MTCS certification Specified risk for State Land, rubberwood plantations and Permanent Reserved Forest of the five states without MTCS certification	N/A for Alienated Land Low risk for Permanent Reserved Forest and State Land Specified risk for Agricultural Land in Permanent Reserved Forest and State Land	N/A for State Land and Alienated Land Specified risk for Permanent Reserved Forest
1.4	Specified risk	Specified risk	N/A for State Land and Alienated Land Specified risk for Permanent Reserved Forest
1.5	Specified risk	N/A for rubberwood from Alienated Land and Industrial Plantation Timber from Alienated Land and State Land Low risk for the rest of the country	Specified risk
1.6	Specified risk	Specified risk	Specified risk
1.7	Specified risk	Specified risk	Specified risk
1.8	Specified risk	Low risk	Specified risk

1.9	Specified risk	Specified risk	Specified risk
1.10	Specified risk	Specified risk	Specified risk
1.11	Specified risk	Specified risk	Specified risk
1.12	Specified risk	Specified risk	Specified risk
1.13	Specified risk	Specified risk	Specified risk
1.14	N/A	Specified risk	N/A for Permanent Reserved Forest and Alienated Land Specified risk for State Land
1.15	Specified risk	Specified risk	Specified risk
1.16	N/A for Industrial Timber Plantations Low risk for rubberwood and selective logging in Permanent Reserved Forest of the six states with MTCS certification Specified risk for the rest of the country	Low risk	Specified risk
1.17	Specified risk	Low risk	Specified risk
1.18	Specified risk	Specified risk	Specified risk
1.19	Specified risk	Specified risk	Specified risk
1.20	Specified risk	Specified risk	Specified risk
1.21	N/A	N/A	N/A
Controlled wood category 2: Wood harvested in violation of traditional and human rights			
2.1	Low risk		
2.2	Low risk for discrimination of women in the labour market. Specified risk for right to freedom of association and collective bargaining, for child labour, for forced labour and for discrimination of indigenous peoples and non-Malaya people, in the labour market.		
2.3	Specified risk		
Controlled wood category 3: Wood from forests where high conservation values are threatened by management activities			
	Peninsular	Sabah	Sarawak
3.0	Low risk	Low risk	Low risk
3.1	Specified risk	Specified risk	Specified risk
3.2	Low risk for Plantation and Agricultural Land	Low risk for Permanent Forest Reserve Class II,	Low risk for Plantation and Agricultural Land

	Specified risk for Natural Forest	Natural Forest State Land and Alienated Land, and Plantation (FR-ITP, State Land and Alienated Land) Specified risk for Permanent Forest Reserve Classes I & III-VII	Specified risk for Natural Forest
3.3	Specified risk	Specified risk	Specified risk
3.4	Specified risk	Low risk for Permanent Forest Reserve Class II Specified risk for Permanent Forest Reserve Classes I & III-VII, Natural Forest State Land and Alienated Land, and Plantation (FR-ITP, State Land and Alienated Land)	Specified risk
3.5	Specified risk	Specified risk	Specified risk
3.6	Specified risk	Specified risk	Specified risk
Controlled wood category 4: Wood from forests being converted to plantations or non-forest use			
4.1	Specified risk		
Controlled wood category 5: Wood from forests in which genetically modified trees are planted			
5.1	Low risk		

Risk assessments

Controlled wood category 1: Illegally harvested wood

Overview

According to the most up to date statistics available from the Ministry of Natural Resources and Environment (NRE), Malaysia's total land area is 33.08 million hectares, of which 18.2 million hectares (55.01%) forested (MNRE 2014). This data is for 2014. Of these 18.2 million hectares, the forested area is divided into:

- Totally protected area / protected area: 2.57 million hectares (14.12%);
- Permanent reserved forest/ permanent forest estate/ permanent forest estates: 11.6 million hectares (63.73%)
- State land forest: 3.8 million hectares (20.87%)

Under the Malaysian Constitution, forestry comes under the jurisdiction of the respective State Governments. As such, each State is empowered to enact laws on forestry and to formulate forestry policy independently. The executive authority of the Federal Government only extends to the provision of advice and technical assistance to the States, training, the conduct of research, and in the maintenance of experimental and demonstration stations. Forest Management-related issues are governed at the Federal level by two Ministries; the Ministry of Natural Resources and Environment and the Ministry of Plantation Industries and Commodities.

In Malaysia there are 3 geographical regions: Peninsular Malaysia, Sabah and Sarawak. The State Governments of these three demarcations have jurisdiction over agriculture, land and soil conservation, rivers, water and forest resources.

Peninsular Malaysia is made up of 11 states and two federal territories. These individual states have a fairly uniform set of laws and regulations for forest management. The states of Sabah and Sarawak are autonomous, and each have differing laws and regulations. A common approach to forest management for the three regions was facilitated through the National Forestry Council (NFC). The NFC harmonised Sustainable Forest Management (SFM) policies and practices between Federal and State Governments. However, it must be noted that the National Forestry Council no longer exists and forestry matters are now incorporated into the meetings of the National Land Council. Generally, while forestry matters are managed by State governments, under the Constitution the Federal government can enact laws to harmonise and standardise State enactments. To this end, the National Forestry Act 1984 was formulated and later adopted by the individual States and Territories in Peninsular Malaysia.

Legally, land in Malaysia is divided into **State Land**, **Alienated Land** (i.e. state land that has been alienated for development) and the **Permanent Reserved Forest** (PRF which includes forest reserves, protected forests, National Parks/Wildlife & Bird Sanctuaries). These legal categories can include various types of forests including unlogged virgin forests, selectively logged forests, forests that have been cleared and regenerated naturally, and planted forests (including plantations of rubber, acacia and other exotic species).

Logging and land clearance/conversion is permitted on most State Land and Alienated Land. Logging and land clearance is also permitted in those parts of the PRF that have been zoned for timber production, however the land must be replanted with timber species. No logging is permitted in those parts of the PRF that have been zoned for protection (including water catchment forests, national parks, wildlife reserves and bird sanctuaries). The state governments have the power to remove any area from the PRF should they wish to use the land for some other purpose.

On these land types, different use permits and licenses can be issued, depending on the State (Timber Trade Portal, 2016; MNRE 2014a; MNRE 2014b; Australian Government Department of Agriculture and Water Resources 2017; Australian Government Department of Agriculture and Water Resources 2017a and Australian Government Department of Agriculture and Water Resources 2017b). The main types are natural forest concession, plantations and agricultural use permits:

1. Permanent Reserved Forest

- a. Natural forest, being managed for long term timber production.
- b. Natural forest being cleared as part of, or to establish, a timber plantation concession.
- c. Timber plantation (e.g. Acacia, Eucalyptus, Latex Timber Clones Rubberwood) in forest reserves.
- d. Agricultural plantation (primarily rubberwood, but also some other fruit woods etc...), that has reach the end of its productive life and is being cleared to make way for a new agricultural/forest plantation NB: very rare in the PRF.

2. State Land

- a. Natural forest, being managed for long term timber production.
- b. Natural forests being cleared for future potential land use the land is zoned for possible future use for agriculture, housing, etc. but no private title to the land has yet been issued.
- c. Timber plantation (NB: rare). Occasionally, timber plantations established on forest reserves are later excised to state land. This land is usually more profitably used for growing oil palm or rubber, not trees for timber.
- d. Agricultural plantation (primarily rubberwood, but also some other fruit woods etc...), that has reach the end of its productive life and is being cleared to make way for a new agricultural or forest plantation.

3. Alienated Land

- a. Natural forest, being managed for long term timber production.
- b. Natural forests being cleared for future potential land use – land holders are given the rights to log the area which will be converted into another use.
- c. Timber plantations are rare (usually used for growing oil palm or rubber, rather than trees for timber). A harvest permit or license is required.

- d. Timber from private “agricultural” estates. This is mainly rubberwood plantations that are being cleared for oil palm or for another rotation of rubber (i.e. grown primarily for latex and not primarily for timber). Includes the cultivation of trees their produce, i.e. fruit and rubber.

In some cases, Malaysian law recognises the existence of native customary rights (NCR) over State Land, Alienated Land and the PRF. In such cases, common law requires that the State obtain the consent of the NCR holders prior to any activity on that land. This is a grey area in the law and there remains significant ambiguities on the extent to which NCR can be claimed. The majority of NCR claims are not recognised by the State Governments. There are no specific restrictions in the statutes regulating the harvesting of timber on indigenous reserves or areas for where there are communal property rights. Consequently, the authorities manage such areas no differently from areas without such rights. Thus these areas are not distinguished in the table on timber source types.

The forestry and timber agencies in Malaysia ('upstream') who issue harvesting permits, licenses and log transport documents are:

- Forestry Department Peninsular (FDPM) and the State Forestry Departments under the authority of the National Forestry Act 1984, guided by the National Forestry Policy 1978 (revised 1992).
- Sabah Forestry Department (SFD) under the Forest Enactment 1968
- Sarawak Forestry Corporation (SFC) under the Sarawak Forestry Corporation Ordinance, 1995 & Forest Department Sarawak (FDS) under the Forest Ordinance, 1958 (Cap. 126).

The licensing authorities issuing export and import licenses for timber products, as provided for under Schedule 2 of the Customs (Prohibition of Export) Order 2012 and (Prohibition of Import) Order 2012:

1. Malaysian Timber Industry Board (MTIB) for Peninsular
2. Sabah Forestry Department; and
3. Sarawak Timber Industry Development Corporation (STIDC)

In 2016, Malaysia had a Corruption Perception Index of 49 (2015:50). There are several reports of corruption in the forestry sector in Malaysia, and corruption is an issue of relevance to the legality of timber grown there. According to the World Bank Worldwide Governance Indicators Malaysia receives a ranking of 0,64 in Rule of law; 0,48 in Control of Corruption; 0,84 in Regulatory Quality and 1,14 for Government Effectiveness on a scale of -2,5 to 2,5.

The Malaysian Timber Certification Scheme (MTCS) is a voluntary, PEFC-endorsed and state-supported third-party certification scheme for PRFs in Malaysia. It does not apply to State Land and Alienated Land. In Peninsular Malaysia, MTCS is implemented with each state as a single Forest Management Unit. As of 31st May 2017, the PRFs of six out of the eleven states in Peninsular Malaysia are certified under MTCS (Forest Management); three concessions in Sarawak; and one concession in Sabah (MTCS, 2017). In Sabah, the Sabah Timber Legality Assurance System (TLAS) is a third-party certification scheme made mandatory by Sabah state government for all timber licensees regardless of land type (PRF, State Land or Alienated Land) with annual audits taking place.

The list of sources provided in FSC-PRO-60-002a, section 3.3.3 has been reviewed for relevance regarding the national legality risk assessment of Malaysia. The following sources have been used:

- a) Chatham House: <http://www.illegal-logging.info/>;

- b) Environmental Investigation Agency: <http://www.eia-international.org>;
- c) EU FLEGT process: http://ec.europa.eu/comm/development/body/theme/forest/initiative/index_en.htm;
- d) Government reports and assessments of compliance with related laws and regulations;
- e) Independent reports and assessments of compliance with related laws and regulations, e.g., the Royal Institute of International Affairs: <http://www.illegallogging.org>;
- f) Interpol: <http://www.interpol.int/Crime-areas/Environmental-crime/Projects/Project-LEAF>;
- g) Justice tribunal records;
- h) Transparency International Corruption Perceptions Index: http://www.transparency.org/policy_research/surveys_indices/cpi;
- i) World Bank Worldwide Governance Indicators: <http://data.worldbank.org/datacatalog/worldwide-governance-indicators>;
- j) In cases where other sources of information are not available, consultations with experts within the area shall be conducted.

Where relevant, they have been specifically referenced under “sources of Information” for each applicable indicator. The remaining sources were found not to be relevant for the legality risk assessment for Malaysia.

Consultation with in-country experts was carried out throughout the drafting of this assessment in 2015-2017, including face to face consultation meetings held in Malaysia. A broad range of experts were consulted, including representatives from Non-government organizations, a number of relevant Government Ministries and enterprises. Due to confidentiality issues, the experts consulted have not been named specifically in this report, but a full list of experts was provided to Policy and Standards Unit (PSU) of the FSC International Center.

Internet based research has been carried out for each indicator in English.

References

Where possible, links to sources of information and applicable legislation have been included in this assessment. Note that links to legislation in particular can change frequently, and the links in this report, that were correct at the time of preparation, may no longer be viable.

- Australian Government Department of Agriculture and Water Resources (2017). Country specific guideline for Malaysia (Sabah) - Department of Agriculture and Water Resource and Ministry of Plantation Industries & Commodities. Available at: <http://www.agriculture.gov.au/SiteCollectionDocuments/forestry/australias-forest-policies/illegal-logging/malaysia-sabah.pdf>, accessed 8 February 2017.
- Australian Government Department of Agriculture and Water Resources (2017a). Country specific guideline for Malaysia (Sarawak) - Australian Government and the Government of Malaysia. Available at: <http://www.agriculture.gov.au/SiteCollectionDocuments/forestry/australias-forest-policies/illegal-logging/malaysia-sarawak.pdf>

- Australian Government Department of Agriculture and Water Resources (2017b). Country specific guideline for Malaysia (Peninsular),[pdf] Australian Government and the Government of Malaysia. Available at: <http://www.agriculture.gov.au/SiteCollectionDocuments/forestry/australias-forest-policies/illegal-logging/malaysia-peninsula.pdf>
- European Timber Trade Federation (2016). Timber Trade Portal – Malaysia. Accessed 6 April 2016 at <http://www.timbertradeportal.com/countries/malaysia/>.
- Malaysian Ministry of Natural Resources (2014). Official Portal Ministry of Natural Resources and Environment (NRE) "Negaraku, Alam Sekitarku" - Total Forested Areas in Malaysia (1990-2014). Accessed 6 April 2018 at <http://www.nre.gov.my/en-my/Forestry/Pages/Statistics-Forest.aspx>.
- Malaysian Ministry of Natural Resources (2014a). Official Portal Ministry of Natural Resources and Environment (NRE) "Negaraku, Alam Sekitarku" - Forest Types In Permanent Reserved Forest (1990-2014). Accessed 6 April 2018 at <http://www.nre.gov.my/en-my/Forestry/Pages/Forest-Types-In-Permanent-Reserved-Forest.aspx>
- Malaysian Ministry of Natural Resources (2014b). Official Portal Ministry of Natural Resources and Environment (NRE) "Negaraku, Alam Sekitarku" - Forestry facts. Accessed 6 April 2018 at <http://www.nre.gov.my/en-my/Forestry/Pages/Forestry-fact.aspx>.

Sources of legal timber in Malaysia

Forest classification type	Permit / license type	Main license requirements (forest management plan, harvest plan or similar?)	Clarification
State Land	Harvest permit or license	Land area mapping, harvesting plan	<p>Forest stand consists of 100% tropical species.</p> <p>The land is meant for clear cut or conversion to other land use such as agriculture or development. Log produced accompanied by Forestry Department's removal pass or transport document. In Peninsular, it is necessary to note that most of rubber production from conversion land is by smallholders and that there is currently no system existing to monitor the harvesting of rubberwood from smallholdings, i.e. no removal pass or harvesting plan. During one of the stakeholder consultations for MYTLAS, the FDPM highlighted that they cannot implement MYTLAS for rubberwood as they do not currently monitor rubberwood harvesting and transport.</p> <p>Peninsular Malaysia: National Land Code 1965(S5) defines State Land as "all land in the State other than –</p> <ol style="list-style-type: none"> Alienated Land reserved land mining land

			<p>d. any land which under the provision of any law relating to forests (whether passed before or after the commencement of this Act) is for the time being reserved forest."</p> <p>Sabah: "all land in the State other than Forest Reserves or Alienated Land" as defined in the Forest Enactment 1968.</p> <p>Sarawak: all forest stands in the State other than a forest reserve, protected forest, communal forest, Government reserve and planted forest as constituted, established or defined in the Forests Ordinance (Cap.126).</p>
Alienated Land	Harvest permit or license	Land area mapping, harvesting plan	<p>Peninsular Malaysia: as defined under National Land Code 1965, means "any land (including any parcel of a sub-divided building) in respect of which a registered title for the time being subsists, whether final or qualified, whether in perpetuity or for a term of years, and whether granted by the State Authority under this Act or in the exercise of powers conferred by any previous land law, but does not include mining land."</p> <p>Sabah: as defined Forest Enactment 1968, means "any land in respect of which a registered title for the time being subsists under any written law relating to land title registration, land tenure or mining, or which has become in any manner vested in any person or authority other than the State."</p> <p>Sarawak: refers to any land held under a 'document title' as defined in Section 2 of the Land Code (Cap. 81).</p>
Permanent Reserved Forest (Production)	Harvest permit or license	Management plan, topographical map, harvesting plan	<p>Forest stand consists of 100% tropical species.</p> <p>Log produced accompanied by Forestry Department's removal pass or transport document.</p> <p>Only tagged logs can be cut as according to harvesting plan.</p> <p>Peninsular Malaysia: as defined under National Forestry Act 1984, means "any land constituted or deemed to have been constituted a Permanent Reserved Forest under this Act."</p> <p>Sabah: refers to Forest Reserves declared under Section 12 of Forest Enactment 1968.</p> <p>Sarawak: refers to forest reserves, protected forests and communal forests* constituted under Sections 14, 33 and 40 respectively of Forests Ordinance (Cap.126).</p> <p>*Timber from communal forests is not for batter trade, sale and export. It is for domestic use only.</p>

Plantation forest (forest species, ex Acacia, teak)	Harvest permit or license	Management plan, topographical map, harvesting plan	Mainly consist of fast growing exotic species purely for commercial purpose. Log produced accompanied by Forestry Department's removal pass or transport document. Harvest activity as according to harvesting plan. Planted forest or Industrial Tree Plantation (ITP) may be established in any of these categories of land. Procedures for the management of planted forests may differ from natural forests.
Rubber Plantation (either as a by-product from Replanting Operations or planted for wood production)	Harvest permit or license	Management plan, topographical map, harvesting plan except for small-scale area under Alienated Land.	Mostly owned by private sector. Some small-scale rubber plantation areas owned by villagers are normally grouped together under one umbrella concept and managed by FELCRA (Federal Land Consolidation and Rehabilitation Authority). Log produced accompanied by Forestry Department's removal pass or transport document. Harvest activity is according to harvesting plan except for small-scale ownership under Alienated Land.

Risk assessment

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
Legal rights to harvest			
1.1 Land tenure and management rights	<p>Peninsular</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> <i>National Forestry Act 1984</i> (Sections 14, 19, 28, 33, 34, 40 and 62, Part IV, Chapters 1, 2 and 3), 62(2)(b)(i) to (iv), 71, 76 to 80, 98(1) & 104., adopted in the State Forest Enactment for Peninsular. http://www.agc.gov.my/Akta/Vol.%207/Act%20313.pdf 	<p>Peninsular</p> <p><i>Government sources</i></p> <ul style="list-style-type: none"> Department of Lands and Mines - www.kptg.gov.my JAKOA (2016). Proposed Amendments to Act 134 Aboriginal Peoples Act 1954. http://www.jakoa.gov.my/en/orang-asli/akta-134-akta-orang-asli-1954/Non-government sources. 	<p>Peninsular</p> <p><i>Overview of Legal Requirements</i></p> <p>Forest land in Peninsular Malaysia belongs to the State Government. The Forestry Department of Peninsular Malaysia (FDPM) is the authority responsible for managing most forest in accordance with the National Forestry Act 1984. Most forest areas have been gazetted and marked according to 11 different classifications based on purposes of the land [section 10 (1)]. Some areas of forest (mostly plantations) are under private title (usually land alienated for agriculture) and some areas are totally protected areas under separate legislation.</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<ul style="list-style-type: none"> • <i>National Land Code 1965</i> (Part 5, Chapter 1, 2 & 3, Section 62) http://www.kptg.gov.my/sites/default/files/article/NLC1956DIGITAL-VER1.pdf • <i>Aboriginal Peoples Act 1954</i> (Sections 6, 7, 8, 10, 13 and 19) http://www.kptg.gov.my/sites/default/files/article/Act%20134-Oboriginal%20Peoples%20Act.pdf • <i>Companies Act 1965</i>, Section 16 - http://jpt.moe.gov.my/RUJUKAN/akta/akta%20syarikat.pdf • <i>Land Conservation Act 1960</i> – Sections 3 & 4. http://www.agc.gov.my/Akta/Vol.%208/Act%20385.pdf • <i>Federal Constitution</i> - http://www.agc.gov.my/images/Personalisation/Buss/pdf/Federal%20Consti%20%28BI%20text%29.pdf • <i>National Forestry Policy, 1978</i> - http://globinmed.com/index.php?option=com_content&view=article&id=104006:malaysia-national-forestry-policy-1978-revised-1993-new&catid=259 • <i>Town and Country Planning Act 1976</i> (Act 172) - http://www.pht.org.my/legislation/Town_and_Country_Planning_Act.pdf • <i>National Policy on Biological Diversity, 1998</i> – 	<p><i>Non-government sources</i></p> <ul style="list-style-type: none"> • Aiken, R., & Leigh, C. H. (2011). In the Way of Development: Indigenous Land-Rights in Malaysia. The Geographical View, 1-127. • Buang, S. (2002). A primer on land ownership. May 11, 2002. Retrieved from www.hba.org.my: http://www.hba.org.my/articles/salleh_buang/2002/primer.htm. • World Resources Institute (WRI) (2013). Forest Legality Alliance Risk Tool, 2013: Malaysia: http://www.forestlegality.org/risk-tool/country/malaysia#tab-management. • Hoare, A. (2015). Illegal Logging and Related Trade the Response in Malaysia a Chatham House Assessment. Chatham House, London. Accessed 23 February 2015 at http://www.illegal-logging.info/sites/default/files/CHHJ2365_Malaysia_Logging_Research_Paper_A4_01_15_WEB.PDF. • Lim, T. W. (2013). <i>Malaysia: Illegalities in Forest Clearance for Large-Scale Commercial Plantations</i> – report prepared for Forest Trends. Accessed 24 February 2015 at http://www.forest- 	<p>The responsible authority for most forest areas is the respective State Forestry Department while FDPM HQ provide the policies and standard operating procedures (SOPs), training etc. The main legislative act related to the native customary rights (NCRs) of land tenure of Orang Asli or the aboriginal peoples of Peninsular Malaysia, the Aboriginal Peoples Act, is administered by the Department of Orang Asli Development (JAKOA, 2016).</p> <p>The forest management shall ensure:</p> <ol style="list-style-type: none"> 1. Clear, documented and unchallenged legal registration of FME (Forest Management Enterprise) with authorization for specific activities. 2. Formally registered as a business or corporate enterprise with vested rights and obligations in respect of conducting business, including for taxation purposes and with the relevant social authorities or agencies as required by law. 3. Adherence to the requirements of relevant organizations including, where applicable, appropriate industry and trade bodies or councils. <p>In Peninsular Malaysia, there are three ways to gain land ownership:</p> <ol style="list-style-type: none"> 1. transfer/purchase, 2. inheritance; and 3. alienation. <p>Land ownership is based on the National Land Code 1965 and the “Torrens System”, meaning that everything is registered in a central land ownership database and ownership is thus determined by the name on the Title Document. Transfer/purchase also includes leases, charges, easements</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<p>http://ww2.sabah.gov.my/jpas/laws/fwork/NBP.pdf</p> <p><i>Legal authority</i></p> <ul style="list-style-type: none"> • Forest Department Peninsular Malaysia (FDPM) • State Land Office • Jabatan Kemajuan Orang Asli (JAKOA) <p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> • Land title • Gazettal record of permanent reserved forest (PRF) • Records of classification of PRFs • Concessionaires' agreements • Record on relevant decision by the Civil Court • Contract agreement with local communities with use rights for use of land. <p>Sabah</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> • Sabah Land Ordinance, 1930 (Sabah Cap.68) http://sabah.gov.my/phb/wp-content/uploads/2011/05/LandOrdinance.pdf 	<p>trends.org/publication_details.php?publicationID=4195.</p> <ul style="list-style-type: none"> • Mah, R. and Balasundaram, S. (2013). <i>Compulsory Land Acquisition in Malaysia, Compensation and Disputes</i>. Available at: www.mahwengkawai.com/compulsory-land-acquisition-malaysia-compensation-disputes/. Accessed 31 January 2017. • Nicholas, C. (2010). Orang Asli: Rights, Problems, Solution. SUHAKAM. • Nicholas, C., Engi, J., & Ping, T. Y. (2010). The Orang Asli and UNDRIP: From Rhetoric to Recognition. Subang Jaya, Malaysia: COAC. • Subramaniam, Y. (2015). Ethnicity, Indigeneity and Indigenous Rights: The 'Orang Asli' Experience. QUT Law Review, 71-91. • Kulasingam & Anor v Commissioner of Lands, Federal Territory & Ors [1982] 1 MLJ 204” determined that ‘public purpose’ has no clear definition and should be based on common sense (Mah & Balasundaram, 2013). • Transparency International (2011). <i>Forest Governance Integrity Report - Peninsular Malaysia</i>. Accessed 24 February 2015 at http://transparency.org.my/wp- 	<p>and liens (Buang, 2002). Inheritance occurs when land is inherited from one’s parents or ancestors.</p> <p><i>Alienation</i> refers to State Land being disposed by way of “alienation”, meaning acquired from customary landowners by government.</p> <p>Land ownership is legally guaranteed and protected by both the Federal Constitution (FC) (Article 13), and the National Land Code 1965 (NCL), which states that a land title is indefeasible (cannot be annulled or overturned) (Buang, 2002).</p> <p>Transfer of ownership can happen through approval by state government in two ways: to either individual people or to corporations. Once transferred to private hands, land is no longer considered PRF (Permanent Reserved Forest). Transfer of tenure to private hands is documented via a land grant/title, and is considered Alienated Land intended for purposes other than forest management/logging (usually for agriculture) (Buang, 2002).</p> <p>There exist two types of ownership: <i>freehold</i> (land held in perpetuity) and <i>leasehold</i> (leased land not exceeding a 99-year term). Land ownership comes with certain duties in the form an annual rent to the State as well as express conditions for agricultural land referent to section 115 of the NCL. If these conditions are breached, the right to land can be forfeited.</p> <p>However, the adoption of the Land Acquisition Act 1960 made it possible for any State Authority to legally acquire land (compulsory land acquisition) for one of the following purposes:</p> <ul style="list-style-type: none"> • For any public purpose (see Kulasingam & Anor v Commissioner of Lands, Federal Territory & Ors) • For an economic development deemed to be beneficial to the public of Malaysia; or

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	<ul style="list-style-type: none"> Sabah, Native Court Enactment 1992 http://www.sabah.gov.my/mlgh/nativecourtsenactment1992.pdf Sabah Forest Enactment, 1968 (Part IV Section 41) http://faolex.fao.org/docs/pdf/mal10907.pdf Land Acquisition Ordinance, 1950 http://sabah.gov.my/phb/wpcontent/uploads/2011/05/LandAcquisitionOrdinance.pdf Forest Rules 1962. Available at: http://www.lawnet.sabah.gov.my/Lawnet/SubsidiaryLegislation/Forest1968(Rules1969).pdf Local Government Ordinance, 1961. Available at: http://www.sabah.gov.my/mlgh/LocalGovernmentOrdinance1961.pdf 1.1.2. <p><i>Legal authority</i></p> <ul style="list-style-type: none"> District Office Sabah Forestry Department Lands and Surveys Department <p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> Proof of ownership is provided by two documents: Issue Document of Title and Register. If the buyer of land is a foreign person or company, the transfer 	<p>content/uploads/sites/3/2013/09/Publication-Report-Peninsular-Malaysia.pdf.</p> <ul style="list-style-type: none"> WWF Global Forest Trade Network (GFTN) (2009). <i>Malaysia, Guide to Legal Documentation, (2009)</i>. Available at: http://sourcing.gftn.panda.org/files/PDF/legal_documentation_malaysia.pdf WWF Global Forest Trade Network, N.Y (undated). <i>Common Framework for Assessing Legality of Forestry Operations, Timber Processing and Trade - Principles, Criteria and Indicators for Malaysia</i> [PDF], Available at: http://sourcing.gftn.panda.org/files/PDF/legal_framework_malaysia.pdf. Sahabat Alam Malaysia (SAM) and Jaringan Kampung Orang Asli Semenanjung Malaysia (JKOASM) (2017). <i>Encroachment on Orang Asli Customary Land in Peninsular Malaysia - CAUSES & SOLUTIONS</i>. Available: http://loggingoff.info/wp-content/uploads/2017/02/2016-SAM-JKOASM-Encroachment-on-Orang-Asli-customary-land.pdf, accessed 6 February 2018. <p>Sabah <i>Government sources</i></p>	<ul style="list-style-type: none"> For purpose of mining, residential, agricultural, commercial, industrial or recreational purposes (Mah & Balasundaram, 2013) <p>Should the State Authority choose to acquire one's land, it is obligated to pay an adequate compensation fee based on the current market value. Hence, despite the guarantee of private property as provided in the FC, private land can be legally acquired by the State authority based on opaque grounds.</p> <p>In Peninsular Malaysia, the main statute in relation to customary rights is the 'Aboriginal Peoples Act 1954', which circumscribes the rights of the Orang Asli. While the Act allows for the designation of aboriginal areas, it also provides for revocation of any such designated areas. In addition, the Orang Asli cannot obtain individual titles to their land and can therefore only have the status of 'tenants' subject to the will of their landlord (Aiken & Leigh, 2011, p. 478). The Federal Constitution places the welfare of the Aboriginal Peoples as a federal responsibility. In addition, and according to the National Land Code 1965, the State government have authority over all state land except for alienated- or reserved land. Consequently, the State controls all aboriginal land not declared customary rights land.</p> <p><i>Description of Risk</i></p> <p><u>Plantation on private land:</u></p> <ul style="list-style-type: none"> There is a risk of political bias (nepotism and/or corruption) in the issuing grants for privatization of land According to Transparency International (2011) an area of specific weakness for corruption in Peninsular Malaysia relates to 'forest classification changes – establishment and excision of Permanent Reserved Forests and conversion of high forest to plantation forest'. Forest excision and granting of private title (for conversion of natural forest to plantations or non-forest uses) requires public notification only after the

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<p>needs to be sanctioned by the State Authority</p> <ul style="list-style-type: none"> Long term timber licence agreement Sustainable Forest Management License Agreement Record on decision by the Civil Court and Native Court Contract agreement with local communities with use rights for use of land. <p>Sarawak</p> <ul style="list-style-type: none"> Native Court Ordinance 1992 Native Court Rules 1993 Laws: Forest Ordinance. Available at: http://www.sarawakforestry.com/pdf/laws/forests_ordinance_chapter_126.pdf Forest Rules 1962. Available at: http://www.sarawakforestry.com/pdf/laws/the_forest_rules.pdf Land Code 1958 (Chapter 8). Available at: http://faolex.fao.org/docs/pdf/mal134804.pdf Native Courts Ordinance, 1992 Native Courts Rules, 1993 	<ul style="list-style-type: none"> forest.sabah.gov.my (N.Y.) Sabah Forestry Department – official Portal. [online] Available at: http://www.forest.sabah.gov.my/ Department of Environment. (2010). Environmental Requirements: A Guide for Investors. Kuala Lumpur: Government of Malaysia. Sabah Forestry Department, (2017). Annual Report 2016 – Chapter 11: Enforcement, Investigation & Prosecution. Available: http://www.forest.sabah.gov.my/ar2016/11.pdf, accessed 8 February 2018. <p><i>Non-government sources</i></p> <ul style="list-style-type: none"> theborneopost.com (2014). Govt urged to give priority to the natives in land disputes. [online] Sept. 29, 2014. Available at: http://www.theborneopost.com/2014/09/29/govt-urged-to-give-priority-to-natives-in-land-dispute/ [Accessed 2 March 2015] Toh, S. M. and Grace, K. T. (2006). Understanding forest tenure in South and Southeast Asia, Case study: Sabah Forest ownership. [online]. FAO. Available at: ftp://ftp.fao.org/docrep/fao/009/j8167e/j8167e10.pdf World Resources Institute (WRI) (2013). Forest Legality Alliance Risk 	<p>decision of changing the status has been made and the perception is that this process is open to political bias.</p> <p><u>Natural forest and plantation on forest reserve and State Land</u></p> <ul style="list-style-type: none"> There is a risk of conflict with native peoples in relation to the alienation of land. There is a risk of excising land title from customary land owners illegally or through an undue process. The issue lies within the provisions of the National Land Code which provide the State authority with incontestable power to seize private land for the benefit of private companies and/or individuals. As there exist significant economic incentive for the State authority to sell large areas of land to private developers, the indigenous group of Orang Asli is often forced to relocate (Nicholas, 2010). Consequently, legislation and statutory law have been the main route to opening land for private development at the expense of residing indigenous populations (Nicholas, Engi, & Ping, 2010). While the High Court has recognized the customary rights of the Orang Asli as exemplified by the Sagong Tasi case, a vast majority of the Orang Asli remains too few and too politically disorganized to make a political influence (Weiss (2006, p. 91) quoted in Aiken & Leigh (2011, p. 477)). In Malaysia, the access to secure land tenure seems to be contingent upon by socioeconomic status or ethnicity and some level of discrimination, especially against the indigenous Orang Asli population, is thus present (Subramaniam, 2015). Little evidence or cases of alleged corruption in the transfer of land has been found in Peninsular Malaysia regarding transfer/purchase of land as well as inheritance. However, land alienation from customary land owners have received

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	<p><i>Legal authority</i></p> <ul style="list-style-type: none"> • Forest Department Sarawak • Land and Survey Department, Sarawak <p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> • Forest timber license • Civil court decision on legal or customary tenure or use right • Contract agreement with local communities with use rights for use of land • Native court decision records 	<p>Tool, 2013: Malaysia: http://www.forestlegality.org/risk-tool/country/malaysia#tab-management.</p> <ul style="list-style-type: none"> • sourcing.gftn.panda.org (N.Y.). WWF Global Forest Trade Network: Common Framework for Assessing Legality of Forestry Operations, Timber Processing and Trade - Principles, Criteria and Indicators for Malaysia. [online]. WWF-GFTN. Available at: http://sourcing.gftn.panda.org/files/PDF/legal_documentation_malaysia.pdf and http://sourcing.gftn.panda.org/files/PDF/legality_framework_malaysia.pdf • forestlegality.org (2009). TTAP Legality Checklist - Malaysia. Available at: http://www.forestlegality.org/risk-tool/country/malaysia • Colchester, M., Jalong, T., Alaza, L. (2013). 'Conflict or Consent?' Chapter 10: Sabah: Genting Plantations and the Sungai and Dusun Peoples. [online]. Forest Peoples. Available at: http://www.forestpeoples.org/sites/fpp/files/private/publication/2013/12/conflict-or-consent-chapter-10-sabah-genting-plantations-and-sungai-and-dusun-peoples.pdf [Accessed 2 March 2015] 	<p>notable media attention and been taken to the high court as well. The root of this conflict seems to be the apparent discrimination AGAINST the Orang Asli, a discrimination present despite a seemingly encompassing Malaysian legal framework and international commitments like the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).</p> <ul style="list-style-type: none"> • According to Chatham House, "Most permanent reserved forests in Peninsular Malaysia are certified under the Malaysian Timber Certification Scheme (MTCS), under which forest management plans are audited. Auditing covers the recognition of aboriginal land where relevant. However, a significant problem is that many customary lands and aboriginal reserves are not gazetted and thus are not recognized by law; for this reason, they are not taken into account in the issuance of licences or subsequent management plans." (Hoare, 2015). In other words, forestry laws are sometimes conflicted against customary laws. • There is an increase in Orang Asli land claims being brought to the court and often in favour of the Orang Asli (JAKOA). This is an issue primarily for natural forest and plantation timber from forest reserve and is not usually an issue for rubberwood from agricultural sources on Alienated Land (Hoare, 2015). • According to SAM and JKOASM (2017) 'encroachments on Orang Asli customary land have indeed been caused by systemic governance and legal issues, as opposed to isolated incidents that may have occurred as a result of the violations and breaches of legislative requirements or executive directives'.

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
		<ul style="list-style-type: none"> Expert consultation conducted by NEPCon, (2015) including personal communication 4. Chan, J. (2016, March 1). To prevent fraud, Sabah MACC wants to reissue native certificates. Retrieved from: http://www.themalaymailonline.com/malaysia/article/to-prevent-fraud-sabah-macc-wants-to-reissue-native-certificates . Daily Express, (2015). Natives must be told, rules court. Available at: http://www.dailyexpress.com.my/news.cfm?NewsID=96067 [Accessed 31 January 2017]. <p>Sarawak</p> <p><i>Non-Government sources</i></p> <ul style="list-style-type: none"> Colchester, M., Pang, W. A., Chuo, W. M., & Jalong, T. 2007. Land is Life: Land Rights and Oil Palm Development in Sarawak. Forest Peoples Programme and Perkumpulan Sawit Watch. Ngidang, D. 2005. Deconstruction and Reconstruction of Native Customary Land Tenure in Sarawak. Southeast Asian Studies, 47-75. Lawson, S. 2014. Consumer Goods and Deforestation: An Analysis of the Extent and Nature of Illegality in 	<p><i>Risk Conclusion</i></p> <p>'Specified risk'. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p> <p>Sabah</p> <p><i>Overview of Legal Requirements</i></p> <p>Land matters in Sabah are controlled by the State Government, and claims to land ownership must be approved and registered by the State. Formal tenures are always related to land, and not to forest or mineral resources.</p> <p>To obtain land ownership in Sabah, the most common way is via a land application to the State government through the Land and Survey Department. However, sections 9(1), 76 and 78 of the Sabah Land Ordinance (SLO) opens for alternative routes for native ownership in Sabah. In addition, the SLO provides some protection of indigenous customary rights, as it introduces a strict set of conditions that must be followed to claim customary land (Toh & Grace, 2006, p. 254). The Land Ordinance is administered by the Land and Survey Department.</p> <p>Property rights in Sabah fall into three categories:</p> <ul style="list-style-type: none"> <u>State property rights</u>: Permanent Reserved Forests and State Land forest come under this category <u>Private property rights</u>: apply where the State has Alienated Land for development, usually oil-palm or other plantations owned by private companies. The Land Ordinance, Part IV, provides private ownership rights for individuals (indigenous title) and communal property rights (communal title) for community ownership. Companies can buy land from the government Alienated Land or indigenous title holders. The owner of the Alienated Land is required to supply a certified

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		<p>Forest Conversion for Agriculture and Timber Plantations. Forest Trends. Accessed 6 March 2015 at http://www.forest-trends.org/documents/files/doc_4718.pdf</p> <ul style="list-style-type: none"> • Lim, T. W. (2013). <i>Malaysia: Illegalities in Forest Clearance for Large-Scale Commercial Plantations</i> – report prepared for Forest Trends. Accessed 24 February 2015 at http://www.forest-trends.org/publication_details.php?publicationID=4195. • Environment News Service. 2014. Sarawak's new chief minister takes on corrupt timber tycoons: http://ens-newswire.com/2014/11/18/sarawaks-new-chief-minister-takes-on-corrupt-timber-tycoons/ • Sarawak Report. 2015. Tufail Mahmud how I-evaded tax on my secret timber concession: http://www.sarawakreport.org/2015/02/timber-concessions-for-sabah-forestry-departments-special-staff-members/; http://www.sarawakreport.org/2015/01/tufail-mahmud-how-i-evaded-tax-on-my-secret-timber-concession/ • Suara Sarawak, (2014): <i>Sarawak gov't suffers 10 defeats in NCR land cases</i>. Available at 	<p>copy of the land title to SFD for issuance of a Form 1 Licence for timber harvesting (Toh & Grace, 2006).</p> <ul style="list-style-type: none"> • <u>Communal property rights</u>: Communities can also gain communal property rights through applying for an indigenous reserve. This differs from communal title in that the community cannot transfer these rights to other parties. There are also restrictions on land use, and a Board of Trustees must be established to manage the indigenous reserve. Although communal property rights are enshrined by law, only a very small area is currently gazetted under them (Toh and Grace, 2006). <p>To formalize the presence of communities in forest reserves, Sabah Forestry Department has recently introduced the use of Occupation Permits (OPs) that can be on PRF and SL. Although the community participates in deciding the duration of and total area covered by the permit, the final decision remains with Sabah Forest Department (Toh and Grace, 2006).</p> <p><i>Description of Risk</i></p> <p>There is a risk of insecure land tenure, especially related to community and indigenous land rights. The risk relates to land right disputes between communities and state/private sector for timber regardless of source (PRF, SL or AL).</p> <ul style="list-style-type: none"> • Land conflict in Sabah is common. Native communities are often unaware of their rights under the SLO and are unfamiliar with the legal process of claiming land, often leading to conflict with the State, which is quick to gazette resource-rich land to other purposes (Toh and Grace, 2006). • Land disputes in Sabah exists when indigenous communities fail to register and claim their traditional lands and the State gazettes this land for other purposes, such as designating it as a forest reserve or alienating it for development purposes (Toh & Grace, 2006).

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		<p>http://www.barubian.net/2014/04/sarawak-govt-suffers-10-defeats-in-ncr.html.</p> <ul style="list-style-type: none"> • Sarawak Report, (2016). Familiar Story Plays Out Against the Native Landowners of West Malaysia. Available at: http://www.sarawakreport.org/2016/09/familiar-story-plays-out-against-the-native-landowners-of-west-malaysia/. • Mongabay, (2017). Leading US plywood firm linked to alleged destruction, rights violations in Malaysia. Available at: https://news.mongabay.com/2017/10/leading-us-plywood-firm-linked-to-alleged-destruction-rights-violations-in-malaysia/. • Transparency International, (2017). Corruption Perception Index 2016. Available at: https://www.transparency.org/country/MYS. [Accessed 5 February 2018]. • Global Witness (2013). <i>Inside Malaysia's Shadow State</i>. Available at https://www.globalwitness.org/campaigns/forests/inside-malaysias-shadow-state/. 	<ul style="list-style-type: none"> • According to Toh and Grace (2013) "Communities tend to have only limited understanding of their indigenous rights as provided in the Land Ordinance, and many communities have not formally registered their traditional claims through Occupation Permits (OP)." However, these issues relate to State Land, and to a lesser extent to Forest Reserves although there are a few issues on land tenure right disputes between forest enterprise/private sector and local community." • There are examples where Natives wanting to register native land have been wrongfully informed by the Lands and Survey Department about the procedure. The wrong forms have instead been provided, with the result that communities have given up their land. Courts have ruled that mistakes have been made and should be corrected by the Lands and Survey Department, but according to a local social NGO this has not yet taken place (Expert consultation, 2015, personal communication 4). • There are reports that insufficient notice is given of the gazettal of areas gazettal. This, as well as the reported failure to properly consult forest communities – has resulted in communities losing their customary rights to land when it is gazetted as forest reserve or other protected area or when it is alienated for development projects (Toh and Grace, 2006). • In early 2015 a ruling was made by the High Court that a proposed alienation of land was withdrawn because the Lands and Survey Department had not given sufficient notice to the Natives claiming native land under Section 13 of the Sabah Land Ordinance (Daily Express, 2015). • In Sabah, the greatest risk in land tenure appears to be fraud in the issuance of native licenses. In the spring of 2016, the Malaysian Anti-Corruption Commission (MACC)

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			<p>estimated that thousands of fake native licenses have been bought by non-natives through criminal syndicates (Chan, 2016). Several prominent cases of land fraud in Sabah have surfaced in 2016, where it was revealed that foreigners had purchased large areas native customary land; one non-native held more than 300 native titles (Chan, 2016). The extent of the fake licenses is so large that the MACC have called for a complete recall of all native certificates and revaluation of the system of issuance, including the introduction of a new and improved certificate (Chan, 2016).</p> <ul style="list-style-type: none"> • According to the 2016 Annual Report of the Sabah Forestry Department (NB: this is the most recent report available), of the 234 forestry offences detected in 2016, 2 were Illegal Entry of Forest Reserve and 26 were Illegal Cultivation in Forest Reserve (Sabah Forestry Department, 2017). <p>Based on the available information relating to the risk of dispute between FMEs and native community rights, this indicator has been assessed as Specified for all sources.</p> <p><i>Risk Conclusion</i></p> <p>'Specified risk'. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p> <p>Sarawak</p> <p><i>Overview of Legal Requirements</i></p> <p>The land tenure system in Sarawak encompasses both formal titles in the Torrens system as well as informal titles derived from customary laws. Consequently, one system is based on "adat" (customary), subsistence land use and traditional farming systems, while the other allows for commercial large-scale agriculture (Ngidang, 2005).</p>

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			<p>Land ownership is legally prescribed under the Land Code for Native Customary Land on State Land and Alienated Land; and subsequently as prescribed under Forest Ordinance 1958 for Forest Reserve, Protected Forest and Communal Forest. Following the Sarawak Land Code 1958, there exist six categories of land in Sarawak:</p> <ul style="list-style-type: none"> • Mixed Zone Lands – located along the coast line. Privately held land. Land markets can freely operate and land can be owned by Malaysians as well as foreigners. • Native Land Areas – close to the coast, restrained land markets where individual titling is encouraged. Available to indigenous people of Sarawak (natives or Dayak) only. • Native Communal Reserves (NCR) – declared by the government, regulated by customary law • Native Customary Lands – Ruled by local customary practices (adat), but subject to the legal interpretation of Native Customary Rights. • Interior Area Lands – Designated over areas where rights/uses are yet to be defined. • Reserved Lands – Gazetted land for special purposes (Colchester et al, 2007, pp. 12-13) <p>All registry numbers for Alienated Land are recorded in a publicly available land registry under the survey department.</p> <p>There are no official native rights to the Permanent Reserved Forest areas. Any former Native Customary Rights (NCR) should have been compensated.</p> <p>Before gazettal of a forest area, any native communities' claims are to be included and considered. If no claims are being made the process of allocation will proceed. In Sarawak, state land</p>

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			<p>areas subject to NCR are excluded from the licensed area. However, these areas may be allowed to be harvested with prior consent of the NCR land owners and subsequent approval of the Director of Forests. NCR rights are not registered and there is no title.</p> <p>The Forest Ordinance provides for traditional uses in Part IV. It allows that following a request from a community, the State can constitute any State land as a Communal Forest (CF).</p> <p><i>Description of Risk:</i></p> <p>There is a risk of corruption and nepotism in the allocation of ownership rights:</p> <ul style="list-style-type: none"> • Much of Sarawak's land has been in private hands for decades. Alienated Land is land that has been transferred from Government to private ownership, with reports of companies getting the land cheaply due to corruption/nepotism (Sarawak Report, 2015). These reports have been linked to the former Prime Minister. A new Sarawak Chief Minister was appointed in early 2015, and has started initiatives to clamp down on corruption in the forest sector (Environmental News Service, 2014). However, whether the initiatives are successful in halting corruption is still to be demonstrated. • Lim (2013) states that “there is still a very high level of perceived corruption in Malaysia — especially related to the granting of land concessions by state governments. Numerous studies suggest that the main beneficiaries of concessions are politicians associated with state executives, their relatives, proxies, cronies and businessmen. There have been extensive allegations of corruption against the chief ministers of Sabah and Sarawak in the form of kickbacks and cronyism connected with the clearance of natural forest for plantations.”

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			<p>There is a risk of insecure land tenure related to the allocation of Native Customary Rights (NCR):</p> <ul style="list-style-type: none"> • Allegations of NCR breaches in the allocation of leases over forestland have been the most contentious issue in plantation development in Malaysia for the last 20 years. Though federal and state laws enshrine the rights of local people to the land on which they have traditionally depended, affected communities and nongovernmental organizations claim that these rights have been almost universally abused in the issuance of logging and plantation licenses. NCR conflicts are a feature in almost every new plantation project in Malaysia, with the situation being particularly serious in Sarawak (Lim, 2013). • Despite the requirement that communities be provided with the opportunity to raise their claim to an area to be gazetted, the process of gazettal might however be made public with a discreet notice that is not read by communities, with no claims therefore raised. Thus, tenure rights disputes between forest enterprises and local communities still occur after gazettal of a forest area. • Many legal cases are currently in court: in Spring 2014 more than 300 NCR land cases were pending in High Court; and ten cases had in April 2014 been settled in favour of the native people (Suara Sarawak, 2014). • Sarawak and its former Chief Minister and current governor, Abdul Taib Mahmud, are notorious for a high level of corruption in the logging- and palm oil industry (Global Witness, 2013). • In 2016, Transparency International gave Malaysia a Corruption Perception Index score of 49 out of 100 (on a scale from 0 to 100 where 100 is lowest level of corruption). Malaysia was ranked 55 out of the 167 countries assessed. The score of 49 see's Malaysia losing points compared to

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			<p>2015, where they scored 50 and 2014 where they scored 52.</p> <ul style="list-style-type: none"> • Sarawak is perhaps the state with most media-attention in relation to corruption (Global Witness, 2013; Transparency International, 2016). Corruption in the country is especially related to the granting of land concessions by state governments (Lim, 2013). • The complex nature of land tenure in Sarawak and the high level of corruption has made NCR breaches one of the most prominent issues in Malaysia for many years. The apparently wide gap between customary rights as conceived by the native peoples and the 'Native Customary Rights' as interpreted by the Government regarding the Land Code, has led to numerous land disputes many of which have been referred to the courts (Colchester et al., 2007). • Lim (2013) has reported that over 200 cases of breaches of NCR rights were pending in Sarawak alone (p. 25). New cases are being filed faster than current cases are resolved. Of the 200 cases, 70 were related to plantation development and a vast majority of these were related to palm oil (Lim, 2013). While the current trend is to rule in favour of the plaintiffs, some cases are currently more than a decade old and as such time intensive. Hence, there is a wide array of risks related to land tenure, mainly caused by the complex nature of the tenure system, NCR claims, the amendments to the SCL and the notorious high-level corruption surrounding the Chief Minister and his family. • According to the Sarawak Report (2016), 'What we have seen in Sarawak, time and again, is the muscling of native peoples out of their land rights by brute force, backed by corrupt political figures and agencies such as the police.' • According to a report from Earthsight in October 2017, since 2010, Shin Yang and other timber companies operating in

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			<p>Sarawak have been linked to corruption and malpractice. In 2013, a local community took Shin Yang to court for not obtaining consent before it began logging on its turf (Mongabay 2017).</p> <p>As the issue is lack of gazettal of land, this issue relates to all sources of timber.</p> <p>Due to the historically high level of cases of corruption, as well as a high level of tenure dispute with native communities, the risk is considered specified for all timber sources.</p> <p><i>Risk Conclusion</i></p> <p>'Specified risk'. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p>
1.2 Concession licenses	<p>Peninsular</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> National Forestry Act 1984, Part IV - Section 14, 16, 19, 62(2)(b)(i) to (iv), 71, 76 to 80, 98(1) & 104 - http://www.agc.gov.my/Akta/Vol.%207/Act%20313.pdf. Aboriginal Peoples Act 1954 – Section 8 & 19 - https://www.ecolex.org/details/legislation/aboriginal-peoples-act-1954-no-134-lex-faoc033568/ Land Conservation Act 1960 – Sections 3 & 4 - https://www.jkptg.gov.my/sites/default/fil 	<p>Peninsular</p> <p><i>Government sources</i></p> <ul style="list-style-type: none"> forestry.gov.my (N.Y.). Forestry Department. [online]. Available at: http://www.forestry.gov.my/index.php/en/ . Forestry Department Peninsular Malaysia, 2018. Licensing (Yield License). Available at: https://www.forestry.gov.my/index.php/en/2016-06-07-02-31-39/licensing-yield-license. [Accessed 1 February 2018. <p><i>Non-Government sources</i></p> <ul style="list-style-type: none"> NEPCon expert consultation 2015 – 2017, Personal communication 2. 	<p>Peninsular</p> <p><i>Overview of Legal Requirements</i></p> <p>Section 16 of the National Forestry Act 1984 empowers the State Authority to permit collection of forest produce – with a license or minor license – from Permanent Reserved Forests and State Land.</p> <p>All states that produce forest products (within Peninsular Malaysia) can permit the collection of forest produce wither via a <u>tender process</u>, <u>concession agreement</u> or <u>general application</u>.</p> <p>Applications for license to extract forest produce is open to all, however, in some states the application is only open to loggers registered with the State Forestry Department.</p> <p>For licenses issued through tender process, the tender is open to loggers registered with the State Forestry Department. In certain circumstances, the tender is open specifically only to certain party such as of forest mill owners or Bumiputera.</p>

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	<p>es/article/Act%20385-land%20conserve.pdf</p> <ul style="list-style-type: none"> National Land Code 1965 – Section 62 - https://www.ecolex.org/details/legislation/national-land-code-act-no-56-of-1965-lex-faoc005145/ <p><i>Legal Authority</i></p> <ul style="list-style-type: none"> State Forestry Department <p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> Concession permits Harvest permits/licenses Records of Gazettal of Permanent Reserve Forests (PRF); Records of classification of PRFs; Concessionaire's agreement, and Licence to Take Forest Produce as well as other relevant permits as applicable, for instance: <ul style="list-style-type: none"> Entry permits Road permits Use permits Records of aboriginal reserves 	<ul style="list-style-type: none"> Transparency International (2011). <i>Forest Governance Integrity Report - Peninsular Malaysia</i>. Accessed 24 February 2015 at http://transparency.org.my/wp-content/uploads/sites/3/2013/09/Publication-Report-Peninsular-Malaysia.pdf. Woon and Norini 2002: Trends in Malaysian Forest Policy. Policy Trend Report 2002 12:28: - Forest managers/owners: http://pub.iges.or.jp/modules/envirolib/upload/371/attach/02_Malaysia.pdf WWF, (2009). <i>Framework for Assessing Legality of Forestry Operations, Timber Processing and Trade Annex, Malaysia</i>. [online] WWF and TRAFFIC. Available at: http://awsassets.panda.org/downloads/national_legality_framework_final_malaysia.pdf Lawson, S. (2015). Stolen Goods: The EU's Complicity in illegal tropical deforestation. FERN. Lawson, S., Blundell, A., Cabarle, B., Basik, N., Jenkins, M., & Canby, K. (2014). Consumer Goods and Deforestation: An Analysis of the Extent and Nature of Illegality in Forest Conversion for Agriculture and Timber Plantations. Forest Trends. • Teoh, C. H. (2002). The Palm Oil 	<p>For concession areas, license would only be considered for concession holders in accordance with the agreement.</p> <p>Details of the work process for the issuance of licenses is available on the Forestry Department Peninsular Malaysia <i>Licensing (Yield License) page</i>.</p> <p>In Peninsular Malaysia, concessions are categorized by size, each with its own length of tenure:</p> <ul style="list-style-type: none"> Concessions up to 1000 hectares in area are allocated for 1–2 years; 1,001–2000-hectares concessions are allocated for 1–5 years; 2,001–20,000 hectares are allocated for 10–30 years; and those exceeding 20,001 hectares are allocated for 20–30 years. <p>A licensee-to-be must prepare a Forest Harvesting Plan for the approval of the State Forestry Department before a license is issued for Permanent Reserved Forest, State Land or Alienated Land (NPECon Expert Consultation 2015, Personal Communication 2). The licensee must then register its classification mark with the State Forestry Department. Clearing of forest usually takes place on State Land forest licensed for logging, and classification mark from the State Forestry Department is not required.</p> <p><i>Description of Risk</i></p> <p>There is a risk of corruption in the licensing process:</p> <ul style="list-style-type: none"> According to Transparency International (2011), an area of specific weakness for corruption in Peninsular Malaysia relates to the 'licensing chain: Award of timber concessions and logging licenses'. That report further states 'State governments have the authority to award preferential timber

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	<p>Sabah</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> • Forest Rules, 1969 http://www.lawnet.sabah.gov.my/Lawnet/SubsidiaryLegislation/Forest1968%28Rules1969%29.pdf • Director of Forestry Circular: FD26/2009 • Forest Enactment 1968 [Section 15 & 24]. Available at: http://www.lawnet.sabah.gov.my/Lawnet/SabahLaws/StateLaws/ForestEnactment1968.pdf <p><i>Legal authority</i></p> <ul style="list-style-type: none"> • Sabah Forestry Department <p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> • Concession permits • Harvest permits/license • SFMLA • Approval of forest harvesting area • Letter of approval for issuance of licence from NRO (PF & SL – short term licence). • Approved EIA study / PMM where applicable • Demarcation of harvesting area. 	<p>Industry in Malaysia: From Seed to Frying Pan. WWF.</p> <ul style="list-style-type: none"> • Wyn, L. T. (2013). Malaysia: Illegals in Forest Clearance for Large-scale. Forest Trends. Retrieved from http://www.forest-trends.org/publication_details.php?publicationID=4195 <p>Sabah</p> <p><i>Government sources</i></p> <ul style="list-style-type: none"> • Sabah Forestry Department, (2013). Annual Report 2013 (Forest Resource Management). Available at: http://www.forest.sabah.gov.my/images/pdf/publications/AR2013/Chap18.pdf • Sabah Forestry Department, (2017). Annual Report 2016 – Chapter 11: Enforcement, Investigation & Prosecution. Available: http://www.forest.sabah.gov.my/ar2016/11.pdf, accessed 8 February 2018. <p><i>Non-governmental sources</i></p> <ul style="list-style-type: none"> • sarawakreport.org, (2012). Malaysian foreign Minister Named in MACC Investigation into Sabah Timber Corruption. [online]. Available at: http://www.sarawakreport.org/2012/04/malaysian-foreign-minister-named-in-macc-investigation-into-sabah-timber-corruption-national-expose/ 	<p>concessions and logging licenses without ensuring that competitive bidding takes place'. The process is approved by the State, but is not transparent, and thus potentially allows for corruption, nepotism and cronyism to take place.</p> <ul style="list-style-type: none"> • In their 2011 Forest Governance Integrity Report of Peninsular Malaysia, Transparency International pointed to several weaknesses in the legislation and possible areas influenced by corruption. In relation to corruption and licensing in the forestry sector, the main concern was the legislation's inability to address issues of preferential treatment exercised by state governments towards private companies. However, Transparency International Malaysia also admits that the failure in forest governance cannot be entirely attributed to corruption and bribery (Transparency International Malaysia, 2011). • Even though no cases have been successfully prosecuted, research shows several cases of alleged corruption in the issuance of licenses in Peninsular Malaysia. More specifically, Forest Trends (2014) found 13 cases of violations of environmental- and planning laws. Most of these cases were related to issues of political patronage, cronyism and nepotism at an often very high level. Hence, the conclusion "... seems to suggest that breaches of regulations during plantation development are common across the country" (Lawson, et al., 2014). This notion is backed by the evidence presented by Wyn (2014), who presents several cases of allegedly unlawful forest clearance for plantation development in Malaysia, which she ascribes to high-level corruption in the granting of land concessions by state governments. • Based on the risk of corruption associated with issuing concession licences, the risk is considered Specified for the PRF and State Lands. Licensing does not apply to the

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<ul style="list-style-type: none"> Approved Inventory Report Payment of licence fees and other charges imposed Letter of approval for issuance of harvesting Licence in AL from DoF. <p>Sarawak</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> Forest Ordinance – Chapter 126 http://www.sarawakforestry.com/pdf/laws/forests_ordinance_chapter_126.pdf Sarawak Procedures for the Inspection of Harvesting Areas 1999 Sarawak Instructions for the Inspection of Logging Areas 1982 <p>Legal authority</p> <ul style="list-style-type: none"> Forest Department Sarawak <p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> Concession permits 	<ul style="list-style-type: none"> NEPCon, (2013). Evaluation and revision of the Sabah TLAS standard and audit checklists 2013. [online]. Sarawak Report, (2012). Malaysian Foreign Minister Named in MACC Investigation into Sabah Timber Corruption – NATIONAL EXPOSE. Available at: http://www.sarawakreport.org/2012/04/malaysian-foreign-minister-named-in-macc-investigation-into-sabah-timber-corruption-national-expose/ NEPCon expert consultation 2015, including NEPCon expert consultation 2015, Personal Communication 1; - NEPCon expert consultation 2015 Personal Communication 2 and NEPCon expert consultation 2015- Personal Communication 7. <p>Sarawak</p> <p><i>Non-government sources</i></p> <ul style="list-style-type: none"> Report-Sarawak Timber Concession System. http://studentsrepo.um.edu.my/2370/6/BAB_3.pdf Global Witness (2013). <i>Inside Malaysia's Shadow State</i>. Available at https://www.globalwitness.org/campaigns/forests/inside-malaysias-shadow-state/. 	<p>Alienated Land or Agricultural Land, and is therefore not applicable for these source types.</p> <p><i>Risk Conclusion</i></p> <p>'Specified risk' for the Permanent Reserved Forest (PRF) and State Land (SL). Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p> <p>Not Applicable for Alienated Land and Agricultural Land.</p> <p>Sabah</p> <p><i>Overview of Legal Requirements</i></p> <p>Any registered company, company with trading license or qualified individual (Sabahan) who intends to harvest forest produce from permanent forest (PF) and State Land (SL) must obtain an approval from the Secretary of Natural Resources (SUHB) under the Chief Minister's Department or the Director of Forestry (DoF) for Alienated Land (AL).</p> <p>Forest Resource Management Division (FRM) of Sabah Forestry Department (FDS) ensures that areas gazetted for specific purposes, including Native Customary Right (NCR) land are excluded from the area to be approved for harvesting in PF and SL.</p> <p>FRM Division of FDS ensures that there is approval to enter and occupy SL.</p> <p>The licenses are valid for a period stated within them (for example, for Alienated Land, licenses can be issued for a period of 100 years in areas that average 100 000 ha), but the licenses for the PRF cannot exceed 5 years, but can be renewed for a further two years.</p>

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		<ul style="list-style-type: none"> The Borneo Post, (2015) Forests Bill 2015 to better regulate state's timber industry, Available at:http://www.theborneopost.com/2015/04/23/forests-bill-2015-to-better-regulate-states-timber-industry/ Daily Express (2015) Sarawak Assembly approves Forests Bill, Available at: http://www.dailyexpress.com.my/news.cfm?NewsID=99207 NEPCon expert consultation 2015-2017, personal communication. Sarawak Report, (2015). Timber concessions for Sabah forestry departments special staff members? Available at: http://www.sarawakreport.org/2015/02/timber-concessions-for-sabah-forestry-departments-special-staff-members. Sarawak Report, (2016). Familiar Story Plays Out Against the Native Landowners of West Malaysia. Available at: http://www.sarawakreport.org/2016/09/familiar-story-plays-out-against-the-native-landowners-of-west-malaysia/. The Star Online, (2017). <i>All timber concessions in Sarawak will need forest management certification.</i> Available ar: 	<p>For State Land, a Temporary Occupation License is also required under the Land Ordinance (per 24(4) of the Land Enactment).</p> <p>Licenses issued for Alienated Land must be issued to the owner/lessee of that land only, or with the written permission of the owner/lessee (per 24(5) of the same act).</p> <p>Licenses are not transferable.</p> <p>These licenses are either Sustainable Forest Management License Agreements (SFMLA)/Long-term-license (LTL) or concession licenses.</p> <p>Concessions in Forest Reserves are subject to the following requirements (NEPCon, 2013):</p> <ul style="list-style-type: none"> The licence (SFMLA/LTL) shall have an approved Annual Work Plan containing maps and description of areas and types of operations to be carried out during the year and approved by Sabah Forest Department. The licensee shall have a Comprehensive Harvesting Plan (CHP) containing total and net production areas; harvesting volumes, diameter, limits, species and protected areas that are approved by Sabah Forest Department. Letter of approval for issuance of licence from Natural Resources Office (NRO) (Permanent Reserved Forest & State Land) under the Chief Minister's Department. - Approval of forest harvesting area Approved EIA study / PMM (Proposal of Mitigation Measures) where applicable Demarcation of harvesting area Approved Inventory Report Payment of licence fees and other charges imposed

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		<p>https://www.thestar.com.my/news/nation/2017/11/07/all-timber-concessions-in-sarawak-will-need-forest-management-certification/</p> <ul style="list-style-type: none"> • Suara Sarawak, (2014): <i>Sarawak gov't suffers 10 defeats in NCR land cases</i>. Available at http://www.barubian.net/2014/04/sarawak-govt-suffers-10-defeats-in-ncr.html. • Sarawak Report, (2012). <i>Malaysian Foreign Minister Named in MACC Investigation into Sabah Timber Corruption – NATIONAL EXPOSE</i>. Available at: http://www.sarawakreport.org/2012/04/malaysian-foreign-minister-named-in-macc-investigation-into-sabah-timber-corruption-national-expose/ • Global Witness (2013). <i>Inside Malaysia's Shadow State</i>. Available at https://www.globalwitness.org/campaigns/forests/inside-malaysias-shadow-state/. • The Star (2014). <i>Adenan shows the way</i>. Available online at https://www.thestar.com.my/opinion/columnists/along-the-watchtower/2014/11/19/adenan-shows-the-way/ accessed 6 April 2018. 	<p>In a concession, there are many compartments known as coupes. Under the principle of SFM, one company is permitted to harvest only a few coupes at any given time in accordance to the Forest Management Plan, CHP and Annual Work Plan.</p> <p>The coupe permit validity is normally 15 years depending on the conditions of the license. The company is not permitted to operate in any area for which it has not yet been issued a coupe permit even though that area may be within its concession.</p> <p><i>Description of Risk</i></p> <p>There is a risk of corruption in the allocation of concession licenses in Sabah:</p> <ul style="list-style-type: none"> • In 1997, Sabah Forestry Department (SFD) divided the Permanent Reserved Forest of Sabah into 27 FMUs. The Sabah Forest Department then allocated areas within these FMUs (as 100-year concession license agreements) to private forest enterprises under 19 Sustainable Forest Management License Agreements (SFMLA). Eleven concession licenses were issued between 1993 and 2011. (Sabah Forestry Department 2013). • Since 2012, some concessions have been suspended due to lack of compliance with the license agreements, some of these have been re-allocated in a process of companies submitting applications that are reviewed by the Forestry Department. Successful applicants must pay a RM5 million bond for the agreement. If the conditions of the concession license agreement are not fulfilled and then revoked, the money will be withheld. The latest SFMLA was issued in 2012, and the latest concession license was issued in 2011. • Sabah has long been suspected of corruption in relation to the issuance of licenses. In 2012, the Sarawak Report unveiled how the MACC was in possession of evidence linking then Foreign Minister Anifar Aman to millions of

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			<p>ringgits achieved through corruptly issued logging licenses by his brother, then Sabah Chief Minister, Musa Aman (Sarawak Report, 2012).</p> <ul style="list-style-type: none"> According to the 2016 Annual Report of the Sabah Forestry Department (NB: this is the most recent report available), of the 234 forestry offences detected in 2016, 2 were Illegal Entry of Forest Reserve and 26 were Illegal Cultivation in Forest Reserve (Sabah Forestry Department, 2017). These offences are related to a lack of concession license. <p>The process of issuing concession licenses is clearly defined and well known, but there is a lack of transparency when issuing the permits and as there are indications of corruption the risk is considered specified.</p> <p>The concession licensing system applies to the PRF, State Land and Alienated Land, these sources are deemed to be specified risk. This licensing system does not apply to agricultural land, and as such is deemed not applicable.</p> <p><i>Risk Conclusion</i></p> <p>'Specified risk' for the Permanent Forest Reserve (PRF), State Land and Alienated Land. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p> <p>Not applicable to Agricultural Land.</p> <p>Sarawak</p> <p><i>Overview of Legal Requirements</i></p> <p>Licenses can only be awarded on Permanent Reserved Forest (PRF) (section 49 of the Forest Ordinance) or State Land (s 50-51 of the same). According to Section 51 and 51A of Forest Ordinance (Chapter 126), the Ministry of Planning and Resource</p>

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			<p>Management has absolute power to issue and retract timber licenses on State Land, but such licenses shall only be valid for one year, unless express permission by the Minister has been given for a longer license period.</p> <p>The Director of the Sarawak Forestry Department has the power to issue licenses and permits under conditions as he deems appropriate.</p> <p>A new Directive by the Chief Minister of Sarawak is to be implemented. Under the new directive, long-term timber concessions (up to 60 years) would be considered by the Sarawak State Government for those license operators/holders who obtain internationally recognized Sustainable Forest Management (SFM) certification within three years of the date of issuance of their license. Presently, timber concessions are issued for a period between 5–10 years in the PRF. One FME that has already been certified has been awarded the extended lease (NEPCon expert consultation 2015, Personal Communication 3).</p> <p><i>Description of Risk:</i></p> <p>There is a risk that concession licenses are issued illegally and the allocation process is widely reported to be at risk of corruption:</p> <ul style="list-style-type: none"> • There are reports describing concession permits being issued associated with high level corruption (nepotism/cronyism) during the administration of the previous Chief Minister; although such cases were not proven in court (Sarawak Report 2012; Global Witness 2013). • A new Sarawak Chief Minister was appointed in early 2015, and has started initiatives to clamp down on corruption in the forest sector. However, whether the initiatives are successful in halting corruption is still be demonstrated. The new Forest

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
			<p>Bill, still to be implemented, states that "The taking of forest produce from permanent forests and Alienated Land in Sarawak shall be controlled and regulated by the director of forests who may issue such licences in such form and under such terms and conditions as he may determine". Thus, it is still possible that nepotism and cronyism will occur, with no guarantee of transparency of the licensing process.</p> <ul style="list-style-type: none"> • Despite the requirement that communities be provided with the opportunity to raise their claim to an area to be gazetted, the process of gazettal might however be made public with a discreet notice that is not read by communities, with no claims therefore raised. Thus, tenure rights disputes between forest enterprises and local communities still occur after gazettal of a forest area. Many legal cases are currently in court; in Spring 2014 more than 300 NCR land cases were pending in the High Court; and ten cases had in April 2014 been settled in favour of the native people (Suara Sarawak, 2014). • According to the Sarawak Report (2016), 'What we have seen in Sarawak, time and again, is the muscling of native peoples out of their land rights by brute force, backed by corrupt political figures and agencies such as the police.' This demonstrates a risk that the licensing process is not conducted according to the law. • In 2014, Sarawak swore in a new chief minister, Tan Sri Adenan Satem. After entering office, Mr Adenan declared that his government would not issue any new timber concession licences, would not approve expansion of palm oil plantations, and would combat timber sector corruption "to the last log". Consistent with these commitments, he challenged Sarawak's biggest logging firms to sign "integrity pledges" against corruption (The Star 2014). According to the Straits Times (2016), despite these promises, the Chief Ministers office has failed to investigate and prosecute the

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
			<p>palm oil company BLD for destroying peatlands on a 20,000ha concession in the Sibu region of Sarawak. The concession includes lands claimed by indigenous communities.</p> <ul style="list-style-type: none"> • Regarding Sarawak's "Big Six" logging companies - Samling, Shin Yang, Rimbunan Hijau, Ta Ann, WTK and KTS - which already hold licences to log most of Sarawak's remaining rainforest, Adenan has promised repeatedly that these firms would not be exempt from his promised crackdown on illegal logging. • In 2015, Adenan announced that these firms must get their logging operations certified for sustainability by 2017. In November 2017, the Deputy Chief Minister reiterated this commitment, stating that the Sarawak government will make it mandatory for all timber concessions in the state to get forest management certification at conference in Kuching. He stated that this requirement would be implemented in phases to boost sustainable forest management in Sarawak. He did not give a timeframe for this (the Star Online, 2017). It is not clear from the publicly available information why the 2017 deadline for certification was not maintained. This clear government recognition of the issues associated with the allocation of concession in Sarawak, and the requirement that all concessions are certified is a strong indication of the risks associated with this indicator. As the government has not upheld their certification requirements (the initial deadline has now passed), it indicates that the historical issues with concession licensing in Sarawak have not been fully resolved. <p>Due to the historically high level of cases of corruption, as well as a high level of tenure dispute with native communities, the risk is considered Specified for the PRF and State Land.</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
			<p>As Concession Licenses are only available for the PRF and State Land, this indicator is not applicable to Alienated Land and Agricultural Land.</p> <p><i>Risk Conclusion</i></p> <p>'Specified risk' for the Permanent Reserved Forest (PRF) and State Land (SL). Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p> <p>Not Applicable for Alienated Land and Agricultural Land.</p>
<p>1.3 Management and harvesting planning</p>	<p>Peninsular</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> National Forestry Act 1984, Part IV - Section 24 http://www.agc.gov.my/Akta/Vol.%207/Act%20313.pdf. See also indicator 1.10 for environmental legislation. <p><i>Legal Authority</i></p> <ul style="list-style-type: none"> State Forestry Department <p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> Forest Management Plan Record of monitoring by FDs Record of demarcated boundaries Record of mitigating measures taken 	<p>Peninsular</p> <p><i>Government Sources</i></p> <ul style="list-style-type: none"> Forestry Department: http://www.forestry.gov.my/images/stories/muatturun/AktaAPN.pdf <p><i>Non-governmental sources</i></p> <ul style="list-style-type: none"> World Resources Institute (2013) Forest Legality Initiative Risk Tool - Malaysia, http://www.forestlegality.org/risk-tool/country/malaysia#tab-management Malaysian Timber Certification Scheme (MTCS) N.Y: List of Certificate Holders: http://www.mtcc.com.my/list-of-certificate-holders/#a Expert consultation conducted by NEPCon, 2015, Personal Communication 2. 	<p>Peninsular</p> <p><i>Overview of Legal Requirements</i></p> <p>Under Section 20 of the National Forestry Act 1984, a licensee-to-be must prepare a Forest Harvesting Plan for the approval of the State Forestry Departments before a license is issued for harvesting in a Permanent Reserved Forest (PRF) or State Land.</p> <p>A Forest Harvesting Plan is not required for Alienated land. The owner of Alienated (privately owned land) and State land will have to apply for a harvesting permit from the State Forest Department.</p> <p>Forest management in PRF in Malaysia is regulated through area and volume control, but for State Land and Alienated Land it is only regulated by area control (Personal communication 2).</p> <p>Section 20 of the National Forestry Act empowers the State Authority to require a forest management plan <i>OR</i> forest harvesting plan. At the time of writing, a Forest Management Plan was not required as forest harvesting plans are required (Personal communication 2).</p> <p>For the PRF, the Forestry Department of each state in Peninsular Malaysia reviews the state level Forest Management</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<p>Sabah</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> Sabah Forest Enactment 1968, Part IIIA-Section 28A and 28B http://faolex.fao.org/docs/pdf/mal10907.pdf <p><i>Legal authority</i></p> <ul style="list-style-type: none"> Sabah Forestry Department <p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> Forest Management Plan Comprehensive Harvesting Plan (CHP) Plantation Development Plan (PDP) Record of demarcated boundaries EIA <p>Sarawak</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> Forest Ordinance (Cap 126) [Section 95 (1)(a)(b)(f)(i)(q)] http://www.sarawakforestry.com/pdf/laws/forests_ordinance_chapter_126.pdf Forest Rules 1962 http://www.sarawakforestry.com/pdf/laws/the_forest_rules.pdf Sarawak Procedures for the Inspection of Harvesting Areas 1999 	<ul style="list-style-type: none"> Kamarudin, Norizah & Ismail, Mohd Hasmadi & Jusoff, Kamaruzaman & Sood, Alias. (2011). Evolution and development of forest harvesting in Peninsular Malaysia. Malaysian Forester. 74. 79-102. Available at: https://www.researchgate.net/publication/285983754_Evolution_and_development_of_forest_harvesting_in_Peninsular_Malaysia. <p>Sabah</p> <p><i>Government sources</i></p> <ul style="list-style-type: none"> SFD Publications. "Forestry in Sabah" Commemorative Edition, In Celebration of the Sabah Forestry Department Centennial time capsule sealing (2005-2105). Sabah Forestry Department, (2013). Forest Resource Management. Available at: http://www.forest.sabah.gov.my/images/pdf/publications/AR2013/Chap18.pdf. <p><i>Non-Governmental Sources</i></p> <ul style="list-style-type: none"> , Expert consultation conducted by NEPCon in 2015, Personal Communication 1 and 2. Lim, T. W. (2013). <i>Malaysia: Illegalities in Forest Clearance for Large-Scale Commercial Plantations</i> 	<p>Plan (FMP) every 10 years (Personal communication 2). The state level forest management plan is not applicable to State Land and Alienated Land (Personal communication 2).</p> <p>Harvesting plans are prepared by the FMEs, and must be approved before harvesting can take place.</p> <p>The harvesting plans include an inventory of the trees to be harvested. Each state is then required to report their state's compliance with the annual extraction limit. Review of these numbers is overseen by the National Land Council (World Resources Institute, 2013).</p> <p><i>Description of Risk</i></p> <p>There is a risk that the requirement for the preparation a Forest Harvesting Plan is not complied with.</p> <ul style="list-style-type: none"> The Forest Harvesting Plan is a condition of the issuance of the Harvesting License, and as such, a Harvesting License is an indication that a Harvesting Plan has been submitted and approved. In Peninsular Malaysia, the Malaysian Timber Certification Scheme (MTCS, a PEFC endorsed scheme) is applied with each state as a single Forest Management Unit. As of 31st May 2017, the PRFs of six out of the eleven states in Peninsular Malaysia are certified under MTCS (Forest Management) whereby the FMP and Harvesting Plan are audited (MTCS, 2017). Nonetheless, the practice of preparing management and harvesting plans for logging inside PRF, regardless of MTCS certification status, is generally well implemented (Personal Communication 2). There are known cases where the MTCS has been revoked, and as such we have taken a precautionary approach to the

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<ul style="list-style-type: none"> Sarawak Instructions for the Inspection of Logging Areas 1982 <p><i>Legal authority</i></p> <ul style="list-style-type: none"> Forest Departments Sarawak Sarawak Forestry Corporation <p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> Approved Forest Management Plan Approved General Harvesting Plan Approved Detailed Harvesting Plan 	<p>– report prepared for Forest Trends. Accessed 24 February 2015 at http://www.forest-trends.org/publication_details.php?publicationID=4195.</p> <p>Sarawak</p> <p><i>Government Sources</i></p> <ul style="list-style-type: none"> Sarawak Forestry Corporation (SFC) N.Y: Sustainable forest manangement: http://www.sarawakforestry.com/htm/sustainable.html <p><i>Non-government sources</i></p> <ul style="list-style-type: none"> Sarawak Report: http://www.sarawakreport.org/ NEPCon.org (2015). Sarawak sets out towards forest certification. [online]. Available at: http://www.nepcon.net/newsroom/sarawak-sets-out-towards-forest-certification. Star Online, 2014. Adenan Satem warns Sarawak's timber industry. Available at: https://www.thestar.com.my/news/nation/2014/11/17/adenan-satem-tells-off-sarawak-logging-firms-on-corruption/ Borneo Post, (2016). Sarawak State Government is committed to combat 	<p>five states where there are non-MTCS certified concessions in the PRF and have designated them as specified risk.</p> <ul style="list-style-type: none"> Because of lower level of enforcement and the absence of the MTCS certification, there is specified risk of non-compliance with preparation of harvesting plans in State Land, and Rubber Plantations (Personal Communication 2). For rubberwood, because there is no royalty charged, there is little incentive for the forestry department to monitor logging in rubber plantations (Personal Communication 2). As such, the lack of monitoring and enforcement reportedly leads to lower levels of compliance in rubberwood plantations (Expert consultation, 2015) <p>As the practice of preparing management plans and obtaining approval for harvesting inside PRF of the six states that are certified under MTCS is considered generally complied with the risk is considered Low.</p> <p>The risk is Specified for State Land, Rubber Plantations and PRF of the five states that are not certified under MTCS.</p> <p><i>Risk Conclusion</i></p> <p>'Low risk' for the Permanent Reserved Forest (PRF) of the six states with MTCS certification. Threshold (1). Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.</p> <p>'Specified risk' for State Land, rubber plantations, and Permanent Reserved Forest of the five states without MTCS certification. Threshold (2) is met Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p> <p>Not applicable for Alienated Land.</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
		<p>illegal Logging. Available at: http://www.theborneopost.com/2016/03/03/sarawak-state-government-is-committed-to-combat-illegal-logging/.</p> <ul style="list-style-type: none"> • Borneo Post, (2017). Transparency in illegal Logging. Available at: http://www.theborneopost.com/2017/10/27/transparency-in-illegal-logging/. • <u>John C. Cannon</u>, (2017). Leading US plywood firm linked to alleged destruction, rights violations in Malaysia, Mongabay Available at: https://news.mongabay.com/2017/10/leading-us-plywood-firm-linked-to-alleged-destruction-rights-violations-in-malaysia/. • Transparency International, (2017). Corruption Perception Index 2016. Available at: https://www.transparency.org/news/features/corruption_perceptions_index_2016. 	<p>Sabah</p> <p><i>Overview of Legal Requirements</i></p> <p>In accordance with section 28A of the Sabah Forest Enactment, all forest licenses for areas exceeding 1000 hectares in the PRF or on State Land, must be preceded by the preparation of both (a) a forest management plan or forest harvesting plan, as the case may be; and (b) a reforestation plan.</p> <p>Concessions (i.e. under either a Sustainable Forest Management License Agreement/Long-term License Agreement (SFMLA/LTL)) can be issued for natural forest and plantations only on Permanent Reserved Forest (PRF), and are subject to the following requirements:</p> <ul style="list-style-type: none"> • The licensee (SFMLA/LTL) shall have an approved Annual Work Plan (AWP) containing maps and description of areas and types of operations to be carried out during the year. The licensee is required to obtain approval for the AWP based on the 10-year Forest Management Plan (FMP) and/or 10-year Plantation Development Plan (PDP). The Forest Management Plan describes the long-term management approach for the SFMLA areas based on forest types, terrain and current conditions of the FMU. It also outlines adequate planning and site preparation for harvesting operations. • The licensee shall have a Comprehensive Harvesting Plan (CHP) containing total and net production areas; harvesting volumes, diameter, limits, species and protected areas that are approved by Sabah Forest Department. <p>The Forest Management Plan describes the long-term management approach for the SFMLA areas based on forest types, terrain and current conditions of the FMU. It also outlines adequate planning and site preparation for harvesting operations.</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
			<p>The CHP must comply with the Reduced Impact Logging (RIL) Operation Guide Book requirements for harvesting and operations (roads, density and location of skid tracks and log landings, harvestable tree marking and stream buffer zone identification). The CHP must be developed by a registered CHP contractor.</p> <p>In 2013, 40 CHP were approved, covering an area of 10,764.83 ha. This is a downward trend compared to the CHP approved area in 2011 of 24,006.90 ha (Sabah Forestry Department 2013).</p> <p>The reduction of CHP coverage in some licenses in Natural Forest Management (NFM) areas was due to a change in priorities to concentrate on salvaging timbers on Integrated Timber Plantation (ITP) areas for plantation activities on Forest Reserves (FR) (Sabah Forestry Department 2013, p. 181)</p> <p>For commercial logging on Alienated Land, companies do not need to prepare CHPs. The only requirements for planning logging activities in such areas are using a registered logging contractor, submitting quarterly logging progress reports and a closing inspection report. These are not considered applicable to this indicator and are addressed elsewhere in this report at indicator 1.8 Timber harvesting regulations.</p> <p>Regarding Agricultural Land (i.e. rubberwood), where the agricultural land occurs within the PRF (very rare), or on State Land, the planning requirements apply. Where the rubber wood is grown on Alienated Land (the most common type of rubber wood plantation), there are no planning requirements (Lim 2013).</p> <p>The concession licences of the Sabah Foundation's (agency set up by the Government) Concession Areas were agreed in the 1960s before the requirement for management plans and detailed harvesting plans, and as such they are not required to produce planning documents. However, the Foundation has</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
			<p>started voluntarily producing harvesting plans (NEPCon Expert Consultation 2015).</p> <p><i>Description of Risk</i></p> <ul style="list-style-type: none"> • According to the experience of the authors, and the experts consulted in the preparation on this report, the requirements relating to harvesting plans are considered implemented and followed. The mandatory Sabah TLAS has been implemented by the Sabah Forestry Department and FMEs across the PRF, and State Land is audited annually whereby the requirements relating to harvesting plans are inspected (Expert consultation 2015). There is sufficient control on requirements relating to harvesting plans across these land types in Sabah. • Extensive internet research, conducted in the preparation of this report, has not turned up any information indicating a specified risk in this indicator. As there has been quite thorough research conducted into the timber industry in Sabah, the lack of information about a risk in this indicator is considered relevant to the designation of the risk. • For rubberwood (grown on Agricultural Land on either SL or the PRF), because there is no royalty charged at the time of harvesting, there is little incentive for the forestry department to monitor logging in rubber plantations actively (Personal Communication 1 and 2). As such, the lack of monitoring and enforcement reportedly leads to lower levels of compliance in rubberwood plantations (Expert consultation, 2015). • For timber harvesting concession above the 1000 ha thresholds in either State Land or Permanent Reserved Forest (PRF), based on the experience of the authors and experts consulted in the preparation of this report, the risk is considered low.

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
			<ul style="list-style-type: none"> For Agricultural Land (occurring on either State Land or the PRF), based on the experience of the authors and experts consulted in the preparation of this report, the risk is considered specified. As there are no requirements for management and harvesting planning for Alienated Land, this indicator is not applicable to all timber sourced from that land type (NB: including rubberwood). <p><i>Risk Conclusion</i></p> <p>'Low risk' for the Permanent Reserved Forest (PRF) and State Land. Threshold (1) is met. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.</p> <p>'Specified risk' for Agricultural Land occurring in the PRF and State Land. Threshold (2) is met. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p> <p>Not applicable for Alienated Land.</p> <p>Sarawak</p> <p><i>Overview of Legal Requirements</i></p> <p>According to section 95 of the Sarawak Forest Ordinance, for logging inside the PRF, preparation of management plans, and harvesting plans, must be conducted by concessionaires and approved by the Forestry Department.</p> <p>The Forest Department Sarawak (FDS) processes and approves the General Harvesting Plan (GP) which shows the layout and size of coupes, harvesting sequence, proposed road networks,</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
			<p>camp sites, log dumping points and other general planning for the entire licensed area.</p> <p>The Sarawak Forestry Corporation (SFC) processes and approves the Detailed Harvesting Plan (DP). The DP contains operational prescriptions at the coupe level, the layout of logging blocks, surveyed road networks, protected or conservation areas as well as the proposed harvesting method. Further pre-harvesting safeguards to ensure compliance with the approved GP and DP are provided by the need for the logging operators to apply for a permit to enter coupe (PEC). The PEC process requires verification of satisfactory ground compliance in terms of coupes and blocks boundary demarcation, preparation of topographical work map, road alignment and construction, tree enumeration before the endorsement of blocks for logging.</p> <p>Logging activities on SL and AL do not require management or harvesting plans.</p> <p><i>Description of Risk</i></p> <p>The corruption issue in Sarawak is still reported to be serious, with the likelihood that management and harvest planning requirements are not properly followed (Expert consultation 2015 and see for example Star Online 2014, Borneo Post 2016, Borneo Post 2017 and Mongabay, 2017). Management plans are reportedly rarely prepared and the requirements allegedly not enforced by the Forest Department (Expert consultation 2015). Despite this, the major logging companies in Sarawak have signed the integrity pledge, which describes the requirement for due care to be observed.</p> <p>In 2015, Adenan (the Chief Minister) announced that these firms must get their logging operations certified for sustainability by 2017. In November 2017, the Deputy Chief Minister reiterated this commitment, stating that the Sarawak government will make it mandatory for all timber concessions in the state to get forest management certification at conference in Kuching. He stated</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
			<p>that this requirement would be implemented in phases to boost sustainable forest management in Sarawak. He did not give a timeframe for this (the Star Online, 2017). It is not clear from the publicly available information why the 2017 deadline for certification was not maintained.</p> <p>In 2016, Transparency International gave Malaysia a Corruption Perception Index score of 49 out of 100 (on a scale from 0 to 100 where 100 is lowest level of corruption). Malaysia was ranked 55 out of the 167 countries assessed. The score of 49 see's Malaysia losing points compared to 2015, where they scored 50 and 2014 where they scored 52.</p> <p>Based on the lack of preparation of management plans in Sarawak to date, the risk is considered specified for Permanent Reserved Forest.</p> <p><i>Risk Conclusion</i></p> <p>'Specified risk' for the Permanent Reserved Forest (PRF). Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p> <p>Not applicable for State and Alienated Land.</p>
1.4 Harvesting permits	<p>Peninsular</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> National Forestry Act 1984, Part IV - Section 16, 32, 47, 50, 81-8 http://www.agc.gov.my/Akta/#Vol.%207/Act%20313.pdf Director General's Directive on the use of monitoring forms A-D. (Form A: Infrastructure, B: Forest Harvesting, C: Environment, D: Output) 	<p>Peninsular</p> <p><i>Government sources</i></p> <ul style="list-style-type: none"> forestry.gov.my (N.Y.). Forestry Department. [online]. Available at: http://www.forestry.gov.my/images/stories/muatturun/AktaAPN.pdf Forestry Department Peninsular Malaysia, (2016). Annual Report 2016. [pdf]. Available at: https://www.forestry.gov.my/images/L 	<p>Peninsular</p> <p><i>Overview of Legal Requirements</i></p> <p>As highlighted in section 1.2, any company or person wishing to take or remove timber from a forest area must first have a valid Harvesting License. The first step to securing a harvesting license is to obtain approval from the state authorities or the relevant state forestry department where applicable. Only companies or persons registered with the State Forestry Departments are eligible to apply for the harvesting license. A company or person that has obtained a harvesting license is referred to as the licensee. Harvest permits in the PRF are</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<ul style="list-style-type: none"> National Forestry Act 1984, Sections 14, 19, 62(2)(b)(i) to (iv), 71, 76 to 80, 98(1) & 104 Aboriginal Peoples Act 1954 – Section 8 & 19 National Land Code 1965 – Section 62 Land Conservation Act 1960 – Sections 3 & 4 <p><i>Legal Authority</i> State Forestry Department</p> <p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> Licence to Take Forest Produce as well as other relevant permits as applicable such as: <ul style="list-style-type: none"> - Entry permits - Road permits - Use permits - Records of aboriginal reserves - Records of aboriginal areas Concession permits Harvest permits/license <p>Sabah <i>Applicable laws and regulations</i></p>	<p>aporan%20Tahunan/2016/annual-report-jpsm-2016.pdf</p> <ul style="list-style-type: none"> Nizum bin Mohd. Nor Abd. Ramlizauyahudin bin Mahli (2017) <i>Executive Talk 2017: Combating Wildlife & Forestry Crime - Forest Crimes & It's Challenges in Peninsular Malaysia</i>, [pdf] <i>Enforcement Division, Forestry Department Peninsular Malaysia</i>. Available at: http://www.wildlife.gov.my/images/stories/ExecTalk/Talk-3.pdf, accessed 6 February 2018. <p><i>Non-Government sources</i></p> <ul style="list-style-type: none"> Transparency International (2011). <i>Forest Governance Integrity Report - Peninsular Malaysia</i>. Accessed 24 February 2015 at http://transparency.org.my/wp-content/uploads/sites/3/2013/09/Publication-Report-Peninsular-Malaysia.pdf. Hoare, A. (2015). <i>Illegal Logging and Related Trade - The Response in Malaysia</i>. [online]. A Chatham House Assessment. Chatham House, London. Available at: http://www.illegal-logging.info/sites/default/files/CHHJ2365_Malaysia_Logging_Research_Pap 	<p>issued through open tender or by direct award by the State Forestry Department in accordance with the National Forestry Act 1984, Section 16.</p> <p>A licensee-to-be must prepare a Forest Harvesting Plan for the approval of the State Forestry Department before a license is issued for logging in Permanent Reserved Forests. The Licensee must then register its classification mark with the State Forestry Department.</p> <p>The owner of Alienated Land (privately owned land) and State Land must apply for a harvesting permit from the State Forest Department for any logging where the timber is intended for sale. This applies to all forest whether natural forest or plantations although timber from rubber plantations is not subjected to royalty payments and in practice harvesting permits, though technically required, are seldom applied for.</p> <p><i>Description of Risk</i></p> <p>There is a risk that harvesting of timber takes places in Peninsular Malaysia without the requisite permission from authorities.</p> <ul style="list-style-type: none"> In 2016, Transparency International gave Malaysia a Corruption Perception Index score of 49 out of 100 (on a scale from 0 to 100 where 100 is lowest level of corruption). Malaysia was ranked 55 out of the 167 countries assessed. The score of 49 see's Malaysia losing points compared to 2015, where they scored 50 and 2014 where they scored 52. According to Transparency International (2011) an area of weakness for corruption in Peninsular Malaysia relates to, inter alia, the award of timber concessions, logging licenses and restrictions on re-entry logging in Permanent Reserved Forest areas.

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<ul style="list-style-type: none"> RIL Operation Guidebook. Code of Practice for Harvesting in Sabah. Available at: http://www.fao.org/fileadmin/templates/rp/files/meetings/2012/120503_reduce_impact.pdf Environment Protection Enactment 2002. Available at: http://www.sabah.gov.my/jpas/laws/EP E/EPE02.pdf Director of Forestry Circular: FD26/2009 Parks Enactment 1984. Available at: http://sabah.gov.my/phb/wp-content/uploads/2011/05/ParksEnactment1984.pdf Water Resources Enactment 1998. Available at: http://sabah.gov.my/phb/wp-content/uploads/2011/05/SabahWaterResourcesEnactment1998.pdf Sabah Land Ordinance, 1930 (Sabah Cap.68). Available at: http://sabah.gov.my/phb/wp-content/uploads/2011/05/LandOrdinance.pdf Sabah Forest Enactment, 1968. Available at: http://faolex.fao.org/docs/pdf/mal10907.pdf 	<p>er_A4_01_15_WEB.PDF [Accessed 23 February 2015]</p> <ul style="list-style-type: none"> thestar.com.my (2013). District forestry officer on graft charge goes wild. [online]. (District officer receiving bribery). Available at: http://www.thestar.com.my/News/Nation/2013/02/02/District-forestry-officer-on-graft-charge-goes-wild/ NEPCon expert consultation,2015, personal communication 1. Transparency International, (2017). Corruption Perception Index 2016. Available at: https://www.transparency.org/news/feature/corruption_perceptions_index_2016 . Accessed 5 February 2018. <p>Sabah <i>Government sources</i></p> <ul style="list-style-type: none"> forest.sabah.gov.my (N.Y.) Sabah Forestry Department – official Portal. [online] Available at: http://www.forest.sabah.gov.my/ Sabah Forestry Department, (2017). Annual Report 2016 – Chapter 11: Enforcement, Investigation & Prosecution. Available: http://www.forest.sabah.gov.my/ar2016/11.pdf, accessed 8 February 2018. 	<ul style="list-style-type: none"> Control of encroachment, illegal harvesting without permits and other unauthorized activities in PRFs and State Land for Peninsular Malaysia is carried out by the Forest Departments, who keep records of these activities. The National Forestry Act was amended in 2010 to empower the state forestry departments in Peninsular Malaysia to request the assistance of police and armed forces in combating illegal logging. At the same time, increased fines and imprisonment for those found guilty of illegal logging were incorporated into the act. Additional enforcement officers have been recruited by the Peninsular Malaysia Forestry Department, and training for enforcement officials across the country has been provided under INTERPOL's Law Enforcement Assistance for Forests (LEAF) project. In 2011 a hotline was set up at the headquarters of the Peninsular Malaysia Forestry Department for the public to report cases of illegal logging and other offences. However, despite the additional initiatives the number of personnel remains insufficient, as do resources for effective enforcement (Hoare, 2015). There are thus still cases reported of companies overharvesting or logging under a license in an area that does not apply to the actual permit area. Based on stakeholder input there are indications that the Forest Department Rangers seldom conduct on-ground patrols and that it is common for bribes to be paid to forest officials. Thus, the misuse of permits is at risk of not being detected and/or reported. Detection of illegal logging activities in forested areas is being done. For example, an increase in Enforcement Operations successfully reduced illegal logging from 42 cases in 2008 to one (1) case in 2014 (Peninsular Malaysia Forestry Department 2016).

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	<ul style="list-style-type: none"> Forest Rules 1962. Available at: http://www.lawnet.sabah.gov.my/Lawnet/SubsidiaryLegislation/Forest1968(Rules1969).pdf <p><i>Legal authority</i></p> <ul style="list-style-type: none"> Sabah Forestry Department <p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> Permanent Forest Reserve: Sustainable Forest Management Licence Agreement, or: Long term timber licence agreement <p>Non-PFE:</p> <ul style="list-style-type: none"> Approval or harvesting license from SFD Form 2 (b) licence for alienated land Form 1 licence Short-term license: Schedule III, Form 1. <p>Sarawak</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> Forest Ordinance (Cap 126) - http://www.sarawakforestry.com/pdf/laws/forests_ordinance_chapter_126.pdf <ul style="list-style-type: none"> Sections 49 (1) Power of the Director to issue a licence or 	<p><i>Non-government sources</i></p> <ul style="list-style-type: none"> Transparency International, (2017). Corruption Perception Index 2016. Available: https://www.transparency.org/country/MYS. Accessed 5 February 2018. theborneopost.com (2014). <i>Govt urged to give priority to the natives in land disputes</i>. [online] Sept. 29, 2014. Available at: http://www.theborneopost.com/2014/09/29/govt-urged-to-give-priority-to-natives-in-land-dispute/ [Accessed 2 March 2015] Toh, S. M. and Grace, K. T. (2006). <i>Understanding forest tenure in South and Southeast Asia, Case study: Sabah Forest ownership</i>. [online]. FAO. Available at: http://www.fao.org/forestry/10515-0462aee542d13dc983cd2bb1d09c073fa.pdf World Resources Institute (WRI) (2013). Forest Legality Alliance Risk Tool, 2013: Malaysia: http://www.forestlegality.org/risk-tool/country/malaysia#tab-management. sourcing.gftn.panda.org (N.Y.). <i>WWF Global Forest Trade Network: Common Framework for Assessing Legality of Forestry Operations, Timber Processing and Trade -</i> 	<ul style="list-style-type: none"> Mr Mohd. Nizum, in his Executive Talk in 2017, states that as of August in 2017, only three of the 121 forestry offences detected by the Enforcement Division of the Forestry Department Peninsular Malaysia were 'illegal logging'. 12 and 11 illegal logging offences were detected in 2015 and 2016 respectively (Mohd. Nizum 2017). 'illegal logging is defined in that report as 'unlicensed logging activities, syndicated and/or using heavy machinery'. According to the information in that presentation, historically, illegal logging offences have been detected far more frequently in the PRF, as opposed to on SL or AL. For example, in 2016, 88 per cent of all offences occurred in the PRF, and 91 per cent of the illegal logging offences occurred in the PRF. According to the experience of the authors and experts consulted in the preparation of this report, there is a high risk that timber from rubber plantations on Alienated Land does not have the licences or permits required by the National Forestry Act 1984 because the state forestry departments seldom require companies harvesting timber from such sources to apply for the necessary permits. <p>Based on the risk of corruption related to issuing permits, misuse of permits, as well as the risk of no permits issued (in the case of rubberwood) the risk is considered Specified for all sources.</p> <p><i>Risk Conclusion</i></p> <p>'Specified risk'. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p>

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	<p>permit in forest reserves and protected forests</p> <ul style="list-style-type: none"> ○ Section 51: Power of the Director to issue a licence or permit in State land ○ Section 55: Power of the Director to issue a licence under special conditions ○ Section 58: Power of the Director to issue a licence in government reserves ○ Section 59: Power of the Director to issue a licence or permit in Alienated land ○ Section 65B: Power of the Director with the approval of the Minister to issue a licence for the establishment of planted forests. <ul style="list-style-type: none"> • Forest Rules 1962. Available at: http://www.sarawakforestry.com/pdf/laws/the_forest_rules.pdf • Sarawak Procedures for the Inspection of Harvesting Areas 1999 • Sarawak Instructions for the Inspection of Logging Areas 1982 <p><i>Legal authority</i></p> <ul style="list-style-type: none"> • Forest Department Sarawak • Sarawak Forestry Corporation 	<p><i>Principles, Criteria and Indicators for Malaysia.</i> [online]. WWF-GFTN. Available at: http://sourcing.gftn.panda.org/files/PDF/legal_documentation_malaysia.pdf and http://sourcing.gftn.panda.org/files/PDF/legal_framework_malaysia.pdf</p> <ul style="list-style-type: none"> • forestlegality.org (2009). TTAP Legality Checklist - Malaysia. Available at: http://www.forestlegality.org/risk-tool/country/malaysia • Colchester, M., Jalong, T., Alaza, L. (2013). 'Conflict or Consent?' Chapter 10: Sabah: Genting Plantations and the Sungai and Dusun Peoples. [online]. Forest Peoples. Available at: http://www.forestpeoples.org/sites/fpp/files/private/publication/2013/12/conflict-or-consent-chapter-10-sabah-genting-plantations-and-sungai-and-dusun-peoples.pdf [Accessed 2 March 2015]. • Sarawak Report, (2012). Malaysian Foreign Minister Named in MACC Investigation into Sabah Timber Corruption – NATIONAL EXPOSE. Available at: http://www.sarawakreport.org/2012/04/malaysian-foreign-minister-named-in-macc-investigation-into-sabah-timber-corruption-national-expose/ 	<p>Sabah</p> <p><i>Overview of Legal Requirements</i></p> <p>Any company or person who intends to harvest forest produce from a forest area must have a valid harvesting licence. The issuance of a harvesting licence for PRF, SL, AL (whether on natural forest or on plantations) is subject to:</p> <ul style="list-style-type: none"> • Letter of approval for issuance of licence from Natural Resources Office (NRO) (PF & SL) under the Chief Minister's Department, or the Director of Forestry (DoF) for Alienated Land (AL) • Approval of forest harvesting area • Approved EIA study / PMM where applicable • Demarcation of harvesting area • Approved Inventory Report (for selective logging inside forest reserves only) • Payment of licence fees and other charges imposed <p>In Sabah a harvesting license can be in the form of:</p> <ul style="list-style-type: none"> • Sustainable Forest Management License Agreement/Long-term License Agreement (SFMLA/LTL) for concessions on PRF • Form I license: short-term license for logging activities on forest reserve or State land. • Form IIB: Normally issued for harvesting from Alienated Land, where timber can be harvested for land clearance for agricultural purposes (mostly oil palm, rubber and other short-term crops). <p>For forest reserves, the National Resources Office decision is based on the SFD recommendation of Class II (commercial</p>

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	<p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> Permit to Enter Coupe (PEC) 	<ul style="list-style-type: none"> The Borneo Project, (2012). Malaysian Foreign Minister Named in MACC Investigation into Sabah Timber Corruption. Available at: https://borneoproject.org/updates/malaysian-foreign-minister-named-in-macc-investigation-into-sabah-timber-corruption <p>Expert consultation conducted by NEPCOn, (2015). Including NEPOon expert consultation 2015, personal communication1.7</p> <p>Sarawak</p> <p><i>Government sources</i></p> <p>Sarawak Forestry Corporation (SFC): Sustainable forest management: [online] Available at: http://www.sarawakforestry.com/SFC/sustainable-forest-management/ <i>Non-government sources</i></p> <ul style="list-style-type: none"> Global Witness 2013: Inside Malaysia Shadow state: https://www.globalwitness.org/campaigns/forests/inside-malaysias-shadow-state/ The Star Online, (2015). Listed timber firms not affected by crackdown in Sarawak: http://www.thestar.com.my/business/business-news/2015/05/25/listed- 	<p>forest). Once approval is received from the National Resource Office, the Sabah Forestry Department informs the successful applicant, stating conditions of approval (including the need for Environmental Impact Assessment (EIA) or Proposal for Mitigation Measures (PMM), if necessary).</p> <p>In the case of State Land, the National Resource Office verifies the application for harvesting rights. Eligible applications are forwarded – together with maps showing the relevant area – to the Lands and Survey Department (LSD) to ascertain availability of the area. (Use of the land can lead to its privatisation). The NRO decision is based on the recommendation made by the LSD, covering availability of the area, and ensuring that any designated water catchments or kampong reserves are excluded from the area.</p> <p>For Alienated Land or in the situation where a company is authorized by the owner, and regarding permission to remove forest produce under licence: The District Forestry Officer (DFO) verifies the status of the land and its ownership and then submits the application to the Director of Forestry for approval. The Director of Forestry issues a letter of approval to the DFO for removal of forest produce.</p> <p><i>Description of Risk</i></p> <p>There is a risk of corruption in the process of issuing harvesting permits, and a lack of harvesting permits.</p> <ul style="list-style-type: none"> The licensing process in Sabah for any permits is not based on a tender process and is thus not transparent. Historically, there have been strong indications of license holders having ties with the Chief Minister in Sabah (see for example Sarawak report 2012 and Borneo Project 2012). However, the process of issuing permits is clear and well known. In 2012 there were reports (through documents leaked from MACC) of the Chief Minister allocating concessions to his brother despite a conflict of interest (Sarawak Report 2012).

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		<p>timber-firms-not-affected-by-crackdown-in-sarawak/</p> <ul style="list-style-type: none"> Transparency International, (2017). Corruption Perception Index 2016. Available: https://www.transparency.org/country/MYS. Accessed 5 February 2018. 	<p>The case was not brought to court, but indicates a risk of nepotism/cronyism in the issuing of licenses (Sarawak Report 2012)</p> <ul style="list-style-type: none"> Form IIB has earlier been abused by contractors, mainly for extraction of timber in areas meant for conversion, to include volumes of timber logged outside the clear-felling area, and thus including illegal timber into the timber chain. This abuse has been minimized and better regulated by the Sabah Forest Department. However, there are no evidence to prove no such actions no longer occurs (Expert consultation 2012, Personal Communication 1 and 7). According to the 2016 Annual Report of the Sabah Forestry Department (NB: this is the most recent report available), of the 234 forestry offences detected in 2016, 22 were Illegal Felling (Section 20 Forest Enactment 1968) in forest reserve; 25 were Illegal Felling in State land (Section 23 Forest Enactment 1968); and 65 were Illegal Possession under section30(1)(g) Forest Enactment 1968 (Sabah Forestry Department, 2017). The annual report states: <i>'The year 2016 marked an increase of 62 cases compared to 2015 largely due to better enforcement throughout the state with special teams assessed in discharging their duties diligently and professionally. During the year under review, there was an increase in offences of illegal felling in forest reserves and state lands due to illegal land clearing for oil palm plantations. Another main threat is an increase in the illegal harvesting of Agarwood (gaharu) by foreigners in particular as indicated from the cases encountered in Keningau and Sandakan regions. Cases in forest reserves may have increased, but they mainly involved small timber extraction, which if not countered, can add up the extent of forest loss. Unfortunately, forest clearing has not yet been sufficiently addressed. We need to do better in 2017.'</i>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
			<ul style="list-style-type: none"> In 2016, Transparency International gave Malaysia a Corruption Perception Index score of 49 out of 100 (on a scale from 0 to 100 where 100 is lowest level of corruption). Malaysia was ranked 55 out of the 167 countries assessed. The score of 49 see's Malaysia losing points compared to 2015, where they scored 50 and 2014 where they scored 52. The process of issuing concession licenses is clearly defined and well known, but there is a lack of transparency when issuing the permits and as there are indications of corruption. Furthermore, misuse of Form IIB licenses has been reported and the risk is thus considered Specified for all timber sources. <p><i>Risk Conclusion</i></p> <p>'Specified risk'. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p> <p>Sarawak</p> <p><i>Overview of Legal Requirements</i></p> <p>Under the Forest Ordinance 1958, a person(s) wishing to harvest <i>any timber</i> for commercial purposes must first obtain a license or permit from the Director of Forests. Permits can be given for a period of minimum five years.</p> <p>Before selective extraction can commence on PRF, the permit holder is to prepare and submit for approval a detailed harvesting plan. The felling permit (commonly known as a Permit to Enter Coupe) is issued and endorsed by the Sarawak Forest Department before harvesting can take place in the approved block, while Sarawak Forestry Corporation (SFC) does the enforcement.</p>

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			<p>A PEC is not required for logging on SL or AL.</p> <p><i>Description of Risk</i></p> <p>In Sarawak, there is a risk of corruption in the issuing of harvesting licenses and permits.</p> <ul style="list-style-type: none"> • In 2016, Transparency International gave Malaysia a Corruption Perception Index score of 49 out of 100 (on a scale from 0 to 100 where 100 is lowest level of corruption). Malaysia was ranked 55 out of the 167 countries assessed. The score of 49 see's Malaysia losing points compared to 2015, where they scored 50 and 2014 where they scored 52. • The corruption issue in Sarawak is widespread: (Sarawak Report; Global Witness, 2013) the issuance of harvesting permits is not transparent with details allegedly not made public. • The appointment of permits to several large logging companies with links to top governmental persons is reported to indicate corruption and nepotism/cronyism practices. Chances are the rights to harvest may have been obtained via corrupt practices (Sarawak Report; Global Witness 2013). • There have been numerous cases and reports by the International NGO Global Witness concerning unlawful harvesting operation occurs outside on areas which have not been approved and encroachment in the national park (Global Witness, 2013). • The Sarawak state government in 2015 teamed up with the Malaysian Anti-Corruption Commission (MACC) to launch a major crackdown on the state's illegal timber trade and tax evasion that had cost the government billions of ringgits in losses. Termed "Ops Gergaji", the MACC had carried out

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			<p>raids in 49 locations in Sarawak including Kapit, freezing a total of 519 accounts of companies and individuals including a state assemblyman with a total worth of almost RM700 million (The Star Online, 2015).</p> <ul style="list-style-type: none"> Information provided by the Sarawak Forestry Department on infringements is at a very high level (see 2013 Annual Report from the Sarawak Forestry Department, not that this is the most recent Annual Report publicly available). According to that report, in 2013 there were 116 investigations carried, resulting in the seizure of 15.5 thousand logs. It is not clear what the infringements were. The general breakdown of law in the forest sector leads to a conclusion of specified risk for PRF based on a precautionary approach. <p><i>Risk Conclusion</i></p> <p>'Specified risk' for the Permanent Reserved Forest (PRF). Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p> <p>Not applicable for State and Alienated Land.</p>
Taxes and Fees			
1.5 Payment of royalties and harvesting fees	<p>Peninsular</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> National Forestry Act 1984: Part IV - Cha.8, Part V - Cha.1, Cha.5 - Sections 60, 61 and 75 - http://www.agc.gov.my/Akta/Vol.%207/Act%20313.pdf 	<p>Peninsular</p> <p><i>Non-government sources</i></p> <ul style="list-style-type: none"> forestry.gov.my (N.Y.). Forestry Department. [online]. Available at: https://www.forestry.gov.my/index.php/en/ Mohd. Nizum bin Mohd. Nor Abd. Ramlizauyahudin bin Mahli, 	<p>Peninsular</p> <p><i>Overview of Legal Requirements</i></p> <p>Most tax revenue (such as income tax) is collected by the Federal Government, but state governments can collect land-related revenue, including timber royalties.</p> <p>Part V of the <i>National Forestry Act</i> is dedicated to royalties and premiums for the use and extraction of forest resources.</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<ul style="list-style-type: none"> State Forest Rules: Second schedule (premium rate), Third schedule (royalty rate), Fourth schedule (forest premium and cess), Fifth schedule (liquidated damages) - Rules 22 and 23 <p><i>Legal Authority</i></p> <ul style="list-style-type: none"> State Forestry Department <p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> Records of payment of required fees, royalties, taxes and other charges kept by forest managers/company and State Forestry Department. <p>Sabah</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> Forest Enactment 1968 [Sections 24C & 42(d), (e)] http://faolex.fao.org/docs/pdf/mal10907.pdf Forest Rules 1969, Rule 12(1) CF Circular 1/81 Measurement of Timber for Royalty Assessment-CF No 1/81 2006 Version, 1st Revision <p><i>Legal authority</i></p> <ul style="list-style-type: none"> Sabah Forestry Department <p><i>Legally required documents or records</i></p>	<p>Enforcement Division, Forestry Department Peninsular Malaysia, (2017). <i>Executive Talk 2017: Combating Wildlife & Forestry Crime - Forest Crimes & It's Challenges in Peninsular Malaysia</i>. Available: http://www.wildlife.gov.my/images/stories/ExecTalk/Talk-3.pdf, accessed 6 February 2018.</p> <ul style="list-style-type: none"> Forestry Department Peninsular Malaysia, (2016). Forestry Statistics 2016. Available at: https://www.forestry.gov.my/index.php/en/2016-06-07-02-53-46/2016-06-07-03-12-29, accessed 6 February 2018. <p><i>Non-Government sources</i></p> <ul style="list-style-type: none"> Hoare, A. (2015). <i>Illegal Logging and Related Trade - The Response in Malaysia</i>. [online]. A Chatham House Assessment. Chatham House, London. Available at: http://www.illegal-logging.info/sites/default/files/CHHJ2365_Malaysia_Logging_Research_Paper_A4_01_15_WEB.PDF [Accessed 23 February 2015] World Resources Institute (WRI) (2013). Forest Legality Alliance Risk Tool, 2013: Malaysia: http://www.forestlegality.org/risk-tool/country/malaysia#tab-management [accessed 23 February 2015] 	<p>The National Forestry Act 1984 [Sections 60, 61 & 75] and the State Forest Rules (Rules 22 & 23) stipulate the statutory charges that need to be paid by a licenced to obtain a harvesting licence for the extraction of logs from the Permanent Reserved Forest, State Land, Alienated Land and Mining Land.</p> <p>A licensee pays all premiums, royalty, forest development cess and other charges payable in respect of the licence and the harvested timber before claiming ownership of the timber from the licenced area.</p> <p>All logs that are felled for commercial purposes are inspected for payment of royalties and cess (a tax) at the nearest Forest Checking Station (FCS) manned by the State Forestry Department officials. Once payment is made, a Removal Pass is issued for each lorry load. The Removal Pass carries a record of the type/species, volume of produce, and the payments made.</p> <p>Once the royalty is paid, each log is stamped with the royalty mark at the FCS.</p> <p>Previously, rubberwood from Peninsular Malaysia was exempted from royalty payments. (The Star Online, 2013, Personal communication 2). This changed in 2015, and now royalties do apply to rubberwood depending on the land type, as described above (Pers. Comm. with official from the Forestry Department of Peninsular Malaysia).</p> <p><i>Description of Risk</i></p> <ul style="list-style-type: none"> According to Chatham House. Before a logging licence is issued, potential licensees must pay a timber premium on the area to be harvested and deposit funds with the respective forestry department to offset future royalties. The royalties due are recorded by the forest checking stations. That report further states that the royalties due are recorded by the forest checking stations. The computerized system to register payments and harvests is considered effective,

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	<ul style="list-style-type: none"> Removal Pass, Revenue Hammer Mark, Timber Disposal Permit. Copies of receipts for payment of royalty, premium, Forest Rehabilitation Fee, Community Forestry Cess and other charges. Monthly Revenue Collection Report License receipt payment <p>List of registered logging machineries</p> <p>Sarawak</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> Forest Ordinance, 1954 (Cap. 126) http://www.sarawakforestry.com/pdf/laws/forests_ordinance_chapter_126.pdf First Schedule Section 52 (2): Produce Taken Under Licence Rates of Royalty and Second Schedule, Section 52(3), Section 52(5), Section 52(5) Produce Taken Under Permit, Section 52(4A) (a). Forest Premium and CESS under Fourth Schedule of Forest Timber Licence 	<ul style="list-style-type: none"> The Star Online, (2013). Illegal logging exposes large tract of Sungai Tekla forest to soil erosion: http://www.thestar.com.my/news/community/2013/07/11/denuded-of-rubber-trees-illegal-logging-exposes-large-tract-of-sungai-tekali-forest-to-soil-erosion/ NEPCon Expert consultation, (2015), Personal Communication 2. Lim, T. W. (2013). <i>Malaysia: Illegalities in Forest Clearance for Large-Scale Commercial Plantations</i> – report prepared for Forest Trends. Accessed 24 February 2015 at http://www.forest-trends.org/publication_details.php?publicationID=4195. Transparency International (2011). <i>Forest Governance Integrity Report - Peninsular Malaysia</i>. Accessed 24 February 2015 at http://transparency.org.my/wp-content/uploads/sites/3/2013/09/Publication-Report-Peninsular-Malaysia.pdf. Adrian, D. (2017). <i>Man faces RM500k fine, jail if convicted of stealing logs from Dungun forest reserve</i>. New Straits Times, Available at: https://www.nst.com.my/news/2017/04/227354/man-faces-rm500k-fine-jail-if-convicted-stealing-logs-dungun- 	<p>although the level of payment of royalties is not known. (Hoare, 2015, p. 4).</p> <ul style="list-style-type: none"> Experts consulted in the preparation of this report stated that they believed the incentives for the Forest Department to collect royalties, results in higher levels of compliance with these requirements, Experts stated that royalty payments based on correct classification of timber outputs are well implemented. (Personal Communication 2). Experts also stated that the stamping of logs with royalty marks is often not done systematically for logs from State Land forest or for logs from clear-felled areas (whether inside forest reserves or from Alienated Land) which allows for fraud to take place. It was not clear from the experts why this issue arises for State and Alienated Land only, and not for the PRF. After reviewing the Forestry Statistics for Peninsular, more than 85 per cent of the forested land in Peninsular occurs in the PRF, whereas 4.5 per cent occurs in State Land (NB: no figure is provided for Alienated Land, but we assume the SL figure incorporated AL). The presentation given in 2017 by Mohd. Nizum, an executive from the Forestry Department Peninsular Malaysia, states that one of the 'Issues and Challenges in Forest Enforcement' is Inadequate number of enforcement staff at State Forestry Department [to conduct detection and enforcement patrols and routine surveillance activities, investigations on forest offense cases and forensic practices]. From these two pieces of information, it is possible to deduce that the Forestry Department focusses their attention on the PRF, as most of the forestry activity is taking place there. According to Mohd. Nizum (2017), in his Executive Talk, further states that a common forestry offence is [under Sec.

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	<p><i>Legal authority</i></p> <ul style="list-style-type: none"> • Forest Department Sarawak • Sarawak Forestry Corporation • State Treasury Department <p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> • Removal Pass (Royalty) • State Treasury Receipts 	<p>forest-reserve, Accessed 8 February 2018.</p> <ul style="list-style-type: none"> • Rosli Zakaria (2017) . Four arrested in MACC crackdown on illegal logging. New Straits Times, Available at: https://www.nst.com.my/news/crime-courts/2017/09/278894/four-arrested-macc-crackdown-illegal-logging, accessed 8 February 2018. • Adie Suri Zulkefli (2017) Man caught red-handed illegally transporting timber logs worth RM10,000. New Straits Times. Available at: https://www.nst.com.my/news/2017/01/202304/man-caught-red-handed-illegally-transporting-timber-logs-worth-rm10000 • Pers. Comm. with official from the Forestry Department of Peninsular Malaysia <p>Sabah</p> <p><i>Government sources</i></p> <p>Sabah Forestry Department, Forest Legislation, Available at: http://www.forest.sabah.gov.my/discover/policies/forest-legislation</p> <ul style="list-style-type: none"> • Sabah Forest Department 2013: Chapter 12, Enforcement, Investigation & Prosecution. Available at: http://www.forest.sabah.gov.my/ima 	<p>84 of the <i>National Forestry Act</i> “unlawful possession of forest produce (possession, custody or control forest produce without paying royalty, premium, cess or other charges)”. [...] Normally done by the local communities adjacent to the forest.”</p> <ul style="list-style-type: none"> • According to Wyn “[largescale commercial plantation] operations are [...] broadly in compliance with the need to pay royalties per cubic meter of timber harvested.” (Wyn, 2013). Based on the 2016 Forestry Statistics, plantations make up only about 6 per cent of the forested area in Peninsular, and 7 per cent of the Production Forests within the PRF. • The 2011 <i>Forest Governance Integrity Report - Peninsular Malaysia</i> from Transparency International includes a recommendation to “modernise monitoring of timber movement through electronic means by using radio frequency identification (RFID) and real-time data transfer and storage systems to enhance enforcement capabilities and combat log stealing and royalty evasion.” This Recommendation implies that royalty evasion was an issue detected in the preparation of that report, although the report itself does not go into any detail on this matter. • Many news articles relating to tax evasion in Peninsular have been identified. Most articles highlight that tax evasion occurs frequently in cases of timber theft (i.e. illegal logging without permits and therefor unpaid taxes and fees): <ul style="list-style-type: none"> ○ In November 2017, New Straits Times (NST) reports on rubberwood suppliers evading paying tax to government (November 2017). The article states that Kedah Forestry Department deputy director (operation) Mohd Rahim Ramli said some 20 rubberwood suppliers had been caught for failing to furnish a licence to transport the timber since early

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		<p>ges/pdf/publications/AR2013/Chap12.pdf</p> <ul style="list-style-type: none"> • Sabah Forestry Department, (2017). Annual Report 2016 – Chapter 11: Enforcement, Investigation & Prosecution. Available at: http://www.forest.sabah.gov.my/ar2016/11.pdf, accessed 8 February 2018. • Australian Government, (2017). Country specific guideline for Malaysia (Sabah) [pdf]. Department of Agriculture and Water Resource and Ministry of Plantation Industries&Commodities. Available at: http://www.agriculture.gov.au/SiteCollectionDocuments/forestry/australias-forest-policies/illegal-logging/malaysia-sabah.pdf, accessed 8 February 2017. • Sabah Forestry Department, (2013). Sabah TLAS document (revised as at 06 March 2013). Available at: http://www.forest.sabah.gov.my/images/pdf/en/flegt/TLAS4.pdf, Accessed 13 February 2018. <p><i>Non-government sources</i></p> <ul style="list-style-type: none"> • NEPCon Expert consultation, 2015, personal communication1 and personal communication 2. • Daily Express, (2016). Nearly 800 forestry offences in five years. Available at 	<p>this year. As proof of royalty payment is a prerequisite to a removal pass (see indicator 1.16 below), there is a risk that royalties are not being paid for rubber wood.</p> <ul style="list-style-type: none"> ○ In April 2017, NST reported on a case of a contractor is facing a fine of RM500,000 and a jail term of between one and 20 years for stealing four Kapur (Dryobalanops) logs. Foo Chee Chean, 38, is facing an additional punishment of a maximum fine of RM50,000 or a maximum jail of five years, or both, upon conviction for failing to pay royalty, premium and other charges for the said logs (New Straits Times 2017). ○ September 2017, NST reports of four arrested in MACC crackdown on illegal logging. The article states that the three of the men are facing charges of tax (royalty) evasion and bribing officials. ○ January 2017, NST reports of the arrest of a man for transporting illegal timber logs worth about RM10,000, including unpaid taxes. It is estimated that the logs are worth about RM6,000, with unpaid taxes of RM4,000. <p>Based on the findings described above the risk for this indicator has been evaluated as specified for all sources.</p> <p><i>Risk Conclusion</i></p> <p>‘Specified risk’. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p>

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		<p>http://www.dailyexpress.com.my/news.cfm?NewsID=113724 [6 April 2018].</p> <ul style="list-style-type: none"> World Resources Institute (WRI) (2013). Forest Legality Alliance Risk Tool, 2013: Malaysia: http://www.forestlegality.org/risk-tool/country/malaysia#tab-management [accessed 23 February 2015] Hoare, A. (2015). <i>Illegal Logging and Related Trade - The Response in Malaysia</i>. [online]. A Chatham House Assessment. Chatham House, London. Available at: http://www.illegal-logging.info/sites/default/files/CHHJ2365_Malaysia_Logging_Research_Paper_A4_01_15_WEB.PDF [Accessed 23 February 2015] Borneo Post, May 2017. Hike in hill timber charges negative for timber players,[online] Available at: http://www.theborneopost.com/2017/05/12/hike-in-hill-timber-charges-negative-for-timber-players/, [accessed 8 February 2018]. <p>Sarawak</p> <p><i>Government Sources:</i></p> <ul style="list-style-type: none"> Australian Government Department of Agriculture and Water Resources (2017) Country specific guideline for 	<p>Sabah</p> <p><i>Overview of Legal Requirements</i></p> <p>Section 24C of the Forest Enactment 1968, and Rule 12(1) of the Forest Rules 1969, stipulate the royalty payment requirements for all harvested timber. All logs transported must have the royalty paid prior to leaving the licenced area or approved royalty assessment area. Payment of royalties must be made to the District Forestry Officer and shall include supporting documents such as the Log Summary and Log List with species, log dimension and volume. The District Forestry Officer conducts a field inspection and verifies the company's log dimensions based on the Guideline for Measurement of Timber for Royalty Assessment and assesses royalty payments based on the applicable royalty rates.</p> <p>The current royalty rates are published on the Sabah Forestry Departments website: http://www.forest.sabah.gov.my/media-centre/rapid-info/guidelines/723-fd-18-2016-sabah-timber-royalty-effective-1st-july-2016.</p> <p>Prior to the assessment of royalties, the District Forestry Officer verifies that: logs bear Property Hammer Mark, logs bear the Forestry Inspection Mark and all logs have species symbol and serial number incised at both ends of log, and volume corresponds to the company's Log List and Log Summary.</p> <p>Once royalties have been paid, the District Forestry Officer will issue a receipt for royalty payments.</p> <p>A Concession or Harvest permit will not be issued if relevant fees have not been paid by the forest enterprise or private land owner.</p> <p>Royalty is based on volume and species. Forest managers pay all royalties, farmers and Community Forestry Cess, Forest Rehabilitation Fees and Removal Pass fees before they can remove the timber from the licensed area. Sabah Forestry</p>

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		<p>Malaysia (Sarawak),[pdf] Australian Government and the Government of Malaysia.Available at: http://www.agriculture.gov.au/SiteCollectionDocuments/forestry/australias-forest-policies/illegal-logging/malaysia-sarawak.pdf</p> <ul style="list-style-type: none"> • Sarawak Forestry Corporation (SFC): Sustainable forest manangement:[online],Available at:http://www.sarawakforestry.com/SFC/sustainable-forest-management/ - http://www.treasury.sarawak.gov.my/ <p><i>Non-government sources</i></p> <ul style="list-style-type: none"> • <u>Ng Bei Shan(2015)</u> Listed timber firms not affected by crackdown in Sarawak,[online] The Star Online, (2015).Available at: http://www.thestar.com.my/business/business-news/2015/05/25/listed-timber-firms-not-affected-by-crackdown-in-sarawak/ • <u>Goh Pei Pei(2014)</u> RM32m worth of logs seized since Jan-Nov: Adenan Satem.[online] New Straits Times, Available at: https://www.nst.com.my/news/2015/09/rm32m-worth-logs-seized-jan-nov-adenan-satem, [accessed 8 February 2017]. • Borneo Post, 2014. 869 logs with unpaid royalty seized during sawmill raid[online]. Available at: 	<p>Department collects payment and issues receipts, Timber Disposal Permit and Removal Pass. District Forestry Officers verify all payment receipts where the forest operations are being conducted. The Sabah Forestry Department Annual Report for 2016 states that the royalty rates of logs for export and for domestic processing were revised effective 1st July 2016, with an average increase of export royalty at RM10/m3 for most species but some species namely Belian showed a significant increase at RM50/m3. The royalty for local processing showed an increase of RM5/m3. The royalty of plantation timber species for both export and import however remained unchanged. The export royalty for processed timber was also revised whereby the export royalty of plywood was raised by RM5/m3 and Belian sawn timber increased by RM20/m3</p> <p>According to the Sabah Country Specific Guidelines published by the Australian Government and this guideline was co-endorsed by the Malaysian governments in March 2017 “rubberwood logs produced from Alienated land in Sabah are royalty exempted, while rubberwood logs produced from PFE (Industrial Tree Plantation Zone of SFMLA) are subject to royalty payment.”</p> <p>According to the Sabah TLAS document, Industrial Plantation Timber (ITP) from State Land and Alienated Land is exempted from royalty payments.</p> <p>In July 2017, the Sarawak Government introduced a significant increase in the timber royalties for the state. This increase, the only one since the mid-1980’s, is predicted to see an increase in revenue for the state from the timber sector. According to the Borneo Post (May 2017), the hike will result in the collection of RM200 million to RM300 million per annum under the revised rate, compared to about RM15 million under the present rate.</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
		<p>http://www.theborneopost.com/2014/05/01/869-logs-with-unpaid-royalty-seized-during-sawmill-raid/, [Accessed 8 February 2018].</p> <ul style="list-style-type: none"> Borneo Post, (2016). Sarawak State Government is committed to combat illegal logging[online] Available at: http://www.theborneopost.com/2016/03/03/sarawak-state-government-is-committed-to-combat-illegal-logging/, [accessed 8 February 2018]. 	<p><i>Description of Risk</i></p> <ul style="list-style-type: none"> The system is considered well implemented, with the gaps allowing abuse of the system having been minimised in recent years through improved enforcement and constant third-party surveillance (e.g. as part of the Sabah TLAS FMU monitoring programme) (Personal Communication 2). The SABAH TLAS annual auditing applies to all timber concessions and SFD has incentive to collect revenues, thus royalties' payment collection is considered an area of strength in Sabah's forestry enforcement (Personal Communication 2). According to the Forest Legality Initiative's Risk Tool (2013): <i>"Most tax revenue is collected by the National Government of Malaysia, but state governments are allowed to collect land-related revenue, including timber export duties.</i> <i>These policies have encouraged state governments to maximize these revenues. In some cases, state taxation has jeopardized the national goal of sustainable forest management. The state exit tax, among others, encourages operators to smuggle wood out of states like Sarawak and Sabah to avoid paying the fee. In Sabah, for example, there are several fees, royalties, taxes, etc., that must be paid to extract forest resources. These include: payment to a community forest cess fund, royalties based on species groupings, fees for an occupational permit, machinery registration fees, rehabilitation funds, performance bond for SFM license agreement, among a few others."</i> According to the 2016 Annual Report of the Sabah Forestry Department (NB: this is the most recent report available), of the 234 forestry offences detected in 2016, only 1 (one) was for royalty evasion. This compares with the 2013 Annual

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			<p>Report, which stated that no cases of royalty evasion were noted that year (SFD 2013, p.78).</p> <ul style="list-style-type: none"> • The 2016 Annual Report notes “a slight increase in log production from the natural forest coupled with revision of royalty rates and a consistent increase in the royalty collection from agro-forestry activities, however showed much better forest revenue collection at RM 225.4 million as compared to RM 189.4 million in 2015”. • According to Chatham House. Before a logging licence is issued, potential licensees must pay a timber premium on the area to be harvested and deposit funds with the respective forestry department to offset future royalties. The royalties due are recorded by the forest checking stations. The computerized system to register payments and harvests is considered effective, although the level of payment of royalties is not known. (Hoare, 2015, p. 4). • Unlike Peninsular Malaysia, where specific issues of tax evasion have been raised in recent years, no information could be found in the preparation of this report to indicate that evasion of royalty payments in Sabah is a specific problem. The Daily Express reported on the statistic of the Sabah Forestry Department (SFD) in October 2016 – that article states that the SFD ‘recorded a total of 789 cases in various forestry offences over the last five years, [... of which] 197 cases of unpaid timber taxes and possession of timber without papers’ were detected. Note that the Sabah FD annual report shows only one case for royalty evasion. • In addition, the expert input into this report included specific advice that the issue of tax and royalty evasion in Sabah is strongly mitigated by the incentives for government to ensure compliance, this is because of the heavy reliance on the revenue generated from the timber sector.

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			<p>Based on the available information, the risk for this indicator is considered low.</p> <p>For rubberwood grown on alienated land, this indicator is not applicable as this timber source is exempt from royalty obligations.</p> <p>For Industrial Plantation timber from State Land and Alienated Land, this indicator is not applicable.</p> <p><i>Risk Conclusion</i></p> <p>Not applicable to rubberwood from Alienated Land and Industrial Plantation Timber from Alienated Land and State Land.</p> <p>'Low risk' for the rest of the country. Threshold (1) is met: Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.</p> <p>Sarawak</p> <p><i>Overview of Legal Requirements</i></p> <p>In Sarawak, there are different regulations pertaining to fees and taxes, including those under Forests Ordinance 1954 (Chapter 126, Sections 2 & 5). One deals with forest produce taken under a valid license, while the other pertains to forest produces taken under a valid permit. It also includes a cess payment and a liquidated damages fee.</p> <p>Statutory charges - Following the issue of a timber harvesting licence, a licensee is required to deposit a security, guarantee or bond with the Government within a specified time as indicated in the licence conditions.</p> <p>Section 45 (1), 46(1), 47(1), 48(1) and 48(2) of Forests Ordinance, 2015 (Cap 71) requires a licensee to pay royalties, premiums and fees payable to the State Government for timber</p>

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			<p>harvested from the licenced area (Australian Government Department of Agriculture and Water Resources, 2017).</p> <p>A licensee must apply for royalty assessment of their logs at the Forest Checking Station by submitting their Log Specification Form, Log Specification Summary and DPR (Daily Production Return). SFC will conduct the royalty assessment of the logs by embossing the Government hammer mark 'JH' (which stands for Jabatan Hutan / Forest Department) at both ends of the logs.</p> <p>At the Forest Checking Station, Sarawak Forestry Corporation (SFC) will issue the Removal Pass (royalty) for timber that has been assessed for royalty and dues paid to Government.</p> <p>Bills issued by SFC. Royalty and premium paid to State Treasury Department. No logs can be transported until both procedures are completed.</p> <p>All local sources of timber must pay royalties except rubberwood.</p> <p><i>Description of Risk</i></p> <p>There is general risk of logs being illegally felled, transported, traded and exported in Sarawak.</p> <p>There is risk that the timber does not have the property hammer mark and removal pass, this indicates that royalties are not being paid. Even where hammer marks and removal passes are in place, the risk of corruption on Sarawak means that the authenticity of documents produced is questionable.</p> <ul style="list-style-type: none"> The Sarawak state government in 2015 teamed up with the Malaysian Anti-Corruption Commission (MACC) to launch a major crackdown on the state's illegal timber trade and tax evasion that had cost the government billions of ringgits in losses. Termed "Ops Gergaji", the MACC had last week carried out raids in 49 locations in Sarawak including Kapit, freezing a total of 519 accounts of companies and

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
			<p>individuals including a state assemblyman with a total worth of almost RM700 million (The Star Online, 2015).</p> <ul style="list-style-type: none"> • In response to the crackdown described in the previous point, AmResearch pointed out that a short-term pain was likely for the players due to stricter enforcement of regulations, including the new marking requirements at harvest points (Star Online 2015). • In December 2014, the New Straits Times reported that over the course of 2014, a total of 65,000 cubic meter logs worth RM32 million were seized by the forestry department. State forestry director Sapuan Ahmad said that there had been 76 cases over the year classified as tax avoidance. • In May 2014, the Borneo Post published a story of 869 logs with unpaid royalty seized during sawmill raid. The article goes on ‘Sapuan said among actions to be taken included slapping high compounds to those found guilty. The department would not hesitate to suspend the licence of any sawmills found to be processing timber logs without royalty being evaluated through the proper process and procedures’. • In March 2016, the Borneo Post published a statement from the Chief Minister Datuk Patinggi Tan Sri Adenan Satem which said (amongst other things): <i>“Since 2014, the State Government has stepped up its efforts to combat illegal logging in Sarawak. Illegal logging has many negative impacts on the economy, environment and society. It contributes to environmental degradation which leads to biodiversity loss, destruction of habitats for animals and deforestation. Besides causing the state losses in millions of ringgit in terms of timber royalties, illegal logging damages the environment and tarnishes the state’s reputation and image.</i>

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			<p><i>[...] The establishment of ‘One Stop Compliance Centre’ (OSCC) to bring enforcement of compliance particularly assessment of royalty to the forest as close as possible to the felling site. A total of 48 OSCCs will be established throughout Sarawak in 2016.”</i></p> <ul style="list-style-type: none"> • The increase in the royalty rate applicable in Sarawak was met with significant opposition from the timber sector. The Borneo Post reported that ‘negative for earnings of timber players such as Ta Ann Holding Bhd (Ta Ann)’ (May 2017). • The government of Sarawak has invested significant amounts into improving the legality and credibility of the timber sector in Sarawak. This includes investing heavily in improvements to the monitoring and enforcement of all legal requirements. While these activities have certainly reduced the risk of non-compliance and/or increased the likelihood of effective enforcement, the experts who developed this assessment do not consider the risks to be low now. <p>The risk is considered specified for all sources.</p> <p>Risk Conclusion</p> <p>‘Specified risk’. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p>
1.6 Value added taxes and other sales taxes	<p>Peninsular, Sabah and Sarawak</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> • Goods and Services Tax Act 2014 (GST). Part I, Section 3 (Meaning of business), Section 4 (Meaning of supply); Part III, Section 9 (Imposition and scope of goods and services tax); Part V, Section 33 (Issuance of tax invoice) - 	<p>Peninsular</p> <p><i>Government sources</i></p> <ul style="list-style-type: none"> • Forestry Department http://www.forestry.gov.my/images/stories/muatturun/AktaAPN.pdf. • Royal Malaysian Customs, 2016. Goods and Services Tax Guide on Forestry Industry. [pdf], Royal 	<p>Peninsular</p> <p><i>Overview of Legal Requirements</i></p> <p>The Goods and Services Tax (GST) was implemented on a nation-wide basis April 1st, 2015 and replaced the former types of sales- and service tax. The GST is a multi-staged “... consumption based tax on goods and services” (Ting, 2015, p. 2) and as such it differs from direct taxes (RPGT, income tax etc.).</p>

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	<p>http://www.federalgazette.agc.gov.my/otputaktap/20140619_762_BI_ACT%20762.pdf</p> <p><i>Legal Authority</i></p> <ul style="list-style-type: none"> Royal Malaysian Customs Department <p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> Records of payment kept by forest managers/company 	<p>Malaysian Customs Department. Available at: http://gst.customs.gov.my/en/rg/SiteAssets/industry_guides_pdf/FORESTRY_INDUSTRY08012016.pdf [accessed 8 February 2017].</p> <p><i>Non-government sources:</i></p> <ul style="list-style-type: none"> New Straits times, (2017). 2,621 companies fail to comply with GST Act: https://www.nst.com.my/news/2016/07/159375/2621-companies-fail-comply-gst-act Annuar, H. A., Salihu, I. A., & Obid, S. N. (2014). Corporate Ownership, Governance and Tax Avoidance: An Interactive Effects. <i>Procedia - Social and Behavioural Sciences</i>, 164, 150-160. Available at: https://www.sciencedirect.com/science/article/pii/S1877042814058832 Ting, E. H. (2015). At a Glance – The Malaysian Goods and Services Tax Act 2014. Abdullah Chan & Co.[online], Available at: http://www.abdullahchan.my/wp-content/uploads/At-a-Glance-The-Malaysian-GST-Act-2014.pdf Karen Arukesamy2017. Over 2,000 cases of tax evasion related to GST charged in court since 2015[online] The Sun Daily, Available at: http://www.thesundaily.my/news/2017 	<p>According to the <i>Goods and Services Tax Act 2014</i>, the GST applies to goods or services supplied in Malaysia, as well as on any importation of goods into Malaysia (Ting, 2015) and is rated at either 6% or 0% unless explicitly exempt by the law.</p> <p>Generally upstream activities involve in a supply of logs are treated as taxable supplies and subject to GST at standard rate. Reforestation and forestation as well as forest husbandry are also part of the upstream activities. GST treatments for these activities are in accordance to the normal provision as prescribed in the GST Act, Regulations and Orders.</p> <p>Generally downstream activities involve in the conversion and manufacturing of logs in primary and secondary processes and subsequently supplied are treated as taxable supplies of goods and subject to GST at standard rate.</p> <p>For GST purposes, any taxable person who make a taxable supply of goods or services in Malaysia with an annual turnover exceeding the prescribed threshold in the past 12 months, or expected to exceed the prescribed threshold within the future of 12 months, are liable to register for GST.</p> <p>GST registered person, you are required to</p> <ol style="list-style-type: none"> keep your business records for 7 years. issue a tax invoice to taxable person for provision of taxable supply; complete and submit the GST returns and pay the Director General the amount of tax not later than the last working day of the month following the end of the specified taxable period; provide all information and reasonable assistance as requested by the Director General in the event of an inspection;

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		<p>/10/25/over-2000-cases-tax-evasion-related-gst-charged-court-2015, [accessed 9 February 2017].</p> <ul style="list-style-type: none"> The Malaysian Reserve, March 2017. Business warned not to cheat GST system[online]. Available at: https://themalaysianreserve.com/2017/03/31/business-warned-not-to-cheat-gst-system/, [accessed 9 February 2018]. Transparency International Malaysia. (2011). Forest Governance Integrity Report: Peninsular Malaysia. Transparency International Malaysia.[pdf], Available at: http://fgi.transparency.org.my/wp-content/uploads/sites/3/2013/09/Publication-Report-Peninsular-Malaysia.pdf <p>Sabah</p> <p><i>Government sources</i></p> <ul style="list-style-type: none"> Sabah Forestry Department[online], Available at http://www.forest.sabah.gov.my/discovers/policies/forest-legislation Malaysia-EU FLEGT VPA; http://www.flegtvp.com/sabah-tlas GST industry guide on forestry www.gst.customs.gov.my/en/rg/SiteAssets/gst_bill/BI ACT 762.pdf. 	<p>(e) notify the Director General in writing when you cease making taxable supplies or when you transfer your business;</p> <p>(f) If you are a voluntary registrant, you must remain registered for at least two years;</p> <p>(g) show the price as GST inclusive when you issue a receipt.</p> <p><i>Description of Risk</i></p> <ul style="list-style-type: none"> Since GST was introduced in Malaysia in April 2015, there is possibly some tax evasion in the forest products sector but no sector-specific reports highlight this as a risk. Based on the Customs Department's audit, most of the 417,000 GST-registered companies nationwide were not ready in terms of record-keeping, usually managed by third parties such as tax agents, accountants or consultants (New Straits Times (NST), 2017). In 2017, the Sun Daily reported that over 2,000 cases of tax evasion related to GST have been charged in court since 2015. The article states that Customs have opened a total of 14,578 investigation papers since the GST implementation of which some 2,097 cases were prosecuted in court. As of July, 928 of the cases were found guilty. Deputy Finance Minister Datuk Othman Aziz is quoted as saying "one of the biggest issues we face is the failure to declare taxes by businesses." The article does not contain any specific information about the industries affected. Regarding the enforcement of the GST requirement, according to the Malaysian Reserve (March 2017), Royal Malaysian Customs is "well prepared" to detect cheats, dodgers or illegal collection of the Goods and Services Tax (GST). Businesses that may try to take advantage of loopholes have been warned that the Customs department,

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
		<ul style="list-style-type: none"> Sabah Forestry Department, (2013). Sabah TLAS document (revised as at 06 March 2013). http://www.forest.sabah.gov.my/images/pdf/en/flegt/TLAS4.pdf, Accessed 13 February 2018. <p><i>Non-Government Sources:</i></p> <ul style="list-style-type: none"> New Straits times, (2017). 2,621 companies fail to comply with GST Act: https://www.nst.com.my/news/2016/07/159375/2621-companies-fail-comply-gst-act Annuar, H. A., Salihu, I. A., & Obid, S. N. (2014). Corporate Ownership, Governance and Tax Avoidance: An Interactive Effects. <i>Procedia - Social and Behavioural Sciences</i>, 164, 150-160.[online], Available at: https://www.sciencedirect.com/science/article/pii/S1877042814058832 Ting, E. H. (2015). At a Glance – The Malaysian Goods and Services Tax Act 2014. Abdullah Chan & Co.[online], Available at: http://www.abdullahchan.my/wp-content/uploads/At-a-Glance-The-Malaysian-GST-Act-2014.pdf The Sun Daily, (2017). Over 2,000 cases of tax evasion related to GST charged in court since 2015. Available: http://www.thesundaily.my/news/2017 	<p>which is responsible for collection, has in place the technology and a highly skilled task force to detect any fraud. The Royal Malaysian Customs GST director Datuk Subramaniam Tholasy said the department is well prepared and is armed with the toughest laws to act against offenders. <i>“We have a system that can recognise anomalies based on the returns submissions. It will pick up the faulty ones and tag it with a red flag, if anything is suspicious”.</i></p> <ul style="list-style-type: none"> Transparency International Malaysia (2011) reports that the risks are transfer pricing (tax evasion through undervaluation) and bribery to undervalue timber. Family, government and foreign ownerships have been proven as the potential determinants of corporate tax avoidance (Annuar, 2014); these types of ownerships are also found in the palm oil plantation sector in Malaysia. Given the general lack of GST readiness reported by the NST, and the specific corruption issues related to the timber sector, a precautionary approach has been taken to the evaluation of this indicator, and it is considered specified. . <p><i>Risk Conclusion</i></p> <p>‘Specified risk’. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p> <p>Sabah</p> <p><i>Overview of Legal Requirements</i></p> <p>NOTE: See general description of GST in the <i>overview of legal requirements</i> for Peninsular above.</p> <p>In Sabah, there has been great commotion about the implementation of the GST in 2015, because Sarawak and Sabah already had their own State Sales Taxes (SST). The SST</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
		<p>/10/25/over-2000-cases-tax-evasion-related-gst-charged-court-2015, accessed 9 February 2017.</p> <ul style="list-style-type: none"> The Malaysian Reserve, March 2017. Business warned not to cheat GST system. Available: https://themalaysianreserve.com/2017/03/31/business-warned-not-to-cheat-gst-system/, accessed 9 February 2018. Transparency International Malaysia. (2011). Forest Governance Integrity Report: Peninsular Malaysia. Transparency International Malaysia.[online], Available at: http://fgi.transparency.org.my/wp-content/uploads/sites/3/2013/09/Publication-Report-Peninsular-Malaysia.pdf Borneo Post. (2016, January 29). Waive SST until CPO price stabilises. Retrieved from www.theborneopost.com: http://www.theborneopost.com/2016/01/29/waive-sst-until-cpoprice-stabilises/ Borneo Post. (2013, November 22). Sabah to retain State Sales Tax when GST implemented – Musa. Retrieved from www.theborneopost.com: http://www.theborneopost.com/2013/11/22/sabah-to-retain-state-sales-tax-when-gstimplemented-musa/ 	<p>is imposed on Crude Palm Oil (CPO), slot machines and lotteries. From the perspective of Sarawak and Sabah, the issue with the introduction of the GST is the choice between losing important state income and the prospect of ‘double taxation’ on e.g., CPO (Borneo Post 2016).</p> <p>This is because while the SST goes in the State coffers, the GST belongs to the Federal Government. The two Bornean States chose to retain their SST and CPO is thus both subject to GST and SST; something that affects especially the mills and consequently affects the price the mills can pay farmers for their Fresh Fruit Bunches (Borneo Post, 2013; Borneo Post, 2016).</p> <p><i>Description of Risk</i></p> <p>See the description of risk for Peninsular Malaysia for this indicator. As the sources are not state specific, we consider the description of risk the same for Sabah.</p> <p><i>Risk Conclusion</i></p> <p>‘Specified risk’. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p> <p>Sarawak</p> <p><i>Overview of legal requirements</i></p> <p>NOTE: See general description of GST in the <i>overview of legal requirements</i> for Peninsular above.</p> <p>In Sarawak, there has been great commotion about the implementation of the GST in 2015, because Sarawak and Sabah already had their own State Sales Taxes (SST). The SST is imposed on Crude Palm Oil (CPO), slot machines and lotteries. From the perspective of Sarawak and Sabah, the issue with the introduction of the GST is the choice between losing</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
		<p>Sarawak</p> <p><i>Government sources:</i></p> <ul style="list-style-type: none"> • Sarawak Forestry Corporation (SFC) ,[online], Available at: https://www.sarawakforestry.com/about/ Sarawak Forestry Department (SFD) [online], Available at: http://www.forestry.sarawak.gov.my/GST industry guide on forestry,[online], Available at: http://www.forest.sabah.gov.my/media-centre/rapid-info/guidelines/450-gst-forestry?sfd_subsites=&Submit=Go! <p><i>Non-government sources</i></p> <ul style="list-style-type: none"> • New Straits times, (2017). 2,621 companies fail to comply with GST Act: https://www.nst.com.my/news/2016/07/159375/2621-companies-fail-comply-gst-act • Annuar, H. A., Salihu, I. A., & Obid, S. N. (2014). Corporate Ownership, Governance and Tax Avoidance: An Interactive Effects. <i>Procedia - Social and Behavioural Sciences</i>, 164, 150-160.,[online], Available a: https://www.sciencedirect.com/science/article/pii/S1877042814058832 • Ting, E. H. (2015). At a Glance – The Malaysian Goods and Services Tax Act 2014. Abdullah Chan & Co.,[online], Available at: 	<p>important state income and the prospect of ‘double taxation’ on e.g., CPO (Borneo Post 2016).</p> <p>This is because while the SST goes in the State coffers, the GST belongs to the Federal Government. The two Bornean States chose to retain their SST and CPO is thus both subject to GST and SST; something that effects especially the mills and consequently affects the price the mills can pay farmers for their Fresh Fruit Bunches (Borneo Post, 2013; Borneo Post, 2016).</p> <p><i>Description of Risk</i></p> <ul style="list-style-type: none"> • Since GST was introduced in Malaysia in April 2015, there is possibly some tax evasion in the forest products sector but no sector-specific reports highlight this as a risk. • Based on the Customs Department’s audit, most of the 417,000 GST-registered companies nationwide were not ready in terms of record-keeping, usually managed by third parties such as tax agents, accountants or consultants (New Straits Times (NST), 2017). • In 2017, the Sun Daily reported that over 2,000 cases of tax evasion related to GST have been charged in court since 2015. The article states that Customs have opened a total of 14,578 investigation papers since the GST implementation of which some 2,097 cases were prosecuted in court. As of July, 928 of the cases were found guilty. Deputy Finance Minister Datuk Othman Aziz is quoted as saying “<i>one of the biggest issues we face is the failure to declare taxes by businesses.</i>” The article does not contain any specific information about the industries affected. • Regarding the enforcement of the GST requirement, according to the Malaysian Reserve (March 2017), Royal Malaysian Customs is “well prepared” to detect cheats, dodgers or illegal collection of the Goods and Services Tax (GST). Businesses that may try to take advantage of

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
		<p>http://www.abdullahchan.my/wp-content/uploads/At-a-Glance-The-Malaysian-GST-Act-2014.pdf</p> <ul style="list-style-type: none"> The Sun Daily, (2017). Over 2,000 cases of tax evasion related to GST charged in court since 2015. Available: http://www.thesundaily.my/news/2017/10/25/over-2000-cases-tax-evasion-related-gst-charged-court-2015, accessed 9 February 2017. The Malaysian Reserve, March 2017. Business warned not to cheat GST system. Available: https://themalaysianreserve.com/2017/03/31/business-warned-not-to-cheat-gst-system/, accessed 9 February 2018. Transparency International Malaysia. (2011). Forest Governance Integrity Report: Peninsular Malaysia. Transparency International Malaysia.,[online], Available at: http://fqi.transparency.org.my/wp-content/uploads/sites/3/2013/09/Publication-Report-Peninsular-Malaysia.pdf Borneo Post. (2016, January 29). Waive SST until CPO price stabilises. Retrieved from www.theborneopost.com: http://www.theborneopost.com/2016/0 	<p>loopholes have been warned that the Customs department, which is responsible for collection, has in place the technology and a highly skilled task force to detect any fraud. The Royal Malaysian Customs GST director Datuk Subramaniam Tholasy said the department is well prepared and is armed with the toughest laws to act against offenders. <i>"We have a system that can recognise anomalies based on the returns submissions. It will pick up the faulty ones and tag it with a red flag, if anything is suspicious"</i>.</p> <ul style="list-style-type: none"> Transparency International Malaysia (2011) reports that the risks are transfer pricing (tax evasion through undervaluation) and bribery to undervalue timber. Family, government and foreign ownerships have been proven as the potential determinants of corporate tax avoidance (Annuar, 2014); these types of ownerships are also found in the palm oil plantation sector in Malaysia. In Sarawak, the risks of bribery and corruption are particularly acute, and may impact the compliance and enforcement of the GST requirements further in that state. Representative from the Malaysian Anti-Corruption Commission (MACC) acknowledges the occurrence of bribery, illegal logging and tax evasion by timber companies in Sarawak, leading to billions of ringgits in losses to the federal government and Sarawak state government (Malay Mail Online, 2015). In May 2015, the MACC froze over RM560 million in over 370 bank accounts and seized 500 timber logs in a massive raid in Sarawak to counter illegal logging (Malay Mail Online, 2015). Given the general lack of GST readiness reported by the NST, and the specific corruption issues in Sarawak, a precautionary approach has been taken to the evaluation of this indicator, and it is considered specified.

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
		<p>1/29/waive-sst-until-cpoprice-stabilises/</p> <ul style="list-style-type: none"> Malay Mail Online, 2015: http://www.themalaymailonline.com/malaysia/article/rm560m-frozen-in-sarawak-after-major-macc-swoop-on-illegal-timber-trade#wBTqYlJK186Z2Y0.97 Borneo Post. (2013, November 22). Sabah to retain State Sales Tax when GST implemented – Musa. Retrieved from www.theborneopost.com: http://www.theborneopost.com/2013/11/22/sabah-to-retain-state-sales-tax-when-gstimplemented-musa/ 	<p><i>Risk Conclusion</i></p> <p>'Specified risk'. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p>
1.7 Income and profit taxes	<p>Peninsular, Sabah and Sarawak</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> Income Tax Act 1967: Part II - Imposition and General Characteristic of the Tax, Section 3 (Charge of income tax), Section 4 (Classes of income). http://www.kpmg.com.my/kpmg/publications/tax/22/a0053.htm The Goods and Services Act 2014 - http://www.customs.gov.my/en/pg/Documents/BI%20ACT%20762.pdf <p><i>Legal Authority</i></p> <ul style="list-style-type: none"> The Ministry of Finance - http://www.treasury.gov.my/index.php/en/ministryprofile/treasurys-profile.html 	<p>Peninsular</p> <p>Government Sources:</p> <ul style="list-style-type: none"> Inland Revenue Board official website, Available at: http://www.hasil.gov.my/bt_goindex.php?bt_kump=5&bt_skum=5&bt_posi=3&bt_unit=1&bt_sequ=2&bt_lqv=2; LAWS OF MALAYSIA ONLINE VERSION OF UPDATED TEXT OF REPRINT; Act 53 INCOME TAX ACT 1967 As at 1 October 2017 ; [online], Available at: http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Pindaan%20Act%2053%20-%2023%2011%202017.pdf 	<p>Peninsular</p> <p><i>Overview of Legal Requirements</i></p> <p>Income taxation is managed and enforced centrally by the Federal Government in Malaysia.</p> <p>In Malaysia, the standard taxation of corporate income is at 25% percent. This level of taxation applies to all sectors, except for the following: banking, insurance, air transport and shipping. Taxable income is all earnings derived from Malaysia and covers gains from dividend, royalty and land trading. Companies with annual earnings below 2,500,000MYR is classified as 'Small to-Medium Enterprise' (SME) and qualifies for a 5% tax decrease for the first 50,000MYR (PWC, 2017). All related records and receipts must be maintained for inspection by the Inland Revenue Board staff/inspector whenever needed (Inland Revenue Board).</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<p>The ministry in charge of formulating and implementing monetary policies and further in charge of distribution and the management of financial resources of Malaysia.</p> <ul style="list-style-type: none"> Inland Revenue Board of Malaysia Royal Malaysian Customs Department - http://www.customs.gov.my/en/ci/Pages/ci_vmv.aspx Responsible for the nations indirect tax <p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> Receipt of payment maintained by company and IRB which normally can only be obtained from the company or from IRB with company authorisation 	<p><i>Non-government sources</i></p> <ul style="list-style-type: none"> PWC 2016/2017 Malaysia Tax Booklet, 2017: [online], Available at: https://www.pwc.com/my/en/assets/publications/2017-malaysian-tax-booklet.pdf - Nor Shaipah Abdul Wahab, 2015: Corporate Tax in Malaysia: Revenue, Collection and Enforcement Nor Shaipah Abdul Wahab, 2015a: Corporate Tax In Malaysia: Revenue, Collection And Enforcement[online], Available at: https://worldconferences.net/proceedings/icssr2015/full%20paper/IC%20035%20CORPORATE%20TAX%20IN%20MALAYSIA.pdf. Transparency International, (2017). Corruption Perception Index 2016.[online] Available at: https://www.transparency.org/news/feature/corruption_perceptions_index_2016 [Accessed 5 February 2018]. Transparency International (2011). <i>Forest Governance Integrity Report - Peninsular Malaysia</i>. Accessed 24 February 2015 at http://transparency.org.my/wp-content/uploads/sites/3/2013/09/Publication-Report-Peninsular-Malaysia.pdf. Annuar, H. A., Salihi, I. A., & Obid, S. N. (2014). Corporate Ownership, 	<p><i>Description of Risk</i></p> <ul style="list-style-type: none"> There is a risk of manipulation of the taxable amount (giving extra bonus, buying assets that can be deducted). However, all companies are subject to tax audits, and are audited by tax agencies, ensuring transparency and that tax deduction takes place according to the tax regulations and rules. Income tax is well-monitored and enforced (Abdul Wahab, 2015). Even small-scale farmers and small companies must pay tax. If they do not have a registered company, they must declare tax as individual income (Abdul Wahab, 2015). Between year 2000 and year 2013, the composition of direct taxes to the Malaysian government's total revenue is made up by corporate tax at the largest, followed by individual tax, petroleum tax and others. This trend is consistent and significant for the 14-year period, and is expected to continue for future years due to effective enforcement policy of the tax authority (Abdul Wahab, 2015a). The main risk in relation to taxation is related to corruption. In 2016, Transparency International gave Malaysia a Corruption Perception Index score of 49 out of 100 (on a scale from 0 to 100 where 100 is lowest level of corruption). Malaysia was ranked 55 out of the 167 countries assessed. The score of 49 see's Malaysia losing points compared to 2015, where they scored 50 and 2014 where they scored 52. Transparency Internationals corruption index and thus corruption is an issue in Malaysia. In relation to forestry and oil palm plantation development, Transparency International Malaysia (2011) reports that the risks are transfer pricing (tax evasion through undervaluation) and bribery to undervalue timber. Family, government and foreign

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		<p>Governance and Tax Avoidance: An Interactive Effects. <i>Procedia - Social and Behavioural Sciences</i>, 164, 150-160. [online], Available at: https://www.sciencedirect.com/science/article/pii/S1877042814058832</p> <ul style="list-style-type: none"> • Chin, M. (2011). <i>Biofuels in Malaysia: An Analysis of the Legal and Institutional Framework</i>. Bogor, Indonesia: CIFOR. [online], Available at: https://books.google.dk/books?id=mkNLPmZC0eoC&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false • PwC. (2016). <i>2015/2016 Malaysian Tax and Business Booklet</i>. Kuala Lumpur, Malaysia: 24 Palm oil Risk Assessment – Malaysia - Peninsular PricewaterhouseCoopers Taxation Services SD Bhd., [online], Available at: https://www.pwc.com/my/en/assets/publications/2016-malaysian-tax-business-booklet.pdf • Nor Shaipah Abdul Wahab, 2015b. <i>Corporate Tax in Malaysia: Revenue, Collection and Enforcement - E-Proceeding of the International Conference on Social Science Research, ICSSR 2015</i>. [online], Available at: https://worldconferences.net/proceedings/icssr2015/full%20paper/IC%2003 	<p>ownerships have been proven as the potential determinants of corporate tax avoidance (Annuar, 2014).</p> <ul style="list-style-type: none"> • Chin (2011), who reports that there have been several complaints from the palm oil industry about the heavy taxation and this can thus be considered a prime motivation for tax evasion. It is likely that this observation can also apply to the timber sector. • In the paper <i>Corporate Tax in Malaysia: Revenue, Collection and Enforcement</i>, Abdul Wahab (2015b) states that the 'loophole[s] in the tax system may create opportunities for firms to avoid or evade the corporate tax. Studies in corporate tax field find evidence on tax planning opportunities created by ambiguity of the tax laws and firms' specific characteristics. Tax planning interpretation is basically referring to tax avoidance and evasion. Tax planning activities among firms are mainly triggered by the availability of the opportunity to avoid tax.' The paper concluded by recommending the 'government [...] levy sufficient corporate tax and respond to the increase administrative and compliance costs in its current enforcement strategies.' • Josephine Dom of the IRB, in a presentation at the Fourth IMF-Japan High-Level Tax Conference for Asian Countries in 2013 listed the following as the key compliance challenges for the IRB: <ul style="list-style-type: none"> - Improving voluntary compliance; - Tax evasion and frauds; - Cross-border transactions, e-commerce and aggressive tax planning - Limited human resources and enhancing skills of audit officers.

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
		<p>5%20CORPORATE%20TAX%20IN%20MALAYSIA.pdf, [accessed 9 February 2018].</p> <ul style="list-style-type: none"> Josephine Hilary Dom, Inland Revenue Board, Malaysia, (2013). Enforcement Trend and Compliance Challenges: Malaysia's Experience. The Fourth IMF-Japan High-Level Tax Conference for Asian Countries.[online], Available at: https://www.imf.org/external/np/seminars/eng/2013/asiatax/pdfs/malaysia2.pdf, [accessed 9 February 2018]. <p>Sabah</p> <p>Government Sources:</p> <ul style="list-style-type: none"> Inland Revenue Board official website• Available at: http://www.hasil.gov.my/bt_goindex.php?bt_kump=5&bt_skum=5&bt_posi=3&bt_unit=1&bt_sequ=2&bt_lgv=2; LAWS OF MALAYSIA ONLINE VERSION OF UPDATED TEXT OF REPRINT; Act 53 INCOME TAX ACT 1967 As at 1 October 2017 ; [online], Available at: http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Pindaa n%20Act%2053%20-%2023%2011%202017.pdf 	<ul style="list-style-type: none"> - Underground economy/cash economy - Incomplete recordkeeping among SME and sole proprietor - High tax arrears every year <p>Although there are no specific reports of income tax evasion in the forestry sector in Peninsular, the well documented corruption issues are considered significant enough to warrant a specified risk finding, based on the precautionary approach.</p> <p><i>Risk Conclusion</i></p> <p>'Specified risk'. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p> <p>Sabah</p> <p><i>Overview of Legal Requirements</i></p> <p>NOTE: See general description of income taxation in the <i>overview of legal requirements</i> for Peninsular above.</p> <p><i>Description of Risk</i></p> <ul style="list-style-type: none"> • There is a risk of manipulation of the taxable amount (giving extra bonus, buying assets that can be deducted). However, all companies are subject to tax audits, and are audited by tax agencies, ensuring transparency and that tax deduction takes place according to the tax regulations and rules. Income tax is well-monitored and enforced (Abdul Wahab, 2015). • Even small-scale farmers and small companies must pay tax. If they do not have a registered company, they must declare tax as individual income (Abdul Wahab, 2015).

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		<p><i>Non-government sources</i></p> <ul style="list-style-type: none"> • PWC 2016/2017 Malaysia Tax Booklet, 2017: https://www.pwc.com/my/en/assets/publications/2017-malaysian-tax-booklet.pdf- Nor Shaipah Abdul Wahab, 2015: Corporate Tax in Malaysia: Revenue, Collection and Enforcement,[online], Available at: https://www.pwc.com/my/en/assets/publications/2017-malaysian-tax-booklet.pdf • Nor Shaipah Abdul Wahab, 2015a: Corporate Tax In Malaysia: Revenue, Collection And Enforcement https://worldconferences.net/proceedings/icssr2015/full%20paper/IC%20035%20CORPORATE%20TAX%20IN%20MALAYSIA.pdf. • Transparency International, (2017). Corruption Perception Index 2016. Available at: https://www.transparency.org/whatwedo/publication/corruption_perceptions_index_2016 . [Accessed 5 February 2018.] • Transparency International (2011). <i>Forest Governance Integrity Report - Peninsular Malaysia</i>. Accessed 24 February 2015 at http://transparency.org.my/wp-content/uploads/sites/3/2013/09/Publi 	<ul style="list-style-type: none"> • Between year 2000 and year 2013, the composition of direct taxes to the Malaysian government's total revenue is made up by corporate tax at the largest, followed by individual tax, petroleum tax and others. This trend is consistent and significant for the 14-year period, and is expected to continue for future years due to effective enforcement policy of the tax authority (Abdul Wahab, 2015a). • The main risk in relation to taxation is related to corruption. In 2016, Transparency International gave Malaysia a Corruption Perception Index score of 49 out of 100 (on a scale from 0 to 100 where 100 is lowest level of corruption). Malaysia was ranked 55 out of the 167 countries assessed. The score of 49 see's Malaysia losing points compared to 2015, where they scored 50 and 2014 where they scored 52. • Transparency Internationals corruption index and thus corruption is an issue in Malaysia. In relation to forestry and oil palm plantation development, Transparency International Malaysia (2011) reports that the risks are transfer pricing (tax evasion through undervaluation) and bribery to undervalue timber. Family, government and foreign ownerships have been proven as the potential determinants of corporate tax avoidance (Annuar, 2014). • Chin (2011), who reports that there have been several complaints from the palm oil industry about the heavy taxation and this can thus be considered a prime motivation for tax evasion. It is likely that this observation can also apply to the timber sector. • In the paper <i>Corporate Tax in Malaysia: Revenue, Collection and Enforcement</i>, Abdul Wahab (2015b) states that the 'loophole[s] in the tax system may create opportunities for firms to avoid or evade the corporate tax. Studies in corporate tax field find evidence on tax planning

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		<p>cation-Report-Peninsular-Malaysia.pdf.</p> <ul style="list-style-type: none"> • Annuar, H. A., Salihu, I. A., & Obid, S. N. (2014). Corporate Ownership, Governance and Tax Avoidance: An Interactive Effects. <i>Procedia - Social and Behavioural Sciences</i>, 164, 150-160.,[online], Available at: https://www.sciencedirect.com/science/article/pii/S1877042814058832 • Chin, M. (2011). <i>Biofuels in Malaysia: An Analysis of the Legal and Institutional Framework</i>. Bogor, Indonesia: CIFOR.,[online], Available at: https://books.google.dk/books?id=mkNLPmZC0eoC&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false • PwC. (2016). <i>2015/2016 Malaysian Tax and Business Booklet</i>. Kuala Lumpur, Malaysia: 24 Palm oil Risk Assessment – Malaysia - Peninsular PricewaterhouseCoopers Taxation Services Sdn Bhd.,[online], Available at: https://www.pwc.com/my/en/assets/publications/2016-malaysian-tax-business-booklet.pdf • Nor Shaipah Abdul Wahab, 2015b. <i>Corporate Tax in Malaysia: Revenue, Collection and Enforcement - E-Proceeding of the International</i> 	<p>opportunities created by ambiguity of the tax laws and firms' specific characteristics. Tax planning interpretation is basically referring to tax avoidance and evasion. Tax planning activities among firms are mainly triggered by the availability of the opportunity to avoid tax.' The paper concluded by recommending the 'government [...] levy sufficient corporate tax and respond to the increase administrative and compliance costs in its current enforcement strategies.'</p> <ul style="list-style-type: none"> • Josephine Dom of the IRB, in a presentation at the Fourth IMF-Japan High-Level Tax Conference for Asian Countries in 2013 listed the following as the key compliance challenges for the IRB: <ul style="list-style-type: none"> - Improving voluntary compliance; - Tax evasion and frauds; - Cross-border transactions, e-commerce and aggressive tax planning - Limited human resources and enhancing skills of audit officers. - Underground economy/cash economy - Incomplete recordkeeping among SME and sole proprietor - High tax arrears every year <p>Although there are no specific reports of income tax evasion in the forestry sector in Sabah, the well documented corruption issues are considered significant enough to warrant a specified risk finding, based on the precautionary approach.</p>

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		<p>Conference on Social Science Research, ICSSR 2015. Available: https://worldconferences.net/proceedings/icssr2015/full%20paper/IC%20035%20CORPORATE%20TAX%20IN%20MALAYSIA.pdf, accessed 9 February 2018.</p> <ul style="list-style-type: none"> Josephine Hilary Dom, Inland Revenue Board, Malaysia, (2013). Enforcement Trend and Compliance Challenges: Malaysia's Experience. The Fourth IMF-Japan High-Level Tax Conference for Asian Countries. Available: https://www.imf.org/external/np/seminars/eng/2013/asiatax/pdfs/malaysia2.pdf, accessed 9 February 2018. <p>Sarawak</p> <p>Government Sources:</p> <ul style="list-style-type: none"> Inland Revenue Board official website, Available at: http://www.hasil.gov.my/bt_goindex.php?bt_kump=5&bt_skum=5&bt_posi=3&bt_unit=1&bt_sequ=2&bt_lgv=2; LAWS OF MALAYSIA ONLINE VERSION OF UPDATED TEXT OF REPRINT; Act 53 INCOME TAX ACT 1967 As at 1 October 2017; [online], Available at: http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Pindaa 	<p><i>Risk Conclusion</i></p> <p>'Specified risk'. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p> <p>Sarawak</p> <p><i>Overview of Legal Requirements</i></p> <p>NOTE: See general description of income taxation in the <i>overview of legal requirements</i> for Peninsular above.</p> <p><i>Description of Risk</i></p> <ul style="list-style-type: none"> There is a risk of manipulation of the taxable amount (giving extra bonus, buying assets that can be deducted). However, all companies are subject to tax audits, and are audited by tax agencies, ensuring transparency and that tax deduction takes place according to the tax regulations and rules. Income tax is well-monitored and enforced (Abdul Wahab, 2015). Even small-scale farmers and small companies must pay tax. If they do not have a registered company, they must declare tax as individual income (Abdul Wahab, 2015). Between year 2000 and year 2013, the composition of direct taxes to the Malaysian government's total revenue is made up by corporate tax at the largest, followed by individual tax, petroleum tax and others. This trend is consistent and significant for the 14-year period, and is expected to continue for future years due to effective enforcement policy of the tax authority (Abdul Wahab, 2015a). The main risk in relation to taxation is related to corruption. In 2016, Transparency International gave Malaysia a Corruption Perception Index score of 49 out of 100 (on a

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		<p>n%20Act%2053%20-%2023%2011%202017.pdf</p> <p><i>Non-government sources</i></p> <ul style="list-style-type: none"> • PWC 2016/2017 Malaysia Tax Booklet, 2017: https://www.pwc.com/my/en/assets/publications/2017-malaysian-tax-booklet.pdf- Nor Shaipah Abdul Wahab, 2015: Corporate Tax in Malaysia: Revenue, Collection and Enforcement,[online], Available at: https://www.pwc.com/my/en/assets/publications/2017-malaysian-tax-booklet.pdf • Nor Shaipah Abdul Wahab, 2015a: Corporate Tax In Malaysia: Revenue, Collection And Enforcement https://worldconferences.net/proceedings/icssr2015/full%20paper/IC%20035%20CORPORATE%20TAX%20IN%20MALAYSIA.pdf. • Transparency International, (2017). Corruption Perception Index 2016. Available at: https://www.transparency.org/whatwedo/publication/corruption_perceptions_index_2016 . [Accessed 5 February 2018]. • Transparency International (2011). <i>Forest Governance Integrity Report - Peninsular Malaysia</i>. Accessed 24 February 2015 at http://transparency.org.my/wp- 	<p>scale from 0 to 100 where 100 is lowest level of corruption). Malaysia was ranked 55 out of the 167 countries assessed. The score of 49 see's Malaysia losing points compared to 2015, where they scored 50 and 2014 where they scored 52.</p> <ul style="list-style-type: none"> • Transparency Internationals corruption index and thus corruption is an issue in Malaysia. In relation to forestry and oil palm plantation development, Transparency International Malaysia (2011) reports that the risks are transfer pricing (tax evasion through undervaluation) and bribery to undervalue timber. Family, government and foreign ownerships have been proven as the potential determinants of corporate tax avoidance (Annuar, 2014). • Chin (2011), who reports that there have been several complaints from the palm oil industry about the heavy taxation and this can thus be considered a prime motivation for tax evasion. It is likely that this observation can also apply to the timber sector. • In the paper <i>Corporate Tax in Malaysia: Revenue, Collection and Enforcement</i>, Abdul Wahab (2015b) states that the 'loophole[s] in the tax system may create opportunities for firms to avoid or evade the corporate tax. Studies in corporate tax field find evidence on tax planning opportunities created by ambiguity of the tax laws and firms' specific characteristics. Tax planning interpretation is basically referring to tax avoidance and evasion. Tax planning activities among firms are mainly triggered by the availability of the opportunity to avoid tax.' The paper concluded by recommending the 'government [...] levy sufficient corporate tax and respond to the increase administrative and compliance costs in its current enforcement strategies.'

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		<p>content/uploads/sites/3/2013/09/Publication-Report-Peninsular-Malaysia.pdf.</p> <ul style="list-style-type: none"> • Annuar, H. A., Salihu, I. A., & Obid, S. N. (2014). Corporate Ownership, Governance and Tax Avoidance: An Interactive Effects. <i>Procedia - Social and Behavioural Sciences</i>, 164, 150-160. [online], Available at: https://www.sciencedirect.com/science/article/pii/S1877042814058832 • Chin, M. (2011). <i>Biofuels in Malaysia: An Analysis of the Legal and Institutional Framework</i>. Bogor, Indonesia: CIFOR. [online], Available at: https://books.google.dk/books?id=mkNLPmZC0eoC&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false • PwC. (2016). <i>2015/2016 Malaysian Tax and Business Booklet</i>. Kuala Lumpur, Malaysia: 24 Palm oil Risk Assessment – Malaysia - Peninsular PricewaterhouseCoopers Taxation Services Sdn Bhd.[online], Available at: https://www.pwc.com/my/en/assets/publications/2016-malaysian-tax-business-booklet.pdf • Nor Shaipah Abdul Wahab, 2015b. <i>Corporate Tax in Malaysia: Revenue, Collection and Enforcement - E-</i> 	<ul style="list-style-type: none"> • Josephine Dom of the IRB, in a presentation at the Fourth IMF-Japan High-Level Tax Conference for Asian Countries in 2013 listed the following as the key compliance challenges for the IRB: <ul style="list-style-type: none"> - Improving voluntary compliance; - Tax evasion and frauds; - Cross-border transactions, e-commerce and aggressive tax planning - Limited human resources and enhancing skills of audit officers. - Underground economy/cash economy - Incomplete recordkeeping among SME and sole proprietor - High tax arrears every year <p>In addition, there have been reports of forestry enterprises evading tax payments (Sarawak Report; Global Witness 2013). Court cases including one involving the Sarawak Governor Taib Mahmud's brother in Singapore High Court reveals that "transfer pricing," that has been commonplace for the major timber companies in Sarawak, who tend to habitually declare pathetic profits or even losses each year, even though Sarawak is still the largest tropical timber exporter in the world. This practice involves selling timber cheaply to a so-called broker agent that is secretly owned by the timber enterprise itself before invoicing end buyers in countries like China and Japan for large profits (Sarawak Report, 2015).</p> <p>Based on the reports of tax evasion, the risk is considered specified for all timber sources.</p>

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		<p>Proceeding of the International Conference on Social Science Research, ICSSR 2015. Available: https://worldconferences.net/proceedings/icssr2015/full%20paper/IC%20035%20CORPORATE%20TAX%20IN%20MALAYSIA.pdf, accessed 9 February 2018.</p> <ul style="list-style-type: none"> • Josephine Hilary Dom, Inland Revenue Board, Malaysia, (2013). Enforcement Trend and Compliance Challenges: Malaysia's Experience. The Fourth IMF-Japan High-Level Tax Conference for Asian Countries. Available: https://www.imf.org/external/np/seminars/eng/2013/asiatax/pdfs/malaysia2.pdf, accessed 9 February 2018. • Sarawak Report 2015: Tufail Mahmud. How I evaded tax on my secret timber concession, [online], Available at: http://www.sarawakreport.org/2015/01/tufail-mahmud-how-i-evaded-tax-on-my-secret-timber-concession/ • Global Witness (2013). <i>Inside Malaysia's Shadow State</i>. Available at https://www.globalwitness.org/campaigns/forests/inside-malaysias-shadow-state/. 	<p><i>Risk Conclusion</i></p> <p>'Specified risk'. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p>

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1.8 Timber harvesting regulations	<p>Peninsular</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> National Forestry Act 1984 - Section 20, 46, 52 adopted by the state as Enactment. http://www.agc.gov.my/Akta/Vol.%207/Act%20313.pdf Guidelines for Reduced Impact Logging in Peninsular Malaysia, 2003 Environmental Quality Act 1974 – section 34A http://faolex.fao.org/docs/pdf/mal13278.pdf Spesifikasi Jalan Hutan (Jalan Tuju dan Lorong Penarik) untuk Semenanjung Malaysia, 1999 [Forest Road Specification (Feeder Road and Skid Trails) For Peninsular Malaysia, 1999] Manual Kerja Luar Sistem Pengurusan Memilih, Bab 4, JPMS, 1997 [Selective Management System, Chapter 4, Forest Department Peninsular Malaysia, 1997] Panduan Kerja Luar Inventori Hutan Selepas Tebangan [Field Manual on Post-felling Forest Inventories] Manual Kerja Luar Sistem Pengurusan Memilih (Selective Management System – SMS), Bab 10 [Field Manual 	<p>Peninsular</p> <p><i>Government sources</i></p> <ul style="list-style-type: none"> Forestry Department - http://www.forestry.gov.my/images/stories/muatturun/AktaAPN.pdf <p><i>Non-government sources</i></p> <ul style="list-style-type: none"> Capt. Kamaruzaman Jusoffand Nik Mohammad Shah Nik Mustafa;"Guidelines on logging practices for the Hill Forest in Peninsular Malaysia" – FAO,[online] Available at: http://www.fao.org/docrep/W3646E/w3646e0d.htm Nizum bin Mohd. Nor Abd. Ramlizauyahhudin bin Mahli (2017) <i>Executive Talk 2017: Combating Wildlife & Forestry Crime - Forest Crimes & It's Challenges in Peninsular Malaysia, [pdf] Enforcement Division, Forestry Department Peninsular Malaysia.</i> Available at: http://www.wildlife.gov.my/images/stories/ExecTalk/Talk-3.pdf, accessed 6 February 2018. Transparency International (2011). <i>Forest Governance Integrity Report - Peninsular Malaysia.</i> Accessed 24 February 2015 at <a 138="" 614="" 827"="" 968="" href="http://transparency.org.my/wp- </td> <td data-bbox="> <p>Peninsular</p> <p><i>Overview of Legal Requirements</i></p> <p>In forest reserves (PRF), all forest/business enterprises are required to comply with the regulations listed before any harvesting activities can be conducted, exemptions are often given when natural forest is felled for conversion to plantation forest.</p> <p>Transparency International 2011 Forest Governance Integrity Report Peninsular Malaysia rates the likelihood of conversion of Permanent Reserved Forests to plantation forest in violations of land use regulations at a grade of 4 (out of scale of 1-5, 5 being most likely).</p> <p>The forest management plan demonstrates the implementation of management guidelines to assess forest composition before harvesting. Forest maps must have been drawn up according to the available standards. Boundaries demarcated on maps must be clearly marked on the ground in compliance with the regulations in force.</p> <p>There are requirements in place for selective logging inside forest reserves in Peninsular Malaysia to ensure the planning and construction of road and tracks and log extraction operations follow operating standards and reduced/low impact logging that minimizes impacts, damage and foregone revenue opportunities is employed. Procedures on reduced and low impact harvesting are included in the harvesting licence, as well as the provisions for the utilization of harvesting residue, the Environmental Impact Assessment (EIA) and records of monitoring by FDs.</p> <p>There are also requirements in place for selective logging inside forest reserves relating to minimum harvestable diameters; ensuring only timber species that are duly authorised by the forest management plan are harvested; and maintaining the</p> 	

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	<p>of Selective Management System (SMS), Chapter 10]</p> <p><i>Legal Authority</i></p> <ul style="list-style-type: none"> State Forestry Department <p><i>Legally required documents or records</i></p> <p>Detailed requirements for harvesting using the “Natural Forest Management” system in forest reserves are described in the Forest Harvesting Plan which can be obtained for review from concession owners or forest managers and the Forestry Department. Documents include the following:</p> <ul style="list-style-type: none"> Pre-felling inventories Post-felling inventories Forest Maps Procedures on reduced and low impact harvesting included in harvesting licence Provisions for the utilization of harvesting residue Environmental Impact Assessment (EIA) Records of timber products, species and quantity harvested under licence Quarterly reports on areas harvested Compliance report 	<p>content/uploads/sites/3/2013/09/Publication-Report-Peninsular-Malaysia.pdf.</p> <ul style="list-style-type: none"> Transparency International, (2017). Corruption Perception Index 2016. Available at: https://www.transparency.org/whatwedo/publication/corruption_perceptions_index_2016. Accessed 5 February 2018. NEPCon expert consultant,2015, Personal Communication 2 <p>Sabah</p> <p><i>Government Sources:</i></p> <ul style="list-style-type: none"> SFD Publications. "Forestry in Sabah" Commemorative Edition, In Celebration of the Sabah Forestry Department Centennial time capsule sealing (2005-2105) Available at: http://books.mouvier.ru/#t=Forestry+Sabah+compiled+by+the+Sabah+Forestry+Department+compiled+by+the+Sabah+Forestry+Department. Sabah Forestry Department, (2017). Annual Report 2016 – Chapter 11: Enforcement, Investigation & Prosecution. Available at: http://www.forest.sabah.gov.my/ar2016/11.pdf, accessed 8 February 2018. 	<p>quantity of residual stands. Compliance with these requirements can be verified by reference to the records of timber products, species and quantity harvested under licence, Quarterly reports on areas harvested and Compliance reports.</p> <p>Logging on Alienated Land and State Land, and clear-felling inside forest reserves are not subject to most of these requirements such as pre-felling inventory and assessment or tree tagging prior to logging. Clearance for plantations (even inside forest reserves) are usually not subject to these requirements.</p> <p>In certain cases, plantations would have to comply with requirements. This could relate to in cases where e.g. a company applies for certification. The requirement for each FME will be specified by the Forestry Department Director and put in the licence.</p> <p>Control of encroachment, illegal harvesting without permits and other unauthorized activities in PRFs and State Land in Peninsular Malaysia is carried out by the state forestry departments, who keep records of these activities.</p> <p><i>Description of Risk</i></p> <ul style="list-style-type: none"> According to Transparency International (2011) an area of specific weakness for corruption in Peninsular Malaysia relates to, among others, the control of harvesting and restrictions on re-entry logging in Permanent Reserved Forest areas. That report further states that because State governments have the authority to award preferential timber concessions and logging licenses (without ensuring that competitive bidding takes place), inexperienced operators and inappropriate logging activities can lead to degradation of forest resources and operators not abiding by sustainable forestry management practices.'

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	<p>Sabah</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> • Forest Enactment 1968 (Sabah En. No. 2 of 1968) - Section 28A and 28B • Reduced Impact Logging (RIL) Operation Guide Book: Code of Practice for Forest http://www.fao.org/fileadmin/templates/rp/files/meetings/2012/120503_reduce_d_impact.pdf • Harvesting in Sabah, Malaysia 2009 • RIL Operation Guide Book Specifically for Crawler Tractor Use 2001. • Reference Manual for Timber Harvesting • Operations in Commercial Class II Forest Reserves in Sabah 1996 • Environment Protection Enactment - Section 38 - http://www.sabah.gov.my/jpas/laws/EP E/EPE02.pdf <p><i>Legal authority</i></p> <ul style="list-style-type: none"> • Sabah Forestry Department <p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> • Sustainable Forest Management Licence Agreement (SFMLA) or Long-Term Licence (LTL) conditions • Comprehensive Harvesting Plan (CHP) 	<ul style="list-style-type: none"> • Sabah Forest Department 2015 – [online], Available at: http://www.forest.sabah.gov.my/media-centre/press-release/436-all-long-term-forest-licensees-to-be-certified-on-their-forest-management-under-any-internationally-recognised-and-accredited-system-director-of-forestry <p><i>Non-government sources</i></p> <ul style="list-style-type: none"> • NEPCon expert consultation, 2015, Personal Communication 1 and 2 <p>Sarawak</p> <p><i>Government Sources:</i></p> <ul style="list-style-type: none"> • Sarawak Forestry Corporation (SFC) http://www.sarawakforestry.com/html/sustainable.html. • Sarawak Forestry Department (SFD) http://www.forestry.sarawak.gov.my/. <p><i>Non-government sources</i></p> <ul style="list-style-type: none"> • Star Online, 2014. Adenan Satem warns Sarawak's timber industry. https://www.thestar.com.my/news/nation/2014/11/17/adenan-satem-tells-off-sarawak-logging-firms-on-corruption/ • Borneo Post, (2016). Sarawak State Government is committed to combat illegal Logging. http://www.theborneopost.com/2016/0 	<ul style="list-style-type: none"> • In 2016, Transparency International gave Malaysia a Corruption Perception Index score of 49 out of 100 (on a scale from 0 to 100 where 100 is lowest level of corruption). Malaysia was ranked 55 out of the 167 countries assessed. The score of 49 see's Malaysia losing points compared to 2015, where they scored 50 and 2014 where they scored 52. • There are cases of logging outside agreed boundaries, and well as logging on steep slopes and overharvesting. Transparency International 2011 Forest Governance Integrity Report Peninsular Malaysia rates the likelihood that these cases happen at a grade of 4 (out of scale of 1-5, 5 being most likely). Much of the timber harvesting is regulated through guidelines and the guidelines are often not clear. • Additional enforcement officers have been recruited by the Peninsular Malaysia Forestry Department, and training for enforcement officials across the country has been provided under INTERPOL's Law Enforcement Assistance for Forests (LEAF) project. In 2011 a hotline was set up at the headquarters of the Peninsular Malaysia Forestry Department for the public to report cases of illegal logging and other offences. However, despite the additional initiatives the number of personnel remains insufficient, as do resources for effective enforcement (Hoare, 2015). • Based on stakeholder input there are indications that Forestry Department Rangers seldom conduct on-ground patrols and that it is widely perceived that bribes are paid to forest officials. • Mohd. Nizum (2017), in his Executive Talk, highlights that the inadequate number of enforcement staff at State Forestry Department [to conduct detection and enforcement patrols and routine surveillance activities, investigations on

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	<ul style="list-style-type: none"> • Approved Annual Work Plan (AWP) • Field verification report-Borang SPKP RIL01 • Production records • Daily felling record • Letter of approval by SFD • EIA • Compartment record book • Analysis of Permanent Sample Plots (PSP) data • Compliance report • Post-harvest Inventory • Closing Inspection Report • Records of silvicultural treatments • Permanent Sample Plot Records • Sustainable Forest Management Licence Agreement <p>Sarawak</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> • Procedures on Reduced and Low Impact Harvesting Systems 1999, Sarawak • Basic Chainsaw Maintenance and Directional Tree Felling 2001, Sarawak 	<p>3/03/sarawak-state-government-is-committed-to-combat-illegal-logging/.</p> <ul style="list-style-type: none"> • Borneo Post, (2017). Transparency in illegal Logging. http://www.theborneopost.com/2017/10/27/transparency-in-illegal-logging/. • Mongabay, (2017). Leading US plywood firm linked to alleged destruction, rights violations in Malaysia. https://news.mongabay.com/2017/10/leading-us-plywood-firm-linked-to-alleged-destruction-rights-violations-in-malaysia/. • Transparency International, (2017). Corruption Perception Index 2016. Available at: https://www.transparency.org/whatwedo/publication/corruption_perceptions_index_2016 . 	<p>forest offense cases and forensic practices] is an issue and challenge in forest enforcement in Peninsular Malaysia. He points out that there is a total of 236 ground staff (Operational and Enforcement Unit) are responsible to monitor 4,916,748 ha PRF and a total of 522 operational wood processing mills operating throughout Peninsular Malaysia. There is a total of 19 Intelligence Officers and 3 forensic personnel for the whole peninsula.</p> <ul style="list-style-type: none"> • The regulations and the associated risk of non-compliance are mainly associated with logging inside forest reserves. For logging on Alienated Land and State Land (if any), the main legal mechanism for timber harvesting compliance verification is the EIA process (which are dealt with under section 1.10) (Personal communication 2). As many of the licences/permits issued for AL and SL do not include the same requirements (this is at the discretion of the licensor), it is difficult to assess the risk not applicable for the all activities on these land types. As such, the experts who developed this assessment believe, based on the research and experience, that the risk should be specified, using a precautionary approach, but it is necessary to review the license conditions to determine if there are specific harvesting requirements applicable to a licensee/permit holder. <p>Based on unclear harvest regulations, lack of implementation of harvesting plans, as well as lack of enforcement resources and corruption amongst forest officials, the risk is considered specified for all source types.</p> <p><i>Risk Conclusion</i></p> <p>'Specified risk'. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<ul style="list-style-type: none"> • Forest Rules 1962, Rule 10 and 19 • Protection of Soil and Water, 1999 • The Manual of Silviculture for the Permanent Forest Estate of Sarawak, 1999 • Guidelines for Forest Road Layout and Construction, 1999 • Forests (Planted Forests) Rules 1997 • Forest Ordinance. Available at: http://www.sarawakforestry.com/pdf/laws/forests_ordinance_chapter_126.pdf • Forest Rules 1962. Available at: http://www.sarawakforestry.com/pdf/laws/the_forest_rules.pdf <p><i>Legal authority</i></p> <ul style="list-style-type: none"> • Sarawak Forest Department (SFD) • Sarawak Forestry Corporation <p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> • Approved Detailed Harvesting Plan • Pre-Felling inspection report • Enumeration data • Record of monitoring by SFD • Record of demarcated boundaries 		<p>Sabah</p> <p><i>Overview of Legal Requirements</i></p> <p>There are various means of control over timber harvesting operations in Sabah, depending on the land status.</p> <p>For PRFs, State Land and Alienated Land, all licensees must adhere to the following conditions as stipulated in the licence conditions:</p> <ol style="list-style-type: none"> i. A licensee must register a Property Hammer Mark, and the Property Hammer Mark must be stamped at the end of each log produced (natural forest), and per batch for plantation timber. ii. A licensee must incise each extracted log with a serial number. iii. A logging contractor must be registered with the SFD prior to commencing operations. iv. The requirement to prepare daily harvesting records. v. Submission of Quarterly Logging Progress Report and Closing Inspection Report. vi. Prohibition of timber harvesting in steep slopes (25° and above) and buffer zones as stipulated in the licence conditions. <p>The conditions of harvesting licence stipulate several protected species of timber that are prohibited from being harvested in PRF or Natural Forest Management Areas.</p> <p>In the PRF and State Land, only a licenced area is allowed for timber harvesting. For Alienated Land, timber can be felled for land clearance for agricultural purposes as the land is Alienated Land, but no timber can be removed without royalty payment</p>

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			<p>and with proper markings and thereafter issuance of Form IIB licence.</p> <p>For selective logging Forest Reserves (SFMLA/LTL), there are additional harvesting controls, including the use of Reduced Impact Logging, and the operation will be guided by a Comprehensive Harvesting Plan which includes requirements relating to road construction, directional felling and mapping trees for harvest. For logging involving clearance for timber plantations or clearance of plantation timber inside Forest Reserves the SFMLA requires that a Plantation Development Plan be completed.</p> <p><i>Description of Risk</i></p> <ul style="list-style-type: none"> • A small amount of harvesting is taking place in PRF in Sabah, as the concessions are often degraded due to earlier logging. Companies now often spend resources to restore the forest. The FMUs are being monitored under the EIA requirements by the Forestry Department through onsite audits and aerial surveys carried out 1–2 times a year (NEPCon Expert Consultation 2015.). • The Sabah Forestry Department has 35 District Forestry Officers conducting audits paid for by the Forestry Department. Field monitoring by the authorities is complicated by the remote locations of the forests being logged. However, the requirement is generally considered well-implemented (Expert consultation 2015, personal communication 1). • The 2016 Annual Report from the Sabah Forestry Department states that almost 40 per cent of the 234 forestry offences from that year were “breach of license conditions”. The annual report does show a significant uptick in enforcement activities. The number of people convicted and arrested for forestry offences has significantly increased over the five years leading up to 2016: In 2012 there were

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			<p>61 offences, 59 in 2013, 91 in 2014, 138 in 2015 and 176 in 2016. This is not necessarily an indicator of more offences, just that more offences are being detected and prosecuted.</p> <ul style="list-style-type: none"> • According to experts consulted (2015), the harvesting requirements for SL, AL and plantations are less stringently applied, or absent. Despite the lack of information to indicate an absence of risk here, the strong advice of the experts was that the risk is not significant enough here, in the sense of scale and impact to warrant this indicator being found to be specified. • According to Sabah Forestry Department, the implementation of third party auditing on all long-term licensees has had a positive impact on enforcement. This was introduced to ensure that forest activities comply with the terms and conditions of the Sustainable Forest Management License Agreements (SFMLAs). As of December 2014, 840,000 ha of forest were certified, and another 213,000 ha is expected to be fully certified during 2015 (SFD 2015). Forest certification is a cornerstone of the State Government Forest Policy and thus encouraged at State level. • EIA for Sabah is more widely and consistently implemented as there is no minimum threshold of land area, meaning all harvesting project needs to conduct an EIA (Expert consultation 2015, personal communication 2). Sabah also has a dedicated department focused on the implementation of EIA, namely the Sabah Environmental Protection Department (Expert consultation 2015, personal communication 2). <p>Based on the input of experts consulted, and the experience of the authors of this report, the risk is considered low for this indicator.</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
			<p><i>Risk Conclusion</i></p> <p>'Low risk' Threshold (1) Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.</p> <p>Sarawak</p> <p><i>Overview of Legal Requirements</i></p> <p>In PRF, the Forest Department of Sarawak (FDS) processes and approves the General Harvesting Plan (GP) which show the layout and size of coupes, harvesting sequence, proposed road networks, camp sites, log dumping point and other general planning.</p> <p>In PRF, the Sarawak Forestry Corporation (SFC) processes and approves the Detailed Harvesting Plan (DP) which contains operations prescriptions at coupe level, the layout of logging blocks, surveyed road networks, protected or conservation areas as well as the proposed harvesting methods. Further pre-harvesting safeguards to ensure compliance with the approved GP and DP are provided by the need for logging operators to apply for a permit to enter coupe (PEC). The PEC process requires verification of satisfactory ground compliance in terms of coupes and block boundary demarcation, preparation of topographical work map, road alignment and construction, tree enumeration before endorsement of blocks for logging in PF.</p> <p>There is a requirement for boundary demarcation by licensee and checking by SFC as follows: -</p> <ul style="list-style-type: none"> • Under-brushing of boundary • Marking of selected trees along boundary

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			<p>Numeration is done by licensee and checked by Sarawak Forestry Corporation. For certified areas, a 100% tree tagging for trees to be harvested are to be carried out (PF). For non-certified areas, the standard 10% enumeration is carried out.</p> <p>Enumeration is not applicable to planted forest or for logging on SL or AL. No tree tagging is required SL and AL, only hammer mark is required on the harvested log (Expert consultation, personal communication 2).</p> <p>SFC checks that harvesting operations have taken place within approved areas in compliance with the Forest Timber Licence terms and conditions and that the licensees use only approved LPI numbers. SFC checks and verifies the DPR information and uploads this to the Log Tracking System (Lots).</p> <p><i>Description of risk</i></p> <ul style="list-style-type: none"> • Despite legal prescriptions for GP, DP and mapping of planned harvest areas, this information is not made publicly available. The limited availability of information about compliance levels makes the evaluation of the risk of non-conformance with these requirements difficult. • In 2014, Sarawak swore in a new chief minister, Tan Sri Adenan Satem. After entering office, Mr Adenan declared that his government would not issue any new timber concession licences, would not approve expansion of palm oil plantations, and would combat timber sector corruption "to the last log". Consistent with these commitments, he challenged Sarawak's biggest logging firms to sign "integrity pledges" against corruption. According to the Straits Times (2016), despite these promises, the Chief Ministers office has failed to investigate and prosecute the palm oil company BLD for destroying peatlands on a 20,000ha concession in the Sibuh region of Sarawak. The concession includes lands claimed by indigenous communities.

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			<ul style="list-style-type: none"> Regarding Sarawak's "Big Six" logging companies - Samling, Shin Yang, Rimbunan Hijau, Ta Ann, WTK and KTS - which already hold licences to log most of Sarawak's remaining rainforest, Adenan has promised repeatedly that these firms would not be exempt from his promised crackdown on illegal logging. In 2015, Adenan announced that these firms must get their logging operations certified for sustainability by 2017. In November 2017, the Deputy Chief Minister reiterated this commitment, stating that the Sarawak government will make it mandatory for all timber concessions in the state to get forest management certification at conference in Kuching. He stated that this requirement would be implemented in phases to boost sustainable forest management in Sarawak. He did not give a timeframe for this (the Star Online, 2017). It is not clear from the publicly available information why the 2017 deadline for certification was not maintained. <p>There is a lack of information available at the time of preparing this report to indicate a low risk in this indicator for Sarawak. The introduction and requirement for certification might lower this risk in the future, by introducing best practices and regular harvesting controls, but to date no results has been provided. Thus, based on the precautionary approach, the risk is considered specified.</p> <p><i>Risk conclusion</i></p> <p>'Specified risk'. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
1.9 Protected sites and species	<p>Peninsular</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> • Forestry Manual 2003 • Wildlife Conservation Act 2010 http://www.gunungganang.com.my/pdf/Malaysian-Legislation/National/Wildlife%20Conservation%20Act%202010.pdf. • International Trade in Endangered Species Act 2008 http://www.unodc.org/res/cld/document/international-trade-in-endangered-species-act-2008.html/International Trade in Endangered Species Act 2008.pdf • National Parks Act, 1980 – Sections 4 & 11 http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20226%20-%20National%20Parks%20Act%201980.pdf • Aboriginal Peoples Act 1954 - http://www.kptg.gov.my/sites/default/files/article/Act%20134-Oboriginal%20Peoples%20Act.pdf <p><i>State Forest Enactments and Rules</i></p> <ul style="list-style-type: none"> • National Land Code 1965 – Section 62 - http://www.kptg.gov.my/sites/default/files/article/NLC1956DIGITAL-VER1.pdf 	<p>Peninsular</p> <p><i>Government sources</i></p> <ul style="list-style-type: none"> • wildlife.gov.my (2010). <i>Red List of Mammals for Peninsular Malaysia</i>. [online]. Department of Wildlife and National Parks (DWNP), Peninsular Malaysia. Available at: http://www.wildlife.gov.my/images/stories/penerbitan/lain_lain/Redlist%20Final.pdf • Ministry of Natural Resources and Environment, Malaysia. (2014). Fifth National Report to the Convention on Biological Diversity. Putrajaya: Ministry of Natural Resources and Environment, Malaysia. Retrieved from https://www.cbd.int/doc/world/my/my-nr-05-en.pdf • Department of Environment. (2010). Environmental Requirements: A Guide for Investors. Putrajaya: Environmental Requirements: A Guide for Investors. Retrieved from http://www.doe.gov.my/eia/wp-content/uploads/2012/03/A-Guide-For-Investors1.pdf <p><i>Non-Government sources</i></p> <ul style="list-style-type: none"> • Expert consultation conducted by NEPCon, 2015, NEPCon expert 	<p>Peninsular</p> <p><i>Overview of Legal Requirements</i></p> <p>As a signatory of the CBD, Malaysia has an obligation to contribute to global targets for protected areas. According to Ministry of Natural Resources and Environment (NRE), Malaysia has 3,400,000 ha of terrestrial protected areas (PAs) which is approximately 10% of the land base (UNDP, 2013). Timber harvesting and hunting is prohibited in these areas. Official figures state that Peninsular Malaysia has approximately 13% of its land under protection, consisting of protection forests within PRFs, wildlife areas/sanctuaries and State Parks. PAs under different networks are governed by different laws with varying degrees of protection status, and gazetting and de-gazetting procedures (UNDP, 2013). In general, Protected Areas (PAs) in Malaysia can be grouped according to the laws used for their establishment (Sukswan & Abidin, 2012):</p> <ul style="list-style-type: none"> • National parks and state parks under the park laws • Sanctuaries or reserves under the wildlife laws • Protection forests under the forestry laws • Marine parks and fisheries prohibited areas under the National Fisheries Act 1985 • Areas reserved for a public purpose under the land laws <p>The Protection of Wildlife Act 1972 was repealed and replaced by the Wildlife Conservation Act 2010 which came into force in 2011 (Ministry of Natural Resources and Environment, Malaysia, 2014). The new Act contains significantly stricter provisions on species protection by adding species to the protective status and alleviating the protection of several species (Ministry of Natural Resources and Environment, Malaysia, 2014). The Act also provides for “presumptions under the law” (Ministry of Natural</p>

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	<ul style="list-style-type: none"> State Park Enactments Guidelines on Criteria for the Selection and Procedures for Marking Mother Trees, 1997 (Garis Panduan Kriteria Pemilihan and Prosedur Penandaan Pokok Ibu, 1997) Forestry Manual Peninsular Malaysia, 1953 (revised 1995) (Manual Perhutanan Semenanjung Malaysia, 1953 (pindaan 1995)) Panduan Penubuhan dan Penyelenggaraan Kawasan-kawasan Simpanan Hutan Dara, 1987 [Guidelines for the Establishment and Maintenance of Virgin Jungle Reserves, 1987] Protection of Wildlife Act, 1972. Available at: http://extwprlegs1.fao.org/docs/pdf/mal11322.pdf <p><i>Legal authority</i></p> <ul style="list-style-type: none"> Department of Environment (DOE): enforces the Environmental Quality Act 1974. Department of Director General of Lands and Mines (JKPTG): enforces land law and legislation regarding with land administration. Forestry Department Peninsular Malaysia (JPSM): is responsible for the management, planning, protection and 	<p>consultation, 2015, personal communication 1 and 2.</p> <ul style="list-style-type: none"> Ahmad, C. B., Jaafar, J., & Abdullah, J. (2011). Buffer zone characteristics for protected areas: a preliminary study of Krau Wildlife Reserve. WIT Transactions on Ecology and The Environment. Retrieved from http://www.witpress.com/Secure/elibrary/papers/RAV11/RAV11003FU1.pdf Azhar, B., Sapari, M., Zulkifly, S., Suhailan, W. M., & Sajap, A. S. (2013). Protecting Biodiversity Outside Natural Forests: Environmental-friendly Oil Palm Plantations as an Off-reserve Strategy in Peninsular Malaysia. TROPICAL AGRICULTURAL SCIENCE. Retrieved from http://www.pertanika.upm.edu.my/Pertanika%20PAPERS/JTAS%20Vol.%2036%20(S)%20Dec.%202013/21%20Page%20231-246%20(JTAS%200476-2012).pdf Clean Malaysia. (2016, February 13). Malaysia's Lax Enforcement is failing Endangered Species. Retrieved from Clean Malaysia: http://cleanmalaysia.com/2015/08/28/5-reasons-malaysias-wildlife-conservation-act-is-one-of-historys-most-important-wildlife-regulations/ 	<p>Resources and Environment, Malaysia, 2014). Simply by being in possession of snares, the presumption under the law is that there was the intention to hunt, trap and/or kill wildlife which is punishable by a fine of up to RM100,000 and a prison term of up to three (3) years or both. There is also the presumption now that if any wildlife or any part or derivative or any wildlife or snare is found on any premises, the 'occupier' of the premises is presumed to be in possession of the above (Ministry of Natural Resources and Environment, Malaysia, 2014). The Act also provides for more punitive measures (Ministry of Natural Resources and Environment, Malaysia, 2014). For example, any person who has been convicted of an offence under the Act or any of its subsidiary legislation may be barred from holding any license, permit or special permit for hunting, commercial use of wildlife, or research for a period not exceeding five (5) years (Ministry of Natural Resources and Environment, Malaysia, 2014). Another significant change made under the new Act relates to the power to compound offences under the previous Act (Ministry of Natural Resources and Environment, Malaysia, 2014). As a result, certain offences such as failure to obtain prerequisite special permits in relation to Totally Protected species, the female or the immature of a Totally Protected species will result in prosecution of the offence rather than an offer to compound the offence through a fine (Ministry of Natural Resources and Environment, Malaysia, 2014).</p> <p>Under the Aboriginal Peoples Act 1954, all matters pertaining to land, including the gazetting and de-gazetting of aboriginal reserves come under the purview of the State, who may by notification in the gazette, declare any area exclusively inhabited by aborigines to be (a) an aboriginal reserve, (b) an aboriginal area, or (c) an aboriginal inhabited area. An aboriginal reserve is to be gazetted, under which no land may be declared for other uses such as sanctuary for wild animals, or reserved forests, neither shall lands be alienated, granted or leased except to Orang Asli who are resident there, and no temporary occupation</p>

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	<p>development of the Permanent Reserved Forests (PRF) in accordance with the National Forestry Policy (NFP) 1992 and the National Forestry Act (NFA) 1984.</p> <ul style="list-style-type: none"> • Department of Wildlife and National Parks (DWNP) Peninsular Malaysia: enforces the Wildlife Conservation Act 2010. • Department of Orang Asli Development (JAKOA): enforces aboriginal reserves under the Aboriginal Peoples Act 1954. • Department of Wildlife and National Parks (DWNP) Pahang: enforces Taman Negara Enactment (Pahang) No.2, 1939 [En.2 of 1938] • Department of Wildlife and National Parks (DWNP) Terengganu: enforces Taman Negara Enactment (Terengganu) No.6, 1939 [En.6 of 1358] • Department of Wildlife and National Parks (DWNP) Kelantan: Taman Negara Enactment (Kelantan) No.14, 1938 [En.14 of 1938] • Johor National Parks Corporation (JNPC): enforces Johor National Parks Corporation Enactment • Perak State Park Corporation (PSPC): enforces Perak State Parks Corporation Enactment 2001 	<ul style="list-style-type: none"> • Human Rights Commission of Malaysia (SUHAKAM). (2013). REPORT OF THE NATIONAL INQUIRY INTO THE LAND RIGHTS OF INDIGENOUS PEOPLES. Human Rights Commission of Malaysia (SUHAKAM). Retrieved from http://nhri.ohchr.org/EN/Themes/BusinessHR/Business%20Womens%20and%20Childrens%20Rights/SUHAKAM%20BI%20FINAL.CD.pdf • Suksuwan, S., & Abidin, S. Z. (2012). Protected Areas Master List. My BioD 2012. My BioD 2012. • UNDP. (2013). Enhancing Effectiveness and Financial Sustainability of Protected Areas in Malaysia "Pa Financing Project" (PIMS 3967) INCEPTION REPORT Final. Kuala Lumpur: UNDP. Retrieved from http://www.protectedareasmalaysia.my/wp-content/uploads/2014/07/FINAL-INCEPTION-PA-FINANCE_13-Jan-2014.pdf • Ahmad, C. B., Jaafar, J., & Abdullah, J. (2011). Buffer zone characteristics for protected areas: a preliminary study of Krau Wildlife Reserve. WIT Transactions on Ecology and The Environment. Retrieved from http://www.witpress.com/Secure/elibrary/papers/RAV11/RAV11003FU1.pdf 	<p>of the land is permitted. An aboriginal inhabited area has almost similar protection, except the Director General of the Department of Orang Asli Affairs (JHEOA) has the power upon consultation to issue licence for collection of forest produce to people other than the Orang Asli residents. An aboriginal inhabited area may be declared by the state government, but the state has authority to revoke it and there appears to be no provision of any obligation imposed on the state to replace any land taken or de-gazetted A total of 32 timber species has been identified by the State Forestry Departments to be retained from selective harvesting in the PRF (Forestry Manual 2003 and Field Manual for Selective Management System). However, this prescription does not apply to forest clearance activities (even inside forest reserves).</p> <p>There are no such requirements for logging on areas outside forest reserves such as on Alienate Land or on State Land.</p> <p>Peninsular Malaysia has allocated some forest areas for conservation of wildlife and endangered species. These forests area are demarcated and gazetted as such. Logging can take place only in forest areas that are identified as production forest. Logging in protected areas is not permitted</p> <p><i>Description of risk</i></p> <ul style="list-style-type: none"> • Illegal logging, does take place in protected areas, and there are issues with the level of control by authorities due to lack of resources. This type of illegal logging however is conducted on a small scale by local people who use the timber for housing and personal village consumption. The timber is not included in the commercial timber chain. • The requirement for selective logging within forest reserves to identify and protect the specified retention species is not always observed. Often the control of an active logging site takes place primarily at the Forest Checking Station and

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	<p><i>Legally required documents or records</i></p> <p>Detailed requirements for harvesting using the “Natural Forest Management” system in forest reserves are described in the Forest Harvesting Plan which can be obtained for review from concession owner or forest manager and Forestry Department. Documents include the following:</p> <ul style="list-style-type: none"> • Forest Management Plan • Compliance Report • List of protected species • List of totally protected species <p>Sabah</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> • Forest Enactment 19688 – sections 28A & 28B • EIA Guidelines for Logging and Forest Clearance Activities 2002 • Sabah Land Ordinance of 1930 - https://thereddesk.org/sites/default/files/land_ordinance_1975.pdf • Wildlife Conservation Enactment 1997. Section 9-24, 25-39, 40-53 and 54-63. Available at: http://www.lawnet.sabah.gov.my/Lawnet/SubsidiaryLegislation/WildlifeConservation1997%28Regulations1998%29.pdf 	<ul style="list-style-type: none"> • Wyn, L. T. (2013). Malaysia: Illegalities in Forest Clearance for Large-scale. Forest Trends. Retrieved from http://www.forest-trends.org/publication_details.php?publicationID=4195 <p>Sabah</p> <p><i>Government sources</i></p> <ul style="list-style-type: none"> • wildlife.gov.my (2010) Red list of mammals for peninsular Malaysia. [online]. Available at: http://www.wildlife.gov.my/images/stories/penerbitan/lain_lain/Redlist%20Final.pdf • Sabah Forestry Department, (2017). Annual Report 2016 – Chapter 11: Enforcement, Investigation & Prosecution. Available at: http://www.forest.sabah.gov.my/ar2016/11.pdf accessed 8 February 2018. • Ministry of Natural Resources and Environment, Malaysia. (2014). Fifth National Report to the Convention on Biological Diversity. Putrajaya: Ministry of Natural Resources and Environment, Malaysia. Retrieved from https://www.cbd.int/doc/world/my/my-nr-05-en.pdf 	<p>there is often inadequate monitoring of logging within the forest (Personal communication 1, 2).</p> <ul style="list-style-type: none"> • In Malaysia, most protected areas and forest reserves are surrounded by oil palm plantations and smallholdings (e.g. Taman Negara, Krau Wildlife Reserve, and Endau Romping National Park) (Azhar, Sapari, Zulkifly, Suhailan, & Sajap, 2013). There are occurrence and risk of oil palm plantations encroaching into the boundaries of protected areas, for example the Krau Wildlife Reserve in the state of Pahang (Ahmad, Jaafar, & Abdullah, 2011). • Given the complexity of the natural ecosystems, environmental consultants have difficulty identifying specific mitigation measures for the protection of certain rare and threatened species in oil palm plantations. Few proponents are willing to pay for expertise that addresses the full range of species found in a natural project site. There is no central source of practical information related to the distribution of rare species in Malaysia. Given this scenario, environmental consultants often address biodiversity conservation indirectly by focusing on keeping an area of natural habitat intact via river buffers and slope protection, with the occasional addition of token set-aside areas associated with salt-licks or swampy areas that would not be operable anyway (Wyn, 2013). These two measures are intended to avoid impacts on the physical and ecological environment (Wyn, 2013). However, the effectiveness of the monitoring is often limited by manpower shortages and other constraints faced by DOE (Wyn, 2013). • As for the Orang Asli communities, apart from loss of land, they have complained that the opening of plantations has resulted in destruction of graveyards (Human Rights Commission of Malaysia (SUHAKAM), 2013). The situation is compounded by the fact that many foresters and administrators are typically unfamiliar with or not informed of

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	<ul style="list-style-type: none"> Biodiversity Enactment 2000. Section 9, 15, 16 and 17. Available at: http://www.wipo.int/edocs/lexdocs/laws/en/my/my055en.pdf Rhino Species Action Plan 2012-2016. Available at: http://www.rhinoreourcecenter.com/index.php?s=1&act=refs&CODE=note_detail&id=1367738814 EIA Guidelines for Logging and Forest Clearance Activities 2002 State Cultural Heritage (Conservation) Enactment 1997. Available at: http://www.lawnet.sabah.gov.my/Lawnet/SabahLaws/StateLaws/CulturalHeritage%28Conservation%29Enactment1997.pdf Orang Utan Action Plan 2012-2016. Available at: http://archive.mpoc.org.my/Summary_of_the_Orang_Utan_State_Action_Plan_%28Sabah_Wildlife_Department,_2012_%E2%80%93_2016%29.aspx Elephant Action Plan 2012-2016. Available at: http://www.mpoc.org.my/Review_of_Sabah_Elephant_Action_Plan_2012.aspx <p><i>Legal authority</i></p> <ul style="list-style-type: none"> Sabah Department of Environment (DOE): enforces the Environmental Quality Act 1974. 	<p><i>Non-Government sources</i></p> <ul style="list-style-type: none"> iucnredlist.org (N.Y.). The IUCN Red List of Threatened Species. [online]. Available at: http://www.iucnredlist.org/ Expert consultation conducted by NEPCon, 2015, including personal communication 1, 2 and 7. Azhar, B., Sapari, M., Zulkifly, S., Suhailan, W. M., & Sajap, A. S. (2013). Protecting Biodiversity Outside Natural Forests: Environmental-friendly Oil Palm Plantations as an Off-reserve Strategy in Peninsular Malaysia. TROPICAL AGRICULTURAL SCIENCE.[online], Available at: https://www.researchgate.net/publication/285580644_Protecting_Biodiversity_outside_Natural_Forests_Environmental-friendly_Oil_Palm_Plantations_as_a_n_Off-reserve_Strategy_in_Peninsular_Malaysia Human Rights Commission of Malaysia (SUHAKAM). (2013). REPORT OF THE NATIONAL INQUIRY INTO THE LAND RIGHTS OF INDIGENOUS PEOPLES. Human Rights Commission of Malaysia (SUHAKAM). Retrieved from http://nhri.ohchr.org/EN/Themes/Busi 	<p>the nature of Orang Asli traditional markers (e.g. graves, orchards, old village sites, sacred sites), resulting in high risk of destruction of Orang Asli's protected sites by plantation activities (Human Rights Commission of Malaysia (SUHAKAM), 2013). Most officers from the State Land and Mines Office, and District Officers are ignorant of the Aboriginal Peoples Act which should protect Orang Asli's reserves, and court decisions and precedents on Orang Asli land matters (Human Rights Commission of Malaysia (SUHAKAM), 2013).</p> <p>As protected areas within the forest are often not respected and there is a lack of enforcement, the indicator is specified risk.</p> <p><i>Risk conclusion</i></p> <p>'Specified risk'. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p> <p>Sabah</p> <p><i>Overview of Legal Requirements</i></p> <p>As a signatory of the CBD, Malaysia has an obligation to contribute to global targets for protected areas.</p> <p>The Protection of Wildlife Act 1972 was repealed and replaced by the Wildlife Conservation Enactment 1997. The new Act contains significantly stricter provisions on species protection by assigning new species a protective status and raising the protection status of several other species (Ministry of Natural Resources and Environment, Malaysia, 2014). The Act also provides for "presumptions under the law" (Ministry of Natural Resources and Environment, Malaysia, 2014). Simply by being in possession of snares, the presumption under the law is that there was the intention to hunt, trap and/or kill wildlife which is</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<ul style="list-style-type: none"> Sabah Department of Director General of Lands and Mines (JKPTG): enforces land law and legislation regarding with land administration. Royal Malaysian Customs Department (RMC): enforces Customs Act 1967 (amended in 1988). Sabah Department of Fisheries (DOF): enforces Fisheries Act 1985 (Act 317). Sabah Forestry Department: is responsible for enforcing the Forest Enactment 1968. Sabah Department of Irrigation and Drainage (DID): enforces Sabah Water Resources Enactment 1998. Sabah Wildlife Department: enforces Wildlife Conservation Enactment 1997. Environment Protection Department: Advise the government of development activities, to comply with various environmental legislation and guidelines so that the process of development do not unduly degrade the environment. Sabah Parks: Protection and management of designated conservation areas as parks, for conservation needs and other uses. It also provides a resource for the development of various tourism related business opportunities, directly and indirectly. 	<p>nessHR/Business%20Womens%20and%20Childrens%20Rights/SUHAKAM%20BI%20FINAL.CD.pdf</p> <ul style="list-style-type: none"> Lim, T. W. (2013). Illegalities in Forest Clearance for Large-scale Commercial Plantations. Forest Trends. Retrieved from http://www.forest-trends.org/publication_details.php?publicationID=4195 Clean Malaysia. (2016, February 13). Malaysia's Lax Enforcement is failing Endangered Species. Retrieved from Clean Malaysia: http://cleanmalaysia.com/2015/08/28/5-reasons-malysias-wildlife-conservation-act-is-one-of-historys-most-important-wildlife-regulations/ Yong, C., SACCESS, & JKOASM. (2014). Deforestation Drivers and Human Rights in Malaysia. Forest Peoples Programme. Retrieved from http://www.forestpeoples.org/sites/fpp/files/private/publication/2014/12/deforestation-drivers-and-human-rights-malaysia.pdf <p>Sarawak</p> <p><i>Government sources</i></p> <ul style="list-style-type: none"> sarawakforestry.com (N.Y.) Sarawak Forestry Corporation (Protected Areas and Biodiversity Conservation units). 	<p>punishable by a fine of up to RM100,000 and a prison term of up to three (3) years, or both. There is also the presumption now that if any wildlife or any part or derivative or any wildlife or snare is found on any premises, the 'occupier' of the premises is presumed to be in possession of the above (Ministry of Natural Resources and Environment, Malaysia, 2014). The Act also provides for more punitive measures (Ministry of Natural Resources and Environment, Malaysia, 2014). For example, any person who has been convicted of an offence under the Act or any of its subsidiary legislation may be barred from holding any license, permit or special permit for a period not exceeding five (5) years from the date proceedings in respect of the conviction concludes (Ministry of Natural Resources and Environment, Malaysia, 2014). Another significant change made under the new Act relates to the power to compound offences under the previous Act (Ministry of Natural Resources and Environment, Malaysia, 2014). As a result, certain offences such as failure to obtain prerequisite special permits in relation to Totally Protected species, the female or the immature of a Totally Protected species will result in prosecution of the offence rather than an offer to compound the offence through a fine (Ministry of Natural Resources and Environment, Malaysia, 2014).</p> <p>The Sabah Land Ordinance of 1930 upholds the principle of the protection of natives' rights to their lands as well as the recognition that natives practised their own customs and laws. Administrators are required to give careful regard to those customs. Native Customary Rights land can be established through Customary Tenure, Native Title, Communal Title, and Native Reserves (Human Rights Commission of Malaysia (SUHAKAM), 2013).</p> <p>In Sabah there are numerous protected areas within and outside of forest reserves. Protected areas inside forest reserves include those areas categorised as Class 1: Protection Forest Reserve,</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> • Forest Management Plan • Latest list of endangered, rare and threatened species of flora and fauna • Malaysian Red List (flora) • IUCN Red List (fauna) • List of protected species • List of totally protected species • Map depicting location of important cultural, ecological, economic or religious sites <p>Sarawak</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> • National Parks and Nature Reserves Ordinance 1998 (Cap. 27). Available at: http://lawnet.sarawak.gov.my/lawnet_file/Ordinance/ORD_CAP.%2027%20watermark.pdf • Wildlife Protection Ordinance 1998 (Cap. 26. Available at: http://www.sarawakforestry.com/pdf/laws/wildlife_protection_ordinance98_chap_26.pdf • National Parks & Nature Reserves Regulations 1998. Available at: http://lawnet.sarawak.gov.my/lawnet_file 	<p>[online]. Available at: http://www.sarawakforestry.com/html/sustainable.html</p> <ul style="list-style-type: none"> • wildlife.gov.my (2010) Red list of mammals for peninsular Malaysia. [online]. Available at: http://www.wildlife.gov.my/images/stories/penerbitan/lain_lain/Redlist%20Final.pdf • Ministry of Natural Resources and Environment, Malaysia. (2014). Fifth National Report to the Convention on Biological Diversity. Putrajaya: Ministry of Natural Resources and Environment, Malaysia. Retrieved from https://www.cbd.int/doc/world/my/my-nr-05-en.pdf <p><i>Non-Government sources</i></p> <ul style="list-style-type: none"> • The Borneo Post, (2016). Attempted entries into Kubah, Gunung Gading national parks thwarted. http://www.theborneopost.com/2016/12/17/attempted-entries-into-kubah-gunung-gading-national-parks-thwarted/ • Expert consultation conducted by NEPCon, 2015, including personal communication 2 and 7. • Azhar, B., Sapari, M., Zulkifly, S., Suhailan, W. M., & Sajap, A. S. (2013). Protecting Biodiversity 	<p>Class 6: Virgin Jungle Reserve and Class 7: Wildlife Reserve. No logging is allowed in these reserves.</p> <p>There are several protected species of timber that are prohibited from being harvesting in the Natural Forest Management zones of forest reserves.</p> <p>Inside forest reserves Comprehensive Harvesting Plans (for selective logging) and Plantation Development Plan shall include which areas and which timber species cannot be felled. Since 2012 this criterion is being enforced through random on-site audits by the Environmental Department.</p> <p>There are no requirements for the protection of species on forested State Land or on Alienated Land.</p> <p><i>Description of Risk</i></p> <ul style="list-style-type: none"> • RIL (Reduced Impact Logging) practices are supposed to be implemented for Natural Forest Management; however according to the expert consultation (2015), only a handful of companies are in fact fully implementing RIL, with most FMEs only partially implementing RIL. • Field monitoring by the authorities is complicated by forest logging often taking place remotely; with inadequate enforcement capacity (Expert consultation. personal communication 1, 2 and 7). • According to personal communication 1, commercial logging in protected areas is rare, but based on the inadequate enforcement capacity, this indicator is considered Specified risk. • Malaysia's Fifth National Report to the Convention on Biological Diversity states that the country's monitoring against CBD targets is weak: "The lack of cohesive and comprehensive monitoring mechanisms/indicators towards the National Policy on Biological Diversity has posed some

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<p>e/Ordinance/ORD_CAP.%2027%20watermark.pdf</p> <p><i>Legal authority</i></p> <ul style="list-style-type: none"> • Sarawak Department of Environment (DOE): enforces the Environmental Quality Act 1974. • Sarawak Department of Director General of Lands and Mines (JKPTG): enforces land law and legislation regarding with land administration. • Royal Malaysian Customs Department (RMC): enforces Customs Act 1967 (amended in 1988). • Department of Fisheries Malaysia (DOF): enforces Fisheries Act 1985 (Act 317). • Forest Department Sarawak: is responsible for enforcing the Forest Bill 2015. • Sarawak Forestry Corporation: is empowered under the Sarawak Forestry Corporation Ordinance 1995 (Sarawak Cap. 17/95) to enforce the Forest Bill 2015, Wildlife Protection Ordinance and National Parks & Nature Reserves Ordinance on the ground. It also includes regulation, inspection and issuance of permits and certificates in line with CITES, with notable enforcement successes in terms of seizures of illegal timber and wildlife. 	<p>Outside Natural Forests: Environmental-friendly Oil Palm Plantations as an Off-reserve Strategy in Peninsular Malaysia. TROPICAL AGRICULTURAL SCIENCE. Retrieved from http://www.pertanika.upm.edu.my/Pertanika%20PAPERS/JTAS%20Vol.%2036%20(S)%20Dec.%202013/21%20Page%20231-246%20(JTAS%200476-2012).pdf</p> <ul style="list-style-type: none"> • Bulan, R., & Locklear, A. (2008). Legal perspective on native customary land rights in Sarawak. Human Rights Commission of Malaysia (SUHAKAM). Retrieved from http://www.suhakam.org.my/wp-content/uploads/2013/12/Legal-Perspectives.pdf • Clean Malaysia. (2016, February 13). Malaysia's Lax Enforcement is failing Endangered Species. Retrieved from Clean Malaysia: http://cleanmalaysia.com/2015/08/28/5-reasons-malysias-wildlife-conservation-act-is-one-of-historys-most-important-wildlife-regulations/ • Human Rights Commission of Malaysia (SUHAKAM). (2013). Report of The National Inquiry into The Land Rights of Indigenous Peoples. Human Rights Commission of Malaysia (SUHAKAM). Retrieved from http://nhri.ohchr.org/EN/Themes/Busi 	<p>challenges towards measuring actual progress in certain conservation areas. Malaysia recognises the need to step up efforts on awareness raising on the importance and significance of biodiversity conservation, protection and management across all levels of society in Malaysia (Ministry of Natural Resources and Environment, Malaysia, 2014).”</p> <ul style="list-style-type: none"> • Malaysian authorities, underfunded and undermanned, continue to play catch-up with illegal wildlife traffickers (Clean Malaysia, 2016). • Given the complexity of the natural ecosystems, environmental consultants have difficulty identifying specific mitigation measures for the protection of certain rare and threatened species. Few proponents are willing to pay for expertise that addresses the full range of species found in a natural project site. There is no central source of practical information related to the distribution of rare species in Malaysia. Given this scenario, environmental consultants often address biodiversity conservation indirectly by focusing on keeping an area of natural habitat intact via river buffers and slope protection, with the occasional addition of token set-aside areas associated with salt-licks or swampy areas that would not be operable anyway (Lim, 2013). • There is a growing number of land dispute cases filed in courts by native landowners against oil palm plantation companies, state government and others in the industry (Yong, SACCESS, & JKOASM, 2014). Apart from loss of land, many community witnesses complained that the opening of plantations has resulted in destruction of graveyards and crops, and pollution of rivers and loss of livelihoods and traditional ways of life (Human Rights Commission of Malaysia (SUHAKAM), 2013).

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> • Forest Management Plan <ul style="list-style-type: none"> • Latest list of endangered, rare and threatened species of flora and fauna provides for the protection, management and conservation of species of wildlife in Sarawak • Malaysian Red List (flora) • IUCN Red List (fauna) • List of protected species • List of totally protected species 	<ul style="list-style-type: none"> • nessHR/Business%20Womens%20and%20Childrens%20Rights/SUHAKAM%20BI%20FINAL.CD.pdf • JI, Y. (2015). Sarawak targets 1.5 million hectares of totally protected areas. The Star Online. Retrieved from http://www.thestar.com.my/news/nation/2015/03/22/sarawak-tpa/ • Lim, T. W. (2013). Malaysia: Illegalities in Forest Clearance for Large-scale. Forest Trends. Retrieved from http://www.forest-trends.org/publication_details.php?publicationID=4195 • Mohr, J. (2015). Plantation blamed for destruction of graves. Borneo Post Online. Retrieved from http://www.theborneopost.com/2015/03/20/plantation-blamed-for-destruction-of-graves/ • Yong, C., SACCESS, & JKOASM. (2014). Deforestation Drivers and Human Rights in Malaysia. Forest Peoples Programme. Retrieved from: https://www.forestpeoples.org/en/topics/rights-land-natural-resources/publication/2014/deforestation-drivers-and-human-rights-malaysia • Borneo Post, (2017). Transparency in illegal logging. Available at: http://www.theborneopost.com/2017/1 	<p>Based on the reported instances of illegal encroachment and the known shortcomings of the enforcement agencies, the risk for this indicator is considered specified.</p> <p><i>Risk Conclusion</i></p> <p>'Specified risk'. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p> <p>Sarawak</p> <p><i>Overview of Legal Requirements</i></p> <p>As a signatory of the CBD, Malaysia has an obligation to contribute to global targets for protected areas. According to Ministry of Natural Resources and Environment (NRE), Malaysia has 3,400,000 ha of terrestrial protected areas (PAs) which is approximately 10% of the land base (UNDP, 2013). Timber harvesting and hunting is prohibited in these areas.</p> <p>In Sarawak, protected areas are referred to as "Totally Protected Areas" (TPAs). These are comprised by 30 national parks, six wildlife sanctuaries and eight nature reserves. According to the Sarawak Forestry Corporation, TPAs encompass 602,035.8 ha of land, not including 229,789 ha of protected bodies of water (JI, 2015). This is less than 5% of the total land area of the state.</p> <p>The Wildlife Protection Ordinance, 1998 aims to provide better provisions for the protection of wild life, the establishment and management of Wildlife Sanctuaries and all matters related. This Ordinance states the banning all commercial sales of wildlife and any products derived from wildlife. It provides the protection for both plants and animals as well as the protection of the habitat of plants and animals within the Wildlife Sanctuaries which are part of the Totally Protected Areas network (TPAs) in the State. The areas which included in the Ordinance are only open for the</p>

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		<p>0/27/transparency-in-illegal-logging/, [accessed 12 February 2018].</p>	<p>purpose of conservation and research of wild life. Under this Ordinance, the “Wildlife” term refers to wild plants and animals and they are categorised as “Totally Protected” or “Protected”. Totally Protected species refers to endangered species due to hunting, habitat destruction and are extremely rare. No licence is to be issued for the possession of any wild life under “Totally Protected Wildlife”, except for certain condition which custodian licence is to be issued to keep the wildlife under strict condition. Under “Protected List Wildlife”, licenses to hunt or ownership can be retrieved upon payment with respective amount of fees. As for wildlife which is not listed under “Protected List”, a licence is required for the import or export from the State.</p> <p>Harvesting of timber is prohibited in Totally Protected Areas (TPA) such as National Parks, Nature Reserves and Wildlife Sanctuaries. Written permission from the Controller of Wildlife is required to harvest any 'totally protected plants' for scientific or educational purposes.</p> <p>For 'protected plants', harvesting is allowed in accordance with the terms and conditions of a license issued by the Controller of Wildlife whether on PF, SL or AL.</p> <p><i>Description of Risk</i></p> <ul style="list-style-type: none"> • Logging operations have been detected inside national parks in the past and reported as recent as 2016 (The Borneo Post, 2016). Poor traceability has been demonstrated in the state of Sarawak, and there is a risk that harvested trees are coming from the protected areas. • There are no descriptions of the requirements for identification of protected sites and species – either physically or on the map, the written permission from the Controller of Wildlife is the only requirement.

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
			<ul style="list-style-type: none"> • Some forest enterprises may not be familiar with the requirements for endangered, rare and threatened species and protected sites and habitats. • Accessibility and field monitoring are challenging because most forests are in remote areas. (Personal communication 2 and 7). • In October 2017, the Borneo Post quoted the Chief Minister in 2015 as saying “<i>I suspect some enforcement personnel are in cahoots with illegal logging operators as every time enforcement agencies raided illegal logging sites, only logs and machineries were seized while the culprits had fled the scene.</i>” He backed his suspicion by citing a case of encroachment into the Similajau National Park in Bintulu where illegal logging operators even managed to build a railway system to transport felled timber without the knowledge of Forestry officers. (http://www.theborneopost.com/2017/10/27/transparency-in-illegal-logging/) • Malaysia’s Fifth National Report to the Convention on Biological Diversity states that the country’s monitoring against CBD targets is weak: “The lack of cohesive and comprehensive monitoring mechanisms/indicators towards the National Policy on Biological Diversity has posed some challenges towards measuring actual progress in certain conservation areas. Malaysia recognises the need to step up efforts on awareness raising on the importance and significance of biodiversity conservation, protection and management across all levels of society in Malaysia (Ministry of Natural Resources and Environment, Malaysia, 2014).” • The main legal safeguard for the protection of legally protected species outside of totally protected areas is the requirement for an environmental permit (for which an

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
			<p>environmental impact assessment (EIA) and mitigation actions are required) in some situations. Under the Natural Resources and Environment (Prescribed Activities) Order, 1994, agricultural development activities that require an EIA include development of agricultural estates or plantations of an area exceeding 500 hectares from land under primary or secondary forest, which would involve the resettlement of more than 100 families, or which would involve modification in the use of the land, and when mangrove swamps are converted into an agricultural estate. The requirements for an EIA are not detailed, but a section for “Habitat and species” is required under “Biological system”.</p> <ul style="list-style-type: none"> • There are also serious problems with the EIA system under the law as there is commonly a conflict of interest between the companies and the consultants they hire to do the EIA, and there are also loopholes whereby an EIA is required based on the size of the project but plantation companies can easily break the project into smaller lots to avoid the EIA requirement (Sharom, 2008). • According to Lim (2013), most forest conversion projects do produce EIAs, and most that are submitted are approved, with mitigation measures prescribed. Given the complexity of the natural ecosystems, environmental consultants have difficulty identifying specific mitigation measures for the protection of certain rare and threatened species in oil palm plantations. Few proponents are willing to pay for expertise that addresses the full range of species found in a natural project site. There is no central source of practical information related to the distribution of rare species in Malaysia. Given this scenario, environmental consultants often address biodiversity conservation indirectly by focusing on keeping an area of natural habitat intact via river buffers and slope protection, with the occasional addition of token

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
			<p>set-aside areas associated with salt-licks or swampy areas that would not be operable anyway (Lim, 2013).</p> <p>Based on the above risk description, the risk is considered specified for all timber sources.</p> <p><i>Risk Conclusion</i></p> <p>'Specified risk'. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p>
<p>1.10 Environmental requirements</p>	<p>Peninsular <i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> Environmental Quality Act 1974 (Prescribed activities) - section 34A - http://faolex.fao.org/docs/pdf/mal13278.pdf Environmental Quality (Clean Air) Regulation 1978 - http://faolex.fao.org/docs/texts/mal38060.doc Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 1987 - http://www.doe.gov.my/eia/wp-content/uploads/2012/03/Environmental-Quality-Prescribed-Activities.pdf Environment Quality (Declared Activities) (Open Burning) Order 2003 - http://faolex.fao.org/docs/texts/mal70151.doc 	<p>Peninsular <i>Government sources</i></p> <ul style="list-style-type: none"> doe.gov.my (2007). <i>Environmental Impact Assessment – Procedure and requirements in Malaysia</i>. [online]. Department of Environment Ministry of Natural Resources & Environment. Available at: http://www.doe.gov.my/eia/wp-content/uploads/2013/06/EIA-Procedure-and-Requirements-in-Malaysia.pdf Department of Environment. (2010). <i>Environmental Requirements: A Guide for Investors</i>. Putrajaya: Environmental Requirements: A Guide for Investors. [online], Available at: http://www.doe.gov.my/eia/wp-content/uploads/2012/03/A-Guide-For-Investors1.pdf 	<p>Peninsular <i>Overview of Legal Requirements</i></p> <p>The Environmental Quality Act 1974 requires that forest enterprises must carry out an Environmental Impact Assessment prior to harvesting for logging areas of more than 500 hectares for all land types. The sensitive areas are normally identified in the approved topographic map. Monitoring is to be conducted during and after the harvesting activities. EIAs must include landscape level considerations, as well as the impacts of on-site processing facilities appropriate to the scale and intensity of forest management. EIAs must take into consideration the conservation of biological diversity and its associated values, water resources, soils and unique and fragile ecosystems. There are also requirements to ensure no discharge into Malaysian waters including no open burning and no pollution of soil. Buffer strips are required along streams and rivers and must be described in the Forest Management Plan.</p> <p>Environmental Impact Assessments (EIAs) are required for logging areas greater than 500 ha. The Waters Act, 1920 and Wildlife Conservation Act, 2010 governs water resources and wildlife.</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<ul style="list-style-type: none"> Environmental Quality (Control of Emission from Diesel Engines) Regulation 1996 - http://faolex.fao.org/docs/texts/mal38069.doc Environmental Quality (Control of Emission from Petrol Engines) Regulation 1996 - http://faolex.fao.org/docs/texts/mal45141.doc Factories and Machinery (Noise Exposure) Regulations 1989 - http://www.dosh.gov.my/index.php/en/legislation/regulations-1/regulations-under-factories-and-machinery-act-1967-act-139/507-03-factories-and-machinery-noise-exposure-regulations-1989/file Land Conservation Act 1960, revised 1989 - http://www.kptg.gov.my/sites/default/files/article/Act%20385-land%20conserve.pdf National Forestry Act 1984 - http://faolex.fao.org/docs/pdf/mal3252.pdf National Land Code 1965 - http://www.kptg.gov.my/sites/default/files/article/NLC1956DIGITAL-VER1.pdf National Parks Act 1984 - http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20226 	<p><i>Non-Government sources</i></p> <ul style="list-style-type: none"> World Resources Institute (WRI) (2013). Forest Legality Alliance Risk Tool, 2013: Malaysia: http://www.forestlegality.org/risk-tool/country/malaysia#tab-management [accessed 23 February 2015] Lim, T. W. (2013). <i>Malaysia: Illegalities in Forest Clearance for Large-Scale Commercial Plantations</i> – report prepared for Forest Trends. Accessed 24 February 2015 at http://www.forest-trends.org/publication_details.php?publicationID=4195. Human Rights Commission of Malaysia (SUHAKAM). (2013). REPORT OF THE NATIONAL INQUIRY INTO THE LAND RIGHTS OF INDIGENOUS PEOPLES. Human Rights Commission of Malaysia (SUHAKAM). Retrieved from http://nhri.ohchr.org/EN/Themes/BusinessHR/Business%20Womens%20and%20Childrens%20Rights/SUHAKAM%20BI%20FINAL.CD.pdf Maidin, A. J. (2005, November 17). Challenges in implementing and enforcing environmental protection measures in Malaysia. Retrieved from The Malaysian Bar: http://www.malaysianbar.org.my/environmental_law/challenges_in_impleme 	<p>In Peninsular Malaysia, the respective State Forestry Department determines if the harvesting area to be licensed is subject to an EIA requirement.</p> <p><i>Description of Risk</i></p> <ul style="list-style-type: none"> According to Lim (2013) "... in Peninsular Malaysia, very few EIAs for forest clearance for rubber and oil palm plantations have actually been produced since the Department of Environment rarely enforces this requirement and the Forestry Department deliberately facilitates projects to circumvent the EIA requirement by issuing licenses below the 500-ha threshold. Recent audits by the Malaysian Auditor General and reports in local newspapers have highlighted six prominent cases in Peninsular Malaysia where the Environmental Quality Act 1974 is alleged to have been flouted by failure to produce an EIA or failure to comply with prescribed mitigating measures". In general, most enterprises follow the requirement to conduct EIAs for areas over 500 hectares, but it is common that environmental requirements are not implemented. There is low control and monitoring by the Department of Environment, unless complaints are made; but logging is often conducted in remote areas that are closed to the public, and thus such offences are rarely detected. The level of enforcement is fully reliant on inspection by the respective agency which is generally limited in capacity (Personal Communication 2). In forest reserves, licence holders exploit an administrative loophole to harvest areas larger than 500 ha without an EIA by ensuring that the area to be logged is sub-divided into multiple licences, none of which individually exceed 500 ha.

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	<p>%20-%20National%20Parks%20Act%201980.pdf</p> <ul style="list-style-type: none"> Pesticide Act 1974 (Pesticide Registration) Rules 2008 - http://faolex.fao.org/docs/texts/mal91852.doc National Land Code 1965 - http://www.kptg.gov.my/sites/default/files/article/NLC1956DIGITAL-VER1.pdf Destruction of Disease-Bearing Insects Act (1975) - http://faolex.fao.org/docs/pdf/mal86137.pdf OSH Act 1994 (Act 514) Regulations and Orders - http://www.dosh.gov.my/index.php/en/legislation/acts/23-02-occupational-safety-and-health-act-1994-act-514/file Use & Standards Exposure of Chemicals Hazardous to Health (USECHH) Regulations 2000 - http://www.dosh.gov.my/index.php/en/legislation/regulations-1/osha-1994-act-154/522-pua-131-2000-1/file Wildlife Conservation Act 2010 - https://www.unodc.org/res/cld/document/wildlife-conservation-act-2010_html/Wildlife_Conservation_Act_2010.pdf 	<p>nting and enforcing environmental protection measures in malaysia by ainul jaria bt maidin.html</p> <ul style="list-style-type: none"> Memon, A. (2012). Devolution of environmental regulation. Retrieved from http://www.unep.ch/etu/publications/13)%2045%20to%2061%20doc.pdf Ministry of the Environment, Japan. (n.d.). Overview of Environmental Issues and Environmental Conservation Practices in Malaysia. [online], Available at: https://www.env.go.jp/earth/coop/oemj/malay/e/malaye1.pdf Sharom, A. (2008). Environmental Laws in Malaysia: Time to Walk the Walk. Inaugural University of Malaya Law Conference. Kuala Lumpur. Retrieved from http://eprints.um.edu.my/13465/1/environmental_laws_in_malaysia.pdf AHMAD, R. (2014, December 13). 'Enforce environmental laws'. The Star Online. Retrieved from http://www.thestar.com.my/news/nation/2014/12/13/enforce-environmental-laws-judge-shortage-of-trained-officers-hinders-cases-being-brought-to-court/ Yaacob, M. R., & Yusof, M. F. (2013). Perindustrian dan Kelestarian Kualiti Alam Sekitar di Malaysia – Asas dan Pendekatan Teori Pemodenan Ekologikal. Prosiding Persidangan 	<ul style="list-style-type: none"> Companies logging rubber plantations (particularly those on Alienated Land) seldom have completed EIAs prior to commencing their activities. The DOE has had limited resources to undertake its functions (Memon, 2012 and Yaacob & Yusof, 2013). The DOE also has limited powers to deal with the land planning system (Maidin, 2005). This is because power to regulate land development is solely within the discretion of the State Planning Committee at the state government level and the local planning authorities at the local government level (Maidin, 2005). Despite the significant numbers of breaches of environmental law, the proportion of prosecutions or other enforcement action has been extremely low (Maidin, 2005). In 2014, Malaysia Federal Court judge Datuk Azhar Mohamed told a UN forum that enforcement agencies in Malaysia “do not have sufficient trained officers and tools, and many cases are not brought before the courts” (AHMAD, 2014). There are serious problems with the EIA system under the law as it requires control measures in the EIA, but environmental audit to monitor the implementation of controls measures is not required (Yaacob & Yusof, 2013). Most sites are visited by DOE only once or twice a year, and there are high chances that plantation management units delay or do not comply with the control measures in the EIA (Yaacob & Yusof, 2013). There is also commonly a conflict of interest between the companies and the consultants they hire to do the EIA, and there are also loopholes whereby an EIA is required based on the size of the project but plantation companies can easily break the project into smaller lots to avoid the EIA requirement (Sharom, 2008). Most officials from environment related departments including the Town and Country Planning Department and the DOE often lack sufficient expertise to vet the

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<ul style="list-style-type: none"> Road Transport Act 1987(Act 334) - http://www.kkr.gov.my/files/akta_subsidia/ari/9.pdf Water Act 1920 (Act 418) - http://faolex.fao.org/docs/texts/mal33533.doc <p><i>Legal authority</i></p> <ul style="list-style-type: none"> State Environment Department State Forestry Department Department of Environment (DOE): is responsible to prevent, eliminate, control pollution and improve the environment, consistent with the purposes of the Environmental Quality Act 1974. Department of Occupational Safety and Health (DOSH): is responsible for the administration and enforcement of legislations related to occupational safety and health of the country. Department of Director General of Lands and Mines (JKPTG): is responsible for Amendment or improvement of any provision of land law and legislation regarding with land administration; Management of the record of Federal Government's Property in Land; Acquisition of the alienated land for Federal Project purposes; Tenancy and enforcement of Federal Government's Property in 	<p>Kebangsaan Ekonomi Malaysia Ke VIII 2013, (pp. 991 - 1003). available at: http://www.ukm.my/fep/perkem/pdf/perkemVIII/PKEM2013_4B4.pdf</p> <ul style="list-style-type: none"> Forest Legality Alliance Risk Tool - Malaysia. Accessed 23 February 2015 at http://www.forestlegality.org/risk-tool/country/malaysia#tab-management <p>Lim Teck Wyn, 2013. Malaysia: Illegalities in Forest Clearance for Large-Scale Commercial Plantations. Forest Trends. Accessed 24 February 2015 at http://www.forest-trends.org/publication_details.php?publicationID=4195.</p> <ul style="list-style-type: none"> Expert consultation 2015, including Personal communication 2 <p>Sabah</p> <p><i>Government sources</i></p> <ul style="list-style-type: none"> forest.sabah.gov.my (N.Y.) Sabah Forestry Department- Official portal. Available at: http://www.forest.sabah.gov.my/discovers/policies/forest-legislation Sabah Forestry Department, (2013). Sabah TLAS document (revised as at 06 March 2013). http://www.forest.sabah.gov.my/image 	<p>Development Proposals and the EIA reports submitted by the applicants seeking for grant of planning permission (Maidin, 2005). Monitoring compliance of the EIA process is lacking due to lack of personnel and increasing numbers of newly approved development projects (Maidin, 2005).</p> <p>Based on the risk of the lack of complying with environmental requirements, the risk is considered specified for all timber sources.</p> <p><i>Risk Conclusion</i></p> <p>'Specified risk'. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p> <p>Sabah</p> <p><i>Overview of legal requirements</i></p> <p>According to the Forest Rules 1969 – Rule 15 and the Environmental Impact Assessment (EIA) Guidelines for Logging and Forest Clearance Activities, 2002, the EIA requirements in Sabah are:</p> <ol style="list-style-type: none"> The Licensee/Land owner has an approved EIA Report from the Director of Environment Protection Department (EPD) for forest related activities involving removal of timber involving an area of 500 ha and above. The licensee/Land owner has an approved PMM from the Director of EPD for forest related activities involving removal of timber involving an area between 100 ha and 500 ha. The licensee / land owner has an approved EIA from the Director of EPD for forest related activities involving

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<p>Land; and Management of Small Estate Distribution.</p> <ul style="list-style-type: none"> Forestry Department Peninsular Malaysia (JPSM): is responsible for the management, planning, protection and development of the Permanent Reserved Forests (PRF) in accordance with the National Forestry Policy (NFP) 1992 and the National Forestry Act (NFA) 1984. Department of Agriculture (DOA): is responsible for the provision of consultation services, technical support and professional advice in various agricultural field to ensure sufficient food production that are safe for consumption and control environmental pollution. Department of Wildlife and National Parks (DWNP) Peninsular Malaysia: is responsible for the enforcement of the Wildlife Conservation Act 2010 and National Parks Act 1984. Department of Irrigation and Drainage (DID): is responsible to provide engineering expertise services and water resources management including river management, coastal and manage flood and drought to improve water security and environment sustainability. 	<p>s/pdf/en/flegt/TLAS4.pdf, Accessed 13 February 2018.</p> <p><i>Non-government sources</i></p> <ul style="list-style-type: none"> Lim, T. W. (2013). <i>Malaysia: Illegalities in Forest Clearance for Large-Scale Commercial Plantations</i> – report prepared for Forest Trends. Accessed 24 February 2015 at http://www.forest-trends.org/publication_details.php?publicationID=4195. Maidin, A. J. (2005, November 17). Challenges in implementing and enforcing environmental protection measures in Malaysia. Retrieved from The Malaysian Bar: http://www.malaysianbar.org.my/environmental_law/challenges_in_implementation_and_enforcing_environmental_protection_measures_in_malaysia_by_ainul_jaria_bt_maidin.html Malaysia Productivity Corporation. (2014). Reducing Unnecessary Regulatory Burden on Businesses: Growing Oil Palm. Malaysia Productivity Corporation. Retrieved from http://www.mpc.gov.my/wp-content/uploads/2016/04/Recommendation-Report-RURB-Growing-Oil-Palm.pdf Memon, A. (2012). Devolution of environmental regulation: Retrieved from 	<p>removal of timber involving an area of 50 ha and above adjacent to any protected areas.</p> <p>According to the Forest Rules 1969, the Forest Resource Management Division (FRM) of Sabah Forestry Department (FDS) determines if the harvesting area to be licensed is subject to an EIA/PMM requirement. EPD (Evaluation of EIA Report Division) evaluates EIA/PMM report submitted by a registered environmental consultant for consideration and upon approval requires Licensee/Land Owner to sign the Agreement of Environmental Condition (AEC)/Mitigation Declaration (MD). FRM Division of FDS verifies that EIA/PMM report has been approved by EPD prior to the issuance of harvesting license. iv. EPD monitors the implementation of mitigation measures on the specified area under the AEC/MD. Frequency: EPD monitors the submission of quarterly Environmental Compliance Report (ECR) by a registered environmental consultant and conduct inspection on any area upon receipt of complaint for serious non-compliance verified from the ECR.</p> <p>Under the Wildlife Conservation Enactment 1977 (Section 38) it is a requirement that the licensee of any area must first notify the Director of the Wildlife Department one month prior to harvesting.</p> <p>Environmental Impact Assessments (EIAs) shall be conducted for logging areas greater than 500 hectares whether in PRF, AL or SL and whether for selective logging or clearance for plantations and whether natural forest or planted timber. Forest enterprises are required to fulfil this requirement prior to harvesting being conducted. The sensitive areas are normally identified in the approved harvest map. The Forest Resources Management (FRM) Division of the Sabah Forestry Department (SFD) determines if the harvesting area to be licensed is subject to an EIA requirement.</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> EIA Report approved by the Department of Environment Forest Management Plan Seed Production Area Comprehensive Harvesting Plan List of fruit trees prohibited for felling <p>Sabah</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> Forest Rules 1969 – Rule 15 http://www.sarawakforestry.com/pdf/laws/the_forest_rules.pdf Environmental Impact Assessment (EIA) Guidelines for Logging and Forest Clearance Activities, 2002 - https://www.elaw.org/content/malaysia-sabah-environmental-impact-assessment-eia-guidelines-logging-and-forest-clearance-a Environment Protection Enactment 2002-Sec.12,13,14,20 and 37 - http://ww2.sabah.gov.my/jpas/laws/EPE/EPE02.pdf Environment Protection Order 2005 (Prescribed activities) http://www.lawnet.sabah.gov.my/Lawnet/SubsidiaryLegislation/EnvironmentProtection2002%28PrescribedActivities%28 	<p>http://www.unep.ch/etu/publications/13)%2045%20to%2061%20doc.pdf</p> <ul style="list-style-type: none"> Sharom, A. (2008). Environmental Laws in Malaysia: Time to Walk the Walk. Inaugural University of Malaya Law Conference. Kuala Lumpur. Retrieved from http://eprints.um.edu.my/13465/1/environmental_laws_in_malaysia.pdf Ministry of the Environment, Japan. (n.d.). Overview of Environmental Issues and Environmental Conservation Practices in Malaysia.[online], Available at: https://www.env.go.jp/earth/coop/oemj/c/malay/e/malaye1.pdf <p>Sarawak</p> <p><i>Government sources:</i></p> <ul style="list-style-type: none"> The Natural Resource Environment Board (NREB)[online], Available at: http://www.nreb.gov.my/modules/web/pages.php?mod=staffcontact&menu_id=0&sub_id=570 Department of Environment. (2010). Environmental Requirements: A Guide for Investors. Putrajaya: Environmental Requirements: A Guide for Investors. Retrieved from http://www.doe.gov.my/eia/wp-content/uploads/2012/03/A-Guide-For-Investors1.pdf 	<p>The Environmental Protection Department (EPD) evaluates the EIA report submitted for consideration by a registered environmental consultant and upon approval requires the licensee/land owner to sign an Agreement of Environmental Condition (AEC)/Mitigation Declaration (MD).</p> <p>Forest Resource Management Division of Sabah Forest Department verifies that the EIA report has been approved by Environmental Protection Department prior to the issuance of the harvesting licence.</p> <p>Logging of some areas below 500 ha may also be subject to environmental requirements if the area is deemed to be particularly sensitive by the EPD. In some cases, an EIA may be required for such logging.</p> <p><i>Description of risk</i></p> <ul style="list-style-type: none"> "In Sabah and Sarawak most forest conversion projects do produce EIAs. In Sabah, it is estimated that about 80% of oil palm plantations submit EIAs for new plantings and some companies apply for EIAs retrospectively (after the forest has been felled). Around 90% of EIAs submitted are eventually approved with several mitigation measures prescribed. However, in practice, there is considerable non-compliance with mitigation due to ambiguities regarding the implementation of these measures. [...] The environmental authorities face a number of challenges in enforcing the mitigation measures highlighted above. They recognize that streams and slopes identified by 1:50k scale maps inadequately represent the reality on the ground. However, the maximum fine for non-compliance is limited (in Sabah this is only RM20,000 per compliance audit visit). Such fines are hardly a deterrent when the additional revenue gained by noncompliance can be in the order of hundreds of millions of ringgits. Sabah's EPD has only 13 enforcement

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<p>EnvironmentallImpactAssessment2005%29%29.pdf</p> <ul style="list-style-type: none"> Environment Protection (Environmental Impact Assessment) Order 2012 http://www.lawnet.sabah.gov.my/Lawnet/SubsidiaryLegislation/EnvironmentProtection2002%28PrescribedActivities%28EnvironmentallImpactAssessment2005%29%29.pdf Environment Protection (Registration of Environmental Consultant) Rules 2005 - http://www.lawnet.sabah.gov.my/Lawnet/SubsidiaryLegislation/EnvironmentProtection2002%28RegistrationOfEnvironmentalConsultants2005%29.pdf Forest Enactment 1968, Section 15 & 24 and 28(A) http://faolex.fao.org/docs/pdf/mal10907.pdf Environment Protection (Registration of Environmental Consultant) Rules 2005. Available at: http://www.lawnet.sabah.gov.my/Lawnet/SubsidiaryLegislation/EnvironmentProtection2002%28RegistrationOfEnvironmentalConsultants2005%29.pdf Environmental Quality Act, 1974. Available at: http://faolex.fao.org/docs/pdf/mal13278.pdf 	<p><i>Non-Government Sources:</i></p> <ul style="list-style-type: none"> Sarawak Integrated Water resources: [online], Available at: http://www.siwr.com.my/modules/iwrm/page.php?id=14&menu_id=0&sub_id=9 Expert consultation 2015, including personal communication 1, 2 and 3. Emang, J. J. (2006). PUBLIC PARTICIPANT IN EIA PROCESS IN SARAWAK: ANY ROOM FOR IMPROVEMENT? Fourth Sabah-Sarawak Environmental Convention 2006, (pp. 1-8). Retrieved from http://ww2.sabah.gov.my/jpas/news/Conov06/Papers/Pap6_NREB.pdf Lim, T. W. (2013). Malaysia: Illegalities in Forest Clearance for Large-scale. Forest Trends. Retrieved from http://www.forest-trends.org/publication_details.php?publicationID=4195 Maidin, A. J. (2005, November 17). Challenges in implementing and enforcing environmental protection measures in Malaysia. Retrieved from The Malaysian Bar: http://www.malaysianbar.org.my/environmental_law/challenges_in_implementation_and_enforcing_environmental_protection_measures_in_malaysia_by_ainul_jaria_bt_maidin.html 	<p>officers to monitor more than 300 active projects." (Lim 2013).</p> <ul style="list-style-type: none"> "In Sabah, it is estimated that about 80% of oil palm plantations submit EIAs for new plantings and some companies apply for EIAs retrospectively (after the forest has been felled)." (Lim, 2013). According to Lim, risks thus exist where harvesting takes place on areas meant to be converted to agriculture that often do not comply with environmentally required harvesting regulations, e.g. riparian zones, HCVs, slopes. Similar risks may apply to selective logging of natural forest as well as harvesting in plantations and on agricultural land. Malaysia is geographically a very large territory to administer while the DOE has had limited resources to undertake its functions (Memon, 2012). Despite the significant numbers of breaches of environmental law, the proportion of prosecutions or other enforcement action is extremely low (Maidin, 2005). To date there are only five reported cases under the heading of environmental law in the law reports in Malaysia (Maidin, 2005) The local authorities and other government agencies prosecute environmental offenders using laws other than the environmental law, principally tort law (i.e. nuisance, trespass, negligence) (Maidin, 2005). The DOE, as the principal agency entrusted to implement and enforce the environmental protection legislation has limited powers to deal with the land planning system (Maidin, 2005). This is because power to regulate land development is solely within the discretion of the State Planning Committee at the state government level and the local planning authorities at the local government level (Maidin, 2005). In Sabah, the establishment of state-level enactments and the agency Environment Protection Department to carry out EIAs for forestry and land conversion activities while the

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<p><i>Legal authority</i></p> <ul style="list-style-type: none"> Environment Protection Department: Advise the government of development activities, to comply with various environmental legislation and guidelines so that the process of development do not unduly degrade the environment. Sabah Forestry Department: is responsible to ensure that the management and development of Sabah's forest reserves are in accordance with the principles of Sustainable Forest Management under the principal forestry law in Sabah that is the Forest Enactment 1968. Sabah Department of Environment (DOE): is responsible to prevent, eliminate, control pollution and improve the environment, consistent with the purposes of the Environmental Quality Act 1974. Sabah Department of Occupational Safety and Health (DOSH): is responsible for the administration and enforcement of legislations related to occupational safety and health of the country. Sabah Department of Director General of Lands and Mines (JKPTG): is responsible for Amendment or improvement of any provision of land law and legislation regarding with land administration; Management of the 	<ul style="list-style-type: none"> Memon, A. (2012). Devolution of environmental regulation: Retrieved from http://www.unep.ch/etu/publications/13)%2045%20to%2061%20doc.pdf Ministry of the Environment, Japan. (n.d.). Overview of Environmental Issues and Environmental Conservation Practices in Malaysia[online], Available at: https://www.env.go.jp/earth/coop/oemj/c/malay/e/malaye1.pdf Yaacob, M. R., & Yusof, M. F. (2013). Perindustrian dan Kelestarian Kualiti Alam Sekitar di Malaysia – Asas dan Pendekatan Teori Pemodenan Ekologikal. Prosiding Persidangan Kebangsaan Ekonomi Malaysia Ke VIII 2013, (pp. 991 - 1003). available at: http://www.ukm.my/fep/perkem/pdf/perkemVIII/PKEM2013_4B4.pdf AHMAD, R. (2014, December 13). 'Enforce environmental laws'. The Star Online. Retrieved from http://www.thestar.com.my/news/nation/2014/12/13/enforce-environmental-laws-judge-shortage-of-trained-officers-hinders-cases-being-brought-to-court/ Sharom, A. (2008). Environmental Laws in Malaysia: Time to Walk the Walk. Inaugural University of Malaya 	<p>DOE covers EIAs related to other activities such as emissions from factories (Lim, 2013).</p> <ul style="list-style-type: none"> There are also serious problems with the EIA system under the law as there is commonly conflict of interest involved with the companies hiring consultants to do the EIA, and loopholes whereby EIA is required based on the size of the project but plantation companies can easily break the project into smaller lots to avoid the EIA requirement (Sharom, 2008). Most officials from environment related departments including the Town and Country Planning Department and the DOE often lack sufficient expertise to vet the Development Proposals and the EIA reports submitted by the applicants seeking for grant of planning permission (Maidin, 2005). Despite the realisation of the importance of monitoring compliance of the EIA process, it is lacking due to lack of personnel and increasing numbers of newly approved development projects (Maidin, 2005). <p>Based on the available information the risk for this indicator has been assessed as specified for all sources.</p> <p><i>Risk conclusion</i></p> <p>'Specified risk'. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p> <p>Sarawak</p> <p><i>Overview of Legal Requirements</i></p> <p>For all commercial logging (apart from logging of virgin forest) above 500 ha (whether on PF, AL or SL), the licensee is to submit an Environmental Impact Assessment Report – with proposed mitigation measures – to Natural Resources and</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<p>record of Federal Government's Property in Land; Acquisition of the alienated land for Federal Project purposes; Tenancy and enforcement of Federal Government's Property in Land; and Management of Small Estate Distribution.</p> <ul style="list-style-type: none"> • Sabah Department of Agriculture (DOA): is responsible for the provision of consultation services, technical support and professional advice in various agricultural field to ensure sufficient food production that are safe for consumption and control environmental pollution. • Sabah Department of Irrigation and Drainage (DID): is responsible to provide engineering expertise services and water resources management including river management, coastal and manage flood and drought to improve water security and environment sustainability. • Department of Wildlife: Protection and conservation of wildlife and associated tourism products, and provide opportunities for tourism development through research, identification of potential tourism spot, eco-tourism partnership, and technical assistance. • Sabah Parks: Protection and management of designated conservation areas as parks, for 	<p>Law Conference. Kuala Lumpur. Retrieved from http://eprints.um.edu.my/13465/1/environmental_laws_in_malaysia.pdf.</p>	<p>Environment Board (NREB). NREB approves conditions for environmental management, with environmental requirements outlined in Government guidelines.</p> <p>In Sarawak, both the Federal and State environmental laws require EIA to be conducted (Emang, 2006). The Federal law is the Environmental Quality Act, 1974 and the State law is the Natural Resources and Environment Order, 1994 (Emang, 2006). The evaluation process for EIA reports at both the Federal Department of Environment (DOE) and the Natural Resources and Environment Board, Sarawak (NREB) is generally similar, but the EIA procedure in Sarawak does not require any public participation (Emang, 2006).</p> <p><i>Description of Risk</i></p> <ul style="list-style-type: none"> • The requirement to have an approved EIA was not properly observed in the past. In addition, there is no emphasis on compliance with mitigation measures as approved in the EIA and mostly are considered purely reporting matters. The EIA is not legally required to be made public, and it is thus not known if EIAs are conducted (Personal communication 1, 2, 3). • The DOE is responsible for enforcing environmental laws to prevent, eliminate, control pollution and improve the environment, but has limited powers to deal with the land planning system which designates where oil palm can be and is grown, because power to regulate land development is solely within the discretion of the State Planning Committee at the state government level and the local planning authorities at the local government level (Maidin, 2005). Furthermore, the DOE has had limited resources to undertake its functions (Memon, 2012 and Yaacob & Yusof, 2013), and despite the significant numbers of breaches of environmental law, the proportion of prosecutions or other enforcement action is extremely low (Maidin, 2005). Until

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<p>conservation needs and other uses. It also provides a resource for the development of various tourism related business opportunities, directly and indirectly.</p> <p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> • Forest Management Plan • Comprehensive Harvesting Plan • Approved EIA Report - Preparation of EIA reports shall be undertaken by environmental consultants that are registered with the Sabah Environment Protection Department and hold valid certificates of practice. • Approved EIA report or Approved (PMM) • Signed Agreement of Environmental Conditions/ Mitigation Declaration • Letter of Compliance to the Environmental Conditions/ Mitigation Declaration ♣ Letter of Compliance issued by EPD • The Agreement of Environmental - Conditions/ Mitigation Declaration 		<p>2005 there had only been five reported cases under the heading of environmental law in the law reports in Malaysia (Maidin, 2005). In 2014, Malaysia Federal Court judge Datuk Azhar Mohamed told a UN forum that enforcement agencies in Malaysia “do not have sufficient trained officers and tools, and many cases are not brought before the courts” (AHMAD, 2014).</p> <ul style="list-style-type: none"> • Under the Natural Resources and Environment (Prescribed Activities) Order, 1994, agricultural development activities that require an EIA include development of agricultural estates or plantations of an area exceeding 500 hectares from land under primary or secondary forest, which would involve the resettlement of more than 100 families, or which would involve modification in the use of the land, and when mangrove swamps are converted into an agricultural estate that exceeds 50 hectares. There are serious problems with the EIA system under the law as there is commonly a conflict of interest between the companies and the consultants they hire to do the EIA, and because companies can easily break their plantation activities into smaller lots (less than 500ha) to avoid the EIA requirement in the first place (Sharom, 2008). There are also several procedural weaknesses in the EIA system now in place in Sarawak, where the state-level enactments and the NREB have been established to carry out EIAs for forestry and land conversion activities while the DOE covers EIAs related to other activities such as emissions from factories (Lim, 2013). Most relevant officials often lack sufficient expertise to vet the Development Proposals and the EIA reports submitted by the applicants seeking for grant of planning permission, and monitoring environmental compliance is lacking due to lack of personnel and increasing numbers of newly approved development projects (Maidin, 2005).

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<p>Sarawak</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> • Forest Rules 1962 - http://www.sarawakforestry.com/pdf/laws/the_forest_rules.pdf • Protection of Soil and Water, 1999 • Land Conservation Act 1960, revised 1989 - http://www.kptg.gov.my/sites/default/files/article/Act%20385-land%20conserve.pdf • National Land Code 1965 - http://www.kptg.gov.my/sites/default/files/article/NLC1956DIGITAL-VER1.pdf • Water Act 1920 (Act 418) - http://faolex.fao.org/docs/texts/mal33533.doc • Wildlife Protection Ordinance, 1998 - http://www.sarawakforestry.com/pdf/laws/wildlife_protection_ordinance98_chap26.pdf • National Parks and Nature Parks Ordinance (Sarawak) 1998 - http://lawnet.sarawak.gov.my/lawnet_file/Ordinance/ORD_CAP.%2027%20watermark.pdf • Natural Resources and Environment (Prescribed Activities) Order 1994 (Incorporating all amendments up to November 2004) - 		<p>Based on the above risk description, the risk is considered specified for all timber sources.</p> <p><i>Risk Conclusion</i></p> <p>'Specified risk'. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p>

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	<p>http://www.nreb.gov.my/modules/web/download_show.php?id=24</p> <ul style="list-style-type: none"> • Natural Resources & Environment Ordinance (Cap.84-Laws of Sarawak 1958 ed.) - http://www.nreb.gov.my/modules/web/download_show.php?id=7 • Sarawak Rivers Ordinance, 1993 - http://lawnet.sarawak.gov.my/lawnet_file/Subsidiary/SUB_Swk.%20L.N.%2050_95hwm.pdf • Water Ordinance, 1994 - http://lawnet.sarawak.gov.my/lawnet_file/Subsidiary/SUB_Swk.%20L.N.%2050_95hwm.pdf • SARAWAK FORESTRY CORPORATION ORDINANCE, 1995 - http://lawnet.sarawak.gov.my/lawnet_file/Ordinance/ORD_CAP.17hwm.pdf • Wildlife Conservation Act 2010 - https://www.unodc.org/res/cld/document/wildlife-conservation-act-2010_html/Wildlife_Conservation_Act_2010.pdf <p><i>Legal authority</i></p> <ul style="list-style-type: none"> • The Natural Resources and Environment Board (NREB) • Sarawak Forestry Department (SFD) • Sarawak Forestry Corporation 		

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> • Forest Management Report • Letter of Approval • EIA Report - Pursuant to Article 3 of the Natural Resources and Environment (Prescribed Activities) Order 1994, (Sarawak. L.N. 45/94) the EIA report must be prepared by such expert or authority as may be approved by the Natural Resources and Environment Board). • Environmental Mitigation Measure (EMM) is required for replanting and new planting when ordered by the Environmental Controller of Sarawak. 		
1.11 Health and safety	<p>Peninsular</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> • Occupational Safety and Health Act 1994. Available at: http://www.ilo.org/dyn/travail/docs/1628/Occupational%20Safety%20and%20Health%20Act%201994%20-%20www.agc.gov.my.pdf • Employees' Social Security Act 1969. Available at: http://www.ilo.org/dyn/travail/docs/1626/Employees%27%20Social%20Security 	<p>Peninsular</p> <p><i>Government sources</i></p> <ul style="list-style-type: none"> • dosh.gov.my (N.Y.). Department of Occupational Safety and Health Malaysia. [online] Ministry of Human Resources. Available at: http://www.dosh.gov.my • Quarterly reports on direct employment in the logging and wood processing sectors through Shuttle Returns No. IV, V and VIII. 	<p>Peninsular</p> <p><i>Overview of Legal Requirements</i></p> <p>The Occupational Safety and Health Act 1994 and regulations have the principal objective of providing for the prevention of harm to employees at work. This legislation applies to workers involved in harvesting timber from all forest types (forest reserves, Alienated Land and State Land). These include:</p> <ul style="list-style-type: none"> • Active management commitment: A policy statement that reflects commitment to the health and safety of employees, employers and others. • Hazard identification and control: A systematic identification of hazards to employees in the workplace, including appropriate controls.

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	<p>%20Act%201969%20-%20www.agc.gov.my.pdf</p> <ul style="list-style-type: none"> • Workmen's Compensation Act 1952. Available at: http://myhos.mohr.gov.my/eAkta/akta_osial/Akta%20Pampasan%20Pekerja%201952%20(Akta%20273).pdf • Industrial Relations Act 1967. Available at: http://www.mp.gov.my/acts/IRA1967.pdf • Employees Provident Fund Act 1991. Available at: http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/43880/99441/F1518109496/MYS43880%202012.pdf <p><i>Legal authority</i></p> <ul style="list-style-type: none"> • The Ministry of Human Resources (MOHR): Ministry charged with the regulation of wages as well as health and safety standards • The Department of Occupational Safety and Health (DOSH) is the department under MOHR responsible for the safety, health and welfare of the working people. <p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> • Employers and self-employed persons are required to produce a written Occupational Health & Safety policy, and employers advise employees about 	<ul style="list-style-type: none"> • Annual report on direct employment in management and administration of the forest resources. • dosh.gov.my (N.Y.). Occupational Accidents Statistics by Sector until February 2015 [online]. Annual report on injury rate in the forestry sector. Available at: http://www.dosh.gov.my/index.php?option=com_content&view=article&id=1563&Itemid=545&lang=en <p><i>Non-government sources</i></p> <ul style="list-style-type: none"> • Expert consultation 2015, including personal communication 1 and 2. • Al-Mahmood, S. Z. (2015, July 26). Palm-Oil Migrant Workers Tell of Abuses on Malaysian Plantations. Retrieved from www.wsj.com - http://www.wsj.com/articles/palm-oil-migrant-workers-tell-of-abuses-on-malaysian-plantations-1437933321 • Bahrin, J. S. (2016). Self-Regulation and Occupational Safety and Health Act (OSHA) 1994. Dinner talk between the Society of Occupational and Environmental Medicine of the Malaysian Medical Association (SOEM-MMA), the Malaysia Medical Association (MMA) and the Executive Director of Malaysian Employers Federation (MEF). (pp. 1-2). Kuala 	<ul style="list-style-type: none"> • Information, training and supervision: Systems in place to ensure workers have the training or supervision to do the work safely and efficiently. • Accident reporting and investigation: Investigation and recording of employee workplace accidents (and appropriate documentation). • Emergency procedures: A plan covering procedures during emergencies, which may occur on the job. <p>The Act places responsibilities on employers, self-employed people and employees to ensure that their work activities do not harm themselves or other people. For forest operations, other people include visitors, people passing the operation, and the public who may be near an operation.</p> <p>Under the Act, employers are required to provide and maintain a safe working environment; provide and maintain facilities for the safety and health of employees; ensure that machinery and equipment are safe for employees; ensure that working arrangements are not hazardous to employees; provide procedures to deal with emergencies that may arise while the employees are at work; and provide information, instruction, training and supervision as is necessary.</p> <p>Employers have general duties relating to the management of hazard, e.g. working at heights above three meters; activities under raised objects; earthworks and excavations; harmful noise; cleaning, maintenance and repair of machinery; protective structures of self-propelled plant; employment of young persons. Refer to Section 15, Part IV, OSHA 1994</p> <p>Employers have a duty to maintain, keep clean and provide access to the following facilities, sufficient for the place of work: washing facilities; toilets; drinking water; first-aid equipment; facilities for employees who become ill at work; facilities for</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<p>the content of the policy, and make revisions based on suggestions made by his employees</p> <ul style="list-style-type: none"> Safety and health records Safety procedures Meeting minutes by safety and health Committee Records on equipment and maintenance. <p>Sabah</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> Occupational Safety and Health Act 1994. Section 16, 29, 30 and 31 Clause 34 and 37 of the Sustainable Forest Management Licence Agreement SFMLA. - Available at: http://www.ilo.org/dyn/travail/docs/1628/Occupational%20Safety%20and%20Health%20Act%201994%20-%20www.agc.gov.my.pdf Employees' Social Security Act 1969. Available at: http://www.ilo.org/dyn/travail/docs/1626/Employees%27%20Social%20Security%20Act%201969%20-%20www.agc.gov.my.pdf Workmen's Compensation Act 1952. Available at: http://myhos.mohr.gov.my/eAkta/akta_s 	<p>Lumpur: Malaysian Employers Federation.</p> <ul style="list-style-type: none"> Human Rights Watch. (2011). They Deceived Us at Every Stage: Abuse of Cambodian Domestic Workers Migrating to Malaysia. Human Rights Watch[online], Available at: https://www.hrw.org/report/2011/10/31/they-deceived-us-every-step/abuse-cambodian-domestic-workers-migrating-malaysia . ILO. (2004). Safety and Health Fact Sheet - Oil Palm. Geneva: International Programme on the Elimination of Child Labour.[online], Available at https://www.scribd.com/document/363531126/Safety-and-health-fact-sheet-oil-palm-2004-03-pdf ILO. (2013). Malaysia - 2013. Retrieved from www.ilo.org - http://www.ilo.org/dyn/legosh/en/f?p=14100:1100:0::NO::P1100_ISO_COD_E3,P1100_YEAR:MYS,2013 Kumar, M., Ismail, N.A. and Govindarajo, N.S., 2014. Way to measure the concept precarious working conditions in oil palm plantations. Asian Social Science, 10(21), pp.1-10.[online], Available at https://www.researchgate.net/profile/Dileep_M/publication/265554025_Way_to_Measure_The_Concept_Precariou 	<p>changing and storing clothes; facilities for meals; lighting; emergency exit plans.</p> <p><i>Description of Risk</i></p> <ul style="list-style-type: none"> There is still lack of awareness of health and safety requirements amongst Forest Management Enterprises, particularly by small business owners/private land owners. On-site workers seldom wear personal protective equipment; first aid kits are lacking; and there is no strict enforcement of these requirements (Personal communication 1 and 2). There is a requirement to report to DOSH regarding any accidents. DOSH has the authority to close operations until accidents have been investigated. If there is a breach, the director or CEO of the FME can be brought to court. Thus, accidents are often not reported by the FME and there is a lack of knowledge of accident statistics. Statistics from DOSH on occupational accidents by sector in 2017 up to the month of April shows that the "Agriculture, Forestry, Logging and Fishing" sector recorded the second highest number of occupational accidents among other sectors, indicating high risk in workers' health and safety in this sector (DOSH, 2017). While the legal requirements for OSH effectively covers the potential risks in the forestry sector, research shows several instances of alleged breaches of the OSH requirements (Al-Mahmood, 2015; Human Rights Watch, 2011; Villadiego, 2015; US Department of State, 2016). Of special interest to Peninsular Malaysia is the Wall Street Journal report by Al-Mahmood (2015), who reported grave breaches of OSH standards in FELDA plantations. One study conducted by Kumar, Ismail & Govindarajo (2014) suggested that OSH breaches were more common in smallholder- than large-scale (palm oil) plantations.

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<p>osial/Akta%20Pampasan%20Pekerja%201952%20(Akta%20273).pdf</p> <ul style="list-style-type: none"> Industrial Relations Act, 1967. Available at: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=48066&p_country=MYS&p_count=199 Employees Provident Fund Act, 1991. Available at: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=43880&p_country=MYS&p_count=199 Pesticides Act 1974-Section 28-30. Available at: http://www.ecolex.org/ecolex/ledge/view/RecordDetails.jsessionid=F6843ED0274B1BA2FD007560EE5296D3?id=LEX-FAOC013354&index=documents Factories and Machineries Act 1967. Available at: http://www.dosh.gov.my/index.php/en/list-of-documents/acts/26-03-factories-and-machinery-act-1967-revised-1974-acts-139/file Labour Ordinance (Sabah Cap 67)-Section 118. Available at: http://www.sabahlaw.com/Labour_Ordinance.htm <p><i>Legal authority</i></p> <ul style="list-style-type: none"> The Ministry of Human Resources (MOHR): Ministry charged with the 	<p>s_Working_Conditions_in_Oil_Palm_Plantations/links/543e458d0cf2d6934ebd23b2/Way-to-Measure-The-Concept-Precarious-Working-Conditions-in-Oil-Palm-Plantations.pdf</p> <ul style="list-style-type: none"> US Department of State. (2016). 2015 Trafficking in Persons Report. US Department of State[online], Available at: https://www.state.gov/j/tip/rls/tiprpt/ . Villadiego, L. (2015). Palm oil: why do we care more about orangutans than migrant workers? The Guardian.[online], Available at: https://www.theguardian.com/sustainable-business/2015/nov/09/palm-oil-migrant-workers-orangutans-malaysia-labour-rights-exploitation-environmental-impacts <p>Sabah</p> <p><i>Government sources</i></p> <ul style="list-style-type: none"> Department of Occupational Safety and Health Malaysia http://www.dosh.gov.my Quarterly reports on direct employment in the logging and wood processing sectors through Shuttle Returns No. IV, V and VIII. 	<p>However, this suggestion stands in contradiction to the widespread OSH breaches reported in FELDA-plantations by Al-Mahmood (2015).</p> <ul style="list-style-type: none"> While reports of OHS breaches in the forestry sector are not as common as the palm oil sector, it does show a breakdown of the monitoring and enforcement of the requirements, which may impact the forestry sector in a similar way. <p>Although a number of the risks mentioned here are specific to the palm oil sector, based on a precautionary approach, the indicator has been assessed as specified for all timber sources.</p> <p><i>Risk Conclusion</i></p> <p>'Specified risk'. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p> <p>Sabah</p> <p><i>Overview of Legal Requirements</i></p> <p>NOTE: See description of legal requirements for Peninsular above. Health and safety is managed federally in Malaysia, so the legal requirements are the same across all three regions.</p> <p><i>Description of Risk</i></p> <p>NOTE: The risks described above for Peninsular in this indicator are also applicable to Sabah.</p> <ul style="list-style-type: none"> According to the sources reviewed and stakeholders consulted, there is still a lack of awareness of health and safety requirements amongst forest enterprises, particularly by small business owners/private land owners. Common examples include on-site workers seldom wearing protective

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<p>regulation of wages as well as health and safety standards</p> <ul style="list-style-type: none"> The Department of Occupational Safety and Health (DOSH) Sarawak is the department under MOHR responsible for the safety, health and welfare of the working people. Labour Department Sabah Forestry Department Social Security Department (SOCSCO) <p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> Safety and health records It is required of all employer and self-employed persons to produce a written Occupational Health & Safety policy. It is further the responsibility of the employer to advise about the content of the policy, revise it as well as alter it based on suggestions made by his employees Meeting minutes by safety and health Committee Records on equipment and maintenance Accident record Notification of accident, Dangerous occurrence, Occupational poisoning and Occupational disease. 	<ul style="list-style-type: none"> Annual report on direct employment in management and administration of the forest resources. Annual report on injury rate in the forestry sector. <p><i>Non-government sources</i></p> <ul style="list-style-type: none"> Expert consultation 2015, including personal communication 1 and 2. Al-Mahmood, S. Z. (2015, July 26). Palm-Oil Migrant Workers Tell of Abuses on Malaysian Plantations. Retrieved from www.wsj.com: http://www.wsj.com/articles/palm-oil-migrant-workers-tell-of-abuses-on-malaysian-plantations-1437933321 Asia Pacific Migration Network. (2014, November 10). 'Slave labour' in Malaysia: Time to rethink migrant labour management. Retrieved from www.apmigration.org: http://apmigration.org/news/slave-labour2019-in-malaysia-time-to-rethink-migrant-labour-management Bahrin, J. S. (2016). Self-Regulation and Occupational Safety and Health Act (OSHA) 1994. Dinner talk between the Society of Occupational and Environmental Medicine of the Malaysian Medical Association (SOEM-MMA), the Malaysia Medical Association (MMA) and the Executive Director of Malaysian Employers 	<p>equipment, lack of first aid kit, and no strict enforcement of this requirement (Personal communication 1 and 2)</p> <p>Based on the description of risk, the indicator is considered Specified for all sources.</p> <p><i>Risk Conclusion</i></p> <p>'Specified risk'. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p> <p>Sarawak</p> <p><i>Overview of Legal Requirements</i></p> <p>NOTE: See description of legal requirements for Peninsular above. Health and safety is managed federally in Malaysia, so the legal requirements are the same across all three regions.</p> <p><i>Description of Risk</i></p> <p>NOTE: The risks described above for Peninsular in this indicator are also applicable to Sarawak.</p> <p>Based on the description of risk, the indicator is considered Specified for all timber sources.</p> <p><i>Risk Conclusion</i></p> <p>'Specified risk'. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<ul style="list-style-type: none"> FD Certificate of Identity. <p>Sarawak</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> Occupational Safety and Health Act 1994-Section 16, 29, 30 and 31. Available at: http://www.dosh.gov.my/index.php/en/list-of-documents/acts/23-02-occupational-safety-and-health-act-1994-act-514/file <p><i>Legal authority</i></p> <ul style="list-style-type: none"> The Ministry of Human Resources (MOHR): Ministry charged with the regulation of wages as well as health and safety standards The Department of Occupational Safety and Health (DOSH) Sarawak is the department under MOHR responsible for the safety, health and welfare of the working people. Sarawak Forestry Department (SFD) Sarawak Forestry Corporation <p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> Safety and health records It is required of all employer and self-employed persons to produce a written Occupational Health & Safety policy. It is further the responsibility of the 	<p>Federation (MEF). (pp. 1-2). Kuala Lumpur: Malaysian Employers Federation.</p> <ul style="list-style-type: none"> Business & Human Rights Resource Centre. (2015, June 10). Malaysia: Palm oil company PJP Pelita Selangau denies exploitation & abuse of 100 Indonesian workers in Sarawak. Retrieved from www.business-humanrights.org: https://business-humanrights.org/en/malaysia-palm-oil-company-pjp-pelita-selangau-denies-exploitation-abuse-of-100-indonesian-workers-in-sarawak Daily Express. (2014). 94 industrial accidents in Sabah palm oil sector last year. Daily Express. 17 January 2014. http://www.dailyexpress.com.my/news.cfm?NewsID=88001 Human Rights Watch. (2011). They Deceived Us at Every Stage: Abuse of Cambodian Domestic Workers Migrating to Malaysia. Human Rights Watch. ILO. (2004). Safety and Health Fact Sheet - Oil Palm. Geneva: International Programme on the Elimination of Child Labour. ILO. (2013). Malaysia - 2013. Retrieved from www.ilo.org: http://www.ilo.org/dyn/legosh/en/f?p= 	

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<p>employer to advise about the content of the policy, revise it as well as alter it based on suggestions made by his employees</p> <ul style="list-style-type: none"> • Meeting minutes by safety and health Committee • Records on equipment and maintenance • Work instructions, training, insurance and incident records • Records of personal accident insurance policies and coverage or Social Security Organisation (SOCSO) 	<p><u>14100:1100:0::NO::P1100_ISO_COD E3,P1100_YEAR:MYS,2013</u></p> <ul style="list-style-type: none"> • Kumar, M., Ismail, N.A. and Govindarajo, N.S., 2014. Way to measure the concept precarious working conditions in oil palm plantations. Asian Social Science, 10(21), pp.1-10. • Villadiego, L. (2015). Palm oil: why do we care more about orangutans than migrant workers? The Guardian. • US Department of Labour. (2014). List of Goods Produced by Child Labour or Forced Labour. Washington D.C.: US Department of Labour. • US Department of State. (2016). 2015 Trafficking in Persons Report. US Department of State. <p>Sarawak</p> <p><i>Government sources</i></p> <ul style="list-style-type: none"> • dosh.gov.my (N.Y.). Department of Occupational Safety and Health Malaysia. [online] Ministry of Human Resources. Available at: http://www.dosh.gov.my <p><i>Non-Government sources</i></p> <ul style="list-style-type: none"> • Al-Mahmood, S. Z. (2015, July 26). Palm-Oil Migrant Workers Tell of Abuses on Malaysian Plantations. 	

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
		<p>Retrieved from www.wsj.com: http://www.wsj.com/articles/palm-oil-migrant-workers-tell-of-abuses-on-malaysian-plantations-1437933321</p> <ul style="list-style-type: none"> • Bahrin, J. S. (2016). Self-Regulation and Occupational Safety and Health Act (OSHA) 1994. Dinner talk between the Society of Occupational and Environmental Medicine of the Malaysian Medical Association (SOEM-MMA), the Malaysia Medical Association (MMA) and the Executive Director of Malaysian Employers Federation (MEF). (pp. 1-2). Kuala Lumpur: Malaysian Employers Federation. • Human Rights Watch. (2011). They Deceived Us at Every Stage: Abuse of Cambodian Domestic Workers Migrating to Malaysia. Human Rights Watch. • ILO. (2004). Safety and Health Fact Sheet - Oil Palm. Geneva: International Programme on the Elimination of Child Labour. • ILO. (2013). Malaysia - 2013. Retrieved from www.ilo.org: http://www.ilo.org/dyn/legosh/en/f?p=14100:1100:0::NO::P1100_ISO_COD E3,P1100_YEAR:MYS,2013 	

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
		<ul style="list-style-type: none"> Villadiego, L. (2015). Palm oil: why do we care more about orangutans than migrant workers? The Guardian. US Department of State. (2016). 2015 Trafficking in Persons Report. US Department of State. Expert consultation 2015, including personal communication 1 and 2. 	
1.12 Legal employment	<p>Peninsular <i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (Amendment 2010) - http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20670.pdf Children and Young Persons (Employment) Act 1966 - http://www.ilo.org/dyn/travail/docs/1529/Children%20and%20Young%20Persons%20Employment%20Act%201966.pdf Employees Provident Fund Act - Part V, Section 42, 45. Available at: http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/43880/99441/F1518109496/MYS43880%202012.pdf Employee's Social Security Act 1969 - Section 3. Available at: http://www.ilo.org/dyn/travail/docs/1626/ 	<p>Peninsular <i>Government sources</i></p> <ul style="list-style-type: none"> Industrial Court of Malaysia. (n.d.). Functions. Retrieved August 10, 2016, from www.mp.gov.my - http://www.mp.gov.my/en/about-us/client-s-charter MPIC. (2014, December 14). PALM OIL -Reduce red tape for hiring foreign workers, employers group tells Putrajaya. Retrieved from www.kppk.gov.my - http://www.kppk.gov.my/mpic/index.php/en/media-mpic-vbi/media-release/2-uncategorised/129-palm-oil-reduce-red-tape-for-hiring-foreign-workers-employers-group-tells-putrajaya PERKESO. (n.d.). Social Security Principles. Retrieved August 10, 2016, from www.perkeso.gov.my - http://www.perkeso.gov.my/en/social- 	<p>Peninsular <i>Overview of Legal Requirements</i></p> <p>Rights and benefits for workers engaged in forestry are mostly covered in the Employment Act 1955, which includes wages, maternity benefits, working hours and paid leave.</p> <ul style="list-style-type: none"> Section 8 of the Employment Act 1955 and Section 5 of the Industrial Relations Act 1967 (IRA) prescribe the inclusion in the individual worker's employment contract any condition restricting the rights of workers to organize or join a union and participate in its lawful activities. Sections 5 and 7 of the Industrial Relations Act 1967 lists Unfair Labour Practices such as intimidation, dismissal or threat of dismissal for joining a trade union or becoming an office bearer, discrimination against a union member regarding employment, promotion, conditions of employment and working conditions. However, the IRA also states explicitly that an employer may dismiss, demote, transfer or refuse to promote a worker on other grounds. Establishment of unions is allowed only when approved by the Management of an FME before being registered by the industry. Unions are not common in FMEs and there are no unions in the FMEs in Peninsular Malaysia. The Malaysian Trade Union Act guarantees the right to form or participate

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	<p>Employees%27%20Social%20Security%20Act%201969%20</p> <ul style="list-style-type: none"> • Employment (Information) Act 1953 – http://asean.org/storage/2016/06/MA8_Employment-Information-Act-1953.pdf • Employment (Restriction) Act 1968 - http://myhos.mohr.gov.my/eAkta/akta_p_erburuhan/Akta%20Sekatan%20Kerja%201968%20(Akta%20353).pdf • Employment Act 1955- Sec.8. Available at: http://www.ilo.org/dyn/natlex/docs/WEBTEXT/48055/66265/E55mys01.htm • Immigration Act 1957 - http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/64031/99464/F1916438079/MYS64031.pdf • Immigration Regulations 1959/63 - http://jpt.mohe.gov.my/images/InstitusiP_engajianTinggi/MengenaiJPT/AKTA/Bil11.aktaimigresen.pdf • Industrial Relations Act 1967- Sec.4 and 13. Available at: http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/48066/99440/F1841123767/MYS48066.pdf • Industrial Relations Act, 1967. Available at: http://www.ilo.org/dyn/natlex/natlex4.det 	<p>security-protection/social-security-principles.html</p> <ul style="list-style-type: none"> • minimumwages.mohr.gov.my (N.Y.) Available at: http://minimumwages.mohr.gov.my/ • perkeso.gov.my (N.Y.) Official website of Social Security Organisation. Available at: http://www.perkeso.gov.my/en/ • kwsp.gov.my (N.Y.) Available at: http://www.kwsp.gov.my/portal/en/web/kwsp/home <p><i>Non-Government sources</i></p> <ul style="list-style-type: none"> • Accenture. 2013. Exploitative Labor Practices in the Global Palm Oil Industry - http://humanityunited.org/pdfs/Modern_Slavery_in_the_Palm_Oil_Industry.pdf • Al-Mahmood, S. Z. (2015, July 26). Palm-Oil Migrant Workers Tell of Abuses on Malaysian Plantations. Retrieved from www.wsj.com - http://www.wsj.com/articles/palm-oil-migrant-workers-tell-of-abuses-on-malaysian-plantations-1437933321 • Chi, M. (2013, October 30). In bid to stop 'slave trading', Putrajaya cuts red tape on foreign hires. Retrieved from www.themalaymailonline.com - http://www.themalaymailonline.com/m 	<p>in trade union activities, but it restricts the right to strike, calling for "socially responsible behaviour". Strikes are extremely rare in Malaysia for several reasons, including strong demand in the labour market and the Government's promotion of "industrial harmony" (summary of information provided by Liaw and Henry, 2011).</p> <p>The Employment Act 1955 (EA) covers employees that have a monthly salary less than 2,000MYR, engage in manual labour, supervise manual labour, operate propelled machinery, or work as a domestic servant, as well as employees in certain positions in sea-going vessels (ICLG, 2016).</p> <p>The coverage of manual labour means that the EA effectively covers most forestry workers and is significant to the forestry industry. Employees covered by the EA have the following minimum terms and conditions of employment:</p> <ul style="list-style-type: none"> • Maximum hours of work per day and per week; • Overtime payment for work more than normal hours of work; • Protection from deduction of wages; • Paid annual leave/vacation leave; • Paid sick leave • Minimum 10 paid public holidays, five of which are determined by law • Termination notice period • Payment of termination benefits, except in cases where the termination of employment is due to misconduct or poor performance • A minimum wage of 920MYR per month or 4.42 per hour in Sarawak (ICLG, 2016)

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	<p>ail?p_lang=en&p_isn=48066&p_country=MYS&p_count=199</p> <ul style="list-style-type: none"> Malaysia Federal Constitution - Part II, Art. 6 + http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Constitution%20(BI%20text).pdf Minimum Wage Order 2012. Available at: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=96034&p_country=MYS&p_count=199 Minimum Wages Order 2016 - http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Constitution%20(BI%20text).pdf National Wage Consultative Council Act 2011 (section 23, 24). Available at: http://www.ilo.org/dyn/travail/docs/1506/National%20Wages%20Consultative%20Council%20Act%202011%20-%20malaysianlaw.my.pdf Occupational Safety and Health 1994 - http://www.utar.edu.my/osh/file/OSHA%201994%20-%20Act%20514.pdf Trade Unions Act 1959 (Act 262). Available at: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=10327&p_country=MYS&p_count=199 	<p>alaysia/article/in-bid-to-stop-slave-trading-putrajaya-cuts-red-tape-on-foreign-hires</p> <ul style="list-style-type: none"> ICLG. (2016). The International Comparative Guide to: Employment and Labour Law 2016 (6th ed.). Global Legal Group. Othman, S. A., & Rahim, R. A. (2014). Migrant Workers in Malaysia: Protection of Employers. <i>Pertanika - Social Sciences & Humanities</i>, 271-282. US Department of Labor. (2014). List of Goods Produced by Child Labor or Forced Labor. Washington D.C.: US Department of Labor. US Department of State. (2016). 2015 Trafficking in Persons Report. US Department of State. Villadiego, L. (2015). Palm oil: why do we care more about orangutans than migrant workers? <i>The Guardian</i>. Liaw, E., Vijendran Henry, R. (2011). <i>ILO Training Workshop on Labour Law Reforms, ILO Standards and Trade Union Agenda</i>. [online]. Country Report: Malaysia. Bangkok, 08-12 August 2011. Available at: http://actrav-courses.itcilo.org/en/a3-52648/a3-52648-part-material/country- 	<p>The EA requires all employees in the private sector to be members of the Employee's Provident Fund (EPF) and the Social Security Organization (SOCSO). EPF handles savings- and retirement- planning, while SOCSO provides medical insurance. SOCSO membership is contingent upon a salary not exceeding 3,000MYR unless the employee is a registered contributor (PERKESO, n.d.).</p> <p>An important note is that foreign nationals working in Malaysia are excluded from EPF and SOCSO (ICLG, 2016). Instead, foreign workers are covered by the Workmen's Compensation Act. The EA also states that all contracts with a duration of one month or more must be in written form and contain provision for termination. Should a written contract not exist, the employment relationship and contractual terms still stand (ICLG, 2016)?</p> <p>People working in the forest sector in Malaysia are covered by the EA and thus enjoy a set of minimum terms and conditions of employment, as well as implied rights to protection from unjust dismissal (ICLG, 2016). Unionizing is governed by the Trade Unions Act 1959 (TUA) and the Industrial Relations Act 1967 (IRA). Membership is restricted to certain sectors and the law prohibits migrant workers from forming a trade union, but allows for migrant workers to join an existing union. Subject to section 28(1) of the Trade Union Act, a migrant worker cannot hold an executive position in a trade union.</p> <p>Malaysian law states that all job vacancies must be offered to Malaysian nationals before opening for migrant applications. An application to the Immigration Department (ID) is made by the employer and if successful, the ID will grant the employer with a license to import migrant workers. Migrant workers must then be able to show a valid visa and passport as well as pass a medical exam (Othman & Rahim, 2014). Upon expiry of the visa (usually valid for three months), the migrant worker is terminated. Migrant</p>

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	<ul style="list-style-type: none"> Wages Council Act 1947 - http://asean.org/storage/2016/06/MA10_Wages-Councils-Act-1947-Act-195.pdf Workers Minimum Housing Standards and Amenities Act 1990 (Act 446) - http://asean.org/storage/2016/06/MA10_Wages-Councils-Act-1947-Act-195.pdf Workmen's Compensation Act 1952. Available at: http://myhos.mohr.gov.my/eAkta/akta_sosial/Akta%20Pampasan%20Pekerja%201952%20(Akta%20273).pdf <p><i>Legal authority</i></p> <ul style="list-style-type: none"> Malaysia's State Labour Department KWSP (Employment Provident Fund - EPF) PERKESO (Social Security Organization - SOCSO) State Industrial Relations Department The Ministry of Human Resources (MOHR): Ministry charged with the regulation of wages as well as health and safety standards Department of Labour, Peninsular Malaysia Occupational Health and Safety Department – Responsible for reviewing, enforcing and promoting industrial health and safety 	<p>reports/malaysia/at_download/file [Accessed 24 February 2015]</p> <ul style="list-style-type: none"> Lim, T. W. (2013). <i>Malaysia: Illegalities in Forest Clearance for Large-Scale Commercial Plantations</i> – report prepared for Forest Trends. Accessed 24 February 2015 at http://www.forest-trends.org/publication_details.php?publicationID=4195. <i>Expert consultation conducted by NEPCon, 2015, including personal Communication 2</i> <p>Sabah</p> <p><i>Sources of information</i></p> <p><i>Government sources</i></p> <ul style="list-style-type: none"> minimumwages.mohr.gov.my (N.Y.) Minimum wage website. [online]. Available at: http://minimumwages.mohr.gov.my/ perkeso.gov.my (N.Y.) The official Website of social Security Organisation. [online]. Available at: http://www.perkeso.gov.my/en/ PERKESO. (n.d.). Social Security Principles. Retrieved August 10, 2016, from www.perkeso.gov.my: http://www.perkeso.gov.my/en/social- 	<p>labour is thus temporary and workers are tied to one Malaysian employer.</p> <p>Referent to the Workmen's Compensation Act of 1952, all employers must insure all their foreign employees. In addition, it is the duty of the employer to produce a written OSH policy for the workplace, hire a safety and health officer (only in some cases) as well as provide the necessary training to the employees (ILO, 2013). Migrant labourers in Malaysia thus enjoy legal protection that is like that of Malaysians.</p> <p><i>Description of Risk</i></p> <p>According to the experts consulted, there is a risk that wages are below the minimum prescribed level. They reported examples of wages being lower than minimum pay, which often occurs through the contractor providing housing, water and electricity and deducting this from the minimum cost. This is an illegal practice, as housing and medical care cannot be used as an equivalent to wages.</p> <p>There is also a risk that migrant workers are not afforded the correct legal working conditions</p> <ul style="list-style-type: none"> Although the laws of Malaysia do not discriminate against migrant workers, in practice, the rights of migrant workers are not protected: workers suffer from non-payment of wages, wrongful deduction of wages to cover work permits, long working hours, sub-standard living conditions (also applicable to Malaysian forest workers); no insurance cover; travel documents withheld by employers; and unfair dismissal, etc. (Liw and Henry, 2011). "A significant share of the workforce in Malaysia comprises legal and illegal foreign workers from Indonesia, Bangladesh and the Philippines. One estimate indicates that there were or are more than 800,000 illegal workers in Malaysia. The presence of illegal workers often signifies that other labor-

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<ul style="list-style-type: none"> The Industrial Court of Malaysia: Main functions are to "... hear and down decisions or awards in industrial disputes referred to it by the Minister or directly by the parties" (Industrial Court of Malaysia, n.d.) and to monitor the collective agreement reached between the employer/trade union of employers and trade union of employees - http://www.mp.gov.my/en/about-us/client-s-charter Social Security Organization (SOSCO): Government Agency administering and enforcing the Employee Social Security Act 1969 and Employee Social Security General Rules 1971 Ministry of Finance <ul style="list-style-type: none"> Employees' Provident Fund (EPF): Management of mandatory savings- and retirement planning for all Malaysian workers in the private sector. To Malaysians, membership of EPF is obligatory and voluntary for non-Malaysian workers. Ministry of Home Affairs: Main function is "To ensure orderly management of the issue of travel documents, entry/exit of citizens and foreign nationals as well as the issue of appropriate passes to foreign nationals who reside in this country in accordance with immigration 	<p>security-protection/social-security-principles.html</p> <ul style="list-style-type: none"> kwsp.gov.my (N.Y.) Agency under the Ministry of Finance Malaysia. [online]. Available at: http://www.kwsp.gov.my/portal/en/web/kwsp/home <p><i>Non-government sources</i></p> <ul style="list-style-type: none"> Liaw, E., Vijendran Henry, R. (2011). <i>Country Report: Malaysia</i>. ILO Training Workshop on Labour Law Reforms, ILO Standards and Trade Union Agenda Bangkok, 08-12 August 2011. STIEU-BWI and MYTUC. Accessed 24 February 2015 at http://actrav-courses.itcilo.org/en/a3-52648/a3-52648-part-material/country-reports/malaysia/at_download/file. Lim, T. W. (2013). <i>Malaysia: Illegalities in Forest Clearance for Large-Scale Commercial Plantations</i> – report prepared for Forest Trends. Accessed 24 February 2015 at http://www.forest-trends.org/publication_details.php?publicationID=4195. Borneo Post. (2015, February 11). Sarawak's palm oil industry in dire need of workers. Retrieved from www.theborneopost.com: http://www.theborneopost.com/2015/0 	<p>related laws are ignored. For example, the quality of the housing and amenities available to fieldworkers often falls short of the standard prescribed by law. One study finds that more than 35% of estate families live in houses that do not meet the basic minimum requirement, regulated by the Workers Minimum Standards of Housing and Amenities Act 1990." (Lim, 2013, p. 27). However, this is not widespread in the forest management area in Peninsular Malaysia and workers are often locals.</p> <ul style="list-style-type: none"> Malaysia's legal framework is currently insufficient to protect foreign workers, because the law imposes several processing fees and levies on the employer and consequently allows these fees to be deducted from the workers' wages, thus incentivizing forced labour and debt bondage. Other common treatment of foreign workers includes passport retention, contract violations, restricted movement, wage fraud, poor housing conditions and lack of H&S training (NEPCon Expert Consultation 2015). Industrial growth in Malaysia has often led to an acute labour shortage in certain sectors, necessitating an influx of migrant workers. According to the 2015 Trafficking in Persons (TIP) report prepared by the US Department of State, Malaysia is a major destination for illegal trafficking and forced labour. This has been especially evident in the palm oil industry in Malaysia and Indonesia, which employs a total of some 3,5 million workers (Villadiego, 2015). In Malaysia, most of these workers are migrant workers from the Philippines, Nepal, Bangladesh and Indonesia. It is estimated that Malaysia currently has two million documented, and even more undocumented, foreign workers (US Department of State, 2016, p. 254). Malaysia's legal framework is currently insufficient to protect foreign workers, because the law imposes several

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	<p>acts and regulations” - http://www.moha.gov.my/index.php/en/maklumat-korporat/fungsi-kementerian</p> <ul style="list-style-type: none"> • The Immigration Department: Charged with issuance of passports and travel documents to Malaysians, visas, passes and permits to foreign nationals and management the movement of people at authorized entry and exist points - http://www.imi.gov.my/index.php/en/corporate-profiles/introduction.html • Plantation Industries and Commodities Ministry: The main functions of MPIC are policy and strategy development in the plantation and commodity sector, as well as supervision of relevant government department and agencies regarding finance and implementation <p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> • EPF Contribution Statements • SOCSO Contribution Statements • Employment Contract <ul style="list-style-type: none"> ○ Subject to the Employment Act 1955 and the Industrial Relations Act 1967, any employer or self-employed person must provide his/her employees with a written contract of employment (unless the duration of the work is less 	<p>2/11/sarawaks-palm-oil-industry-in-dire-need-of-workers/</p> <ul style="list-style-type: none"> • Borneo Post. (2016, February 20). Nod for Sarawak, Sabah to recruit own foreign workers. Retrieved from www.theborneopost.com: http://www.theborneopost.com/2016/02/20/nod-for-sarawak-sabah-to-recruit-own-foreign-workers/ • Business & Human Rights Resource Centre. (2015, June 10). Malaysia: Palm oil company PJP Pelita Selangau denies exploitation & abuse of 100 Indonesian workers in Sarawak. Retrieved from www.business-humanrights.org: https://business-humanrights.org/en/malaysia-palm-oil-company-pjp-pelita-selangau-denies-exploitation-abuse-of-100-indonesian-workers-in-sarawak • ICLG. (2016). The International Comparative Guide to: Employment and Labour Law 2016 (6th ed.). Global Legal Group. • ILO. (2013). Malaysia - 2013. Retrieved from www.ilo.org: http://www.ilo.org/dyn/legosh/en/f?p=14100:1100:0::NO::P1100_ISO_COD E3,P1100_YEAR:MYS,2013 • Motlagh, J. (2013, April 8). Palm Oil for the West, Exploitation for Young 	<p>processing fees and levies on the employer and consequently allows these fees to be deducted from the workers’ wages, thus incentivizing forced labour and debt bondage (US Department of State, 2016).</p> <ul style="list-style-type: none"> • Common policies in the treatment of foreign workers further include passport retention (both authorized and unauthorized), contract violations, restricted movement, wage fraud and imposition of debt by both recruitment agents and employers (US Department of State, 2016, p. 255). • In 2015, the Business & Human Rights Resource Centre concluded that: “<i>There have been complaints of mistreatment, exploitation by unscrupulous recruitment agencies, physically abuse and poor living and work conditions of foreign workers</i>” and further that these problems are exacerbated by the lack of law enforcement. • Several reports of abuse of foreign workers in Malaysian oil palm plantations have surfaced in the media in the last couple of years. Of greatest relevance to Peninsular Malaysia is probably an article by the Wall Street Journal in 2015 that reported horrible treatment and systematic abuse of foreign workers in some plantations (Al-Mahmood, 2015). Workers reported that they did not receive their salaries, lived secluded from society in inadequate housing, lacked training in operating machinery and spraying herbicides, and had to cover their own medical costs. Because they were in Malaysia illegally, they dared not complain to the employer (Al-Mahmood, 2015). This is one of many cases of alleged abuse of foreign workers in the Malaysian palm oil industry, which have prompted the US Department of Labor to designate palm oil as a product produced by both forced- and child labour (US Department of Labor, 2014). Hence, despite enjoying legal protection close to that of Malaysian

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<p>than one month, in which an oral contract will suffice)</p> <ul style="list-style-type: none"> ○ The contract must include the following information: <ul style="list-style-type: none"> ▪ Names of both employer and employee ▪ Job title ▪ Date of commencement of work ▪ Place of work as well as work address ▪ Required notice period as well as retirement age ○ By law, following minimum terms and conditions must be adhered to: <ul style="list-style-type: none"> ▪ No more than 48 hours per week ▪ No more than 8 hours per day (maximum 10 hours if spread over a day) ▪ A minimum 30 minutes of rest for every five hours worked ▪ One day off per week 	<p>Workers in Malaysia. Retrieved from www.theatlantic.com: http://www.theatlantic.com/international/archive/2013/04/palm-oil-for-the-west-exploitation-for-young-workers-in-malaysia/274769/</p> <ul style="list-style-type: none"> • Othman, S. A., & Rahim, R. A. (2014). Migrant Workers in Malaysia: Protection of Employers. <i>Pertanika - Social Sciences & Humanities</i>, 271-282. • Sapienza, S. (2013, February 12). Growing Demand for Palm Oil Drives Malaysia to Employ Child Migrant Workers. Retrieved from www.pbs.org: http://www.pbs.org/newshour/bb/world-jan-june13-palmoil_02-12/ • US Department of State. (2016). 2015 Trafficking in Persons Report. US Department of State. • Villadiego, L. (2015). Palm oil: why do we care more about orangutans than migrant workers? <i>The Guardian</i>. <p>Expert consultation 2015, including, personal communication 2</p>	<p>nationals, reports of abuses of foreign labour are much more prominent in the media.</p> <p>While the most publicised instances of illegality in this indicator relate to the palm oil sector, and not the forestry sector, it does indicate a breakdown in governance, and inadequate monitoring and enforcement of these requirements. Available data is not sufficient to determine whether legal employment requirements are enforced in the forestry sector, so a precautionary approach has to be applied for this indicator. The risk is considered specified for all timber sources.</p> <p><i>Risk Conclusion</i></p> <p>'Specified risk'. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p> <p>Sabah</p> <p><i>Overview of Legal Requirements</i></p> <p>NOTE: See description of legal requirements for Peninsular above. Labour law are managed federally in Malaysia, so the legal requirements are the same across all three regions.</p> <p><i>Description of Risk</i></p> <p>NOTE: The risks described above for Peninsular in this indicator are also applicable to Sabah.</p> <p>In Sabah, issues with sub-contractors have been found in relation to FMEs illegally employing short-term workers, without documentation and contracts (forest pass, immigration papers, employment contract). Since regular control visits by the authorities have been introduced, this risk has been reduced. However, the risk is still considered specified Personal communication 2).</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<ul style="list-style-type: none"> Migrant workers also need to have a valid passport and a valid visa, and pass a medical exam prior to employment <p>Sabah</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (Amendment 2010) - http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20670.pdf Children and Young Persons (Employment) Act 1966 - http://www.ilo.org/dyn/travail/docs/1529/Children%20and%20Young%20Persons%20Employment%20Act%201966.pdf Employees Provident Fund Act - Part V, Section 42, 45. Available at: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=43880&p_country=MYS&p_count=199 Employee's Social Security Act 1969 - Section 3. Available at: http://www.ilo.org/dyn/travail/docs/1626/Employees%27%20Social%20Security%20Act%201969%20 	<p>Sarawak</p> <p><i>Government sources</i></p> <ul style="list-style-type: none"> PERKESO. (n.d.). Social Security Principles. Retrieved August 10, 2016, from www.perkeso.gov.my: http://www.perkeso.gov.my/en/social-security-protection/social-security-principles.html Jtkswk.mohr.gov.my (N.Y.) Labour Department Sarawak. [online] Available at: http://jtkswk.mohr.gov.my/index.php/contact-us/department-of-labour-office-headquarters minimumwages.mohr.gov.my (N.Y.) Minimum wage website. [online]. Available at: http://minimumwages.mohr.gov.my/ kwsp.gov.my (N.Y.) Agency under the Ministry of Finance Malaysia. [online]. Available at: http://www.kwsp.gov.my/portal/en/web/kwsp/home <p><i>Non-Government sources</i></p> <ul style="list-style-type: none"> Borneo Post. (2015, February 11). Sarawak's palm oil industry in dire need of workers. Retrieved from www.theborneopost.com: http://www.theborneopost.com/2015/02/11/sarawaks-palm-oil-industry-in-dire-need-of-workers/ 	<p>In Sabah, as in Sarawak, the issue of migrant workers is especially pertinent in the palm oil sector, as Sabah currently faces a significant shortage of labour in the oil palm industry (Borneo Post 2016). Recognizing that need for foreign labour as locals seems unwilling to take the dirty, dangerous and difficult (3D) work as oil palm harvesters, Sabah has been allowed to import its own foreign labour (Borneo Post, 2016). However, this sourcing of migrant labour is not without risks. Several reports of the use of child labour in Sabah have hit the media (Motlagh, 2013; Sapienza, 2013) and coupled with the report from the Wall Street Journal uncovering systematic abuses in the import and treatment of migrant workers in Malaysia (though most related to Peninsular Malaysia), we have a picture of a Malaysian palm oil industry oftentimes unconcerned with most immigrants performing 3D work.</p> <p>The risk is specified for all sources of timber.</p> <p><i>Risk Conclusion</i></p> <p>'Specified risk'. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p> <p>Sarawak</p> <p><i>Overview of Legal Requirements</i></p> <p>NOTE: See description of legal requirements for Peninsular above. Labour laws are managed federally in Malaysia, so the legal requirements are the same across all three regions.</p> <p>The Sarawak Labour Ordinance has provisions for paid sick leave, and protection of basic benefits such as rights to public holidays, half an hour rest after four hours of work, a rest day after working continuously for six days, overtime payment for</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<ul style="list-style-type: none"> • Employment (Information) Act 1953 - http://asean.org/storage/2016/06/MA8_Employment-Information-Act-1953.pdf • Employment (Restriction) Act 1968 - http://myhos.mohr.gov.my/eAkta/akta_p_erburuhan/Akta%20Sekatan%20Kerja%201968%20(Akta%20353).pdf • Employment Act 1955. Available at: http://www.ilo.org/dyn/natlex/docs/WEBTEXT/48055/66265/E55mys01.htm • Industrial Relations Act 1967. Available at: http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/48066/99440/F1841123767/MYS48066.pdf • Minimum Wage Order 2012. Available at: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=96034&p_country=MYS&p_count=199 • National Wage Consultative Council Act 2011 (section 23, 24). Available at: http://www.ilo.org/dyn/travail/docs/1506/National%20Wages%20Consultative%20Council%20Act%202011%20-%20malaysianlaw.my.pdf • Occupational Safety and Health 1994 - http://www.utar.edu.my/osh/file/OSHA%201994%20-%20Act%20514.pdf • Sabah Labour Ordinance - http://myhos.mohr.gov.my/eAkta/akta_p 	<ul style="list-style-type: none"> • Borneo Post. (2016, February 20). Nod for Sarawak, Sabah to recruit own foreign workers. Retrieved from www.theborneopost.com: http://www.theborneopost.com/2016/02/20/nod-for-sarawak-sabah-to-recruit-own-foreign-workers/ • Business & Human Rights Resource Centre. (2015, June 10). Malaysia: Palm oil company PJP Pelita Selangau denies exploitation & abuse of 100 Indonesian workers in Sarawak. Retrieved from www.business-humanrights.org: https://business-humanrights.org/en/malaysia-palm-oil-company-pjp-pelita-selangau-denies-exploitation-abuse-of-100-indonesian-workers-in-sarawak • ICLG. (2016). The International Comparative Guide to: Employment and Labour Law 2016 (6th ed.). Global Legal Group. • ILO. (2013). Malaysia - 2013. Retrieved from www.ilo.org: http://www.ilo.org/dyn/legosh/en/f?p=14100:1100:0::NO::P1100_ISO_COD E3,P1100_YEAR:MYS,2013 • Othman, S. A., & Rahim, R. A. (2014). Migrant Workers in Malaysia: Protection of Employers. Pertanika - 	<p>working more than normal hours of work, annual leave, and maternity leave.</p> <p>Section 10C of Chapter 4 of the Sarawak Labour Ordinance prescribe that “Nothing in any contract of service shall in any manner restrict the right of any employee” to join or participate a registered trade union, and to associate with any unionist (Sarawak Labour Ordinance).</p> <p><i>Description of Risk</i></p> <p>NOTE: The risks described above for Peninsular in this indicator are also applicable to Sarawak.</p> <ul style="list-style-type: none"> • Sarawak is prone to illegal immigration from Indonesia, particularly in areas close to the Kalimantan border. A widely recognized problem is workers from neighbouring countries working illegally, with high staff turnover especially in the forestry sector. These issues are difficult to deal with due to the location of the various work places and low level of enforcement activity by the relevant agencies. FMEs are often located in remote areas where monitoring can be challenging (Personal communication 1, 2). • State forestry employees are generally well safeguarded regarding labour law (Personal communication 2). • In Sarawak, the issue of migrant workers is especially pertinent, as Sarawak currently faces a significant shortage of labour (especially in the oil palm industry) (Borneo Post, 2015). Apparently in recognition of a lack of willingness by Malaysian to undertake the dirty, dangerous and difficult (3D) work of oil palm harvesters, Sarawak has been allowed to import its own foreign labour (Borneo Post, 2016). However, this sourcing of migrant labour is not without risks. Several reports of abuse of foreign workers in Malaysian oil palm plantations have surfaced in the media the last couple of years. An example is the report of abuses of 100

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<p>erburuhan/Ordinan%20Buruh%20(Sabah%20Bab%2067).pdf</p> <ul style="list-style-type: none"> Sabah Weekly Holidays Ordinance - http://www.lawnet.sabah.gov.my/lawnet/SabahLaws/StateLaws/HolidaysOrdinance.pdf Trade Unions Act 1959 (Act 262) - http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20262.pdf Trade Unions Act 1959 (Act 262). Available at: http://myhos.mohr.gov.my/eAkta/akta_jheks/TRADE_UNION_ACT_1959%20(ACT%20262).pdf Wages Council Act 1947 - http://asean.org/storage/2016/06/MA10_Wages-Councils-Act-1947-Act-195.pdf Workers Minimum Housing Standards and Amenities Act 1990 (Act 446) - http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/87154/118009/F797374692/MYS87154.pdf Workmen's Compensation Act 1952. Available at: http://myhos.mohr.gov.my/eAkta/akta_sosial/Akta%20Pampasan%20Pekerja%201952%20(Akta%20273).pdf <p><i>Legal authority</i></p> <ul style="list-style-type: none"> Department of Labour Sabah 	<p>Social Sciences & Humanities, 271-282.</p> <ul style="list-style-type: none"> US Department of State. (2016). 2015 Trafficking in Persons Report. US Department of State. Villadiego, L. (2015). Palm oil: why do we care more about orangutans than migrant workers? The Guardian. Expert consultation 2015, including personal communication 1 and 2 	<p>Indonesian workers in Sarawak in June 2015 (Business & Human Rights Resource Centre, 2015). This is one of many cases of alleged abuse of foreign workers in the Malaysian palm oil industry, which have prompted the US Department of Labour to designate palm oil as a product produced by both forced- and child labour (US Department of Labour, 2014). Hence, despite enjoying legal protection close to that of Malaysian nationals, reports of abuses of foreign labour are much more prominent in the media.</p> <p>Due to the risks identified above, the risk is considered specified for all timber sources.</p> <p><i>Risk Conclusion</i></p> <p>'Specified risk'. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<ul style="list-style-type: none"> • KWSP (EPF) • Perkeso (Socso) • The Ministry of Human Resources (MOHR): Ministry charged with the regulation of wages as well as health and safety standards • Department of Labour Sabah • Occupational Health and Safety Department – Responsible for reviewing, enforcing and promoting industrial health and safety • The Industrial Court of Malaysia: Main functions are to “... hear and down decisions or awards in industrial disputes referred to it by the Minister or directly by the parties” (Industrial Court of Malaysia, n.d.) and to monitor the collective agreement reached between the employer/trade union of employers and trade union of employees (http://www.mp.gov.my/en/about-us/client-s-charter) • Social Security Organization (SOSCO): Government Agency administering and enforcing the Employee Social Security Act 1969 and Employee Social Security General Rules 1971 • Ministry of Finance - Employees' Provident Fund (EPF): Management of mandatory savings- and retirement planning for all Malaysian workers in 		

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<p>the private sector. To Malaysians, membership of EPF is obligatory and voluntary for non-Malaysian workers.</p> <ul style="list-style-type: none"> Ministry of Home Affairs: Main function is “To ensure orderly management of the issue of travel documents, entry/exit of citizens and foreign nationals as well as the issue of appropriate passes to foreign nationals who reside in this country in accordance with immigration acts and regulations” (http://www.moha.gov.my/index.php/en/maklumat-korporat/fungsi-kementerian) The Immigration Department: Charged with issuance of passports and travel documents to Malaysians, visas, passes and permits to foreign nationals and management the movement of people at authorized entry and exist points (http://www.imi.gov.my/index.php/en/corporate-profiles/introduction.html) Plantation Industries and Commodities Ministry: The main functions of MPIC are policy and strategy development in the plantation and commodity sector, as well as supervision of relevant government department and agencies regarding finance and implementation <p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> Employment records 		

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<ul style="list-style-type: none"> • Insurance records • Payment records • Records of number of people employed • Employment Contract • Migrant workers have a valid passport, valid visa as well as pass a medical exam prior to employment <p>Sarawak</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> • Industrial Relations Act 1967 - Sec.4 and 13 http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/48066/99440/F1841123767/MYS48066.pdf • Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (Amendment 2010) - http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Acts%20670.pdf • Children and Young Persons (Employment) Act 1966 - http://www.ilo.org/dyn/travail/docs/1529/Children%20and%20Young%20Persons%20Employment%20Act%201966.pdf • Employees Provident Fund Act - Part V, Section 42, 45. Available at: http://www.ilo.org/dyn/natlex/natlex4.det 		

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<p>ail?p_lang=en&p_isn=43880&p_country=MYS&p_count=199</p> <ul style="list-style-type: none"> • Employee's Social Security Act 1969 - Section 3. Available at: http://www.ilo.org/dyn/travail/docs/1626/Employees%27%20Social%20Security%20Act%201969%20 • Employment Act 1955- Sec.8. Available at: http://www.ilo.org/dyn/natlex/docs/WEBTEXT/48055/66265/E55mys01.htm • Labour Ordinance Sarawak- Cap.76. Available at: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=82128&p_country=MYS&p_count=199 • Minimum Wage Order 2012. Available at: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=96034&p_country=MYS&p_count=199 • National Wage Consultative Council Act 2011 (section 23, 24). Available at: http://www.ilo.org/dyn/travail/docs/1506/National%20Wages%20Consultative%20Council%20Act%202011%20-%20malaysianlaw.my.pdf • Occupational Safety and Health 1994 • Sarawak Labour Ordinance 1952 		

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<ul style="list-style-type: none"> • Sarawak Weekly Holidays Ordinance 1951 • Trade Unions Act 1959 (Act 262). Available at: http://myhos.mohr.gov.my/eAkta/akta_jeheks/TRADE_UNION_ACT_1959%20(ACT%20262).pdf • Wages Council Act 1947 • Workers Minimum Housing Standards and Amenities Act 1990 (Act 446) • Workmen's Compensation Act 1952. Available at: http://myhos.mohr.gov.my/eAkta/akta_sosial/Akta%20Pampasan%20Pekerja%201952%20(Akta%20273).pdf <p><i>Legal authority</i></p> <ul style="list-style-type: none"> • KWSP (Employment Provident Fund - EPF) • The Ministry of Human Resources (MOHR): Ministry charged with the regulation of wages as well as health and safety standards • Department of Labour Sarawak: <ul style="list-style-type: none"> ○ Occupational Health and Safety Department – Responsible for reviewing, enforcing and promoting industrial health and safety 		

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<ul style="list-style-type: none"> • The Industrial Court of Malaysia: Main functions are to “... hear and down decisions or awards in industrial disputes referred to it by the Minister or directly by the parties” (Industrial Court of Malaysia, n.d.) and to monitor the collective agreement reached between the employer/trade union of employers and trade union of employees (http://www.mp.gov.my/en/about-us/client-s-charter) • Social Security Organization (SOSCO): Government Agency administering and enforcing the Employee Social Security Act 1969 and Employee Social Security General Rules 1971 • Ministry of Finance <ul style="list-style-type: none"> ○ Employees' Provident Fund (EPF): Management of mandatory savings- and retirement planning for all Malaysian workers in the private sector. To Malaysians, membership of EPF is obligatory and voluntary for non-Malaysian workers. • Ministry of Home Affairs: Main function is “To ensure orderly management of the issue of travel documents, entry/exit of citizens and foreign nationals as well as the issue of appropriate passes to foreign nationals who reside in this country in accordance with immigration 		

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	<p>acts and regulations” http://www.moha.gov.my/index.php/en/maklumat-korporat/fungsi-kementerian</p> <ul style="list-style-type: none"> ○ The Immigration Department: Charged with issuance of passports and travel documents to Malaysians, visas, passes and permits to foreign nationals and management the movement of people at authorized entry and exist points http://www.imi.gov.my/index.php/en/corporate-profiles/introduction.html ● Plantation Industries and Commodities Ministry: The main functions of MPIC are policy and strategy development in the plantation and commodity sector, as well as supervision of relevant government department and agencies regarding finance and implementation – <p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> ● Employment records ● Employment providence fund (EPF) ● Payment records ● Employment Contract - Subject to the Sarawak Labour Ordinance 1952 and the Industrial Relations Act 1967, any employer or self-employed person must provide his/her employees with a 		

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<p>written contract of employment (unless the duration of the work is less than one month, in which an oral contract will suffice).</p> <ul style="list-style-type: none"> Migrant workers further must have a valid passport, valid visa as well as pass a medical exam prior to employment 		
Third parties' rights			
1.13 Customary rights	<p>Peninsular <i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> Federal Consitution of Malaysia 1963- http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Constitution%20(BI%20text).pdf Aboriginal Peoples Act 1954. Available at: http://www.kptg.gov.my/sites/default/files/article/Act%20134-Oboriginal%20Peoples%20Act.pdf Forest Rules – Rules 28 to 30 Land Acquisition Act 1960 - http://www.kptg.gov.my/sites/default/files/article/Act%20486-PENGAMBILAN.pdf National Forestry Act 1984. Available at: http://extwprlegs1.fao.org/docs/pdf/mal3252.pdf 	<p>Peninsular: <i>Government sources</i></p> <ul style="list-style-type: none"> PERKESO. (n.d.). Social Security Principles. Retrieved August 10, 2016, from www.perkeso.gov.my - http://www.perkeso.gov.my/en/social-security-protection/social-security-principles.html <p><i>Non-government sources</i></p> <ul style="list-style-type: none"> Adong bin Kuwau & Ors v Kerajaan Negeri Johor [1998] 2 MLJ 158 (Court of Appeal); Superintendent of Land & Surveys Miri Division & Anor v Madeli bin Salleh (suing as Administrator of the Estate of the deceased, Salleh bin Kilong) [2008] 2 MLJ 677 (Federal Court). Aiken, R., & Leigh, C. H. (2011). In the Way of Development: Indigenous 	<p>Peninsular <i>Overview of Legal Requirements</i></p> <p>Peninsular Malaysia is inhabited by the Orang Asli, who is "... the most impoverished and marginalized community in Malaysia" (Subramaniam, 2015, p. 73). The Orang Asli enjoys two statuses: Orang Asli as Malaysian citizens and Orang Asli as indigenous peoples (Nicholas, 2010). The Federal Constitution provides for Orang Asli rights to property, association and religion as well as a set of special rights and protections (Nicholas, 2010, p. 5). Despite of this constitutional and statutory protection, the Orang Asli faces difficulties achieving their rights (Subramaniam, 2015). In Peninsular Malaysia (PM), the main statute in relation to customary rights is the Aboriginal Peoples Act 1954, which allows for the designation of aboriginal areas. However, it also provides for revocation of any such designated areas. In addition, the Orang Asli cannot obtain individual titles to their land and thus occupies the status of 'tenants' subject to the will of their landlord (Aiken & Leigh, 2011, p. 472). The Federal Constitution places the welfare of the Aboriginal Peoples as a federal responsibility, who in turn acts as landlord. In addition, and according to the National Land Code 1965, the State government have authority over all state land except for alienated- or reserved land. Consequently, the State controls all</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<ul style="list-style-type: none"> National Forestry Policy 1978. Available at: http://www.eldis.org/go/home&id=25050&type=Document#.WJ3B0_nhCUk National Land Code. Available at: http://www.kptg.gov.my/sites/default/files/article/NLC1956DIGITAL-VER1.pdf Native laws and customs United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) - http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf <p><i>Legal authority</i></p> <ul style="list-style-type: none"> State Forestry Department Department of Orang Asli Affairs (JAKOA) State Land Office Ministry of Rural Development - Department of Orang Asli Development (JAKOA) - Government agency overseeing the affairs of the Orang Asli "... for the protection, well-being or advancement of the aboriginal peoples of the Malay Peninsula (including the reservation of land) or the reservation to aborigines of a reasonable proportion of suitable positions in the public service" (Federal Constitution, Article 8(5)). 	<p>Land-Rights in Malaysia. The Geographical View, 1-127.</p> <ul style="list-style-type: none"> Amnesty International. (2016). Amnesty International 2015/16: The State of the World's Human Rights. Amnesty International. Bahrin, J. S. (2016). Self-Regulation and Occupational Safety and Health Act (OSHA) 1994. Dinner talk between the Society of Occupational and Environmental Medicine of the Malaysian Medical Association (SOEM-MMA), the Malaysia Medical Association (MMA) and the Executive Director of Malaysian Employers Federation (MEF). (pp. 1-2). Kuala Lumpur: Malaysian Employers Federation. Duncan, C. R. (2004). Legislating Modernity among the Marginalized. In C. R. Duncan (Ed.), <i>Civilizing the Margins: South- east Asian Government Policies for the Development of Minorities</i> (pp. 1-23). Ithaca, NY: Cornell University Press. Hoare, A. (2015). <i>Illegal Logging and Related Trade - The Response in Malaysia</i>. [online]. A Chatham House Assessment. Chatham House, London. Available at: http://www.illegal-logging.info/sites/default/files/CHHJ23_65_Malaysia_Logging_Research_Pap 	<p>aboriginal land not declared customary rights land. The laws of Malaysia provide the State authority with incontestable power to seize private land for public development purposes. This legislation has been used systematically by both the Federal- and State government to prioritize development projects over indigenous/customary claims to land, consequently bringing about forceful dislocation, dispossession and marginalization (Duncan, 2004). In addition to the issues of land access, the Aboriginal Peoples Act 1954 transfers many administrative duties and rights of the Orang Asli to the Federal- and State governments, including the right to determine whether a person is Orang Asli, appointment of Orang Asli heads (Batin) and restriction of any material whether written or photographic deemed harmful by the relevant government (Subramaniam, 2015, p. 80). Consequently, the term Orang Asli places both makes their identity, leadership and ethnicity as a state responsibility (Subramaniam, 2015).</p> <p>There exists a legal ambiguity in relation to the Orang Asli, as the legal framework on the one side provides recognition and protection on the special status of indigenous communities, while also affording incontestable power over land matters to the State authority as well as a paternalistic transfer of rights away from the Orang Asli. Consequently, while there exists little doubt of the encroachment of land development projects on customary Orang Asli land, both the Federal- and State governments oftentimes operate within the law to make these concessions. However, the Orang Asli's customary right to land is increasingly recognized by the High Courts in Malaysia, which have ruled in favour of the Orang Asli in many disputes (Nicholas, 2010, pp. 7-9). No court rulings have so far led to a change in legislation.</p> <p>An important note on this subject is that Malaysia has adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and thus adheres to some level of international standards. As argued by Subramaniam (2015),</p>

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	<ul style="list-style-type: none"> Ministry of Home Affairs - The National Registration Department (NRD) - Responsible for the registration of important events of all Malaysians, including birth, adoption, marriage, divorce and death. NRD also distributes Identification Cards and determines citizenship status. <p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> Gazettal record of permanent reserved forest (PRF) Concessionaires' agreements Forest harvest license Entry permits Road permits Use permits Maps of aboriginal reserves/area/customary land area/inhabited place Record on relevant decision by the Civil Court Contract agreement with local communities with use rights for use of Land titles 	<p>er_A4_01_15_WEB.PDF [Accessed 23 February 2015]</p> <ul style="list-style-type: none"> Human Rights Commission of Malaysia (2013) Report Of The National Inquiry Into The Land Rights Of Indigenous Peoples: http://nhri.ohchr.org/EN/Themes/BusinessHR/Business%20Womens%20and%20Childrens%20Rights/SUHAKAM%20BI%20FINAL.CD.pdf Human Rights Watch. (2011). They Deceived Us at Every Stage: Abuse of Cambodian Domestic Workers Migrating to Malaysia. Human Rights Watch. IWGEA 2015: 2015 yearbook article on indigenous peoples in Malaysia: http://www.iwgia.org/images/stories/sections/regions/asia/documents/IW2015/Malaysia_IW2015_web.pdf iwgia.org (2015). The indigenous world. [online]. IWGIA. Available at: http://www.iwgia.org/images/stories/sections/regions/asia/documents/IW2015/Malaysia_IW2015_web.pdf Lim, T. W. (2013). <i>Malaysia: Illegalities in Forest Clearance for Large-Scale Commercial Plantations</i> – report prepared for Forest Trends. Accessed 24 February 2015 at http://www.forest- 	<p>while UNDRIP might not be legally enforceable as such, its adoption does bring about some moral and ethical expectations (p. 72). Hence, while perhaps not in direct opposition to the national legal framework, the status and treatment of the Orang Asli is in contradiction with Malaysia's international moral obligations.</p> <p>The Malaysian superior courts have recognised and repeatedly reaffirmed the native customary rights of Orang Asli since 1997 due to, among other factors, the special position of the Orang Asli under Article 8(5)(c) of the Federal Constitution (Malay Mail Online 2016). Aboriginal Reserves and Aboriginal Areas may be allowed to be harvested with prior consent of the Jabatan Kemajuan Orang Asli, Malaysia (JAKOA; Department of Orang Asli Development, Malaysia) and subsequent approval of the State Authority concerned. In addition, Indigenous people can collect forest produce from state land for their own consumption (although not for trade). Regarding Indigenous Peoples, the schedules of the National Land Code (which applies only to Peninsular Malaysia) refer to Indigenous areas and Indigenous reserves, requiring any dealings relating to such areas to make note of the number and date the areas were gazetted as such (e.g. Sch I, Form 5B).</p> <p>In addition to statutory law, the Malaysian courts have held that customary land rights are also defined by reference to the broader native conception of native customary tenure under native law and customs.</p> <p><i>Description of Risk</i></p> <ul style="list-style-type: none"> According to Hoare (2015), 'Most permanent reserved forests in Peninsular Malaysia are certified under the Malaysian Timber Certification Scheme (MTCS), under which forest management plans are audited. Auditing covers the recognition of aboriginal land where relevant. However, a significant problem is that many customary lands and

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<p>Sabah</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> Aboriginal Peoples Act 1954 - link Environmental Protection Enactment 2002 Forest Enactment, 1968. (Part IV Section 41) Available at: http://faolex.fao.org/docs/pdf/mal10907.pdf Land Acquisition Act 1960 - http://www.kptg.gov.my/sites/default/files/article/Act%20486-PENGAMBILAN.pdf Land Ordinance, 1930 (Sabah Cap.68). Available at: http://sabah.gov.my/phb/wp-content/uploads/2011/05/LandOrdinance.pdf Malaysia Federal Constitution - http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Constitution%20(BI%20text).pdf National Land Code (Act No. 56 of 1965) - http://www.kptg.gov.my/sites/default/files/article/NLC1956DIGITAL-VER1.pdf Native Court (Native Customary Laws) Rules 1995. Available at: http://www.gavel- 	<p>trends.org/publication_details.php?publicationID=4195.</p> <ul style="list-style-type: none"> Malay Mail Online, (2016). Respect the legal rights of the Orang Asli — Steven Thiru. Available at: http://www.themalaymailonline.com/what-you-think/article/respect-the-legal-rights-of-the-orang-asli-steven-thiru#1qVJcCVOv4U7rcoL99, accessed 12 February 2018. Nicholas, C. (2010). Orang Asli: Rights, Problems, Solutions. Kuala Lumpur: The Human Rights Commission of Malaysia (SUHAKAM). Othman, S. A., & Rahim, R. A. (2014). Migrant Workers in Malaysia: Protection of Employers. <i>Pertanika - Social Sciences & Humanities</i>, 271-282. Pusat Komnas. (2016). Malaysia Racial Discrimination Report 2015. Petaling Jaya, Selangor: Pusat Komnas Malaysia - Non-Discrimination Programme. Short, A., Pietropaoli, I., & Dhanarajan, S. (2015). Business & human rights in Malaysia: A report from Kuala Lumpur. Business & Human Rights Resource Centre. Subramaniam, Y. (2015). Ethnicity, Indigeneity and Indigenous Rights: 	<p>aboriginal reserves are not gazetted and thus are not recognized by law; for this reason, they are not considered in the issuance of licences or subsequent management plans.</p> <ul style="list-style-type: none"> Despite legal recognition, there are numerous examples where the customary rights of indigenous peoples have been violated, with many cases filed in the civil courts. As a result, many judicial decisions have been taken to integrate customary law into the modern legal framework. However, the policy and legislative reforms necessary to implement those decisions have not been made. This has implications for the legality of timber harvested from land where indigenous peoples claim their customary land rights.' (Hoare, 2015, p. 13). There have been cases of Orang Asli's claims to customary lands not being marked or identified in the cadastral maps of the Department of Survey and Mapping Malaysia or the Jabatan Ukur dan Pemetaan Malaysia (JUPEM). This has meant that these claims have not been considered when, e.g., a new plantation is to be licensed. The Department of Orang Asli Development (JAKOA) has admitted having insufficient resources to deal with applications for gazettal, and applications have been found not to be forwarded to the right departments, and have thus not been processed. Furthermore, many Orang Asli witnesses – whose villages were included in logging concession areas within forest reserves – have testified that logging licensees had destroyed their sacred areas and old grave sites that had existed for generations, thus eliminating evidence of their continued occupation in the area (HRWM 2013). Some mechanisms are in place for the resolution of disputes but these deal mostly with disputes between holders of

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<p>publications.com/assets/toc/9789833519330.pdf</p> <ul style="list-style-type: none"> Native Court Enactment 1992. Available at: http://www.sabah.gov.my/mlgh/nativecourtsenactment1992.pdf State Cultural Heritage (Conservation) Enactment 1997. Available at: http://www.lawnet.sabah.gov.my/Lawnet/SabahLaws/StateLaws/CulturalHeritage%28Conservation%29Enactment1997.pdf Sustainable Forest Management Licence Agreement – Clause 23 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) - http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf <p><i>Legal authority</i></p> <ul style="list-style-type: none"> Native court Sabah Forestry Department Lands and Surveys Department <p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> Records of consultation with natives Long term timber licence agreement Sustainable Forest Management License Agreement 	<p>The 'Orang Asli' Experience. QUT Law Review, 71-91.</p> <ul style="list-style-type: none"> US Department of Labor. (2014). List of Goods Produced by Child Labor or Forced Labor. Washington D.C.: US Department of Labor. US Department of State. (2016). 2015 Trafficking in Persons Report. US Department of State. Villadiego, L. (2015). Palm oil: why do we care more about orangutans than migrant workers? The Guardian. Yates, B. (2014, May 4). Displaced Indigenous Malaysians Face Uncertain Future. Retrieved from ourworld.unu.edu - http://ourworld.unu.edu/en/displaced-indigenous-malaysians-face-uncertain-future Nicholas, C. (2010). Orang Asli: Rights, Problems, Solution. SUHAKAM. Nicholas, C., Engi, J., & Ping, T. Y. (2010). The Orang Asli and UNDRIP: From Rhetoric to Recognition. Subang Jaya, Malaysia: COAC. Weiss, M. L. (2006). Protest and Possibilities: Civil Society and Coalitions for Political Change in Malaysia. Stanford: Stanford University Press. 	<p>customary rights. The village development and security committees provide a mechanism for resolving conflicts over property rights at the village level. For disputes between communities and licence holders and/or the Government, resolution can be sought through the courts or mediators. Such conflicts are widespread. The Indigenous in Peninsular Malaysia are supported by NGOs, and cases are continually being filed in the courts (IWGEA 2015; HRCM 2013).</p> <ul style="list-style-type: none"> Conflicts in areas being logged selectively inside forest reserves have decreased since 2012, since forest management has been more engaged with people. This has not been the case when large-scale conversion is taking place (whether in forest reserves, Alienated Land or state land). Malaysia has not ratified ILO convention 169 on indigenous and tribal peoples. There are numerous court cases and allegations that commercial plantations had encroached on, or were introduced into, land claimed as indigenous customary land rights/title, without the community's knowledge or without complying the principles of free, prior and informed consent (see list of cases below). Furthermore, there is no legal definition or understanding or concept of 'traditional territories' (Nicholas 2010; Nicholas et al. 2010). While a positive development is traceable in the Malaysian court system, this road to justice oftentimes requires vast amounts time and resources not in the possession of a marginalized community like the Orang Asli of Peninsular Malaysia (Nicholas 2010; Nicholas et al. 2010). The issue of indigenous rights is less of an issue for plantations on Alienated Land since land claims are normally over areas that are still covered by natural forest (NEPCon Expert Consultation 2015).

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<ul style="list-style-type: none"> Record on decision by the Civil Court and Native Court Contract agreement with local communities with use rights for use of land Established Native Customary Rights <p>Sarawak</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> Forest Ordinance. Available at: http://www.sarawakforestry.com/pdf/laws/forests_ordinance_chapter_126.pdf Land Acquisition Act 1960 - http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf Land Code 1958 (Chapter 8). Available at: http://faolex.fao.org/docs/pdf/mal134804.pdf Malaysia Federal Constitution - http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Constitution%20(BI%20text).pdf National Land Code (Act No. 56 of 1965) - http://www.kptg.gov.my/sites/default/files/article/NLC1956DIGITAL-VER1.pdf Native Court Ordinance 1992 - http://lawnet.sarawak.gov.my/lawnet_fil 	<p>Sabah</p> <p><i>Government sources</i></p> <ul style="list-style-type: none"> forest.sabah.gov.my (N.Y.) Sabah Forestry Department- Official portal. Available at: http://www.forest.sabah.gov.my/discovers/policies/forest-legislation Sabah Forestry Department, (2013). Sabah TLAS document (revised as at 06 March 2013). http://www.forest.sabah.gov.my/images/pdf/en/flegt/TLAS4.pdf, Accessed 13 February 2018. <p><i>Non-government sources</i></p> <ul style="list-style-type: none"> Lim, T. W. (2013). <i>Malaysia: Illegalities in Forest Clearance for Large-Scale Commercial Plantations</i> – report prepared for Forest Trends. Accessed 24 February 2015 at http://www.forest-trends.org/publication_details.php?publicationID=4195. Toh, S. M and Grace, K. T. (2006). <i>Understanding forest tenure in South and Southeast Asia, Case study: Sabah Forest Ownership</i>. [online]. FAO. Available at: ftp://ftp.fao.org/docrep/fao/009/j8167e/j8167e10.pdf Dailyexpress.com.my (2015). <i>Natives must be told, rules court</i>. [online]. 	<p>The legal ambiguity mentioned above has caused multiple conflicts, consequently generating several high-profile cases of violation of customary rights, which have ended in the Malaysian High Courts.</p> <ul style="list-style-type: none"> Koperasi Kijang Mas v Kerajaan Negeri Perak Important case from the Ipoh High Court, where it was decided that the Orang Asli had exclusive rights to the forest produce in approved Orang Asli areas. An important point here was that these rights were in force despite the land only being approved for reserve and not yet gazetted (Nicholas, 2010, pp. 7-8) Adong bin Kuwau & Ors v State Government of Johor Case from 1997 in the Johor High Court, where compensation was awarded 52 Jakuns for loss of ancestral lands. Despite not holding an official title to the land, the Johor High Court recognized the customary rights of the Jakuns to use the land. Hence, the case implied that aboriginal peoples have right to hunt and gather on lands other than those reserved for indigenes (Nicholas, 2010, p. 8) Sagong Tasi & 6 Ors v Kerajaan Negeri Selangor & 3 Ors In 2002, the Shah Alam High Court ruled that the Temuans had propriety rights over their customary lands and thus should be compensated according to the rules of the Land Acquisition Act 1960. The Temuans had been evicted from their land to make way for a highway to the Kuala Lumpur International Airport in 1995 (Nicholas, 2010, pp. 9-10). This case set an important precedent and received a lot of media attention because the defendants were both private companies, Selangor State and the Federal Government. <p>In general, the disputes between the Orang Asli and the State- and Federal governments have been solved in the courts and</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<p>e/Ordinance/ORD_CAP.%2022%20watermark.pdf</p> <ul style="list-style-type: none"> Native Court Rules 1993 - http://www.nativecourt.sarawak.gov.my/modules/web/page.php?id=63&menu_id=113&sub_id=120 Sarawak Forest Ordinance (Cap. 126) - Part II (Forest reserves), Part III (Protected Forests) and Part IV (Communal Forests) Sarawak Land code (Cap. 81) (grants, leases, native customary right and communal reserves) - https://tiyungdayak.files.wordpress.com/2010/11/land-code-1958.pdf Sarawak Native Court Ordinance 1992 Sarawak Native Court Rules 1993 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) - http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf <p><i>Legal authority</i></p> <ul style="list-style-type: none"> Sarawak Forestry Department (SFD) Sarawak Forestry Corporation <p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> Forest timber license 	<p>Daily Express 2015. Available at: http://www.dailyexpress.com.my/news.cfm?NewsID=96067</p> <ul style="list-style-type: none"> Chan, J. (2015, February 13). Sabah lists 42 ethnic groups to replace 'lain lain' race column. Retrieved from www.themalaymailonline.com:https://web.archive.org/web/20160601095050/http://www.themalaymailonline.com/malaysia/article/sabah-lists-42-ethnic-groups-to-replace-lain-lain-race-column Colchester, M., Jalong, T., & Alaza, L. (2013). Marcus Colchester, Thomas Jalong and Leonard Alaza. In M. Colchester, & S. Chao, Conflict or Consent? The oil palm sector at a crossroads (pp. 259-282). FPP, Sawit Watch and TUK INDONESIA. Forest Peoples Programme. (2016, April 8). Tongod villagers secure settlement of land claim with palm oil developer Genting Plantations. Retrieved from www.forestpeoples.org:https://www.forestpeoples.org/topics/palm-oil-rspo/news/2016/04/tongod-villagers-secure-settlement-land-claim-palm-oil-developer-g Subramaniam, Y. (2015). Ethnicity, Indigeneity and Indigenous Rights: The Orang Asli Experience. QUT L. Rev., 15, 71. 	<p>the decisions of the courts seems to be respected by both parties. As accounted for above, it seems that the courts have been favourable to the Orang Asli. However, a court case is both protracted and expensive and consequently oftentimes out of reach for the Orang Asli, who are both few and politically disorganized (Weiss, 2006).</p> <p>Based on the risk of violating customary rights (which can include third parties, indigenous peoples or traditional peoples' rights), the risk is considered specified.</p> <p><i>Risk Conclusion</i></p> <p>'Specified risk'. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p> <p>Sabah</p> <p><i>Overview of Legal Requirements</i></p> <p>Native customary rights (NCR) are accepted as a source of law in Malaysia's constitution and have been upheld as valid by the courts. The specifics of customary laws vary among the dozens of tribal communities in Malaysia but several general principles have widespread application. A community (kampung) claims general rights over its traditional territory (wilayah adat) up to one day's walk from the main settlement. The territory is defined along natural boundaries such as streams and ridges.</p> <p>Native customary rights cover;</p> <ol style="list-style-type: none"> land possessed by customary tenure; land planted with fruit trees, when the number of fruit trees amounts to fifty and upwards to each hectare; isolated fruit trees, and sago, rotan, or other plants of economic value, that the claimant can prove to the

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<ul style="list-style-type: none"> • Civil court decision on legal or customary tenure or use right • Contract agreement with local communities with use rights for use of land 	<ul style="list-style-type: none"> • Expert consultation conducted by NEPCon, 2015 <p>Sarawak</p> <p><i>Government sources</i></p> <ul style="list-style-type: none"> • Sarawak Forestry Corporation (SFC) http://www.sarawakforestry.com/html/sustainable.html • Sarawak Forestry Department (SFD) http://www.forestry.sarawak.gov.my/ <p><i>Non-government sources</i></p> <ul style="list-style-type: none"> • Bulan, R. (2010). Indigenous Peoples and the Right to Participate in. International Expert Seminar on Indigenous Peoples and The Right to Participate in Decision Making. Chang Mai, Thailand. • Colchester, M., Jalong, T., & Chuo, W. M. (2013). Sarawak: IOI-Pelita and the community of Long Teran Kanan. In M. Colchester, & S. Chao, Conflict or Consent? (pp. 232-258). FPP, Sawit Watch and TUK INDONESIA. • Lawson, S. 2014. Consumer Goods and Deforestation: An Analysis of the Extent and Nature of Illegality in Forest Conversion for Agriculture and Timber Plantations. Forest Trends. Accessed 6 March 2015 at http://www.forest- 	<p>satisfaction of the Collector were planted or upkeep and regularly enjoyed by him as his personal property;</p> <ul style="list-style-type: none"> d) grazing land that the claimant agrees to keep stocked with a sufficient number of cattle or horses to keep down the undergrowth; e) land that has been cultivated or built on within three years; f) burial grounds or shrines; g) usual rights of way for men or animals from rivers, roads, or houses to any or all of the above. <p>Within a community, individual fields (ladang) and orchards (dusun) are assigned to families belonging to the community that originally cleared the forest and planted the area. Certain areas (particularly village water catchments) are zoned as protected forest (hutan tagal) which is subject to various controls, with clearance not permitted. It is accepted that outsiders may enter the unprotected parts of a community's territory for hunting or the collection of forest produce. However, clearance of natural forest for plantations requires the consent of the community. Fines (sogit) can be imposed for transgressions such as unlawful entry into a protected forest and for forest clearance without the consent of the community. In Sabah and Sarawak native courts are empowered to try offences and determine the level of compensation required (Lim 2013).</p> <p>Communities can gain communal property rights through applying for an indigenous reserve. This differs from communal title in that the community cannot transfer these rights to other parties. There are also restrictions on land use, and a Board of Trustees must be established to manage the indigenous reserve (Toh and Grace, 2006). Communal titles are given out to a group of Natives, with attached rules as to use, i.e. no individual title to</p>

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		<p>trends.org/documents/files/doc_4718.pdf.</p> <ul style="list-style-type: none"> • Lim, T. W. (2013). <i>Malaysia: Illegalities in Forest Clearance for Large-Scale Commercial Plantations</i> – report prepared for Forest Trends. Accessed 24 February 2015 at http://www.forest-trends.org/publication_details.php?publicationID=4195. • Lucas, J. (2013, November 26). Forest people 'disillusioned' in battle to protect land. Retrieved from Thomson Reuters Foundation News: http://news.trust.org/item/20131126101312-463ag/ • Minority Rights Group International. (2016). Malaysia - Indigenous peoples and ethnic minorities in Sarawak. Retrieved from www.minorityrights.org: http://minorityrights.org/minorities/indigenous-peoples-and-ethnic-minorities-in-sarawak/ • NEPCon Expert consultation, (2015) • Sarawak Gone, undated. Native Customary Rights. Available: http://www.sarawakgone.cc/issues/ncr/, accessed 12 February 2018. • Suara Sarawak 2014: Sarawak gov't suffers 10 defeats in NCR land cases: http://www.barubian.net/2014/04/sara 	<p>be issued, specific land size allocation per family, specific crop to be grown, and to be managed by a Board of Trustees.</p> <p>Under Section 13 of the Sabah Land Ordinance, it is specifically provided that upon receipt of any application for unalienated country land, it shall be the duty of the Collector to publish a notice calling upon any claimant to native customary rights in such land who is not yet in possession of a registered documentary title to make or send in a statement of his claim within a date to be specified in the notice. If no claim is made the land shall be dealt with as if no such rights existed.</p> <p>Temporary Occupation Licences (TOL) are not allowed to be issued on areas with Native Customary Right (NCR) claims described under the Land Ordinance.</p> <p>Sustainable Forest Management License Agreements (SFMLA) / Long Term License (LTL) holder or its appointed consultant must conduct a Social Baseline Survey of the licensed forest area during the preparation of a 10-year Forest Management Plan to identify or get details of the population and area of the existing village within the Licensed Area. Local community and native people living within and adjacent to the SFMLA area have free access to the forest area for hunting or fruit collection as well as using the forest enterprise's facilities such as school and clinic. They are also allowed to practice the Tagal and Sogit system along the river (a traditional way of fish farming). Ownership in forest reserves is not permitted and, to formalize the presence of communities in forest reserves, Sabah Forestry Department has introduced the use of Occupation Permits (OPs). Although the community participates in deciding the duration of and total area covered by the permit, the final decision remains with Sabah Forestry Department (Toh and Grace 2013).</p> <p>The Director of Forestry may exempt Natives from payment of royalties through the issuance of Form IIA license for any of the following forest produce taken from State Land and Alienated</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
		<p>wak-govt-suffers-10-defeats-in-ncr.html</p> <ul style="list-style-type: none"> Subramaniam, Y. (2015). Ethnicity, Indigeneity and Indigenous Rights: The 'Orang Asli' Experience. QUT Law Review, 71-91. 	<p>Land: the construction or repair of a dwelling house; the construction of fences and temporary huts on any land lawfully occupied; the construction or repair of native boats; the upkeep of fishing stakes and landing places; firewood to be consumed for domestic purposes; or the construction and upkeep of clinics, schools, community halls, places of worship, bridges and any work for the common benefit (including for traditional medicine purposes) of the native inhabitants of the kampong.</p> <p>Sabah is extremely diverse and currently has at least 42 ethnic groups and more than 200 sub-groups, which constitutes a majority of the population in Sabah, but is still considered minorities in a Malaysian perspective (Chan, 2015). A review of the Federal Constitution of Malaysia shows that the indigenous interests of Sabah and Sarawak is protected. Article 153(1) establishes that the Federal Government needs to safeguard the special position of natives in Sabah and Sarawak.</p> <p>In addition, and in respect of the native legal system in place prior to British colonialization, a system of legal pluralism is present in Sabah and Sarawak. Native courts are present as an addition to the existing courts and hears matters regarding breaches of native laws or customs involving native parties.</p> <p>In Sabah, the Native Court is established under the Native Courts Enactment 1992 and is comprised of a court of appeal, a district native court as well as a native court. However, despite a constitutional protection of native custom, it is evident that the indigenous peoples of Sabah suffer from a high level of tenure insecurity.</p> <p>Governed by the Sabah Land Ordinance, the law on land tenure in Sabah is biased towards restriction of indigenous access to land and maximizing land available for private- or plantation development (Toh & Grace, 2006). As an example, this bias is exercised through the requirement of indigenous land to be continually developed to retain land rights; something which</p>

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			<p>contradicts the methods of shifting agriculture and crop rotation often exercised by indigenous communities.</p> <p>An important note on this subject is that Malaysia has adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and thus adheres to some level of international standards. As argued by Subramaniam (2015), while UNDRIP might not be legally enforceable as such, its adoption does bring about some moral and ethical expectations (p. 72). Hence, while perhaps not in direct opposition to the national legal framework, the status and treatment of the indigenous peoples of Sabah in relation to land tenure is in contradiction with Malaysia's international moral obligations.</p> <p><i>Description of Risk:</i></p> <ul style="list-style-type: none"> • The complex nature of land tenure in Sabah and the high level of corruption has made NCR breaches one of the most prominent issues in Malaysia for many years. According to government records, in 2013 there were 32,554 cases of pending land claims in Sabah out of which 2,000 was regarding NCR (Colchester, Jalong, & Alaza, 2013). While this may not signify violations, it shows a highly inefficient system of land registration potentially causing frustration and land conflict. • The Malaysian legal framework on the indigenes of Sabah, provides on the one side recognition and protection of the native customs legal system while also affording incontestable power over land matters to the State authority to promote private land development over NCR rights. Consequently, while there exists little doubt of the encroachment of land development projects on NCR land, both the Federal- and State governments oftentimes operate within the law to make these concessions. However, the customary right to land is increasingly recognized by the courts in Malaysia, which have ruled in favour of the

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
			<p>indigenous groups on many disputes in Sabah and thus indicated that the government's limited interpretation of NCR rights is faulty (Forest People Programme, 2016).</p> <ul style="list-style-type: none"> • There have been several prominent conflicts ending up in the High Court and consequently attracting large amounts of public attention. However, the most famous case has been Genting Plantations vs. the Sungai and Dusun Peoples, which have lasted from 2002-2016. In April 2016, the High Court handed down the decision of the land dispute. While the details of the final settlement are unknown, the court decided to uphold the NCR claims (Forest People Programme, 2016). • In general, the disputes between the Orang Asli and the State- and Federal government have been solved in the courts and the decisions of the courts seems to be respected by both parties. An issue here is that a court case is both protracted and expensive and consequently oftentimes out of reach for the indigenous groups of Malaysia. • There are examples where Natives wanting to register native land have been wrongfully informed by the Lands and Survey Department about the procedure. The wrong forms have instead been provided, with the result that communities have given up their land. Courts have ruled that mistakes have been made and should be corrected by the Lands and Survey Department, but according to a local social NGO this has not yet taken place (personal communication 4; Toh and Grace 2006 and Daily Express 2015). • Insufficient notice given of gazettal of areas gazettal – as well as failure to properly consult forest communities – has resulted in communities losing their customary rights to land when it is gazetted as forest reserve or other protected area or when it is alienated for development projects including

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
			<p>logging (Toh and Grace, 2006). In early 2015 a ruling was made by the High Court that a proposed alienation of land was withdrawn because the Lands and Survey Department had not given sufficient notice to the Natives claiming native land under Section 13 of the Sabah Land Ordinance (Daily Express 2015).</p> <ul style="list-style-type: none"> • Risks exists for native people losing their right to ancestral land despite recognized legislative rights to keep this land. Several court cases are ongoing, but there is still need for changed practices when allocating FMEs. Thus, the risk is considered specified for all timber sources. <p><i>Risk Conclusion</i></p> <p>‘Specified risk’. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p> <p>Sarawak</p> <p><i>Overview of Legal Requirements</i></p> <p>As defined by article 161A of the Constitution, an indigenous person in Sarawak is a person who is born of parents who are both natives. The largest indigenous group is the Iban (31% of Sarawak’s population). Other groups are Bidayuh, Kenyah, Kayan, Kedayan, Murut, Punan, Bisayah, Kelabit, Berawan and Penan (Minority Rights Group International, 2016).</p> <p>The Sarawak legal system constitutionally upholds and protects the native custom of its indigenous people (Colchester, Jalong, & Chuo, 2013). The village heads (tuai rumah or tua elocat), regional chiefs (penghulu) and paramount chiefs (pemancha and temongong) are not only recognized by the government of Sarawak, they receive compensation for their role in maintaining the rule of law. Despite the provision in the constitution allowing</p>

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			<p>the Federal Government to make laws in an emergency or promote uniformity, the indigenous decision-making process remains protected because it is embedded in native customary practices (Colchester, Jalong, & Chuo, 2013; Bulan, 2010).</p> <p>Under the Second Schedule of the FTL document, State land areas subject to Native Customary Rights (NCR) are excluded from the licenced area. These areas may be allowed to be harvested with the prior consent of the NCR land owners and subsequent approval of the Director of Forests. This is not applicable to PF or AL as NCR are deemed to have been extinguished on these areas. Under the Forest Ordinance, at the request of a community, the State can constitute any State land as a Communal Forest (CF). The community can take any forest produce from this area for their domestic use. Communities themselves need to apply for allocation of their land as Community Forest. Due to lack of knowledge of the community, this is often not done, which leads to the possibility that forest land will be allocated as forest concession, or converted to agriculture despite communities using the land. Some cultural areas, such as burial sites, are automatically protected by law.</p> <p><i>Description of Risk</i></p> <p>Although land ownership is legally prescribed and clear, there are issues with Native Customary Rights disputes between forest enterprise/State Government and local community/tribes. Local Indigenous people have constructed blockades against forest enterprises and, similarly, the former have been denied access to their customary lands.</p> <p>"Allegations of NCR breaches in the allocation of leases over forestland have been the most contentious issue in plantation development in Malaysia for the last 20 years. Though federal and state laws enshrine the rights of local people to the land on which they have traditionally depended, affected communities and nongovernmental organizations claim that these rights have</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
			<p>been almost universally abused in the issuance of logging and plantation licenses. NCR conflicts are a feature in almost every new plantation project in Malaysia, with the situation being particularly serious in ... Sarawak" (Forest Trends 2014, p. 52). Despite the requirement that communities be provided with the opportunity to raise their claim to an area to be gazetted, the process of gazettal might however be made public with a discreet notice that is not read by communities, with no claims therefore raised. Thus, tenure rights disputes between forest enterprises and local communities still occur after gazettal of a forest area. Many legal cases are currently in court; in Spring 2014 more than 300 NCR land cases were pending in the High Court; and ten cases had in April 2014 been settled in favour of the native people (Suara Sarawak 2014).</p> <p>The main risks related to traditional- and indigenous rights are a legal framework that appears incapable of adequately protecting indigenous rights as well as State- and Federal governments, who have used this legal framework systematically to prioritize 'public purpose development' over customary land rights.</p> <p>Malaysia has not ratified ILO convention 169 on indigenous and tribal peoples and the national legal framework does not adequately cover all rights of indigenes. While a positive development is traceable in the Malaysian court system, this road to justice oftentimes requires vast amounts time and resources not in the possession of all indigenous communities. Malaysia has adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and thus adheres to some level of international standards. As argued by Subramaniam (2015), while UNDRIP might not be legally enforceable as such, its adoption does bring about some moral and ethical expectations (p. 72). Hence, while perhaps not in direct opposition to the national legal framework, the status and treatment of the indigenous peoples of Sarawak in relation to</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
			<p>land tenure is in contradiction with Malaysia’s international moral obligations.</p> <p>While the Sarawak legal system constitutionally upholds and protects the native custom of its indigenous, it is evident that the indigenous peoples of Sarawak suffer from a high level of tenure insecurity as the law also provides incontestable power over land matters to the State authority to promote private land development over NCR rights. This insecurity is mainly caused by the narrow interpretation of NCR by the Sarawak Government and the large land concessions handed over to private enterprises by the government. Land policy in Sarawak is governed by the Sarawak Land Code 1958. The law limits many aspects of NCR land and the amendments made by former Chief Minister and current governor Taib Mahmud have aggressively promoted private investments and large-scale plantations (Colchester, Jalong, & Chuo, 2013). The creation of the Sarawak Land Consolidation and Rehabilitation Authority SALCRA, section 46 of the Land Code as well as amendments made in 1996 and 1998 has provided the state with absolute power to extinguish NCR to promote private development (Colchester, Jalong, & Chuo, 2013; Bulan, 2010). ILO Convention 169 has not been ratified by Malaysia or Sarawak, but the UNDRIP has been adopted.</p> <p>There is evidence of systematic violations of legal and customary rights of indigenous or traditional peoples. The complex nature of land tenure in Sarawak and the high level of corruption has made NCR breaches one of the most prominent issues in Malaysia for many years. In 2013, Lim (2013) reported that over 200 cases of breaches of NCR rights were pending in Sarawak alone, and cases are being filed faster than they can be resolved (p. 25). Of the 200 cases, 70 were related to plantation development and a clear majority of these were related to oil palm (Lim, 2013). Several of the cases are notable, perhaps the most famous is IOI-Pelita vs. Long Teran Kanan. In</p>

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			<p>1996, IOI-Pelita, and RSPO member, was granted land to a joint venture in the Tinjar area in northern Sarawak; an area that overlapped with NCR land of the Berawan-, Kayan- and Kenyah communities (Colchester, Jalong, & Chuo, 2013). The court first ruled in favour of the native community, however, this decision was later overturned after an appeal thus leaving the indigenous communities without land after a more than 15 year long legal battle (Lucas, 2013). In general, the disputes between the indigenous groups of Sarawak and the State- and Federal governments have been solved in the courts and the decisions of the courts seems to be respected by both parties, however court cases are generally both protracted and expensive and consequently out of reach for some indigenous groups of Malaysia.</p> <p>Based on the high number of NCR issues, the risk is considered specified.</p> <p><i>Risk Conclusion</i></p> <p>'Specified risk'. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p>
1.14 Free prior and informed consent	<p>Peninsular</p> <p><i>Applicable laws and regulations</i></p> <p>N/A - There is no existing legislation in Peninsular Malaysia on FPIC.</p> <p><i>Legal Authority</i></p> <p>N/A</p> <p><i>Legally required documents or records</i></p> <p>N/A</p>	<p>Peninsular</p> <p><i>Non-Government sources</i></p> <ul style="list-style-type: none"> Hoare, A. (2015). Illegal Logging and Related Trade - The Response in Malaysia. [online]. A Chatham House Assessment. Chatham House, London. Available at: http://www.illegal-logging.info/sites/default/files/CHHJ2365_Malaysia_Logging_Research_Pap 	<p>Peninsular</p> <p><i>Overview of Legal Requirements</i></p> <p>There is no legal provision which compels for a Free, Prior and Informed Consent process in Peninsular Malaysia (JKOASM, 2016).</p> <p><i>Risk Conclusion</i></p> <p>N/A</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<p>Sabah</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> Land Ordinance, 1930 (Sabah Cap.68) Available at: http://sabah.gov.my/phb/wp-content/uploads/2011/05/LandOrdinance.pdf Native Court Enactment 1992 Available at: http://www.sabah.gov.my/mlgh/nativecourtsenactment1992.pdf Forest Enactment, 1968 (Part IV Section 41) http://faolex.fao.org/docs/pdf/mal10907.pdf UN Declaration on Rights of Indigenous Peoples 2007 Native Court (Native Customary Laws) Rules 1995 Native Court (Native Customary Laws) Rules 1995 http://www.lawnet.sabah.gov.my/Lawnet/SubsidiaryLegislation/NativeCourts1992%28NativeCustomaryLaws1995%29.pdf Sustainable Forest Management Licence Agreement – Clause 23 State Cultural Heritage (Conservation) Enactment 1997. Available at: http://www.lawnet.sabah.gov.my/Lawnet 	<p>er_A4_01_15_WEB.PDF [Accessed 23 February 2015]</p> <ul style="list-style-type: none"> Malaysia Timber Certification Council (2012), 'Malaysian Criteria and Indicators for Forest Management Certification (Natural Forest)', Principles 3 (on indigenous peoples' rights) and 4 (on local community relations and workers' rights). JAKOA, (2016). Sahabat Alam Malaysia and Jaringan Kampung Orang Asli, (2016). Semenanjung Malaysia Encroachment on Orang Asli Customary Land in Peninsular Malaysia CAUSES & SOLUTIONS: http://loggingoff.info/wp-content/uploads/2017/02/2016-SAM-JKOASM-Encroachment-on-Orang-Asli-customary-land.pdf <p>Sabah</p> <p><i>Government sources</i></p> <ul style="list-style-type: none"> forest.sabah.gov.my (N.Y.) Sabah Forestry Department- Official portal. Available at: http://www.forest.sabah.gov.my/discovers/policies/forest-legislation Sabah Forestry Department, (2013). Sabah TLAS document (revised as at 06 March 2013). http://www.forest.sabah.gov.my/image 	<p>Sabah</p> <p><i>Overview of Legal Requirements</i></p> <p>Unlike in Peninsular Malaysia, the Sabah Land Ordinance has specific provisions to address the regulation of the native customary land rights related to FPIC.</p> <p>Clearance of natural forest for plantations requires the consent of the community. NCR laws impose fines (sogit) for transgressions such as unlawful entry into a protected forest and for clearance (without consent of the community) of forest areas with NCR claims. Discussion, consultation and consent from Natives are required if NCR or claims of NCR exist.</p> <p>In Sabah Native courts are empowered to try offences and determine the level of compensation required (Lim 2013).</p> <p>SFMLA/LTL holder or its appointed consultant conducts Social Baseline Survey of the licensed area during the preparation of a 10-year Forest Management Plan to identify or get details of the population and area of the existing village within the Licensed Area.</p> <p><i>Description of Risk</i></p> <ul style="list-style-type: none"> Despite the Land Ordinance requiring communities to be informed through a formal notice of land being allocated to FMEs, this has failed to happen. An example is in early 2015 a ruling was made by the High Court that a proposed alienation of land was withdrawn because the Lands and Survey Department had not given sufficient notice to the Natives claiming native land under Section 13 of the Sabah Land Ordinance (Daily Express 15). The Daily Express (2015) further refer to how large areas of customary land in the past has been lost due to insufficient notice to the Natives.

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	<p>t/SabahLaws/StateLaws/CulturalHeritage%28Conservation%29Enactment1997.pdf</p> <p><i>Legal authority</i></p> <ul style="list-style-type: none"> • Native court • Sabah Forestry Department • Lands and Surveys Department <p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> • Long term timber licence agreement • Sustainable Forest Management License Agreement • Record on decision by the Civil Court and Native Court • Contract agreement with local communities with use rights for use of land <p>Sarawak</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> • Sarawak Forest Ordinance (Cap. 126) - Part II (Forest reserves), Part III (Protected Forests) and Part IV (Communal Forests) http://www.sarawakforestry.com/pdf/laws/forests_ordinance_chapter_126.pdf • Sarawak Land code (Cap. 81) (grants, leases, native customary right and communal reserves) 	<p>s/pdf/en/flegt/TLAS4.pdf, Accessed 13 February 2018.</p> <p><i>Non-government sources</i></p> <ul style="list-style-type: none"> • Lim, T. W. (2013). <i>Malaysia: Illegalities in Forest Clearance for Large-Scale Commercial Plantations</i> – report prepared for Forest Trends. Accessed 24 February 2015 at http://www.forest-trends.org/publication_details.php?publicationID=4195. • Toh, S. M and Grace, K. T. (2006). Understanding forest tenure in South and Southeast Asia, Case study: Sabah Forest Ownership. [online]. FAO. Available at: ftp://ftp.fao.org/docrep/fao/009/j8167e/j8167e10.pdf • Dailyexpress.com.my (2015). Natives must be told, rules court. [online]. Daily Express 2015. Available at: http://www.dailyexpress.com.my/news.cfm?NewsID=96067 • Expert consultation conducted by NEPCon, 2015 <p>Sarawak</p> <p><i>Government sources</i></p> <ul style="list-style-type: none"> • sarawakforestry.com (N.Y.) Sarawak Forestry Corporation (SFC). [online]. 	<p>As there is insufficient evidence available to indicate the risk is low according to the thresholds, a precautionary approach must be applied and as such, a specified risk has been found for this indicator.</p> <p><i>Risk Conclusion</i></p> <p>‘Specified risk’. Threshold (2) is met Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p> <p>Sarawak</p> <p><i>Overview of Legal Requirements</i></p> <p>Unlike in Peninsular Malaysia, the Sarawak Land Code has specific provisions to address the regulation of the native customary land rights related to FPIC.</p> <p>Under the Second Schedule of the FTL document, State land areas subject to Native Customary Rights (NCR) are excluded from the licenced area. These areas may be allowed to be harvested with the prior consent of the NCR land owners and subsequent approval of the Director of Forests.</p> <p>This is not applicable to PF or AL as NCR are deemed to have been extinguished on these areas (Sarawak Land Code, Chapter 8).</p> <p><i>Description of Risk</i></p> <p>Although land ownership is legally prescribed and clear, there are issues with Native Customary Rights disputes between forest enterprise/State Government and local community/tribes (Sarawak Gone (N.Y)). There are known cases whereby the land in dispute between the local indigenous people and the forest enterprise is being harvested without proper consultation taking place.</p>

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	<p>http://faolex.fao.org/docs/pdf/mal134804.p</p> <ul style="list-style-type: none"> Sarawak Native Court Ordinance 1992 Sarawak Native Court Rules 1993 Forest Rules 1962. Available at: http://www.sarawakforestry.com/pdf/laws/the_forest_rules.pdf <p><i>Legal authority</i></p> <ul style="list-style-type: none"> Sarawak Forestry Department (SFD) Sarawak Forestry Corporation <p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> Forest timber license Civil court decision on legal or customary tenure or use right <p>Contract agreement with local communities with use rights for use of land.</p>	<p>Available at: http://www.sarawakforestry.com/html/sustainable.html</p> <ul style="list-style-type: none"> forestry.sarawak.gov.my (N.Y.) Sarawak Forestry Department (SFD). [online]. Available at: http://www.forestry.sarawak.gov.my/ <p><i>Non-governmental sources</i></p> <ul style="list-style-type: none"> Expert consultation conducted by NEPCon, 2015 Global Witness (2013). <i>Inside Malaysia's Shadow State</i>. Available at https://www.globalwitness.org/campaigns/forests/inside-malaysias-shadow-state/. Sarawak Gone (N.Y). Native Customary Rights. [Online]. Available at: http://www.sarawakgone.cc/issues/ncr/. 	<p>Free, Prior and Informed Consent (FPIC) is generally poorly understood by forest enterprises and legal requirements do not specifically mention the concept. Proper consultation, which requires the agreement of all the parties involved, is known to be poor considering the many blockades that occur in the State and displacement of local indigenous people from their customary lands (Global Witness 2013).</p> <p>There is a risk of violation of FPIC by third parties and therefore the risk is considered specified for State Land.</p> <p><i>Risk Conclusion</i></p> <p>'Specified risk' for State Land. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p> <p>Not applicable for the Permanent Reserved Forest and Alienated Land.</p>
1.15 Indigenous peoples rights	<p>Peninsular</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> Federal Constitution of Malaysia 1963 - http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Constitution%20(BI%20text).pdf Aboriginal Peoples Act 1954. Available at: http://www.kptg.gov.my/sites/default/file 	<p>Peninsular:</p> <p><i>Government sources</i></p> <ul style="list-style-type: none"> PERKESO. (n.d.). Social Security Principles. Retrieved August 10, 2016, from www.perkeso.gov.my - http://www.perkeso.gov.my/en/social-security-protection/social-security-principles.html 	<p>Peninsular</p> <p><i>Overview of Legal Requirements</i></p> <p>Peninsular Malaysia is inhabited by the Orang Asli, who is "... the most impoverished and marginalized community in Malaysia" (Subramaniam, 2015, p. 73). The Orang Asli enjoys two statuses: Orang Asli as Malaysian citizens and Orang Asli as indigenous peoples (Nicholas, 2010). The Federal Constitution provides for Orang Asli rights to property, association and religion as well as a set of special rights and protections (Nicholas, 2010, p. 5). Despite of this constitutional and statutory</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<p>s/article/Act%20134-Oboriginal%20Peoples%20Act.pdf</p> <ul style="list-style-type: none"> • Forest Rules – Rules 28 to 30 • Land Acquisition Act 1960 - http://www.kptg.gov.my/sites/default/files/article/Act%20486-PENGAMBILAN.pdf • Malaysia Federal Constitution - http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Consti%20(BI%20text).pdf • National Forestry Act 1984. Available at: http://extwprlegs1.fao.org/docs/pdf/mal3252.pdf • National Forestry Policy 1978. Available at: http://www.eldis.org/go/home&id=25050&type=Document#.WJ3B0_nhCUk • National Land Code. Available at: http://www.kptg.gov.my/sites/default/files/article/NLC1956DIGITAL-VER1.pdf • Native laws and customs • United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) - http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf 	<p><i>Non-government sources</i></p> <ul style="list-style-type: none"> • Adong bin Kuwau & Ors v Kerajaan Negeri Johor [1998] 2 MLJ 158 (Court of Appeal); Superintendent of Land & Surveys Miri Division & Anor v Madeli bin Salleh (suing as Administrator of the Estate of the deceased, Salleh bin Kilong) [2008] 2 MLJ 677 (Federal Court). • Aiken, R., & Leigh, C. H. (2011). In the Way of Development: Indigenous Land-Rights in Malaysia. The Geographical View, 1-127. • Amnesty International. (2016). Amnesty International 2015/16: The State of the World's Human Rights. Amnesty International. • Bahrin, J. S. (2016). Self-Regulation and Occupational Safety and Health Act (OSHA) 1994. Dinner talk between the Society of Occupational and Environmental Medicine of the Malaysian Medical Association (SOEM-MMA), the Malaysia Medical Association (MMA) and the Executive Director of Malaysian Employers Federation (MEF). (pp. 1-2). Kuala Lumpur: Malaysian Employers Federation. • Duncan, C. R. (2004). Legislating Modernity among the Marginalized. In C. R. Duncan (Ed.), <i>Civilizing the Margins: South- east Asian</i> 	<p>protection, the Orang Asli faces difficulties achieving their rights (Subramaniam, 2015). In Peninsular Malaysia (PM), the main statute in relation to customary rights is the Aboriginal Peoples Act 1954, which allows for the designation of aboriginal areas. However, it also provides for revocation of any such designated areas. In addition, the Orang Asli cannot obtain individual titles to their land and thus occupies the status of ‘tenants’ subject to the will of their landlord (Aiken & Leigh, 2011, p. 472). The Federal Constitution places the welfare of the Aboriginal Peoples as a federal responsibility, who in turn acts as landlord. In addition, and according to the National Land Code 1965, the State government have authority over all state land except for alienated- or reserved land. Consequently, the State controls all aboriginal land not declared customary rights land. The laws of Malaysia provide the State authority with incontestable power to seize private land for public development purposes. This legislation has been used systematically by both the Federal- and State government to prioritize development projects over indigenous/customary claims to land, consequently bringing about forceful dislocation, dispossession and marginalization (Duncan, 2004). In addition to the issues of land access, the Aboriginal Peoples Act 1954 transfers many administrative duties and rights of the Orang Asli to the Federal- and State governments, including the right to determine whether a person is Orang Asli, appointment of Orang Asli heads (Batin) and restriction of any material whether written or photographic deemed harmful by the relevant government (Subramaniam, 2015, p. 80). Consequently, the term Orang Asli places both makes their identity, leadership and ethnicity as a state responsibility (Subramaniam, 2015).</p> <p>There exists a legal ambiguity in relation to the Orang Asli, as the legal framework on the one side provides recognition and protection on the special status of indigenous communities, while also affording incontestable power over land matters to the State authority as well as a paternalistic transfer of rights away</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<p><i>Legal authority</i></p> <ul style="list-style-type: none"> State Forestry Department Department of Orang Asli Affairs (JAKOA) State Land Office Ministry of Rural Development - Department of Orang Asli Development (JAKOA) - Government agency overseeing the affairs of the Orang Asli “... for the protection, well-being or advancement of the aboriginal peoples of the Malay Peninsula (including the reservation of land) or the reservation to aborigines of a reasonable proportion of suitable positions in the public service” (Federal Constitution, Article 8(5)). Ministry of Home Affairs - The National Registration Department (NRD) - Responsible for the registration of important events of all Malaysians, including birth, adoption, marriage, divorce and death. NRD also distributes Identification Cards and determines citizenship status. <p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> Gazettal record of permanent reserved forest (PRF) Concessionaires' agreements Forest harvest license 	<p>Government Policies for the Development of Minorities (pp. 1-23). Ithaca, NY: Cornell University Press.</p> <ul style="list-style-type: none"> Hoare, A. (2015). Illegal Logging and Related Trade - The Response in Malaysia. [online]. A Chatham House Assessment. Chatham House, London. Available at: http://www.illegal-logging.info/sites/default/files/CHHJ2365_Malaysia_Logging_Research_Paper_A4_01_15_WEB.PDF [Accessed 23 February 2015] Human Rights Commission of Malaysia (2013) Report Of The National Inquiry Into The Land Rights Of Indigenous Peoples: http://nhri.ohchr.org/EN/Themes/BusinessHR/Business%20Womens%20and%20Childrens%20Rights/SUHAKAM%20BI%20FINAL.CD.pdf Human Rights Watch. (2011). They Deceived Us at Every Stage: Abuse of Cambodian Domestic Workers Migrating to Malaysia. Human Rights Watch. IWGEA 2015: 2015 yearbook article on indigenous peoples in Malaysia: http://www.iwgia.org/images/stories/sections/regions/asia/documents/IW2015/Malaysia_IW2015_web.pdf iwgia.org (2015). The indigenous world. [online]. IWGIA. Available at: 	<p>from the Orang Asli. Consequently, while there exists little doubt of the encroachment of land development projects on customary Orang Asli land, both the Federal- and State governments oftentimes operate within the law to make these concessions. However, the Orang Asli's customary right to land is increasingly recognized by the High Courts in Malaysia, which have ruled in favour of the Orang Asli in many disputes (Nicholas, 2010, pp. 7-9). No court rulings have so far led to a change in legislation.</p> <p>An important note on this subject is that Malaysia has adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and thus adheres to some level of international standards. As argued by Subramaniam (2015), while UNDRIP might not be legally enforceable as such, its adoption does bring about some moral and ethical expectations (p. 72). Hence, while perhaps not in direct opposition to the national legal framework, the status and treatment of the Orang Asli is in contradiction with Malaysia's international moral obligations.</p> <p>In Peninsular Malaysia, the Permanent Reserved Forest belongs to the State government where State Forestry Department is responsible for managing the area. The Forestry Department is responsible for maintaining records or maps of the area inhabited by indigenous people outside or inside the forest reserved area.</p> <p>Under the National Forestry Act 1984, the respective State Forestry Director ensures that areas gazetted as Aboriginal Reserves and Aboriginal Areas are excluded from areas planned for harvesting. However, these areas may be allowed to be harvested with prior consent of the Jabatan Kemajuan Orang Asli, Malaysia (JAKOA; Department of Orang Asli Development, Malaysia) and subsequent approval of the State Authority concerned. In addition, Indigenous people can collect forest produce for their own consumption. Licences and permits must contain provisions to ensure resources are not diminished and</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<ul style="list-style-type: none"> Entry permits Road permits Use permits Maps of aboriginal reserves/area/customary land area/inhabited place <p>Records of land reserved for aboriginal peoples and natives.</p> <ul style="list-style-type: none"> Records of areas predominantly or exclusively inhabited by aboriginal peoples or natives Decisions of the Civil Courts pertaining to legal or customary title, tenure or use rights <p>Evidence of any dispute and land claims</p> <p>Sabah</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> Aboriginal Peoples Act 1954 - http://www.kptg.gov.my/sites/default/files/article/Act%20134-Oboriginal%20Peoples%20Act.pdf Environmental Protection Enactment 2002 Forest Enactment, 1968. (Part IV Section 41) Available at: http://faolex.fao.org/docs/pdf/mal10907.pdf 	<p>http://www.iwgia.org/images/stories/sections/regions/asia/documents/IW2015/Malaysia_IW2015_web.pdf</p> <ul style="list-style-type: none"> Lim, T. W. (2013). <i>Malaysia: Illegalities in Forest Clearance for Large-Scale Commercial Plantations</i> – report prepared for Forest Trends. Accessed 24 February 2015 at http://www.forest-trends.org/publication_details.php?publicationID=4195. Malay Mail Online, (2016). Respect the legal rights of the Orang Asli — Steven Thiru. Available at: http://www.themalaymailonline.com/what-you-think/article/respect-the-legal-rights-of-the-orang-asli-steven-thiru#1qVJcCVOv4U7rcol.99, accessed 12 February 2018. Nicholas, C. (2010). <i>Orang Asli: Rights, Problems, Solutions</i>. Kuala Lumpur: The Human Rights Commission of Malaysia (SUHAKAM). Othman, S. A., & Rahim, R. A. (2014). <i>Migrant Workers in Malaysia: Protection of Employers</i>. <i>Pertanika - Social Sciences & Humanities</i>, 271-282. Pusat Komnas. (2016). <i>Malaysia Racial Discrimination Report 2015</i>. Petaling Jaya, Selangor: Pusat Komnas 	<p>affirm the rights and interests of aboriginal peoples and natives on the land.</p> <p>About Indigenous Peoples, the schedules of the National Land Code (which applies only to Peninsular Malaysia) refer to Indigenous areas and Indigenous reserves, requiring any dealings relating to such areas to make note of the number and date the areas were gazetted as such (e.g. Sch I, Form 5B).</p> <p><i>Description of Risk</i></p> <ul style="list-style-type: none"> According to Chatham House, 'Most permanent reserved forests in Peninsular Malaysia are certified under the Malaysian Timber Certification Scheme (MTCS), under which forest management plans are audited. Auditing covers the recognition of aboriginal land where relevant. However, a significant problem is that many customary lands and aboriginal reserves are not gazetted and thus are not recognized by the forestry department; for this reason, they are not considered in the issuance of licences or subsequent management plans. Despite legal recognition, there are numerous examples where the customary rights of indigenous peoples have been violated, with many cases filed in the civil courts. As a result, many judicial decisions have been taken to integrate customary law into the modern legal framework. However, the policy and legislative reforms necessary to implement those decisions have not been made. This has implications for the legality of timber harvested from land where indigenous peoples claim their customary land rights.' (Hoare, 2015, p. 13). There have been cases of Orang Asli's claims to customary lands not being marked or identified in the cadastral maps of the Department of Survey and Mapping Malaysia or the Jabatan Ukur dan Pemetaan Malaysia (JUPEM). This has

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<ul style="list-style-type: none"> Land Acquisition Act 1960 - http://www.kptg.gov.my/sites/default/files/article/Act%20486-PENGAMBILAN.pdf Land Ordinance, 1930 (Sabah Cap.68). Available at: http://sabah.gov.my/phb/wp-content/uploads/2011/05/LandOrdinance.pdf National Land Code (Act No. 56 of 1965) - http://www.kptg.gov.my/sites/default/files/article/NLC1956DIGITAL-VER1.pdf Native Court (Native Customary Laws) Rules 1995. Available at: http://www.gavel-publications.com/assets/toc/9789833519330.pdf Native Court Enactment 1992. Available at: http://www.sabah.gov.my/mlgh/nativecourtsenactment1992.pdf State Cultural Heritage (Conservation) Enactment 1997. Available at: http://www.lawnet.sabah.gov.my/Lawnet/SabahLaws/StateLaws/CulturalHeritage%28Conservation%29Enactment1997.pdf Sustainable Forest Management Licence Agreement – Clause 23 	<p>Malaysia - Non-Discrimination Programme.</p> <ul style="list-style-type: none"> Short, A., Pietropaoli, I., & Dhanarajan, S. (2015). Business & human rights in Malaysia: A report from Kuala Lumpur. Business & Human Rights Resource Centre. Subramaniam, Y. (2015). Ethnicity, Indigeneity and Indigenous Rights: The 'Orang Asli' Experience. QUT Law Review, 71-91. US Department of Labor. (2014). List of Goods Produced by Child Labor or Forced Labor. Washington D.C.: US Department of Labor. US Department of State. (2016). 2015 Trafficking in Persons Report. US Department of State. Villadiego, L. (2015). Palm oil: why do we care more about orangutans than migrant workers? The Guardian. Yates, B. (2014, May 4). Displaced Indigenous Malaysians Face Uncertain Future. Retrieved from ourworld.unu.edu - http://ourworld.unu.edu/en/displaced-indigenous-malaysians-face-uncertain-future nhri.ohchr.org (2013) <i>Report of the national inquiry into the land rights of indigenous peoples</i>. [online]. Human 	<p>meant that these claims have not been considered when, e.g., a new plantation is to be licensed.</p> <p>The Department of Orang Asli Development (JAKOA) has admitted having insufficient resources to deal with applications for gazettal, and applications have been found not to be forwarded to the right departments, and have thus not been processed. Furthermore, many Orang Asli witnesses – whose villages were included in logging concession areas within forest reserves – have testified that logging licensees had destroyed their sacred areas and old grave sites that had existed for generations, thus, eliminating evidence of their continued occupation in the area (HRCM 2013).</p> <ul style="list-style-type: none"> Some mechanisms are in place for the resolution of disputes but these deal mostly with disputes between holders of customary rights. The village development and security committees provide a mechanism for resolving conflicts over property rights at the village level. For disputes between communities and licence holders and/or the Government, resolution can be sought through the courts or mediators. Such conflicts are widespread. The indigenous people in Peninsular Malaysia are supported by NGOs, and cases are continually being filed in the courts (IWGEA 2015; HRCM 2013). Conflicts in forest reserves have decreased since 2012, since forest management has been more engaged with people. This has not been the case when large-scale conversion is taking place. The issue of indigenous rights is less of an issue for plantations on Alienated Land since land claims are normally over areas that are still covered by natural forest. <p>The legal ambiguity mentioned above has caused multiple conflicts, consequently generating several high-profile cases of</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<ul style="list-style-type: none"> United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) - http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf <p><i>Legal authority</i></p> <ul style="list-style-type: none"> Native court Sabah Forestry Department Lands and Surveys Department <p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> Records of consultation with natives Long term timber licence agreement Sustainable Forest Management License Agreement Record on decision by the Civil Court and Native Court Contract agreement with local communities with use rights for use of land Established Native Customary Rights <p>Sarawak</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> Forest Ordinance. Available at: http://www.sarawakforestry.com/pdf/laws/forests_ordinance_chapter_126.pdf 	<p>Rights Commission of Malaysia. Available at: http://nhri.ohchr.org/EN/Themes/BusinessHR/Business%20Womens%20and%20Childrens%20Rights/SUHAKAM%20BI%20FINAL.CD.pdf</p> <ul style="list-style-type: none"> Weiss, M. L. (2006). Protest and Possibilities: Civil Society and Coalitions for Political Change in Malaysia. Stanford: Stanford University Press. <p>Sabah</p> <p><i>Government sources</i></p> <ul style="list-style-type: none"> forest.sabah.gov.my (N.Y.) Sabah Forestry Department- Official portal. Available at: http://www.forest.sabah.gov.my/discovers/policies/forest-legislation Sabah Forestry Department, (2013). Sabah TLAS document (revised as at 06 March 2013). http://www.forest.sabah.gov.my/images/pdf/en/flegt/TLAS4.pdf, Accessed 13 February 2018. <p><i>Non-government sources</i></p> <ul style="list-style-type: none"> Lim, T. W. (2013). <i>Malaysia: Illegalities in Forest Clearance for Large-Scale Commercial Plantations</i> – report prepared for Forest Trends. Accessed 24 February 2015 at 	<p>violation of customary rights, which have ended in the Malaysian High Courts.</p> <ul style="list-style-type: none"> Koperasi Kijang Mas v Kerajaan Negeri Perak Important case from the Ipoh High Court, where it was decided that the Orang Asli had exclusive rights to the forest produce in approved Orang Asli areas. An important point here was that these rights were in force despite the land only being approved for reserve and not yet gazetted (Nicholas, 2010, pp. 7-8) Adong bin Kuwau & Ors v State Government of Johor Case from 1997 in the Johor High Court, where compensation was awarded 52 Jakuns for loss of ancestral lands. Despite not holding an official title to the land, the Johor High Court recognized the customary rights of the Jakuns to use the land. Hence, the case implied that aboriginal peoples have right to hunt and gather on lands other than those reserved for indigenes (Nicholas, 2010, p. 8) Sagong Tasi & 6 Ors v Kerajaan Negeri Selangor & 3 Ors In 2002, the Shah Alam High Court ruled that the Temuans had propriety rights over their customary lands and thus should be compensated according to the rules of the Land Acquisition Act 1960. The Temuans had been evicted from their land to make way for a highway to the Kuala Lumpur International Airport in 1995 (Nicholas, 2010, pp. 9-10). This case set an important precedent and received a lot of media attention because the defendants were both private companies, Selangor State and the Federal Government. In general, the disputes between the Orang Asli and the State- and Federal governments have been solved in the courts and the decisions of the courts seems to be respected by both parties. As accounted for above, it seems

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	<ul style="list-style-type: none"> Land Acquisition Act 1960 - http://www.kptg.gov.my/sites/default/files/article/Act%20486-PENGAMBILAN.pdf Land Code 1958 (Chapter 8). Available at: http://faolex.fao.org/docs/pdf/mal134804.pdf Malaysia Federal Constitution - http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Constitution%20(BI%20text).pdf National Land Code (Act No. 56 of 1965) - http://www.kptg.gov.my/sites/default/files/article/NLC1956DIGITAL-VER1.pdf Native Court Ordinance 1992 - http://lawnet.sarawak.gov.my/lawnet_file/Ordinance/ORD_CAP.%2022%20watermark.pdf Native Court Rules 1993 - http://www.nativecourt.sarawak.gov.my/modules/web/page.php?id=63&menu_id=113&sub_id=120 Sarawak Forest Ordinance (Cap. 126) - Part II (Forest reserves), Part III (Protected Forests) and Part IV (Communal Forests) Sarawak Land code (Cap. 81) (grants, leases, native customary right and communal reserves) - 	<p>http://www.forest-trends.org/publication_details.php?publicationID=4195.</p> <ul style="list-style-type: none"> Toh, S. M and Grace, K. T. (2006). <i>Understanding forest tenure in South and Southeast Asia, Case study: Sabah Forest Ownership</i>. [online]. FAO. Available at: ftp://ftp.fao.org/docrep/fao/009/j8167e/j8167e10.pdf Dailyexpress.com.my (2015). <i>Natives must be told, rules court</i>. [online]. Daily Express 2015. Available at: http://www.dailyexpress.com.my/news.cfm?NewsID=96067 Chan, J. (2015, February 13). Sabah lists 42 ethnic groups to replace 'lain lain' race column. Retrieved from www.themalaymailonline.com: https://web.archive.org/web/20160601095050/http://www.themalaymailonline.com/malaysia/article/sabah-lists-42-ethnic-groups-to-replace-lain-lain-race-column Colchester, M., Jalong, T., & Alaza, L. (2013). Marcus Colchester, Thomas Jalong and Leonard Alaza. In M. Colchester, & S. Chao, Conflict or Consent? The oil palm sector at a crossroads (pp. 259-282). FPP, Sawit Watch and TUK INDONESIA. Forest Peoples Programme. (2016, April 8). Tongod villagers secure 	<p>that the courts have been favourable to the Orang Asli. However, a court case is both protracted and expensive and consequently oftentimes out of reach for the Orang Asli, who are both few and politically disorganized (Weiss, 2006).</p> <p>Based on the risk of violating the customary rights of the Indigenous people, the risk is considered specified.</p> <p><i>Risk Conclusion</i></p> <p>'Specified risk'. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p> <p>Sabah</p> <p><i>Overview of Legal Requirements</i></p> <p>Native customary rights (NCR) are accepted as a source of law in Malaysia's constitution and have been upheld as valid by the courts. The specifics of customary laws vary among the dozens of tribal communities in Malaysia but several general principles have widespread application. A community (kampung) claims general rights over its traditional territory (wilayah adat) up to one day's walk from the main settlement. The territory is defined along natural boundaries such as streams and ridges.</p> <p>Native customary rights cover:</p> <ol style="list-style-type: none"> land possessed by customary tenure; land planted with fruit trees, when the number of fruit trees amounts to fifty and upwards to each hectare; isolated fruit trees, and sago, rotan, or other plants of economic value, that the claimant can prove to the satisfaction of the Collector were planted or upkept and regularly enjoyed by him as his personal property;

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	<p>https://tiyungdayak.files.wordpress.com/2010/11/land-code-1958.pdf</p> <ul style="list-style-type: none"> • Sarawak Native Court Ordinance 1992 • Sarawak Native Court Rules 1993 • United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) - http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf <p><i>Legal authority</i></p> <ul style="list-style-type: none"> • Sarawak Forestry Department (SFD) • Sarawak Forestry Corporation <p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> • Forest timber license • Civil court decision on legal or customary tenure or use right • Contract agreement with local communities with use rights for use of land 	<p>settlement of land claim with palm oil developer Genting Plantations. Retrieved from www.forestpeoples.org: http://www.forestpeoples.org/topics/palm-oil-rspo/news/2016/04/tongod-villagers-secure-settlement-land-claim-palm-oil-developer-g</p> <ul style="list-style-type: none"> • Subramaniam, Y. (2015). Ethnicity, Indigeneity and Indigenous Rights: The Orang Asli Experience. QUT L. Rev., 15, 71. • Expert consultation conducted by NEPCon, 2015 • Daily Express 2015: Natives must be told, rules court. http://www.dailyexpress.com.my/news.cfm?NewsID=96067 <p>Sarawak</p> <p><i>Government sources</i></p> <ul style="list-style-type: none"> • Sarawak Forestry Corporation (SFC) http://www.sarawakforestry.com/html/sustainable.html • Sarawak Forestry Department (SFD) http://www.forestry.sarawak.gov.my/ <p><i>Non-government sources</i></p> <ul style="list-style-type: none"> • Bulan, R. (2010). Indigenous Peoples and the Right to Participate in. International Expert Seminar on 	<p>d) grazing land that the claimant agrees to keep stocked with a sufficient number of cattle or horses to keep down the undergrowth;</p> <p>e) land that has been cultivated or built on within three years;</p> <p>f) burial grounds or shrines;</p> <p>g) usual rights of way for men or animals from rivers, roads, or houses to any or all of the above.</p> <p>Within a community, individual fields (ladang) and orchards (dusun) are assigned to families belonging to the community that originally cleared the forest and planted the area. Certain areas (particularly village water catchments) are zoned as protected forest (hutan tagal) which is subject to various controls, with clearance not permitted. It is accepted that outsiders may enter the unprotected parts of a community's territory for hunting or the collection of forest produce. However, clearance of natural forest for plantations requires the consent of the community. Fines (sogit) can be imposed for transgressions such as unlawful entry into a protected forest and for forest clearance without the consent of the community. In Sabah and Sarawak native courts are empowered to try offences and determine the level of compensation required (Lim, 2013).</p> <p>Communities can gain communal property rights through applying for an indigenous reserve. This differs from communal title in that the community cannot transfer these rights to other parties. There are also restrictions on land use, and a Board of Trustees must be established to manage the indigenous reserve (Toh and Grace, 2006). Communal titles are given out to a group of Natives, with attached rules as to use, i.e. no individual title to be issued, specific land size allocation per family, specific crop to be grown, and to be managed by a Board of Trustees.</p> <p>Under Section 13 of the Sabah Land Ordinance, it is specifically provided that upon receipt of any application for unalienated</p>

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		<p>Indigenous Peoples and The Right to Participate in Decision Making. Chang Mai, Thailand.</p> <ul style="list-style-type: none"> • Colchester, M., Jalong, T., & Chuo, W. M. (2013). Sarawak: IOI-Pelita and the community of Long Teran Kanan. In M. Colchester, & S. Chao, Conflict or Consent? (pp. 232-258). FPP, Sawit Watch and TUK INDONESIA. • Lawson, S. (2014). Consumer Goods and Deforestation: An Analysis of the Extent and Nature of Illegality in Forest Conversion for Agriculture and Timber Plantations. Forest Trends. Accessed 6 March 2015 at http://www.forest-trends.org/documents/files/doc_4718.pdf. • Lim, T. W. (2013). <i>Malaysia: Illegalities in Forest Clearance for Large-Scale Commercial Plantations</i> – report prepared for Forest Trends. Accessed 24 February 2015 at http://www.forest-trends.org/publication_details.php?publicationID=4195. • Lucas, J. (2013, November 26). Forest people 'disillusioned' in battle to protect land. Retrieved from Thomson Reuters Foundation News: http://news.trust.org/item/20131126101312-463ag/ 	<p>country land, it shall be the duty of the Collector to publish a notice calling upon any claimant to native customary rights in such land who is not yet in possession of a registered documentary title to make or send in a statement of his claim within a date to be specified in the notice. If no claim is made the land shall be dealt with as if no such rights existed.</p> <p>Temporary Occupation Licences (TOL) are not allowed to be issued on areas with Native Customary Right (NCR) claims described under the Land Ordinance.</p> <p>Sustainable Forest Management License Agreements (SFMLA) / Long Term License (LTL) holder or its appointed consultant must conduct a Social Baseline Survey of the licensed forest area during the preparation of a 10-year Forest Management Plan to identify or get details of the population and area of the existing village within the Licensed Area. Local community and native people living within and adjacent to the SFMLA area have free access to the forest area for hunting or fruit collection as well as using the forest enterprise's facilities such as school and clinic. They are also allowed to practice the Tagal and Sogit system along the river (a traditional way of fish farming). Ownership in forest reserves is not permitted and, to formalize the presence of communities in forest reserves, Sabah Forestry Department has introduced the use of Occupation Permits (OPs). Although the community participates in deciding the duration of and total area covered by the permit, the final decision remains with Sabah Forestry Department (Toh and Grace, 2013).</p> <p>The Director of Forestry may exempt Natives from payment of royalties through the issuance of Form IIA license for any of the following forest produce taken from State Land and Alienated Land: the construction or repair of a dwelling house; the construction of fences and temporary huts on any land lawfully occupied; the construction or repair of native boats; the upkeep of fishing stakes and landing places; firewood to be consumed for domestic purposes; or the construction and upkeep of clinics,</p>

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		<ul style="list-style-type: none"> Minority Rights Group International. (2016). Malaysia - Indigenous peoples and ethnic minorities in Sarawak. Retrieved from www.minorityrights.org: http://minorityrights.org/minorities/indigenous-peoples-and-ethnic-minorities-in-sarawak/ Expert consultation conducted by NEPCon (2015) Sarawak Gone, undated. Native Customary Rights. Available: http://www.sarawakgone.cc/issues/ncr/, accessed 12 February 2018. Suara Sarawak (2014) Sarawak gov't suffers 10 defeats in NCR land cases: http://www.barubian.net/2014/04/sarawak-govt-suffers-10-defeats-in-ncr.html Subramaniam, Y. (2015). Ethnicity, Indigeneity and Indigenous Rights: The 'Orang Asli' Experience. QUT Law Review, 71-91. 	<p>schools, community halls, places of worship, bridges and any work for the common benefit (including for traditional medicine purposes) of the native inhabitants of the kampong.</p> <p><i>Description of Risk</i></p> <ul style="list-style-type: none"> There are examples where Natives wanting to register native land have been wrongfully informed by the Lands and Survey Department about the procedure. The wrong forms have instead been provided, with the result that communities have given up their land. Courts have ruled that mistakes have been made and should be corrected by the Lands and Survey Department, but according to a local social NGO this has not yet taken place (Expert consultation, 2015). Insufficient notice given of gazettal of areas gazettal – as well as failure to properly consult forest communities – has resulted in communities losing their customary rights to land when it is gazetted as forest reserve or other protected area or when it is alienated for development projects (Toh and Grace, 2006). In early 2015 a ruling was made by the High Court that a proposed alienation of land was withdrawn because the Lands and Survey Department had not given sufficient notice to the Natives claiming native land under Section 13 of the Sabah Land Ordinance (Daily Express http://www.dailyexpress.com.my/news.cfm?NewsID=96067). <p>Risk exists for indigenous people losing their right to ancestral land despite recognized legislative rights to keep this land. Several court cases are ongoing, but there is still need for changed practices when allocating FMEs. Thus, the risk is considered specified for all timber sources.</p> <p><i>Risk Conclusion</i></p> <p>'Specified risk'. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
			<p>Sarawak</p> <p><i>Overview of Legal Requirements</i></p> <p>As defined by article 161A of the Constitution, an indigenous person in Sarawak is a person who is born of parents who are both natives. The largest indigenous group is the Iban (31% of Sarawak's population). Other groups are Bidayuh, Kenyah, Kayan, Kedayan, Murut, Punan, Bisayah, Kelabit, Berawan and Penan (Minority Rights Group International, 2016).</p> <p>The Sarawak legal system constitutionally upholds and protects the native custom of its indigenous people (Colchester, Jalong, & Chuo, 2013). The village heads (tuai rumah or tua elocat), regional chiefs (penghulu) and paramount chiefs (pemancha and temongong) are not only recognized by the government of Sarawak, they receive compensation for their role in maintaining the rule of law. Despite the provision in the constitution allowing the Federal Government to make laws in an emergency or promote uniformity, the indigenous decision-making process remains protected because it is embedded in native customary practices (Colchester, Jalong, & Chuo, 2013; Bulan, 2010).</p> <p>Under the Second Schedule of the FTL document, state land areas subject to Native Customary Rights (NCR) are excluded from the licenced area. These areas may be allowed to be harvested with the prior consent of the NCR land owners and subsequent approval of the Director of Forests. This is not applicable to PF or AL as NCR are deemed to have been extinguished on these areas. Under the Forest Ordinance, at the request of a community, the State can constitute any state land as a Communal Forest (CF). The community can take any forest produce from this area for their domestic use. Communities themselves need to apply for allocation of their land as Community Forest. Due to lack of knowledge of the community, this is often not done, which leads to the possibility that forest land will be allocated as forest concession, or converted to</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
			<p>agriculture despite communities using the land. Some cultural areas, such as burial sites, are automatically protected by law.</p> <p><i>Description of Risk</i></p> <ul style="list-style-type: none"> Although land ownership is legally prescribed and clear, there are issues with Native Customary Rights disputes between forest enterprise/State Government and local community/tribes. Local Indigenous people have constructed blockades against forest enterprises and, similarly, the former have been denied access to their customary lands. <p>"Allegations of NCR breaches in the allocation of leases over forestland have been the most contentious issue in plantation development in Malaysia for the last 20 years. Though federal and state laws enshrine the rights of local people to the land on which they have traditionally depended, affected communities and nongovernmental organizations claim that these rights have been almost universally abused in the issuance of logging and plantation licenses. NCR conflicts are a feature in almost every new plantation project in Malaysia, with the situation being particularly serious in ... Sarawak" (Forest Trends 2014, p. 52). Despite the requirement that communities be provided with the opportunity to raise their claim to an area to be gazetted, the process of gazettal might however be made public with a discreet notice that is not read by communities, with no claims therefore raised. Thus, tenure rights disputes between forest enterprises and local communities still occur after gazettal of a forest area. Many legal cases are currently in court; in Spring 2014 more than 300 NCR land cases were pending in the High Court; and ten cases had in April 2014 been settled in favour of the native people (Suara Sarawak, 2014).</p> <p>Based on the high number of NCR issues, the risk is considered specified.</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
			<p><i>Risk Conclusion</i></p> <p>'Specified risk'. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p>
Trade and transport			
<p>1.16 Classification of species, quantities, qualities</p>	<p>Peninsular <i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> National Forestry Act 1984: Part IV - Cha.8, Part V - Cha.1, Cha.5 - http://www.eldis.org/go/home&id=25050&type=Document#.WJ3B0_nhCUk State Forest Rules: Second schedule (premium rate), Third schedule (royalty rate), Fourth schedule (forest premium and cess), Fifth schedule (liquidated damages) <p><i>Legal authority</i></p> <ul style="list-style-type: none"> State Forestry Department <p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> Records of payments made by company Removal pass Delivery notes 	<p>Peninsular <i>Government sources</i></p> <ul style="list-style-type: none"> State Forestry Department: http://www.forestry.gov.my/images/stories/muatturun/AktaAPN.pdf <i>Non-government sources</i> Expert consultation, 2015, including personal communication 1 and 2. <p>Sabah <i>Government sources:</i></p> <ul style="list-style-type: none"> Sabah Forestry Department: http://www.forest.sabah.gov.my/discovers/policies/forest-legislation Sabah Forestry Department, (2013). Sabah TLAS document (revised as at 06 March 2013). http://www.forest.sabah.gov.my/images/pdf/en/flegt/TLAS4.pdf, Accessed 13 February 2018. 	<p>Peninsular <i>Overview of Legal Requirements</i></p> <p>The State Forest Rules govern the classification of the timber for harvest (Personal Communication 2). The material shall be classified according to type/species, volume of produce. The classification shall be included in the removal licence (FORM 5).</p> <p>In the PRF, the following is required:</p> <ol style="list-style-type: none"> a record, with details of trees felled in each licensed area, is checked at the forest checking station, which is operated by the respective forest authorities, and the record is verified against the details pertaining to the tree tag number, species and number of logs per tagged tree recorded in the tree tagging record. The forest checking station staff will check to ensure that the total volume of logs harvested is within the permitted limit. In addition, monitoring of the forest checking station will be conducted through reporting and random checking by the enforcement team. Each log is stamped with Property Mark by the licensee (in the licensed area) which specifies its origin and ownership prior to the removal from the licensed area to the designated forest checking station. Revenue/Royalty Mark - upon assessment and payment of royalty at the forest checking station, each log is

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<p>Sabah</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> Forest Enactment 1968: Part IA, Part III-Section 24C, & 27 http://faolex.fao.org/docs/pdf/mal10907.pdf Forest Rules, 1969 (Rule 3) http://www.sarawakforestry.com/pdf/laws/the_forest_rules.pdf Director or Forestry Circular FD: 21/2010 (Removal Pass for Plantation Logs) - SL/AL. State Forest Rules: Second schedule (premium rate), Third schedule (royalty rate), Fourth schedule (forest premium and cess), Fifth schedule (liquidated damages) Sabah Forest Enactment, 1968. Available at: Forest Rules 1969 - Rule 15(1). Available at: Director of Forestry Circular FD: 21/2010 Issuance of Removal Pass for Plantation Logs <p><i>Legal authority</i></p> <ul style="list-style-type: none"> Sabah Forestry Department <p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> Records of payment Form IIB (a license to take forest produce on prepayment of royalty) 	<p>Timber Royalty: http://www.forest.sabah.gov.my/discover/sustainable-management/forest-ind</p> <ul style="list-style-type: none"> <i>Non-government sources</i> Expert consultation conducted by NEPCon in Malaysia from 2015-2016, including personal communication 1 <p>Sarawak</p> <p><i>Government sources</i></p> <ul style="list-style-type: none"> sarawakforestry.com (N.Y.) Sarawak Forestry Corporation (SFC). Sustainable Forest Management [online]. Available at: http://www.sarawakforestry.com/html/sustainable.html forestry.sarawak.gov.my (N.Y.) Sarawak Forestry Department (SFD). [online]. Available at: http://www.forestry.sarawak.gov.my/ <p><i>Non-government sources</i></p> <ul style="list-style-type: none"> Expert consultation conducted by NEPCon in Malaysia in 2015 	<p>stamped with the revenue/royalty mark by the respective forest authorities.</p> <p>iv. Issuance of Removal Pass - to be issued subject to inspection and confirmation on the above procedures. A removal pass contains information on license number of logging area, logging license holder, details of the logs (i.e. log number, species, length, diameter, volume), conveyor registration number and destination of logs. One Removal Pass is issued for each conveyer of logs at the forest checking station.</p> <p>v. Logs in transit are subject to random checking by the forestry authority to ensure that the details of logs being transported are as recorded in the accompanying removal pass. The consignment will be detained for further investigation if any infringement or irregularities are detected. Logs in transit are not allowed to be stored temporarily once the removal pass is issued.</p> <p>In State Land and Alienated Land, only the following steps are required (relevant to this indicator):</p> <p>i. Each log is stamped with Property Mark by the licensee (in the licensed area) which specifies its origin and ownership prior to the removal from the licensed area to the designated forest checking station.</p> <p>ii. Revenue/Royalty Mark - upon assessment and payment of royalty at the forest checking station, each log is stamped with the revenue/royalty mark by the respective forest authorities.</p> <p>iii. Issuance of Removal Pass - to be issued subject to inspection and confirmation on the above procedures. A removal pass contains information on license number of logging area, logging license holder, details of the logs (i.e. log number, species, length, diameter, volume),</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<ul style="list-style-type: none"> • Timber Disposal Permit • Removal Pass • Removal Pass for Plantation Logs <p>For Alienated Land:</p> <ul style="list-style-type: none"> • Evidence of ownership (land title and other documents) • Payment Receipt of land premium • Letter/agreement/contract between the land owner and contractor • Letter of confirmation of land ownership or status from the ACLR • Form IIB • Timber Disposal Permit • Removal Pass <p>For Industrial Timber Plantations</p> <ul style="list-style-type: none"> • Quarterly Logging Progress Report • Occupation Permit • Registered Hammer Mark Record • Logging Contractor Registration Certificate • Log list for sawmill processing • Transit Pass • Removal Pass • Letter of Compliance issued by EPD 		<p>conveyor registration number and destination of logs. One Removal Pass is issued for each conveyer of logs at the forest checking station.</p> <p>The Removal Pass is a legal and controlled document printed only by Government-approved agency/company. The quantity of logs received by the mills as recorded in the Removal Pass will also be kept and maintained by the mills. The mills are required to keep a log book containing information on logs stored and processed in these mills.</p> <p>The Removal Pass is also required for timber from any other commercial felling operation but trees from other areas (such as from state land, alienated land or timber from clear-felling operations) does not usually have unique serial numbers.</p> <p>Both the Removal Pass and Exchange Removal Pass can be inspected at forest operator premises. A copy of the Removal Pass is retained by the relevant FCS. The custodians of the Removal Passes are the primary processing mills. Value-adding processing mills that usually source their already-processed timber supplies (such as sawn timber or plywood) from primary processing mills do not possess the Removal Passes.</p> <p>These classification requirements do not currently apply to plantation timber.</p> <p><i>Description of Risk</i></p> <ul style="list-style-type: none"> • According to the experience of the authors of this report, and the experts consulted in its preparation, while there is a theoretical risk of miss-classification of rubberwood (for example to launder other timber), there has been no evidence detected that this is a risk in practice. The incentive for under-declaration is low for rubberwood (since no royalty relates to this species) and miss-classification of species is relatively easy to detect (important to take into

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	<p>Sarawak</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> • Forest Ordinance 1958 (Cha. 126), Part V - Section 52 http://www.sarawakforestry.com/pdf/laws/forests_ordinance_chapter_126.pdf • Forest Timber Licence: Fourth schedule - Forest premium and CESS Fifth Schedule-Liquidated damage Forest Rules 1962, Rule 25(I) http://www.sarawakforestry.com/pdf/laws/the_forest_rules.pdf <p><i>Legal authority</i></p> <ul style="list-style-type: none"> • Sarawak Forestry Department (SFD) • Sarawak Forestry Corporation <p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> • Data on the quantity and species of timbers harvested within the forest management area • Enumeration Data • Compliance report • Production report • Production monitoring form • Transit Pass • Removal Pass 		<p>consideration that the supply chain for rubberwood does not interact with supply chain from other forest species).</p> <ul style="list-style-type: none"> • The risk for timber from selective logging in forest reserves from the six states with MTCS certification is also considered low since it is regularly audited under the MTCC scheme (Personal communication 1 and 2). There are known cases where the MTCS has been revoked, and as such we have taken a precautionary approach to the five states where there are non-MTCS certified concessions in the PRF and have designated them as specified risk • However, the risk for timber from clear-felling inside forest reserves or timber from State Land/Alienated Land (other than rubberwood) is risk specified as the practice for classifying logs are often less accurate applied for logs from clear-felling areas. Royalties are still required, but the practice opens up for the possibility of false classification and because of lack of payment of royalties (see indicator 1.5 Payment of royalties and harvesting fees for more details) (Personal communication 1 and 2). <p><i>Risk Conclusion</i></p> <p>Not applicable for Industrial Timber Plantations.</p> <p>'Low risk' for rubberwood and for selective logging in forest reserves of the six states under MTCS certification. Threshold (1) is met: Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.</p> <p>'Specified risk' for the rest of the country. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
			<p>Sabah</p> <p><i>Overview of Legal Requirements</i></p> <p>For Alienated Land (in accordance with Land Ordinance (Sabah Cap. 68); Forest Rules, 1969 (Rule 3); and Forest Enactment, 1968 [Section 24(5)]), once harvesting has been carried out in accordance with a Form IIB (application before felling of timber) and with proper land titles:</p> <ol style="list-style-type: none"> i. The District Forestry Officer (DFO) carries out boundary stones inspection on the ground and measures logs volume for royalty assessment and submits report to DoF for approval. ii. Director of Forestry (DoF) issues approval to DFO for issuance of Form IIB (application of timber felled). iii. DFO issues Timber Disposal Permit (TDP) and Form IIB. iv. Forest Ranger/Forester issues Removal Pass (RP). <p>The verification procedure applies for each application to remove logs and/or wood residues.</p> <p>For Industrial Timber Plantations on the PRF (Forest Rules, 1969 [Rule 15(1)]):</p> <ol style="list-style-type: none"> i. DFO ensures that all plantations logs are extracted from an area as approved in the AWP with coupe permit issued upon commencement of harvesting operation. ii. Forest Ranger/Forester verifies monthly production records for all plantation logs based on volume or weight as stated in the Transit Pass. iii. DFO ensures that the licensee/logging contractors adhered to the harvesting license /coupe permit conditions throughout the harvesting operations.

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
			<ul style="list-style-type: none"> iv. DFO ensures that Quarterly Logging Progress Report is prepared and submitted to the DoF quarterly. v. DFO ensures that logging contractor has a valid annual registration certificate. vi. Forest Ranger/Forester verifies that all plantation logs incised with serial numbers, transported for sawmill processing are hammer marked with registered Property Hammer Mark. 15 vi. DFO verifies that areas occupied for stumping within forest reserve have a valid occupation permit. vii. EPD monitors the implementation of mitigation measures on the specified area under the Agreement. EPD monitors the submission of quarterly environmental compliance report by a registered environmental consultant and conduct inspection every four months based on the consultant's recommendation: For Industrial Timber Plantations on SL/AL (Director's Circular FD: 21/2010 (Removal Pass for Plantation Logs)): viii. DFO ensures that all plantations logs incised with serial numbers, transported for sawmill processing are hammer marked with registered Property hammer Mark. ix. Forest Ranger/Forester issues Removal Pass with the word "Royalty Exempted" stamped on it and records the approximate volume of timber removed. x. EPD monitors the implementation of mitigation measures on the specified area under the Agreement. EPD monitors the submission of quarterly Environmental Compliance Report (ECR) by a registered environmental consultant and conduct inspection every four months based on the consultant's recommendation.

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
			<p>For PF, SL & AL (excluding ITP) (Forest Rules, 1969 (Rules 20A)):</p> <ul style="list-style-type: none"> • Where the license/permit includes requirements for Reduced Impact Logging (RIL): <ul style="list-style-type: none"> ○ DFO verifies that all Comprehensive Harvesting Plan (CHP) conditions are met throughout harvesting operation. ○ DFO verifies that the key forest workers are properly trained with minimum competency standard as specified in Table 1.2 within the RIL Operation Guide Book prior and during the harvesting operation. ○ Forest Ranger/Forester verifies that Daily Felling Record is maintained and updated daily during harvesting operation. ○ DFO ensures that Quarterly Logging Progress Report is submitted to the DoF quarterly. ○ DFO ensures that Closing Inspection Report is submitted to the DoF within six months after harvesting operation is completed. • Where the license/permit does not mandate RIL: <ul style="list-style-type: none"> ○ DFO verifies that all logging contractors are registered with FDS once before the harvesting operation commences. ○ DFO ensures that Quarterly Logging Progress Report is submitted to the DoF quarterly. ○ DFO ensures that Closing Inspection Report is submitted to the DoF after completion of harvesting operation.

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
			<ul style="list-style-type: none"> ○ DFO ensures that Property Hammer Mark is registered with FDS once before harvesting operation commences. ○ Forest Ranger/Forester ensures that all extracted logs are inscribed with serial numbers when applying for scaling order. ○ DFO ensures that area occupied for stumping within PF has valid occupation permit or TOL for area inside SL before harvesting operation commences. ○ EPD monitors the implementation of mitigation measures on the specified area under the Agreement, through the submission of quarterly ECR by a registered environmental consultant and conduct inspection on any area, upon receipt of complaint for serious non-compliance verified from the ECR. <p>All natural and plantation logs shall be classified based on volume or weight, as well as species. This shall be recorded in the removal pass. Also the type of logging (RIL/non-RIL, class, helicopter-logging) shall be included in the removal passes.</p> <p><i>Description of Risk</i></p> <ul style="list-style-type: none"> • Volumes and species are controlled at Forest Department Control Check points, and no timber is removed without going through the check points along the road. However, there is a reported risk of incorrect classification of timber as a means of royalty evasion (Personal communication 1 and Expert Consultation 2015-16)). • There is no royalty payable for rubberwood or ITP on Alienated Land (see indicator 1.5), therefore the incentive for false declaration is low for these sources. There is a theoretical risk that shipments that are declared to be “rubberwood” or ITP might be some other species, so there

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
			<p>is a risk of misclassification associated with these sources. However, it is important to take into consideration that the supply chain for rubberwood does not interact with supply chain from other forest species.</p> <ul style="list-style-type: none"> As indicator 1.5 for Sabah has been evaluated as low risk, the associated risks in this indicator are also evaluated as low as all classification is done for the purposes of royalty calculation. <p><i>Risk Conclusion</i></p> <p>'Low risk'. Threshold (1) is met: Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.</p> <p>Sarawak</p> <p><i>Overview of Legal Requirements</i></p> <p>According to the Forest Rules, 1969 (Rule 22), every licensee / permit holder must record the details of the timber harvested under that permit/license and have that timber checked at a forest checking station by a Forest Officer. The methods of measurement of timber and other forest produce for assessment of royalty or other payments due are prescribed by the Conservator. No forest produce can be removed to any place from any Forest Checking Station unless the person removing it is in possession of removal pass and the timber is marked with the government hammer mark.</p> <p>At the forest landing, a licensee must:</p> <ul style="list-style-type: none"> Mark both ends of each log with the registered property mark Scale and grade each log to determine the volume

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
			<ul style="list-style-type: none"> - Affix a Log Production Identity (LPI) tag to each log - Submit the log details in the Daily Production Return to SFC. - The category of species is required in the removal licence. <p><i>Description of Risk</i></p> <ul style="list-style-type: none"> • SFC monitors and controls timber production through enumeration data, log production records, and logs are hammer marked with the licensee property mark. • The classification of the exact species does not appear in the Transit Pass or Removal Pass, but the species category is required. Hence, substitution might potentially take place (Expert consultation, 2015). As the fee depend on the species and volume there is a risk of payment of incorrect fees. Issues such as failure to fully report the origin or volume – or reporting different species may arise and could be used for tax evasion purposes. • The risks identified associated with non-payment of royalties in indicator 1.5 above are also considered relevant to this indicator, as all classification in Sarawak is done for the purposes of royalty calculation. <p>Based on the above risk of incorrect classification of timber species, the risk is considered specified for all timber sources</p> <p><i>Risk Conclusion</i></p> <p>'Specified risk'. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
1.17 Trade and transport	<p>Peninsular</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> National Forestry Act 1984 [Section 68 & 73] http://www.eldis.org/go/home&id=25050&type=Document#.WJ3B0_nhCUk State Forest Rules (Rules 16, 17 & 19) Director General of Forestry Directive JH/126 Jld. 2(6) dated 21 April 2010 <p><i>Legal authority</i></p> <ul style="list-style-type: none"> State Forestry Department <p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> Certificate of incorporation of company Removal pass Delivery notes Occupation permits for mills <p>Sabah</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> Forest Rules 1969 - Rule 15(1) http://www.sarawakforestry.com/pdf/laws/the_forest_rules.pdf Director of Forestry Circular FD: 21/2010 Issuance of Removal Pass for Plantation Logs 	<p>Peninsular</p> <p><i>Government sources</i></p> <ul style="list-style-type: none"> mtib.gov.my (N.Y.) Application for TLAS Licence Via Online. [online]. MTIB. Available at: http://www.mtib.gov.my/index.php?option=com_content&view=article&id=2141%3Aapplication-for-mytlas-licence-via-online&catid=1 <p><i>Non-Government sources</i></p> <ul style="list-style-type: none"> Hoare, A. (2015). Illegal Logging and Related Trade - The Response in Malaysia. [online]. A Chatham House Assessment. Chatham House, London. Available at: http://www.illegal-logging.info/sites/default/files/CHHJ2365_Malaysia_Logging_Research_Paper_A4_01_15_WEB.PDF [Accessed 23 February 2015] Expert consultation 2015. Personal communication 1 and 2. <p>Sabah</p> <p><i>Government sources</i></p> <ul style="list-style-type: none"> Sabah Forestry Department, (2013). Sabah TLAS document (revised as at 06 March 2013). http://www.forest.sabah.gov.my/image 	<p>Peninsular</p> <p><i>Overview of Legal Requirements</i></p> <p>Timber tracking systems are used only for logs harvested from permanent reserved forests. Peninsular Malaysia has a paper-based tagging system and a Removal Pass system to trace logs from the forests to the mills. The Removal Pass system is integrated into the States' revenue collection system (Hoare, 2015).</p> <p>The company must be registered as a business entity and lorries and other transport vehicles must also be registered with relevant agencies/authorities as appropriate. This can be verified by reference to the certificate of incorporation of the company, consultation with the Ministry of Transport (regarding licences for commercial vehicles) and the Forestry Departments.</p> <p>In Peninsular Malaysia, logs that are felled for commercial purposes are inspected for payment of royalties and Forestry Department cess at the Forest Checking Stations (FCS) manned by State Forestry Department officials. Once payment is made, a Removal Pass is issued for each lorry load. The Removal Pass carries a record of the type/species, volume of produce, and the payments made. The licensee must ensure that all logs transported from the FCS to the mills are accompanied by a Removal Pass or Exchange Removal Pass. An Exchange Removal Pass is issued by the relevant State Forestry Department in cases where the load has been inspected during transit (such as for transshipment of logs between states) or for a load transported from one mill to another.</p> <p>Logs from selective logging within forest reserves are hammer-marked and tagged with serial numbers so it is possible to trace the logs back to stump. The Removal Pass is a legal and controlled document printed only by Government-approved agency/company. The quantity of logs received by the mills as</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<ul style="list-style-type: none"> Director of Forestry Circular FD: 31/2013 (Handling of rubber wood (log) from Alienated Land) <p><i>Legal authority</i></p> <ul style="list-style-type: none"> Sabah Forestry Department <p><i>Legally required documents or records</i></p> <p>Non-industrial plantations (SL, AL, PRF)</p> <ul style="list-style-type: none"> Log Arrival Book Revenue Hammer Mark Removal Pass Timber Disposal Permit Letter of approval to transport beyond 7:00 p.m. – 7:00 a.m. Transit Pass Removal Pass Removal Pass Payment receipt <p>Industrial Timber Plantations</p> <p>Sarawak</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> Forest Ordinance 1958 (Cha. 126), Part V - Section 52 http://www.sarawakforestry.com/pdf/laws/forests_ordinance_chapter_126.pdf 	<p>s/pdf/en/flegt/TLAS4.pdf, Accessed 13 February 2018.</p> <p><i>Non-Government sources</i></p> <ul style="list-style-type: none"> Hoare (2015). Illegal Logging and Related Trade the Response in Malaysia. [online]. A Chatham House Assessment. Energy, Environment and Resources. Available at: https://www.chathamhouse.org/sites/files/chathamhouse/field/field_document/20150121IllegalLoggingMalaysiaHoare.pdf Expert consultation 2015. Personal communication 1 and 2. <p>Sarawak</p> <p><i>Government sources</i></p> <ul style="list-style-type: none"> Sarawak Forestry Corporation (SFC). Sustainable forest management: http://www.sarawakforestry.com/html/sustainable.html Sarawak Forestry Department (SFD): http://www.forestry.sarawak.gov.my/ H32Harwood Timber Sdn. Bhd. http://www.sarawaktimber.org.my/content.php?do=subsidiaries <p><i>Non-Government sources</i></p> <p>David Brown, Kate Schreckenber, Neil Bird, Paolo Cerutti, Filippo Del Gatto,</p>	<p>recorded in the Removal Pass will also be kept and maintained by the mills. The mills are required to keep a log book containing information on logs stored and processed in these mills.</p> <p>The Removal Pass is also required for timber from any other commercial felling operation but trees from other areas (such as from State Land, Alienated Land or timber from clear-felling operations) does not usually have unique serial numbers so tracing back to stump is not possible.</p> <p>Any lorry transporting logs unaccompanied by a Removal Pass is considered illegal.</p> <p>Both the Removal Pass and Exchange Removal Pass can be inspected at forest operator premises. A copy of the Removal Pass is retained by the relevant FCS. The custodians of the Removal Passes are the primary processing mills. Value-adding processing mills that usually source their already-processed timber supplies (such as sawn timber or plywood) from primary processing mills do not possess the Removal Passes.</p> <p>The Malaysian Timber Legality Assurance System (MYTLAS) has been developed and is being implemented in Peninsular Malaysia, where it is managed by the Malaysian Timber Industry Board (MTIB). It uses the same paper-based tagging and Removal Pass systems for the verification of origin and legality required for export licences. The system has been operational since February 2013. It is not obligatory but is being presented to industry as a tool to help those exporting to the EU to meet the due diligence requirements of the EU Timber Regulation (EUTR) (Hoare, 2015).</p> <p><i>Description of Risk</i></p> <ul style="list-style-type: none"> As the Removal Passes are paper documents, this makes the process of tracking timber slow and cumbersome (Hoare, 2015), but is generally considered to be well

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<ul style="list-style-type: none"> Forest Rules 1962, Rule 25(I) http://www.sarawakforestry.com/pdf/laws/the_forest_rules.pdf <p><i>Legal authority</i></p> <ul style="list-style-type: none"> Sarawak Forestry Corporation Harwood Timber Sdn Bhd Sarawak Forestry Department (SFD) <p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> Removal Pass (Royalty) Endorsement Clearance Certificate (ECC) Transit Removal Pass (TRP) Export Clearance Certificate (ExCC) 	<p>Chimere Diaw, Tim Fomété, Cecilia Luttrell, Guillermo Navarro, Rob Oberndorf, Hans Thiel and Adrian Wells (2008). Legal Timber Verification and Governance in the Forest Sector: https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/3472.pdf</p>	<p>implemented apart from timber from the clearance of rubber plantations for which the system is seldom (if ever) applied.</p> <ul style="list-style-type: none"> The manual Removal Pass system is robust and the control by the authorities is considered sufficient to avoid systematic fraud with transport documents (Personal communication 2). Original records or documents are kept by Forest managers/Land owners and copy by SFD. Despite the holes in the paper-based tracking system, it is generally considered well-implemented (Hoare 2015, personal communication 1+2). While there are no specific reports of illegalities or issues associated with the issuance of removal passes, given the risks identified in associating with the payments of royalties (1.5 and 1.16), a precautionary approach has been taken to this indicator. <p>The risk is therefore considered specified for all sources.</p> <p><i>Risk Conclusion</i></p> <p>‘Specified risk’. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p> <p>Sabah</p> <p><i>Overview of Legal Requirements</i></p> <p>The movement of all commercial logs is regulated by Rule 15(1) of the Forest Rules 1969, which requires that all timber to be transported must be accompanied by a Removal Pass (RP) upon payment of the royalties to the government, or a Transit Pass for transportation of logs from the extraction area to the</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
			<p>royalty assessment area. All logging trucks must also be registered with the Sabah Forest Department.</p> <p>For timber produced on SL, PRF or AL (other than from Industrial Tree Plantations), the following requirements and procedures apply (Forest Rules, 1969 [Rule 15(1)]):</p> <ol style="list-style-type: none"> 1. For logs where royalty is assessed at the Pangkalan or Weigh Bridge at the Mill Gate: <ol style="list-style-type: none"> i. All logs transported from the Stumping Point to the Pangkalan, or weigh bridge at the mill gate bear Property Hammer Mark, FDS Inspection Hammer Mark and are accompanied by a Transit Pass and/or CS Form. ii. All logs transported from the Pangkalan to the Port of loading/to the mill bear FDS Royalty Hammer Mark and are issued with Removal Passes upon payment of royalty. iii. Logs transported between mills must be accompanied with Removal Passes. 2. For logs where royalty is assessed at the Stumping Point/licensed area: <ol style="list-style-type: none"> i. All logs transported from the Stumping Point/licensed area to the mill or port of loading bear Property Hammer Mark, FDS Inspection Hammer Mark, FDS Royalty Hammer Mark and are issued with Removal Passes upon payment of royalty. ii. Logs transported between mills must be accompanied with Removal Passes iii. Logs transported from a designated area to another destination only allowed from 07:00 a.m. to 07:00 p.m.,

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
			<p>unless with the DoF's approval outside the stipulated time.</p> <p>iv. The validity of Removal Pass is determined by the distance and mode of log transportation and may range from 1 to 3 days for land transportation or maximum 1 week for river/sea transportation subject to extension with a new removal pass by the DoF.</p> <p>Verification of compliance takes place at the following points in the supply chain:</p> <p>1. At the Pangkalan /Weigh Bridge:</p> <ul style="list-style-type: none"> a. Forest Ranger/Forester ensures that all logs bear Property Hammer Mark, and FDS Inspection Hammer Mark and are accompanied by a Transit Pass and records log arrival at the Pangkalan/Weigh Bridge at the mill gate. b. Forest Ranger/Forester ensures that relevant statutory charges for all logs transported from the Pangkalan to the mill/port of loading have been collected and all logs bear FDS Revenue Mark, except for weighed logs which are randomly marked, and logs are accompanied by a Removal Pass. <p>Note: Logs to be weighed are randomly marked with the Inspection Hammer Mark.</p> <p>2. At the mill</p> <ul style="list-style-type: none"> a. Forest Ranger/Forester inspects logs upon arrival and "stamps" Removal Pass as "Used Removal Pass" upon verification of the consignment. b. Forest Ranger/Forester ensures that logs arrival have been recorded in Log Arrival Book.

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
			<p>3. At the Port of Loading:</p> <ul style="list-style-type: none"> a. Forest Ranger/Forester inspects logs and verifies that the logs' details records tally with the Removal Pass as stated in the Export Declaration/export supporting documents. b. Forest Ranger/Forester stamps Removal Pass as "used Removal Pass" upon verification of each consignment. Frequency: The verification procedure applies for every load of logs transported. <p>Note: Weighed logs are small diameter and irregularly shaped logs.</p> <p>For Industrial Timber Plantations (ITP) on the PRF:</p> <ul style="list-style-type: none"> 1. All plantation logs transported from the harvesting area to an approved weigh bridge/weigh bridge at the mill gate for royalty assessment bear Property Hammer mark, FDS Hammer Mark (Marked randomly) and are accompanied by Transit Pass. 2. All logs transported from the weigh bridge to the Port of loading/to the mill bear FDS Property Hammer Mark (marked randomly) and are issued with Removal Passes upon payment of royalty. 3. If logs are transported to another mill, the mill must apply for another Removal Pass to be issued by a Forestry Officer. <p>For ITP from SL and AL</p> <ul style="list-style-type: none"> 1. The land owner has a contract with the contractor to remove logs and wood residues. 2. ii. Licensee ensures that an approval to transport plantation logs to an approved weigh bridge has been obtained from the DoF (SL) or the District Forestry Officer (AL) and all logs

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
			<p>bear Property Hammer Mark and FDS Inspection Hammer Mark (marked randomly).</p> <ol style="list-style-type: none"> 3. The licensee ensures that all logs transported from the weigh bridge to the Port of loading/to the mill are issued with Removal Passes upon recording of volume (weighed volume). 4. If logs are transported to another mill, the mill must apply for another Removal Pass to be issued by a Forestry Officer. 5. Licensee transport logs from a designated area to another destination only from 7.00am to 7.00pm, unless with the DoF's approval for transportation outside the stipulated time. 6. The validity of Removal Pass is determined by the distance and mode of log transportation and may range from 1 to 3 days for land transportation or maximum 1 week for river/sea transportation subject to extension with a new removal pass by the DoF. <p>The verification of compliance is carried out by the Forest Ranger/Forester who verifies land title and/or letter of consent/contract/Power of Attorney to extract planted timber.</p> <ol style="list-style-type: none"> 1. At the Weigh Bridge: <ol style="list-style-type: none"> a) Forest Ranger/Forester inspects logs upon arrival and records logs arrival and weighed volume. b) DFO issues Receipt of royalty payment. c) DFO issues Removal Pass for logs transported to the destination (unless exempted: Example; weigh bridge is at the mill gate). 2. At the Mill <ol style="list-style-type: none"> a) Forest Ranger/Forester inspects logs upon arrival and "stamps" Removal Pass as "Used Removal Pass" upon

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
			<p>verification of the consignment. No Removal Pass is required for logs weighed at the mill gate.</p> <p>b) Forest Ranger/Forester ensures that logs arrival have been recorded in Log Arrival Book.</p> <p>3. At the Port of Loading:</p> <p>a) Forest Ranger/Forester inspects logs and verifies that the log details as recorded in the Removal Pass tallies with the details as in the Export Declaration/export supporting documents.</p> <p>b) Forest Ranger/Forester stamps Removal Pass as “used Removal Pass” upon verification of each consignment</p> <p>The verification procedure applies for every load of logs transported.</p> <p><i>Description of Risk</i></p> <ul style="list-style-type: none"> As the Removal Passes are paper documents, this makes the process of tracking timber slow and cumbersome (Hoare 2015). A thorough review of the literature did not call this finding into question. According to the experience of the authors of this report, and the experts consulted in its preparation, the manual Removal Pass system is robust in the sense that it is systematic for all shipments of timber, and this leads experts to believe that the risks posed by a centralised electronic system (“massive fraud”) are not present in the manual system. (Personal communication 2). While there are theoretical risks associated with such a system, there is no evidence that this happening on a scale or with an impact sufficient to warrant a specific risk based on this. In addition to the evidences provided above, by following the logic applied in indicator 1.16 Classification of species, quantities and qualities, as the risks associated with the

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
			<p>payment of royalties is considered low for Sabah, the associated requirements for classification and trade and transport (related to this indicator) are also considered low risk.</p> <p><i>Risk Conclusion</i></p> <p>'Low risk' Threshold (1) is met: Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.</p> <p>Sarawak</p> <p><i>Overview of Legal Requirements</i></p> <p>Licensed area to designated Forest Checking Station:</p> <p>A licensee is required to register the company property mark with the Director of Forests (Rule 25 (l) of the Forest Rules 1962). At the forest landing, a licensee must:</p> <ul style="list-style-type: none"> - Mark both ends of each log with the registered property mark - Scale and grade each log to determine the volume - Affix a Log Production Identity (LPI) tag to each log - Submit the log details in the Daily Production Return to SFC. <p>SFC checks that harvesting operations have taken place within approved areas in compliance with the Forest Timber Licence terms and conditions and that the licensee uses only approved LPI numbers. SFC checks and verifies the DPR information and uploads this to the Log Tracking System (LoTS). LoTS is an ICT tool used in Sarawak to monitor and control the movement of</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
			<p>logs. The licensee then moves the logs from the licensed area to the Forest Checking Station for royalty assessment.</p> <p>Logs are checked and royalty hammer-marked by SFC at the following points of the supply chain:</p> <ol style="list-style-type: none"> 1. Forest Checking Station to processing mills: <ol style="list-style-type: none"> a) Harwood Timber Sdn Bhd (HTSB) carries out an inspection of logs at the Forest Checking Station to ensure they have been royalty assessed. b) HTSB issues Endorsement Clearance Certificate (ECC) and the shipping/transportation pass confirming logs for local processing to be delivered to local mills c) Issuance of Transit Removal Pass (TRP) by SFC d) Upon arrival at mills, logs are inspected by both SFC and Harwood Timber Sdn Bhd and reconciled with ECC and TRP 2. Checking Station to export point: <ol style="list-style-type: none"> e) At Forest Checking Station, issuance of Transit Removal Pass (TRP) by SFC f) At the export point, inspection of logs for issuance of Export Clearance Certificate (ExCC) by Harwood Timber Sdn Bhd (as authorized under Section 67A (7)(a) of Forests Ordinance (Cap 126)) g) Issuance of TRP by SFC at export point <p>These requirements are applicable for all timber sources.</p> <p><i>Description of Risk</i></p> <ul style="list-style-type: none"> • Without tagging at the stump, the current system of timber administration functions more as a means for log tallying than a guarantee of legal origin. As a wholly-owned subsidiary of STIDC, Harwood's role in monitoring log

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
			<p>reservation quotas is arguably a delegation of functions within the state administrative structure, as opposed to genuine outsourcing to a third party (Brown et al, 2008).</p> <ul style="list-style-type: none"> • As a result, risk of substitution may arise due to the lack of information in the documents that are carried during transportation – as well as the poor traceability system. • Issues such as failure to fully report the origin or volume; or reporting different species may arise and could be used for tax evasion purposes. • Extensive internet research has not revealed any additional sources which specifically analyse or highlight the risks associated with the transportation of timber in Sarawak. Referring to indicators 1.5 and 1.16, the risks associated with the royalty payments and classification of timber may also have an impact on the legality of the trade and transport process, and as such are considered relevant considerations for this indicator. • As discussed in indicator 1.5 Payment of royalties and harvesting fees, the most common reported illegalities in Sarawak are of illegal harvesting, in the sense of harvesting without a license or permit, or harvesting outside the limits of a license or permit. Less attention (from authorities /media / NGOs) is given to the nuances compliance within the legal operations, and as such there is a lack of analysis of this issue in available sources. <p>Based on a precautionary approach the risk is considered specified for all timber sources.</p> <p><i>Risk Conclusion</i></p> <p>'Specified risk'. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
1.18 Offshore trading and transfer pricing	<p>Peninsular, Sabah and Sarawak</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> Malaysia Income Tax Act, 1967 - Sec.140A http://www.kpmg.com.my/kpmg/publications/tax/22/a0053.htm Income Tax (Transfer Pricing) Rules 2012 http://www.hasil.gov.my/pdf/pdfam/MalaysianTransferPricingGuidelines2012.pdf Income Tax (Advance Pricing Arrangement) Rules 2012 http://www.hasil.gov.my/pdf/pdfam/MalaysianAPAGuidelines2012.pdf <p><i>Legal Authority</i></p> <ul style="list-style-type: none"> Inland Revenue Board Malaysia <p><i>Legally required documents or records</i></p> <p>There are no specific transfer pricing documentation requirements in the MITA, the general provision in the MITA (specifically Section 82) requires taxpayers to maintain appropriate documentation to support their transactions. Such records must be retained for a period of seven years and include:</p> <ul style="list-style-type: none"> Company details – Ownership structure, company organisational chart and operational aspects of the business; 	<p>Peninsular, Sabah and Sarawak</p> <p><i>Government sources</i></p> <ul style="list-style-type: none"> hasil.gov.my (2012) Transfer Pricing Guidelines 2012. [online]. IRBM. Available at: http://www.hasil.gov.my/pdf/pdfam/MalaysianTransferPricingGuidelines2012.pdf <p><i>Non-Government sources</i></p> <ul style="list-style-type: none"> deloitte.com (2012). Malaysia International Tax and Business Guides by Deloitte. [online]. Available at: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-malaysiaguide-2016.pdf eoi-tax.org (2012). Malaysian Advance Pricing Arrangement Guidelines. [online]. Available at: http://www.eoi-tax.org/jurisdictions/CA#agreements pwc.com (2012). International transfer pricing. [online]. Report by PriceWaterhouseCoopers. Available at: http://download.pwc.com/ie/pubs/2012_international_transfer_pricing.pdf The Malaysian digest (2013). Lawyers in Taib Video Expose to Face Police Probe, Answer Misconduct Charges [online]. Available at: 	<p>Peninsular, Sabah and Sarawak</p> <p><i>Overview of Legal Requirements</i></p> <p>Malaysia has exchange of information relationships with 73 jurisdictions through 73 DTCs and 1 TIEA (eoi, 2012).</p> <p>In Malaysia, Multinational Enterprises involved in transfer pricing must be able to provide adequate, documented proof to support their transfer pricing policies. Under the self-assessment system, the taxpayer is responsible for clearing any alleged non-compliance with transfer pricing legislation. A general anti-avoidance provision under subsection 140(1) of the Income Tax Act 1967 (ITA as amended) empowers the Director General (DG) to disregard certain transactions which he believes have the direct or indirect effect of altering the incidence of tax, and adjust as he thinks fit, to counteract the effects of such transactions. Section 140 will also be applied in the adjustment of transfer prices. Section 140 allows the DG to disregard transactions believed not to be at arm's length and make the necessary adjustments to revise or impose tax liability on the persons concerned. Under subsection 140(6), the said non-arm's length dealings include transactions between persons one of whom has control over the other and between persons both of whom are controlled by some other person.</p> <p>Upon a tax audit or enquiry, taxpayers must substantiate that their transfer prices have been determined in accordance with the arm's length principle as prescribed under the Transfer Pricing Rules 2012 and Guidelines. Control measures or factors that trigger the Inland Revenue Board (IRB) to carry out a transfer pricing audit include outstanding tax enquiries, sustained losses, use of tax havens, fluctuations in profits from year to year, third-party information and instances where a company has not been tax audited in the past six years.</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<ul style="list-style-type: none"> Transaction details – Summary of the related party transactions, pricing policy, price breakdown, terms of the transaction, economic conditions at the time of the transaction and any independent comparable transactions; and Determination of arm’s-length price – Selection of pricing methodology, functional analysis and comparability analysis. 	<p>http://malaysiandigest.com/news/174742-lawyers-in-taib-video-expose-to-face-police-probe-answer-misconduct-charges.html</p> <ul style="list-style-type: none"> Global Witness (2013). Inside Malaysia’s shadow state. March 19: https://www.globalwitness.org/campaigns/forests/inside-malysias-shadow-state 	<p>Recently, the Malaysian IRB issued a new requirement relating to transfer pricing in the Corporate Income Tax Return Form ('Form') for 2014. This new 'check-the-box' disclosure as to whether transfer pricing documentation has been prepared is a sign of the increasing focus and scrutiny on transfer pricing matters by the IRB, whether mandatory documentation requirements have been met. Previously, taxpayers were required to disclose whether transfer pricing documentation had been prepared only if they received a Form MNE 1/2011 ('Form MNE') from the IRB.</p> <p>As the IRB is intensifying its efforts on transfer pricing through audits, this revision to the Form is a further indicator of transfer pricing being an area of priority now and in the imminent future. Not satisfying the IRB's mandatory requirements carries substantial tax risks that an appropriate analysis and documentation exercise can help avoid.</p> <p><i>Description of Risk</i></p> <p>To date, no legal cases concerning transfer pricing have been decided by the Malaysian courts. However, a few cases have recently gone to court and are awaiting hearing. Most of the cases involving disputes on transfer pricing issues have been settled out of court, and the details have not been published.</p> <p>Since the transfer pricing guidelines were issued in Malaysia in July 2003, the MIRB has set up a team at its head office that specialises in transfer pricing audits. This has been further enhanced with the establishment of separate transfer pricing teams in the various tax audit assessment branches of the MIRB across the country. Most of the tax officers have experience handling tax investigations and tax audits. The officers are continually updating their knowledge through dialogues with other tax administrations in the region, in addition to participating in training conducted by foreign and international tax</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
			<p>authorities/bodies, such as the OECD (Deloitte 2012, Deloitte 2012a).</p> <p>In 2013, Global Witness exposed the occurrence of transfer pricing amongst forestry companies with ties to the former Sarawak Chief Minister Taib (Global Witness 2013). The exposé focused on the sale of forested land in Malaysia to foreigners and highlighted the existence of strategies to avoid real property gains tax by under-declaring the true value of and having the full value transferred offshore. The case is not directly linked to sale of timber, but provides an indication of unlawful price manipulation can occur within the forest sector.</p> <p>The case took place in Sarawak, but as the legal requirements are the same in all of Malaysia and the general level of corruption in Malaysia indicates a risk that transfer pricing also could take place in any Malaysian State.</p> <p>Based on the limited available information, a precautionary approach has been used to find this indicator specified risk.</p> <p><i>Risk Conclusion</i></p> <p>'Specified risk'. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p>
1.19 Custom regulations	<p>Peninsular</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> Malaysian Timber Industry Board (Incorporation) Act, 1973 (Act 105). Section 20 - Available at: http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20105%20-%20Malaysian%20Timber%20Ind 	<p>Peninsular</p> <p><i>Government sources</i></p> <ul style="list-style-type: none"> mtib.gov (N.Y.) Malaysian Timber Industry Board. [online]. Available at: http://www.mtib.gov.my customs.gov.my(N.Y.) Royal Malaysian Customs Department. [online]. Available at: http://www.customs.gov.my 	<p>Peninsular</p> <p><i>Overview of Legal Requirements</i></p> <p>According to the MTIB website, the import procedure for timber and timber products:</p> <ol style="list-style-type: none"> Malaysian Timber Industry Board (MTIB) are authorised by the Royal Malaysian Customs (RMC) to issue import licence for logs (including poles), Baulks (sawn timber measuring 60 square inches in cross-sectional area and above), mangroves piles, plywood including similar

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	<p>ustry%20Board%20Incorporation%20Act.pdf</p> <ul style="list-style-type: none"> • Customs Acts 1967 [Act 235]. Available at: https://simplymalaysia.files.wordpress.com/2011/10/act-235-customs-act-1967.pdf • Customs Export Prohibition Order (1998). (Fourth Schedule, item 50 and 51, First Schedule Item 15 (June 2006, & 4th Schedule Items 50, 51, 52 & 53. Available at: http://www.vertic.org/media/National%20Legislation/Malaysia/MY_Customs_Prohibition_Exports_Order_Schedule3.pdf • Customs Import Prohibition Order. Available at: http://www.env.go.jp/recycle/yugai/reg/pua_20121231_P.U.%28A%29490-LaranganImportFinal[Warta311212].pdf <ul style="list-style-type: none"> - Schedule 1 – Goods that are absolutely prohibited from import. Included in this list are logs, wood in the rough, roughly squared wood, and baulks from Indonesia. - Schedule 2, Part 1 – Goods that are prohibited from import to Malaysia except under licence. Included in this list are logs, wood in the rough, roughly squared wood, baulks, sawn timber, plywood, 	<p><i>Non-government sources</i></p> <ul style="list-style-type: none"> • UNODC, (2017). Criminal justice response to wildlife crime in Malaysia - A rapid assessment: Available: https://www.unodc.org/documents/southeastasiaandpacific/Publications/2017/Malaysia_Assessment_-_09.pdf, accessed 13 February 2018. • Expert consultation conducted by NEPCon, (2015). • New Straits Time, (2017). MTIB intercepts illegal shipment of round logs worth RM500,000. Available: https://www.nst.com.my/news/crime-courts/2017/10/289059/mtib-intercepts-illegal-shipment-round-logs-worth-rm500000, accessed 13 February 2018. <p>Sabah</p> <p><i>Non-government sources</i></p> <ul style="list-style-type: none"> • UNODC, (2017). Criminal justice response to wildlife crime in Malaysia - A rapid assessment: Available: https://www.unodc.org/documents/southeastasiaandpacific/Publications/2017/Malaysia_Assessment_-_09.pdf, accessed 13 February 2018. • Expert consultation conducted by NEPCon, 2015 	<p>laminated wood and sawn timber under the Customs Act 1967, Second Schedule, Part I, Item 2, Customs (Prohibition of Imports) Order 2017 P.U.(A) 103 gazetted on 31 March 2017 and enforced on 1 April 2017. This procedure is in line with the gazette of the Malaysian Timber Industry Board (Incorporation) Act 1973 [Act 105] on 15 March 2012.</p> <ol style="list-style-type: none"> 2. Applicants must fill-in the Application Form for Import that can be downloaded from the MTIB website: www.mtib.gov.my or obtain the Form from the nearest MTIB Regional/State offices. 3. Working hours for MTIB Headquarters and MTIB Regional/State office: 4. All importers must be registered with MTIB in accordance to Act 105. For registration, the importer must attach the following documents: <ol style="list-style-type: none"> a. copy of Business Registration Certificate (Form D) under the Business Registration Act 1956 and Business Licence (Form B); or A copy of the Memorandum and Articles of Association, a copy of Form 24 (List of Shareholders) and a copy of Form 49 (List of Board of Directors). b. For an applicant who is a sole proprietorship business/partnership, a copy of Bank Account Statement for the three-consecutive months (latest) that has been approved are required to support registration. <p>For the importation of logs (including poles) and Baulks (item no. 5 - 8 apply).</p> <ol style="list-style-type: none"> 5. Importers are required to submit: <ol style="list-style-type: none"> a. Completed Application Form for Import;

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	<p>veneered panels, and Bacau poles/piles from all countries (other than Indonesia).</p> <ul style="list-style-type: none"> Wood-based Industries Act, 1984. Available at: http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20314%20-%20Wood-based%20Industries%20(State%20Legislatures%20Competen.pdf Companies Act, 1965. Available at: http://jpt.mohe.gov.my/images/InstitusiPengajianTinggi/MengenaiJPT/AKTA/Bil12.aktasyarikat.pdf <p><i>Legal authority</i></p> <ul style="list-style-type: none"> Malaysian Timber Industry Board (MTIB) Royal Malaysian Customs <p><i>Legally required documents or records</i></p> <p>Export</p> <ul style="list-style-type: none"> Timber export (logs) license issued by MTIB Certificate of Registration (Form 9)- Register with the Companies Commission of Malaysia (Suruhanjaya Syarikat Malaysia) Records of cess account in MTIB for log, sawn timber, plywood, moulding, 	<ul style="list-style-type: none"> New Straits Times, (2017). Sabah timber industry set to boost with return of licensing power: LDP. Available: https://www.nst.com.my/news/nation/2017/05/242178/sabah-timber-industry-set-boost-return-licensing-power-ldp, accessed 13 February 2018. <p>Sarawak</p> <p><i>Government sources</i></p> <ul style="list-style-type: none"> Mtib.gov.my (N.Y.). Malaysian Timber Industry Board. [online]. Official Portal. Available at: http://www.mtib.gov.my Customs.gov.my (N.Y.) Royal Malaysian Customs Department. [online] Available at: www.customs.gov.my sarawaktimber.org.my (N.Y.) Sarawak Timber Industry Development Corporation (STIDC). Available at: http://www.sarawaktimber.org.my/doc/STIDC_Ordinance_1973.pdf <p><i>Non-government sources</i></p> <ul style="list-style-type: none"> Expert consultation conducted by NEPCon, 2015 UNODC, (2017). Criminal justice response to wildlife crime in Malaysia - A rapid assessment: Available: 	<ul style="list-style-type: none"> Copies of sales agreement/supply contract made with oversea suppliers and certified by the Malaysian Embassy in the respective countries (Thailand, Laos, Cambodia, Vietnam, Singapore, Papua New Guinea, Solomon Islands, Timor Leste) or the authorities/bodies/agencies recognised by the government of the respective country (Myanmar, Philippines); and Letter of Oath that has been approved. <ol style="list-style-type: none"> Complete applications will be tabled to the Import & Export Committee Meeting. If approved, MTIB will issue a Letter of Approval to import for a period of one year from the date of letter issued. Upon receiving the Letter of Approval, the import company can apply for import licence to any of the MTIB Regional/State offices and bring together the Approval Letter, original Certificate of Origin/Form D from the valid exporting country, invoice, packing lists and bill of lading. Importers must comply with the other agency regulations, that is enforced by the Department of Agriculture which requires an import permit (except plywood) for purpose of quarantine inspection and verification of the Phytosanitary Certificate and to provide timber scientific name; and obtained approval from the State Forestry Department for issuance of Forest Removal Replacement Pass. <p>For the importation of mangrove piles and plywood including similar laminated wood and sawn timber (item no. 9 - 11 apply)</p> <ol style="list-style-type: none"> Importers are required to submit: <ul style="list-style-type: none"> Completed Application Form for Import; and Letter of Oath that has been approved.

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	<p>vener, particleboard/chipboard and block board</p> <ul style="list-style-type: none"> • Removal pass issued by Forestry Department for imported log • Custom export declaration form • Grading summary • Record on custom clearance • Good/Consignments inspection report • Bill of lading • Invoice • Customs form K2 <p>Import</p> <ul style="list-style-type: none"> • Import licence issued by MTIB for logs • Removal pass (for logs) from FD • Customs Department K1 form • Customs Department K3 form as appropriate (within Malaysia) <p>Sabah</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> • Customs Acts 1967 [Act 235]. Available at: https://www.mytradelink.gov.my/documents/10179/0/Customs-act 	<p>https://www.unodc.org/documents/southeastasiaandpacific/Publications/2017/Malaysia_Assessment_-_09.pdf, accessed 13 February 2018.</p>	<p>10. MTIB will process the Application Form and documents received. If all are in order and completed, the application will be approved. MTIB will issue a Letter of Approval to import for a period of one year from the date of letter issued.</p> <p>11. Upon receipt of the Letter of Approval, the import company can apply for an import licence to any of the MTIB Regional/State offices and bring together the Approval Letter with the following documents:</p> <ul style="list-style-type: none"> a. For the importation of plywood including similar laminated wood and sawn timber shall be accompanied with the original copy of Certificate of Origin /Form D from the valid exporting country, invoice, packing lists and bill of lading. MTIB will conduct physical inspection at the entry point or port and validation with MTIB stamp on the import licence. b. For the importation of mangrove piles shall be accompanied by an invoice/manifest/payment receipt/packing lists/other information from the exporting country, if any, for reference. MTIB will conduct physical inspection randomly at any time desired on mangrove piles consignment at the entry point or port and validation with MTIB stamp on the import licence. <p>12. Starting 1 July 2017, MTIB enforced the requirement for certifying on legality source on import of timber and timber products whereby any one of the documents are required to be presented during physical inspection besides other documents mentioned in item 11(a) that is:</p> <ul style="list-style-type: none"> a. CITES Permit; or b. FLEGT licence; or

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	<ul style="list-style-type: none"> • Customs Export Prohibition Order (1998). Available at: http://www.vertic.org/media/National%20Legislation/Malaysia/MY_Customs_Prohibition_Exports_Order_Schedule3.pdf • Customs Import Prohibition Order. Available at: http://www.env.go.jp/recycle/yugai/reg/pua_20121231_P.U.%28A%29490-LaranganImportFinal[Warta311212].pdf • Sabah Forest Enactment, 1968 - http://faolex.fao.org/docs/pdf/mal10907.pdf • Forest Rules 1962 - http://www.sarawakforestry.com/pdf/laws/the_forest_rules.pdf <p><i>Legal authority</i></p> <ul style="list-style-type: none"> • Sabah Forest Department • Customs Department <p><i>Legally required documents or records</i></p> <p><u>Imports:</u></p> <ul style="list-style-type: none"> • Company Import Certificate-FDS • Import clearance (CD1 Form)-RMC • Phytosanitary certificates (DoA) • Physical Inspection report by FDS. • Records of Import data (FDS) 		<ul style="list-style-type: none"> c. Certificate of Timber Certification (PEFC, MTCS); or d. Certificate of Voluntary Legality Scheme; or e. Legality Document issued by recognised Agency/Body/Association related: or f. Self-Declaration recognised by a Competent Third Party; or g. Copy of Customs Declaration from exporting country. <p>13. For imports involving endangered wood species listed in the Third Schedule of Act 686, a CITES export permit from the exporting country must be submitted in advance to MTIB for confirmation from the relevant permit issuing country before MTIB issues CITES import permit.</p> <p>14. Importers must apply for physical inspection at the nearest MTIB Regional/State offices where the timber consignment enters. MTIB will conduct physical inspection at the entry point or port and validation with MTIB stamp on the import licence.</p> <p>15. The validity of import licence is 60 days from the date issued.</p> <p>16. The Customs will ensure that all requirements and regulations have been complied before giving clearance into Peninsular Malaysia and Federal Territory (Kuala Lumpur and Labuan).</p> <p>17. Any businesses and enquiries related to importation can be forwarded to MTIB Headquarters and MTIB Regional/State offices</p> <p>Timber and timber products requiring import licence Customs (Prohibition of Imports) Order 2017, Second Schedule, Part I, Item 2 [P.U.(A) 103 dated 31 March 2017]</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
	<ul style="list-style-type: none"> • Import license/permit • Company ROC certificate and trading license. <p><u>Exports</u></p> <ul style="list-style-type: none"> • Export License • Inspection reports • Endorsed/Export Approval Stamped on CD2 Form • Export data (output of SJHP) • Company ROC certificate and trading license <p>Sarawak</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> • Customs Acts 1967 [Act 235]. Available at: https://www.mytradelink.gov.my/documents/10179/0/Customs-act • Customs Export Prohibition Order (1998). Available at: http://www.vertic.org/media/National%20Legislation/Malaysia/MY_Customs_Prohibition_Exports_Order_Schedule3.pdf • Customs Import Prohibition Order. Available at: http://www.env.go.jp/recycle/yugai/reg/pua_20121231_P.U.%28A%29490-LaranganImportFinal[Warta311212].pdf 		<ul style="list-style-type: none"> • Logs; wood in the rough, if stripped of its bark or merely roughed down; wood roughly squared or half-squared but not further manufactured; and baulks (44.03) • Poles and piles of Bakau (Rhizophora spp) (4403.99.90 00) • Sawntimber (44.07) • Plywood, veneered panel and similar laminated wood (44.12) <p>Malaysia does not grant import permits for logs and large scantlings and squares (LSS) from Indonesia.</p> <p><u>Export procedure for timber and timber products</u></p> <ol style="list-style-type: none"> 1. Malaysian Timber Industry Board (MTIB) are authorised by the Royal Malaysian Customs (RMCD) to issue export licence for timber and timber products under the Customs Act 1967, Second Schedule, Item 6, Customs (Prohibition of Exports) Order 2017 P.U.(A) 102 gazetted on 31 March 2017 and enforced on 1 April 2017. This procedure in line with the gazette of the Malaysian Timber Industry Board (Incorporation) Act 1973 [Act 105] on 15 March 2012. 2. Exporters registered with MTIB will be issued User ID code and Password to enable them to apply for export licence via on-line through website MTIB Core System: www.mtib.gov.my/mcs. 3. Applicants must fill-in all details required (mark * must be filled), payment of cess and send via on-line to MTIB Headquarters or any MTIB Regional/State office without submitting the supporting documents hardcopy (packing list, invoice, kiln drying / preservative timber certificate and grading summary).

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	<ul style="list-style-type: none"> • The Sarawak Timber Industry Development Corporation Ordinance 1973. Available at: http://www.sarawaktimber.org.my/doc/S_TIDC_Ordinance_1973.pdf • The Sarawak Timber Industry (Registration) Regulations 1999 • The Ramin Logs Prohibition of Export Order, 1980 • The Ramin Shorts and Ramin Squares Prohibition of Export Order, 1991 • The Sepetir Timber Export Restriction Order, 1980 <p><i>Legal authority</i></p> <ul style="list-style-type: none"> • Sarawak Timber Industry Development Corporation (STIDC) • Royal Malaysian Customs Department <p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> • Certificate of Registration with STIDC • Timber export/import license/permit • Custom export declaration form (K2) • Grading summary • Record of Customs clearance • Goods/Consignments inspection report • Approval letter from Ministry of Planning and Resource Management 		<ol style="list-style-type: none"> 4. MTIB will review and approved, if completed, or not approved the export licence via on-line. Exporters will receive each approved or unapproved export licence on the exporters application screen. 5. Export licence issued by MTIB are computer generated and no signature are required. 6. The validity of export licence is 60 days from the date issued. 7. For each export licence approved, exporters must state the date for physical inspection to MTIB Checking Station near the export exit point. Exporters must ensure their timber consignment are ready for inspection and submit the relevant supporting documents on the date of inspection. 8. MTIB will carried out physical inspection randomly on the export licence and declaration of timber consignment as follows: <ol style="list-style-type: none"> a. For export licence inspected, MTIB will carried out physical inspection at the timber consignment site and inspection result will either be approved or unapproved and for consignment that are offended will be acted. b. Consignment that are approved will be stamped "Telah Diperiksa" and exporter will proceed for declaration to the Customs. c. For export licence that are not inspected will be approved and stamped "Diluluskan Tanpa Pemeriksaan Fizikal ". Exporter can proceed for declaration to the Customs. 9. For timber and timber products that are subjected to MTIB special approval such as Rubberwood sawn timber export quotas; timber product quotas for endangered timber species listed under the CITES international trade

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	<ul style="list-style-type: none"> • Bill of lading • Invoice • Customs form K1 • Customs form K3 (within Malaysia) 		<p>regulation; export of rattan, coconut trunk, oil palm trunk and plantation log; participation at international exhibition; market exploration; and timber products for research purpose (R&D), exporter must refer to MTIB Headquarter Kuala Lumpur. MTIB will explained to the exporter on the export procedures and regulations be followed.</p> <p>10. For export of wooden furniture products, except for export to the European Union, are postponed from MTIB export licence requirement. Exporter can proceed directly with the Customs for exportation of wooden furniture products.</p> <p>11. For exportation of timber and timber products, including wooden furniture products, listed under TLAS scope for the European Union market, exporter is still subject to the current export procedure that is registration requirement, apply for MTIB export licence with MYTLAS licence and undergoes MTIB physical inspection. The whole processes can be made via on-line through MCS.</p> <p>12. Any businesses and enquiries related to exportation can be forwarded to MTIB Headquarters and MTIB Regional/State offices.</p> <p>List of timber and timber products requiring export licence - Customs (Prohibition of Exports) Order 2017, Second Schedule, Item 6 - [P.U.(A) 102 dated 31 March 2017]</p> <ol style="list-style-type: none"> 1. Bamboo 1401.10.00 00 2. Rattans 1401.20 3. Fuel wood, wood in chips or particles; sawdust and wood waste and scrap 44.01 4. Wood charcoal 4402.90.90 00 5. Logs (including baulks and roughly squared) 44.03 6. Hoopwood 44.04

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			<ul style="list-style-type: none"> 7. Wood wool; Wood flour 4405.00 8. Railways or tramway sleepers 44.06 9. Sawn timber 44.07 10. Veneer sheets 44.08 11. Moulding 44.09 <ul style="list-style-type: none"> a. Particleboard 44.10 b. Fibreboard 44.11 c. Plywood, veneered panel and similar laminated wood 44.12 d. Densified wood 4413.00.00 00 12. Wooden frames 4414.00.00 00 13. Packaging cases, boxes, crates, drums and similar packing, cable drum, pallets, box pallets and other load boards, pallet collars of wood 44.15 14. Cask, barrels, vats, tub and other coopers' products of wood, including staves 4416.00.10 00 4416.00.90.00 15. Tools, tool bodies, tool handles, broom and brush bodies and handles, of wood; shoe last and trees, of wood 4417.00.10 00 4417.00.20.00, 4417.00.90.00 16. Builders joinery and carpentry, of wood 44.18 17. Tableware and kitchenware, of wood 4419.11.00 00 4419.12.00 00 4419.19.00 00 4419.90.00 00 18. Wooden article of furniture not falling in chapter 94 4420.90.10 00 19. Other articles of wood 44.21 20. Wood pulp 47.01, 47.02, 47.03, 47.04, 47.05, 47.06

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			<p>21. Prefabricated buildings, of wood 9406.10.90 00</p> <p>Note: For code product 9401.52.00 00, 9401.53.00 00, 9401.61.00 00, 9401.69.10 00 and 9401.69.90 00 (Seats of bamboo or rattan and other seats, with wooden frames) and 9403.30.00 00, 9403.40.00 00, 9403.50.00 00, 9403.60.10 00 dn 9403.60.90 00 (Wooden furniture) are temporarily postphone until further notice. However, companies are encouraged to register with MTIB as Exporter to access facilities to export furniture under the relevant customs code as mentioned.</p> <p>The cess rate for timber and timber products Timber Cess Order 2000 can be found at http://www.mtib.gov.my/index.php?option=com_content&view=article&id=2439%3Aexport-procedure-for-timber-and-timber-products&catid=214%3Aregistration-and-licensing&Itemid=340&lang=en</p> <p>The MTIB is responsible for the registration of individuals who wish to perform any of the following activities or functions in the timber industry: exporters; importers; suppliers; graders; processors; traders; operators; or jetty operators. Should an individual perform any of these activities without being registered with the MTIB, they risk imprisonment for up to three years or a fine not exceeding 250,000 Malaysian ringgit, or both (UNODC 2017).</p> <p>The MTIB also has the power to refuse registration, as well as suspend, cancel or refuse to renew any previous registration. Any person who wishes to export timber is required to declare their intentions before the exportation occurs. Failing to do so may incur a penalty of imprisonment of up to two years or a fine not exceeding 100,000 Malaysian ringgit, or both (UNODC 2017).</p> <p>The MTIB has about 130 personnel engaged in a law enforcement capacity who enjoy powers similar to police. The extent of these powers is found in Part IVA of the Malaysian</p>

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			<p>Timber Industry Board (Incorporation) Act of 1973 (Act 105), and include arrest, search and seizure and the power to enter premises with or without a warrant (UNODC 2017).</p> <p><i>Description of Risk</i></p> <ul style="list-style-type: none"> Malaysia receive timber from 3rd country as long as export documents are in place and without requiring proof of legal origin. When this timber enters the supply chain and is processed into secondary products there is a possibility that an export license can be issued for products that could have an illegal origin. However, international trade in timber from Malaysia is generally well regulated and there is only a low risk that the Malaysian custom regulations have been violated (Personal communication 1 and 2). An October 2017 report from the New Straits Times states that 'MTIB intercepts illegal shipment of round logs worth RM500,000'. The article claims that Malaysian Timber Industry Board (MTIB) has revealed that it foiled an attempt in August to smuggle 10 containers filled with 133 round logs of the banned keruing species, worth RM500,000. MITB director-general Datuk Jalaluddin Harun said the logs, en route from Pahang to India, were seized at Westports Malaysia in Port Klang on Aug 22." <p>The 2017 report from the UNODC contains a number of observations relevant to this indicator:</p> <ul style="list-style-type: none"> Port Klang is Malaysia's largest port [...] figures prominently in the seizures of large quantities of wildlife products. Between 2011 and 2014 the port was the subject of two Malaysian Anti-Corruption Commission (MACC) investigations into corruption. (These investigations were not specifically related to wildlife or forest crime cases, but do indicate the presence of some officials complicit in illicit activities). [...] It stands to reason that some of the corrupt customs officials previously investigated by the MACC in

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			<p>relation to other offences (between 2011 and 2014), or others working at the port at that time, may have played a role in facilitating the importation and re-export of wildlife products into and from Malaysia during that period.</p> <ul style="list-style-type: none"> • Corruption has plagued the Royal Malaysian Customs Department (RMCD) over the last several years and is something that the Department has shown it is committed to addressing. All customs officers take an oath and sign a pledge committing to integrity, as all government agencies are required to do. All civil servants (including customs officers and their spouses) must also declare personal assets every five years as well as any trip abroad. At the start of every shift, customs officers must declare how much money is being carried on their person, and it is checked again at the end of the shift. Supervisors can also make spot checks during a shift to ensure compliance. There is an RMCD Internal Disciplinary Board that conducts an initial assessment of any allegations made against customs officers. • Cases can also be started by MACC, and the RMCD supports these investigations. There are also integrity officers from the MACC that are seconded within the Customs Department. Internationally, RMCD requests for assistance and information sharing are conducted under the Regional Intelligence Liaison Office of the World Customs Organization (WCO) with other countries (for example the United States, Korea, or Turkey). • Domestically, Customs has good cooperation with domestic wildlife agencies, notably Perhilitan, FDS, and SWD, and with other agencies such as the MACC, RMP and MTIB. Intelligence on environmental crime is disseminated to other agencies on a case-by-case or ad-hoc basis.

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			<ul style="list-style-type: none"> • Most of the identified illegal trade cases undertaken by the MTIB relate to trans-shipments and imports of timber. From 2012 to 2017, the MTIB investigated 34 cases related to prohibited imports, of which 22 cases related to the illegal imports/trans-shipments of CITES-listed timber species. Despite having the necessary provisions within the Act, none of these investigations resulted in a period of imprisonment, with all being resolved by way of administrative sanction. • According to the MTIB, the majority of timber imported into or exported from Malaysia is in the form of furniture, and to a lesser extent, whole logs. Primary export destinations include the US, EU, Japan and to a lesser extent China. Most of the timber imported into Malaysia is from China and Indonesia. • It is surprising that in Malaysia there are more wildlife cases before the courts than forestry cases. [...] This could be because the MTIB has not yet commenced any prosecutions that resulted in court action for timber cases. It will be interesting to see if these numbers change now that Sabah and Sarawak will be taking over the role of the MTIB within their jurisdictions. • Shortcomings of MTIB: <ul style="list-style-type: none"> ○ Prison terms for forestry offences are not applied ○ Regulatory agency with little law enforcement experience ○ No intelligence unit ○ No formal law enforcement training ○ No central CHIS system ○ Does not use advanced investigative methodologies

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			<ul style="list-style-type: none"> ○ Challenges with identification of nonnative CITES-listed species • The Malaysian Legislators and Courts have shown themselves to be innovative and in touch with the needs of the environment. They are to be congratulated for the strength of judgement that sees those engaged on transnational and domestic wildlife crime feeling the full weight of the law • The Customs Department has 709 officers working in the Enforcement Division posted throughout the country, handling all tasks relating to law enforcement. Customs officers are well trained and educated, with senior officers requiring a Bachelor's Degree as a minimum requirement for employment. • At this moment, the overall effectiveness of Malaysia's effort to address the international aspect is questionable. Despite many seizures there is very little to show in the way of arrests, prosecutions and convictions. There has also never been a controlled delivery of any of the shipments seized by the RMCD. Seizures of a finite wildlife resource will not prevent or stop wildlife trafficking. In the absence of arrests, seizures alone may in fact do more harm than good. <p>Based on the analysis provided in the UNODC report, and applying a precautionary approach, the risk for this indicator has been evaluated as specified.</p> <p><i>Risk Conclusion</i></p> <p>'Specified risk'. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
			<p>Sabah</p> <p><i>Overview of Legal Requirements</i></p> <p>According to the Sabah TLAS document, the follow procedures apply for imports and exports of timber from the state:</p> <p><u>Imports</u></p> <p>A company intending to import timber and timber products needs to register with the Registrar of Companies (ROC), FDS and poses a trading license. Note: ROC registration is not applicable to sole proprietors/enterprise/individual and only a trading license is required.</p> <p>A company intending to import timber products (logs/veneer/sawn timber) is subject to phytosanitary requirements and obtains an import permit from the Department of Agriculture (DoA).</p> <p>A company intending to import timber products is required to obtain Customs' clearance (using CD1 Form) by Royal Malaysian Customs (RMC). iv. Imported timber is subject to inspection by FDS and payment of inspection fees to FDS.</p> <p>The following verification procedure applies:</p> <ol style="list-style-type: none"> 1. FDS (DFO) checks compliance of company's application for Importer's Certificate and issues Importer's Import Certificate. 2. FDS (DFO) ensures that the applicant for the import license is registered with ROC and/or with trading license and have a valid sales contract. 3. FDS (DFO) checks the CD1Form for every consignment of imported timber. iv. FDS (DFO) conducts random10 % physical inspection each consignment against import declaration and other supporting documents, collects Inspection fees and records volume

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			<p>of imported timber. v. DoA inspects consignment for compliance to phytosanitary requirements. Frequency: The above procedures apply to every consignment of imported timber.</p> <p><u>Exports</u></p> <p>A company intending to export timber and timber products needs to be registered with the Registrar of Companies (ROC) and poses a trading license. Note: ROC registration is not applicable to sole proprietors/enterprise/individual and only a trading license is required.</p> <p>A company/sole proprietor (Enterprise) declares timber and timber products to be exported to the District Forestry Officer with a valid export permit or annual export license with supporting documents such as Log summary, Sales Contract, Invoice, Packing List, Borang EIS 1/2000 (declaration on the source of processed timber to be exported), CITES Permit, where applicable, receipt of royalty payment and other fees where applicable (for logs, sawn timber, veneer, plywood and moulding) (not applicable to planted timber from SL and AL and other products not mentioned herein).</p> <p>Exporters of certain round logs, timber and timber products must pay export royalties, as provided in the Forest Rules 1969: <u>HS Codes 44 and 94.</u></p> <p>Any company/person engaged in the export of timber under these HS Codes must be registered and licensed by SFD. Registered and licenced companies/persons are issued with a registration and export licence. A timber export permit is issued by SFD to these persons/companies upon satisfaction of all export requirements.</p>

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			<p>The Second Schedule of the Customs (Prohibition of Exports) Order 2012 lists the timber and timber products that require an export licence/permit from SFD prior to export.</p> <p><u>HS Codes 47 and 48 (pulp and paper)</u></p> <p>Exporters under these codes must make a declaration using Customs Export Declaration Form K2 and submit it to the Customs Department for final clearance of exports.</p> <p>In June 2017, the licensing power for imports and exports to Sabah was transferred from the Malaysian Timber Industry Board to the Sabah Forestry Department (New Straits Times 2017).</p> <p><i>Description of Risk</i></p> <p>The description of risk provided for Peninsular above is also applicable to Sabah.</p> <p>Because the import/export regulation functions only reverted to Sabah Forestry Department from MTIB in July 2017 (New Straits Times 2017), it is too early to properly evaluate the effectiveness of the monitoring and enforcement functions. Based on the analysis provided in the UNODC report, and applying a precautionary approach, the risk for this indicator has been evaluated as specified.</p> <p><i>Risk Conclusion</i></p> <p>'Specified risk'. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p>

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
			<p>Sarawak</p> <p><i>Overview of Legal Requirements</i></p> <p>There are mandatory requirements, for any persons/companies engaged in or associated with the manufacture, sale and marketing (export and imports) of timber, to be registered with Sarawak Timber Industry and Development Corporation (STIDC). Registered persons are issued with a certificate of registration.</p> <p>STIDC is responsible for issuance of Export & Import Licenses. The issuance of export/ import licenses is done through an ePermit System at STIDC's portal.</p> <p><u>Export</u></p> <p>Under Section 10 of the Customs Act 1967, STIDC officers are authorised to issue Export Licenses for every shipment of timber and timber products from Sarawak. The Export Licence is endorsed in the Customs Export Declaration Form (K2).</p> <p>The Second Schedule of the Customs (Prohibition of Exports) Order 2012 lists the timber and timber products that require an Export Licence prior to export. There is no export duty imposed by the Sarawak Government on timber or timber products.</p> <p><u>Import</u></p> <p>Importers of logs are required to seek prior written approval from the Ministry of Resource Planning and the Environment. The Customs (Prohibition of Imports) Order 2012 has listed products for which an Import License from STIDC is required for importing into Sarawak. The following documents must also be attached to the application for an Import Licence:</p> <ul style="list-style-type: none"> - CITES Certificate, if applicable; - Certificate Country of Origin COO; and

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			<p>- Phytosanitary Certificate.</p> <p>It is mandatory that every shipment is accompanied by an import licence. Imported logs are physically inspected, tagged, STIDC hammer-marked and issued with an STIDC Removal Pass prior to being transported internally.</p> <p><i>Description of Risk</i></p> <ul style="list-style-type: none"> • There is a risk of illegal timber smuggles from Indoensia being mixed with the Malaysian supply chain. Experts consulted in the preparation of this report stated that they believed the custom regulation is well implemented (Personal communication 2). <p>The 2017 report from the UNODC contains a number of observations relevant to this indicator:</p> <ul style="list-style-type: none"> • Corruption has plagued the Royal Malaysian Customs Department (RMCD) over the last several years and is something that the Department has shown it is committed to addressing. All customs officers take an oath and sign a pledge committing to integrity, as all government agencies are required to do. All civil servants (including customs officers and their spouses) must also declare personal assets every five years as well as any trip abroad. At the start of every shift, customs officers must declare how much money is being carried on their person, and it is checked again at the end of the shift. Supervisors can also make spot checks during a shift to ensure compliance. There is an RMCD Internal Disciplinary Board that conducts an initial assessment of any allegations made against customs officers. • Cases can also be started by MACC, and the RMCD supports these investigations. There are also integrity officers from the MACC that are seconded within the Customs Department. Internationally, RMCD requests for

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			<p>assistance and information sharing are conducted under the Regional Intelligence Liaison Office of the World Customs Organization (WCO) with other countries (for example the United States, Korea, or Turkey).</p> <ul style="list-style-type: none"> Domestically, Customs has good cooperation with domestic wildlife agencies, notably Perhilitan, FDS, and SWD, and with other agencies such as the MACC, RMP and MTIB. Intelligence on environmental crime is disseminated to other agencies on a case-by-case or ad-hoc basis. The Customs Department has 709 officers working in the Enforcement Division posted throughout the country, handling all tasks relating to law enforcement. Customs officers are well trained and educated, with senior officers requiring a Bachelor's Degree as a minimum requirement for employment. At this moment, the overall effectiveness of Malaysia's effort to address the international aspect is questionable. Despite many seizures there is very little to show in the way of arrests, prosecutions and convictions. There has also never been a controlled delivery of any of the shipments seized by the RMCD. Seizures of a finite wildlife resource will not prevent or stop wildlife trafficking. In the absence of arrests, seizures alone may in fact do more harm than good. In Sarawak, all wildlife and forestry investigations are undertaken by the FDS since 2012, occasionally with the support of the RMP and RMCD, for example during operations targeting illegal loggers or poachers. Rangers engaged in enforcement activities receive basic law enforcement training, but like their counterparts in Perhilitan and Sabah, they come from a conservation background.

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			<ul style="list-style-type: none"> • The FDS has an intelligence unit but does not possess any analytical software, and its analysts receive only basic training. • The FDS does not use advanced undercover officers or undertake electronic surveillance. It does have basic physical surveillance capability; however, its officers have not been trained in surveillance. • When the FDS needs to utilize advanced investigation methods, it relies almost completely on the police. • In Sarawak, the FDS utilizes Honorary Wildlife Rangers, who provide timely and reliable enforcement information from the field. These Honorary Rangers are generally recruited as volunteers from the local communities in certain areas, and through their employment the FDS has access to good local intelligence. • In 2013, 2014 and 2015, the FDS investigated a total of 12, 13 and 15 cases respectively. In 2016 the number of cases dropped to five. • Shortcomings of FDS: <ul style="list-style-type: none"> ○ Lack of training and experience in advanced investigative techniques ○ No centralized CHIS system ○ Lack of experience with advanced investigative methods ○ No advanced analytical software ○ No independent cell phone analytical capability ○ Poor informant reward provisions ○ High reliance on temporary staff and rangers

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			<ul style="list-style-type: none"> ○ Poor crime scene capabilities <p>Based on the analysis provided in the UNODC report, and applying a precautionary approach, the risk for this indicator has been evaluated as specified.</p> <p><i>Risk Conclusion</i></p> <p>'Specified risk'. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p>
1.20 CITES	<p>Peninsular</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> • International Trade in Endangered Species Act 2008 (Act 686). - Sec.10, 12 and 13. Available at: http://www.unodc.org/res/cld/document/international-trade-in-endangered-species-act-2008_html/International_Trade_in_Endangered_Species_Act_2008.pdf • Customs Act 1967 [Act 235]. Available at: https://simplymalaysia.files.wordpress.com/2011/10/act-235-customs-act-1967.pdf • Customs (Prohibition of Exports) Order 2012. Available at: http://www.env.go.jp/recycle/yugai/reg/pua_20121231_LaranganExport.pdf 	<p>Peninsular</p> <p><i>Government sources</i></p> <ul style="list-style-type: none"> • mtib.gov.my (N.Y.). <i>Malaysian Timber Industry Board</i>. [online]. Available at: http://www.mtib.gov.my <p><i>Non-Government sources</i></p> <ul style="list-style-type: none"> • World Resources Institute (WRI) (2013). Forest Legality Alliance Risk Tool, 2013: Malaysia: http://www.forestlegality.org/risk-tool/country/malaysia#tab-management [accessed 23 February 2015] • unep.wcmc.org (2013). <i>CITES Tree Species</i>. [online]. Available at: http://www.unep-wcmc.org/medialibrary/2013/07/10/7a9ef9fe/Trees_CITES_listed_updated_July_2013.pdf • cites.org (N.Y.). <i>CITES Country Profile: Malaysia</i>. [online]. Available 	<p>Peninsular</p> <p><i>Overview of Legal Requirements</i></p> <p>Malaysia acceded to CITES in 1977. The export of goods made from Dalbergia spp, Aquilaria spp. Gonystylus spp., Taxus chinensis and Taxus wallichianais is included on the CITES list under the CITES Commercial Regulations under Appendix II (CITES Checklist).</p> <p>As the Management Authority for timber species in Peninsular Malaysia, MTIB is responsible for the issuance of export, import and re-export permits for the CITES listed timber species: Ramin or Karas/Gaharu wood originating from Malaysia. The Ministry of Natural Resources and Environment (NRE) is the Scientific Authority under CITES. To legally export either Ramin or Karas wood, operators will need to work with these bodies. For the export of Ramin, a CITES export permit application must be made directly to MTIB and NRE, while for Agarwood products/Karas (either woodchip or Agarwood oil), exports are subject to the approval of the company quota, made in advance. States apply for export quotas of Agarwood/Karas before applying for the CITES permit. Other operators wanting to import and re-export products made with these materials from these trees will need a similar permit to re-export before these goods reach their final destinations.</p>

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	<p><i>Legal authority</i></p> <ul style="list-style-type: none"> Malaysian Timber Industry Board (MTIB) <p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> CITES permit/license <p>Sabah</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> International Trade in Endangered Species Act 2008 (Act 686). Available at: http://www.unodc.org/res/cld/document/international-trade-in-endangered-species-act-2008.html/International_Trade_in_Endangered_Species_Act_2008.pdf Customs Act 1967 [Act 235]. Available at: https://simplymalaysia.files.wordpress.com/2011/10/act-235-customs-act-1967.pdf Customs (Prohibition of Exports) Order 2012. Available at: http://www.env.go.jp/recycle/yugai/reg/pua_20121231_LaranganExport.pdf <p><i>Legal authority</i></p> <ul style="list-style-type: none"> State Forestry Department SFD <p><i>Legally required documents or records</i></p>	<p>at: http://www.cites.org/eng/cms/index.php/component/cp/country/MY</p> <ul style="list-style-type: none"> speciesplus.net (N.Y). <i>Species+ Database</i>. [online]. Available at: http://www.speciesplus.net/ checklist.cites.org (N.Y). <i>CITES Species Checklist</i>. [online]. Available at: http://checklist.cites.org/#/search/country_ids[]=127&cites_appendices[]=I&cites_appendices[]=II&cites_appendices[]=III&output_layout=alphabetical&level_of_listing=0&show_synonyms=1&show_author=0&show_english=1&show_spanish=1&show_french=1&scientific_name=Plantae&page=1&per_page=20&locale=en Barden, A., Awang Anak, N., Mulliken, T., Song, M. (2000). <i>Heart of the Matter - Agarwood Use and Trade and CITES Implementation for Aquilaria malaccensis</i>. [online] Available at: http://www.traffic.org/publications/heart-of-the-matter-agarwood-use-and-trade-and-cites-impleme.html Teck Wyn, L., Soehartono, T., Hin Keong, C. (2004). <i>Framing the Picture: An assessment of Ramin trade in Indonesia, Malaysia and Singapore</i>. [online] TRAFFIC Southeast Asia Available at : 	<p><i>Description of Risk</i></p> <ul style="list-style-type: none"> Importing countries have contacted the MTIB to verify the authenticity of the CITES documents, and thereby several of cases of false CITES permits have been detected, which shows that there is a risk of fraud with CITES permits for products originating from Malaysia (Personal communication 5). <p>According to the 2017 UNODC report:</p> <ul style="list-style-type: none"> Malaysia is one of eight countries identified by CITES as being of “primary concern” and heavily implicated in the illegal trade in ivory. All seized wildlife and timber products are handled in accordance with the provisions of relevant legislation and the Enforcement Standing Instructions. Any timber seized in Malaysia is measured, marked, recorded and photographed, and put into secure storage that only the investigating officer can access. A similar system exists for wildlife seizures. Even though capacity-building programmes have been conducted to identify CITES-listed timber species, customs officers still need to contact the MTIB to conduct joint inspections of timber cases. Most of the identified illegal trade cases undertaken by the MTIB relate to trans-shipments and imports of timber. From 2012 to 2017, the MTIB investigated 34 cases related to prohibited imports, of which 22 cases related to the illegal imports/trans-shipments of CITES-listed timber species. Despite having the necessary provisions within the Act, none of these investigations resulted in a period of imprisonment, with all being resolved by way of administrative sanction. According to the MTIB, most of timber imported into or exported from Malaysia is in the form of furniture, and to a lesser extent, whole logs. Primary

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	<ul style="list-style-type: none"> CITES Export or re-Export permit issued by SFD. <p>Sarawak</p> <p><i>Applicable laws and regulations</i></p> <ul style="list-style-type: none"> International Trade in Endangered Species Act 2008 (Act 686) - Sec.10, 12 and 13. Available at: http://www.unodc.org/res/cld/document/international-trade-in-endangered-species-act-2008.html/International_Trade_in_Endangered_Species_Act_2008.pdf Customs Acts 1967 [Act 235]. Available at: https://www.mytradelink.gov.my/documents/10179/0/Customs-act Customs (Prohibition of Exports) Order 2012. Available at: http://www.env.go.jp/recycle/yugai/reg/pua_20121231_LaranganExport.pdf <p><i>Legal authority</i></p> <ul style="list-style-type: none"> Sarawak Timber Industry Development Corporation (STIDC) Sarawak Forestry Corporation Sarawak Forestry Department (SFD) <p><i>Legally required documents or records</i></p> <ul style="list-style-type: none"> CITES Export or re-Export permit 	<p>http://www.illegal-logging.info/item_single.php?it_id=126&it=document</p> <ul style="list-style-type: none"> Teck Wyn, L., Awang Anak, N. (2010) <i>Wood for the Trees - A review of the Agarwood Trade in Malaysia</i>. [online] TRAFFIC Southeast Asia. Available at: http://www.academia.edu/812244/Wood_for_the_Trees_A_Review_of_the_Agarwood_Trade_in_Malaysia Gratzfeld, J., Tan, B. (2008). <i>Agarwood - saving a precious and threatened resource</i>. [online] Botanic Gardens Conservations International. Available at: http://www.bgci.org/resources/article/0576/ cites.org (2004). <i>Proposal for the inclusion of Gonystylus spp (Ramin)</i>. [online]. Available at: http://www.cites.org/common/cop/13/raw_props/ID-Ramin.pdf <p>Sabah</p> <p><i>Government sources</i></p> <ul style="list-style-type: none"> mtib.gov.my (N.Y.) <i>Malaysian Timber Industry Board</i>. [online]. Available at: http://www.mtib.gov.my <p><i>Non-Government sources</i></p>	<p>export destinations include the US, EU, Japan and to a lesser extent China. Most of the timber imported into Malaysia is from China and Indonesia.</p> <p>The risk is considered specified due to the risk of using false CITES certificates.</p> <p><i>Risk Conclusion</i></p> <p>'Specified risk'. Threshold (2) is met: Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.</p> <p>Sabah</p> <p><i>Overview of Legal Requirements</i></p> <p>Malaysia acceded to CITES in 1977. The export of goods made from Dalbergia spp, Aquilaria spp. Gonystylus spp., Taxus chinensis and Taxus wallichianais is included on the CITES list under the CITES Commercial Regulations under Appendix II (CITES Checklist).</p> <p>As of July 2017, the Management Authority for timber species in Sabah, is the Sabah Forestry Department, who is responsible for the issuance of export, import and re-export permits for the CITES listed timber species: Ramin or Karas/Gaharu wood originating from Malaysia.</p> <p>The Ministry of Natural Resources and Environment (NRE) is the Scientific Authority under CITES. To legally export either Ramin or Karas wood, operators will need to work with these bodies.</p> <p>For the export of Ramin, a CITES export permit application must be made directly to SFD and NRE, while for Agarwood products/Karas (either woodchip or Agarwood oil), exports are subject to the approval of the company quota, made in advance. States apply for export quotas of Agarwood/Karas before</p>

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Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
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		<ul style="list-style-type: none"> • cites.org (2004). Proposal for the inclusion of Gonystylus spp (Ramin). [online]. Available at: http://www.cites.org/common/cop/13/r aw_props/ID-Ramin.pdf • UNODC, (2017). Criminal justice response to wildlife crime in Malaysia - A rapid assessment: Available: https://www.unodc.org/documents/sou theastasiaandpacific/Publications/201 7/Malaysia_Assessment_-_09.pdf accessed 13 February 2018. • Expert consultation conducted by NEPCon, 2015 - Personal communication 5 • New Straits Times, (2017). Sabah timber industry set to boost with return of licensing power: LDP. Available: https://www.nst.com.my/news/nation/ 2017/05/242178/sabah-timber- industry-set-boost-return-licensing- power-ldp, accessed 13 February 2018. <p>Sarawak</p> <p><i>Government sources</i></p> <ul style="list-style-type: none"> • sarawakforestry.com (N.Y.) Sarawak Forestry Corporation (SFC). [online]. Available at: http://www.sarawakforestry.com/htm/s ustainable.html 	

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		<ul style="list-style-type: none"> • forestry.sarawak.gov.my (N.Y.) Sarawak Forestry Department (SFD). [online]. Available at: http://www.forestry.sarawak.gov.my/ <p><i>Non-Government sources</i></p> <ul style="list-style-type: none"> • World Resources Institute (WRI) (2013). Forest Legality Alliance Risk Tool, 2013: Malaysia: http://www.forestlegality.org/risk-tool/country/malaysia#tab-management [accessed 23 February 2015] • unep.wcmc.org (2013). <i>CITES Tree Species</i>. [online]. Available at: http://www.unep-wcmc.org/medialibrary/2013/07/10/7a9ef9fe/Trees_CITES_listed_updated_July_2013.pdf • cites.org (N.Y.). <i>CITES Country Profile: Malaysia</i>. [online]. Available at: http://www.cites.org/eng/cms/index.php/component/cp/country/MY • speciesplus.net (N.Y). <i>Species+ Database</i>. [online]. Available at: http://www.speciesplus.net/ • checklist.cites.org (N.Y). <i>CITES Species Checklist</i>. [online]. Available at: http://checklist.cites.org/#/search/country_ids[]=127&cites_appendices[]=I&cites_appendices[]=II&cites_appendice 	

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
		<p>s[]=III&output_layout=alphabetical&level_of_listing=0&show_synonyms=1&show_author=0&show_english=1&show_spanish=1&show_french=1&scientific_name=Plantae&page=1&per_page=20&locale=en</p> <ul style="list-style-type: none"> • Barden, A., Awang Anak, N., Mulliken, T., Song, M. (2000). <i>Heart of the Matter - Agarwood Use and Trade and CITES Implementation for Aquilaria malaccensis</i>. [online] Available at: http://www.traffic.org/publications/heart-of-the-matter-agarwood-use-and-trade-and-cites-impleme.html • Teck Wyn, L., Soehartono, T., Hin Keong, C. (2004). <i>Framing the Picture: An assessment of Ramin trade in Indonesia, Malaysia and Singapore</i>. [online] TRAFFIC Southeast Asia Available at : http://www.illegal-logging.info/item_single.php?it_id=126&it=document • Teck Wyn, L., Awang Anak, N. (2010) <i>Wood for the Trees - A review of the Agarwood Trade in Malaysia</i>. [online] TRAFFIC Southeast Asia. Available at: http://www.academia.edu/812244/Wood_for_the_Trees_A_Review_of_the_Agarwood_Trade_in_Malaysia 	

Indicator	Applicable laws and regulations, legal Authority, & legally required documents or records	Sources of Information	Risk designation and determination
		<ul style="list-style-type: none"> • Gratzfeld, J., Tan, B. (2008). Agarwood - saving a precious and threatened resource. [online] Botanic Gardens Conservations International. Available at: http://www.bgci.org/resources/article/0576/ • cites.org (2004). Proposal for the inclusion of Gonystylus spp (Ramin). [online]. Available at: http://www.cites.org/common/cop/13/r aw_props/ID-Ramin.pdf • UNODC, (2017). Criminal justice response to wildlife crime in Malaysia - A rapid assessment: Available: https://www.unodc.org/documents/southeastasiaandpacific/Publications/2017/Malaysia_Assessment_-_09.pdf accessed 13 February 2018. 	
Diligence/due care procedures			
1.21 Legislation requiring due diligence/due care procedures	<i>Applicable laws and regulations</i> N/A. There is no legislation covering due diligence/due care procedures in Malaysia. <i>Legal Authority</i> N/A <i>Legally required documents or records</i> N/A	Peninsular: N/A Sabah: N/A Sarawak: N/A	Peninsular: N/A Sabah: N/A Sarawak: N/A

Recommended control measures

The recommended control measures here are only indicative in nature, and are not mandatory. Organizations shall evaluate and devise appropriate control measures to mitigate the risks identified in this risk assessment as applicable.

Indicator	Recommended control measures
1.1 Land tenure and management rights	<p>Peninsular</p> <ul style="list-style-type: none"> • Confirm land registry ownership and validity of property deed. • Confirm that land tenure rights are clear through consultation with neighbours, local communities and others. • Confirm that registration of FME has been granted following legally prescribed processes through stakeholder consultation. • Confirm that legal status of the operation or rights for conducting the established activities are not subject to court orders or other legally established decisions to cease operations through stakeholders' consultation. • FSC or MTCS certificate <p>Sabah</p> <ul style="list-style-type: none"> • The organisation shall ensure claims to land ownership have to be approved and registered by the State. • The organisation shall ensure there are Sustainable Forest Management License Agreements (SFMLAs) in place on PFRs. • The organisation shall ensure that where there are communities present in forest reserves (either PFRs or SL), the Sabah Forestry Department has issued Occupation Permits (OPs) for the communities. • The organisation shall ensure that proper consultation has taken place with the communities on all types of land. • FSC or MTCS certificate <p>Sarawak</p> <ul style="list-style-type: none"> • Confirm land registry ownership and validity of property deed. • Confirm that land tenure rights are clear through consultation with neighbours, local communities and others. • Confirm that registration of FME has been granted following legally prescribed processes through stakeholder consultation. • Confirm that legal status of the operation or rights for conducting the established activities are not subject to court orders or other legally established decisions to cease operations through stakeholder consultation. • FSC or MTCS certificate

Indicator	Recommended control measures
1.2 Concession licenses	<p>Peninsular</p> <ul style="list-style-type: none"> • The organisation shall ensure that a valid concession license is in place which meets all the legal requirements. • The organisation shall ensure that any public allegations of corruption in awarding of concession licence have been rebutted publicly. • Independent stakeholder consultation shall confirm that legal procedures for obtaining concession licenses have been followed • FSC or MTCS certificate <p>Sabah</p> <p>For the Permanent Forest Reserve (PRF), State Land and Alienated Land.</p> <ul style="list-style-type: none"> • The organisation shall ensure that a valid concession license is in place which meets all the legal requirements. • The organisation shall ensure that any public allegations of corruption in awarding of concession licence have been rebutted publicly. • Independent stakeholder consultation shall confirm that legal procedures for obtaining concession licenses have been followed • FSC or MTCS certificate <p>Sarawak</p> <ul style="list-style-type: none"> • There shall be no major claims by Natives on customary rights within the concession area (can vet verified at the High Court of Sarawak) • FSC or MTCS certificate
1.3 Management and harvesting planning	<p>Peninsular</p> <ul style="list-style-type: none"> • Maps showing harvesting areas (in compliance with the harvesting plan) • Document review: approved harvesting plan and management plan • Field visits to verify that the contractors have a Timber Extraction Contract • Approved forest management plans shall exist for the FMU where the harvesting is taking place. • Forest management plans shall contain all legally required information and procedures. • Annual operating or harvesting plans shall be in place and approved by legally competent authorities. • Annual operating or harvesting plans shall contain information and procedures, according to all legal requirements. • The contents of the operating and harvesting plans shall be consistent with approved forest management plans. • Plans for carrying out harvesting operations shall be subject to public disclosure and objections prior to commencement if legally required. • Harvesting restrictions shall be identified in management plan and maps if legally required.

Indicator	Recommended control measures
	<ul style="list-style-type: none"> • Harvesting inventories shall be conducted according to legal requirements. • Field verifications shall indicate that the contents of the harvesting plans are adhered to in the field. • Stakeholder consultation shall indicate that the forest management plan has been approved according to legally prescribed process <p>Sabah</p> <ul style="list-style-type: none"> • Maps showing harvesting areas (in compliance with the harvesting plan) • Document review: approved harvesting plan and management plan • Field visits to verify that the contractors have a Timber Extraction Contract • Approved forest management plans shall exist for the FMU where the harvesting is taking place. • Forest management plans shall contain all legally required information and procedures. • Annual operating or harvesting plans shall be in place and approved by legally competent authorities. • Annual operating or harvesting plans shall contain information and procedures, according to all legal requirements. • The contents of the operating and harvesting plans shall be consistent with approved forest management plans. • Plans for carrying out harvesting operations shall be subject to public disclosure and objections prior to commencement if legally required. • Harvesting restrictions shall be identified in management plan and maps if legally required. • Harvesting inventories shall be conducted according to legal requirements. • Field verifications shall indicate that the contents of the harvesting plans are adhered to in the field. • Stakeholder consultation shall indicate that the forest management plan has been approved according to legally prescribed process <p>Sarawak</p> <ul style="list-style-type: none"> • Maps showing harvesting areas (in compliance with the harvesting plan) • Document review: approved harvesting plan and management plan • Field visits to verify that the contractors have a Timber Extraction Contract • Approved forest management plans shall exist for the FMU where the harvesting is taking place. • Forest management plans shall contain all legally required information and procedures. • Annual operating or harvesting plans shall be in place and approved by legally competent authorities. • Annual operating or harvesting plans shall contain information and procedures, according to all legal requirements.

Indicator	Recommended control measures
	<ul style="list-style-type: none"> • The contents of the operating and harvesting plans shall be consistent with approved forest management plans. • Plans for carrying out harvesting operations shall be subject to public disclosure and objections prior to commencement if legally required. • Harvesting restrictions shall be identified in management plan and maps if legally required. • Harvesting inventories shall be conducted according to legal requirements. • Field verifications shall indicate that the contents of the harvesting plans are adhered to in the field. • Stakeholder consultation shall indicate that the forest management plan has been approved according to legally prescribed process. • FSC or MTCS certificate
1.4 Harvesting permits	<p>Peninsular</p> <ul style="list-style-type: none"> • Field visits shall verify that maps follow reality • Harvesting permits shall exist • Harvesting limits shall be clearly defined based on maps and quantities • Authorities shall confirm the validity of harvesting permit • Field inspection shall confirm that harvesting takes place within limits given in the harvesting permit. • Field inspection shall confirm that information regarding area, species, volumes and other information given in the harvesting permit is correct and within limits prescribed in the legislation. • FSC or MTCS certificate <p>Sabah</p> <ul style="list-style-type: none"> • Field visits shall verify that maps follow reality • Harvesting permits shall exist • Harvesting limits shall be clearly defined based on maps and quantities • Authorities shall confirm the validity of harvesting permit • Field inspection shall confirm that harvesting takes place within limits given in the harvesting permit. • Field inspection shall confirm that information regarding area, species, volumes and other information given in the harvesting permit is correct and within limits prescribed in the legislation. • FSC or MTCS certificate

Indicator	Recommended control measures
	<p>Sarawak</p> <ul style="list-style-type: none"> The FMU shall have in place approved General Harvesting Plan and Detailed Harvesting Plans Prior to harvest the FMU shall have a valid permit to enter coupe (PEC). FSC or MTCS certificate
1.5 Payment of royalties and harvesting fees	<p>Peninsular</p> <ul style="list-style-type: none"> Receipts shall exist for payments of harvesting related royalties, taxes, harvesting fees and other charges. Volumes, species and qualities given in sales and transport documents shall match the paid fees. Classification of species, volumes and qualities shall match the royalties and fees paid. Harvesting permit should verify origin. If timber originates from cleared areas royalty stamps on logs should be verified. Verification of the Removal Pass to ensure that the species and volumes are indicated with royalty payment correctly. FSC or MTCS certificate <p>Sabah N/A</p> <p>Sarawak</p> <ul style="list-style-type: none"> Timber shall be marked with the correct hammer markings "JH" Removal pass shall be based on Royalty Payment and it shall be possible to cross check hammer markings - FSC or MTCS certificate
1.6 Value added taxes and other sales taxes	<ul style="list-style-type: none"> Sales documents shall include applicable sales taxes. Receipts for payment sales taxes shall exist. Volumes, species and qualities given in sales and transport documents shall match the fees paid. Sales prices shall be in line with market prices. Harvested species, volume and qualities shall match the sales documents. Authorities shall confirm that operation is up to date in payment of applicable sales taxes. <p>Consultation with financial authority to verify that all required income and profit taxes have been paid.</p>
1.7 Income and profit taxes	<ul style="list-style-type: none"> Verify that the user has issued current accounting invoices.

Indicator	Recommended control measures
	<ul style="list-style-type: none"> • Verify timber species, volumes and prices (depending on qualities) shown in the accounting invoice. • Verify monthly, quarterly or end-of-year payment of income tax • Cross-check between duplicates of invoices issued and the report submitted • Cross-check between issuance of accounting invoices and the enterprise's shipping tickets (they should coincide about the species and volumes shown).
1.8 Timber harvesting regulations	<p>Peninsular</p> <ul style="list-style-type: none"> • The FMU shall have in place approved Harvesting Plan. • Prior to harvest the FMU shall have a valid harvesting licence • There shall be evidence that the requirements of the Harvesting Plan and procedures on reduced and low impact harvesting as specified in the harvesting license are being followed in the forest. • FSC or MTCS certificate <p>Sabah N/A</p> <p>Sarawak</p> <ul style="list-style-type: none"> • The FMU shall have in place approved General Harvesting Plan and Detailed Harvesting Plans • Prior to harvest the FMU shall have a valid permit to enter coupe (PEC). • There shall be evidence that the requirements of the General Harvesting Plan and the Detailed Harvesting Plan (DP) are being followed in the forest, including: layout of logging blocks, surveyed road networks, protected or conservation areas as well as the proposed harvesting methods. • FSC or MTCS certificate
1.9 Protected sites and species	<p>Peninsular</p> <ul style="list-style-type: none"> • All legally protected areas (including species habitats) shall be included in the management plan or related documentation if required by the legislation. • Confirm that all legally established procedures for surveying, managing and protecting endangered or threatened species within the management unit have been followed. • Review RIL implementation guidelines and reports of RIL implementation at forest level. Verification of RIL implementation in the forest shall be confirmed, and workers shall be interviewed to confirm awareness of RIL requirements. • The satellite data from Global Forest Watch can give a first indication if harvesting is encroaching on protected areas.

Indicator	Recommended control measures
	<ul style="list-style-type: none"> • A press review can also help to identify if a company has been involved in hunting of protected species or destruction of protected areas. • FME shall clearly outline areas allowed for harvesting and avoid harvesting within protected areas. <p>Sabah</p> <ul style="list-style-type: none"> • All legally protected areas (including species habitats) shall be included in the management plan or related documentation if required by the legislation. • Confirm that all legally established procedures for surveying, managing and protecting endangered or threatened species within the management unit have been followed. • Review RIL implementation guidelines and reports of RIL implementation at forest level. Verification of RIL implementation in the forest shall be confirmed, and worked shall be interviewed to confirm awareness of RIL requirements. • The Forest manager shall be able to identify and record any protected species in their area and where possible to conduct inventory on number of species involved. • The satellite data from Global Forest Watch can give a first indication if harvesting is encroaching on protected areas. <p>Sarawak</p> <ul style="list-style-type: none"> • FME shall clearly outline areas allowed for harvesting and avoid harvesting within protected areas. - All legally protected areas (including species habitats) shall be included in the management plan. • FME shall identify and record any protected species within the FMU; and where possible to conduct inventory on number of species involved. • FME shall identify and record protected species fauna and flora in the forest area. <p>The FME shall implement protection of the species of fauna and flora in the forest area.</p>
1.10 Environmental requirements	<p>Peninsular</p> <ul style="list-style-type: none"> • Ensure an EIA has been prepared for any FME greater than 500 ha. <p>Third party verification of the implementation of the mitigation measures as prescribed in the EIA should be observed and cross-checked.</p> <p>Sabah</p> <ul style="list-style-type: none"> • FSC or MTCS certificate • Ensure an EIA has been prepared for any area greater than 500 ha. • Conduct on-site visit to confirm logging has been done in conformance with the EIA. If not, avoid purchasing. • Review Environmental monitoring compliance reports prepared by the EPD. Annual compliance reports, but it is not always completed for all companies every year. • FSC or MTCS certificate

Indicator	Recommended control measures
	<p>Sarawak</p> <ul style="list-style-type: none"> • Third part verification of the implementation of the mitigation measures as prescribed in the EIA should be observed on-site and cross-checked. • Interview with the NREB Environmental controllers shall confirm conformance with EIA. • FSC or MTCS certificate
1.11 Health and safety	<p>Peninsular</p> <ul style="list-style-type: none"> • Verify Health and Accident records are kept • Conduct thorough review of Health and Accident records and relevant documents; and when required conduct field verification. • FME shall observe occupational health and safety requirements by all personnel involved in harvesting and forest management activities: provide and maintain a safe working environment; provide and maintain facilities for the safety and health of employees; ensure that machinery and equipment are safe for employees; ensure that working arrangements are not hazardous to employees; provide procedures to deal with emergencies that may arise while the employees are at work; and provide information, instruction, training and supervision as is necessary. • Interviews with staff and contractors shall confirm that legally required protection equipment is provided by the FME and used by laborers. • FSC or MTCS certificate <p>Sabah</p> <ul style="list-style-type: none"> • Monitoring on use of Personal Protective Equipment (PPE) by site workers through record on issuance of PPE and site visit. • Checking on Health and Accident records • Quarterly reports on direct employment in the logging and wood processing sectors through Shuttle Returns No. IV, V and VIII. • Annual report on direct employment in management and administration of the forest resources. • FSC or MTCS certificate • Review: <ul style="list-style-type: none"> ○ Policy statement ○ Work permit for foreign workers, if any ○ Employee Provident Fund (EPF) ○ Social Security Organization (SOSCO) ○ Records of insurance policies ○ Occupational Safety and health Committee ○ FD Certificate of Identity

Indicator	Recommended control measures
	<p>Sarawak</p> <ul style="list-style-type: none"> • FME shall observe occupational health and safety requirements by all personnel involved in harvesting and forest management activities: provide and maintain a safe working environment; provide and maintain facilities for the safety and health of employees; ensure that machinery and equipment are safe for employees; ensure that working arrangements are not hazardous to employees; provide procedures to deal with emergencies that may arise while the employees are at work; and provide information, instruction, training and supervision as is necessary. • Interviews with staff and contractors shall confirm that legally required protection equipment is provided by the FME and used by laborers. • FSC or MTCS certificate
1.12 Legal employment	<p>Peninsular</p> <ul style="list-style-type: none"> • Conduct thorough review of employment records and relevant documents; and when required conduct field verification. • For high risk migrant workers, interviews with workers shall confirm receipt of wages (and that wages have not been deducted to cover work permits), legal working hours, adequate living conditions, insurance and that travel documents are not being withheld by employers. • Review the records of number of people employed <ul style="list-style-type: none"> ○ Compliance Report ○ Work permits for foreign workers • FSC or MTCS certificate <p>Sabah</p> <ul style="list-style-type: none"> • Conduct thorough review of employment records and relevant documents; and when required conduct field verification. • For high risk migrant workers, interviews with workers shall confirm receipt of wages (and that wages have not been deducted to cover work permits), legal working hours, adequate living conditions, insurance and that travel documents are not being withheld by employers. • Review the records of number of people employed <ul style="list-style-type: none"> ○ Compliance Report ○ SFMLA ○ Work permits for foreign workers • - FSC or MTCS certificate <p>Sarawak</p> <ul style="list-style-type: none"> • Review on employment records and relevant documents, as well as interviews with workers, shall confirm evidence of legal employment. • FSC or MTCS certificate

Indicator	Recommended control measures
1.13 Customary rights	<p>Peninsular</p> <ul style="list-style-type: none"> • Documents or records of consultations with local communities for any land or rights dispute resolutions. • The absence of conflicts over customary rights is a good verifier to determine how well customary rights are respected in each case. • Newspaper reviews and interviews can be part of the set of verifiers to assess the situation. • Stakeholder consultation shall confirm that customary rights are observed during harvesting activities. • FSC or MTCS certificate <p>Sabah</p> <ul style="list-style-type: none"> • Documents or records of consultations with local communities for any land or rights dispute resolutions. A community use zone (CUZ) can be set aside for communal use. • The absence of conflicts over customary rights is a good verifier to determine how well customary rights are respected in each case. • Newspaper reviews and interviews can be part of the set of verifiers to assess the situation. • Stakeholder consultation shall confirm that customary rights are observed during harvesting activities. • FSC or MTCS certificate <p>Sarawak</p> <ul style="list-style-type: none"> • Records of consultation between the forest enterprises shall be available and interviews with the local indigenous people should be undertaken and verified against the consultation records. • Maps showing the customary claims shall be available be considered and any claims areas shall be excluded from the harvesting areas. • Verify whether the claims are genuine and evidence of customary use does exist. • FSC or MTCS certificate
1.14 Free prior and informed consent	<p>Peninsular</p> <ul style="list-style-type: none"> • Documents or records of consultations with local communities for any land or rights dispute resolutions. • The absence of conflicts over customary rights is a good verifier to determine how well customary rights are respected in each case. • Newspaper reviews and interviews can be part of the set of verifiers to assess the situation. • Stakeholder consultation shall confirm that customary rights are observed during harvesting activities. • FSC or MTCS certificate

Indicator	Recommended control measures
	<p>Sabah</p> <ul style="list-style-type: none"> • Documents or records of consultations with local communities for any land or rights dispute resolutions. • The absence of conflicts over customary rights is a good verifier to determine how well customary rights are respected in each case. • Newspaper reviews and interviews can be part of the set of verifiers to assess the situation. • Stakeholder consultation shall confirm that customary rights are observed during harvesting activities. • FSC or MTCS certificate <p>Sarawak</p> <ul style="list-style-type: none"> • Review FPIC record where prior and informed consent has been made with stakeholders on all NCR land. • Interviews with all stakeholders to verify that this has been agreed between the management and all applicable stakeholders. • FSC or MTCS certificate
1.15 Indigenous people's rights	<p>Peninsular</p> <ul style="list-style-type: none"> • Documents or records of consultations with local communities for any land or rights dispute resolutions. • The absence of conflicts over customary rights is a good verifier to determine how well customary rights are respected in each case. • Newspaper reviews and interviews can be part of the set of verifiers to assess the situation. • Stakeholder consultation shall confirm that customary rights are observed during harvesting activities. • FSC or MTCS certificate <p>Sabah</p> <ul style="list-style-type: none"> • Stakeholder consultation shall confirm that indigenous peoples' established rights are not being violated • Country specific • Documents or records of consultations with local communities for any land or rights dispute resolutions. A community use zone (CUZ) can be set aside for communal use. • Absence of conflict and practice of self-determination is a first verifier of established Indigenous Peoples' rights. <p>Sarawak</p> <ul style="list-style-type: none"> • Records of consultation between the forest enterprises shall be available and interviews with the local indigenous people should be undertaken and verified against the consultation records. • Maps showing the customary claims shall be available be considered and any claims areas shall be excluded from the harvesting areas.

Indicator	Recommended control measures
	<ul style="list-style-type: none"> Verify whether the claims are genuine and evidence of customary use does exist. FSC or MTCS certificate
1.16 Classification of species, quantities, qualities	<p>Peninsular</p> <ul style="list-style-type: none"> Receipts shall exist for payments of harvesting related royalties, taxes, harvesting fees and other charges. Volumes, species and qualities given in sales and transport documents shall match the paid fees. Classification of species, volumes and qualities shall match the royalties and fees paid. Harvesting permit should verify origin. If timber originates from cleared areas royalty stamps on logs should be verified. Verification of the Removal Pass to ensure that the species and volumes are indicated with royalty payment correctly. FSC or MTCS certificate <p>Sabah N/A</p> <p>Sarawak</p> <ul style="list-style-type: none"> The Transit Pass and Removal Pass shall entail information such as classification of species, volume and weight correspond about the actual logs, and fees paid FSC or MTCS certificate
1.17 Trade and transport	<p>Peninsular</p> <ul style="list-style-type: none"> Inspect the validity of the documents (removal pass, transit removal pass) with the relevant agencies and ensure that the information is sufficient and consistent with the actual logs. FSC or MTCS certificate <p>Sabah N/A</p> <p>Sarawak</p> <ul style="list-style-type: none"> Inspect the validity of the documents (removal pass, transit removal pass) with the relevant agencies and ensure that the information is sufficient and consistent with the actual logs. FSC or MTCS certificate

Indicator	Recommended control measures
1.18 Offshore trading and transfer pricing	<ul style="list-style-type: none"> • There shall be no illegal manipulation in relation to the transfer pricing • Determine if the company has any subsidiary operating in a known tax haven. • Review internal invoicing to determine whether the prices used were comparable to market prices. • Review transfer pricing documentation to prove market price-based transactions. • Malaysian Inland Revenue Board (IRB) transfer pricing audit reports may be reviewed • Verify if Corporate Income Tax Return Form ('Form') for 2014 contains disclosure as to whether transfer pricing documentation has been prepared.
1.19 Custom regulations	<ul style="list-style-type: none"> • All required import and exports and import permits shall be in place. • Review export and import licenses, which must be based on a file that meets the national legal requirements. • Verify supporting documentation that is the basis for obtaining an export licence (certificate of shipment inspection, shipping inspection ticket, CITES certificate – when applicable –, and invoice, among others). • Visit INAB's single contact point for timber exports, where all export licences and their respective supporting documentation are located, to verify species, volumes and export prices. • Verify payment of taxes linked to the export process.
1.20 CITES	<ul style="list-style-type: none"> • The authenticity of CITES permits should be verified by MTIB, SFD or FDS. • Verify that the CITES permit obtained relates directly to the product. • Concession location, logging permits, Work Plans, transport documents and inspection results can give an indication of the presence of CITES species. Independent verification of wood samples can give assurance of CITES-free shipments..
1.21 Legislation requiring due diligence/due care procedures	N/A

Controlled wood category 2: Wood harvested in violation of traditional and human rights

Risk assessment

Indicator	Sources of Information	Functional scale	Risk designation and determination
2.1. The forest sector is not associated with violent armed conflict, including that which threatens national or regional security and/or linked to military control.	See detailed analysis below.	Country	<p>Low risk</p> <p>Justification: All 'low risk thresholds' (1, 2, 3, 4 and 5) are met. None of the 'specified risk thresholds' are met.</p>
2.2. Labour rights are respected including rights as specified in ILO Fundamental Principles and Rights at work.	See detailed analysis below.	Country	<p>Specified risk for right to freedom of association and collective bargaining, for child labour, for forced labour and for discrimination of indigenous peoples and non-Malaya people in the labour market</p> <p>Justification: 'Specified risk' thresholds (14) and (15) are met.</p> <p>Low risk for discrimination of women in the labour market.</p> <p>Justification: 'Specified risk' thresholds (11) and (12) are met.</p>
2.3. The rights of Indigenous and Traditional Peoples are upheld.	See detailed analysis below.	Country	<p>Specified risk for territories claimed by Indigenous Peoples</p> <p>Justification: 'Specified risk' thresholds (23), (24) and (26) are met.</p>

			Note: Because traditional territories of indigenous peoples are not clearly mapped, further assessment is needed to conclude what exactly are the borders of the customary forests of indigenous peoples. Applying the precautionary approach, the whole country is therefore designated as specified risk for this indicator.
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Recommended control measures

The recommended control measures here are only indicative in nature, and are not mandatory. Organizations shall evaluate and devise appropriate control measures to mitigate the risks identified in this risk assessment as applicable.

Indicator	Recommended control measures
2.1	N/A
2.2	CM should be based on clear evidence that the Organization has policies in place that guarantee core labour rights.
2.3	(1) Clear evidence that a forest operation is not taking place in a territory claimed by IP OR (2) clear evidence that the FMU is managed by the governance structures of Indigenous Peoples, OR (3) Clear evidence that the involved indigenous peoples have freely ceded their territorial and/or use rights in an agreement or settlement with the government, OR (4) An (FPIC) agreement with the IPs with rights in the FMU after a fair, transparent, cultural appropriate and inclusive procedure.

Detailed analysis

Sources of information	Evidence	Scale of risk assessment	Risk indication ¹
Context (the following are indicators that help to contextualize the information from other sources) <ul style="list-style-type: none"> Searching for data on: level of corruption, governance, lawlessness, fragility of the State, freedom of journalism, freedom of speech, peace, human rights, armed or violent conflicts by or in the country, etc. 			
World Bank: Worldwide Governance Indicators - the WGI report aggregate and individual governance indicators for 215 countries (most recently for 2006–2016), for six dimensions of governance: Voice and Accountability; Political Stability and Absence of Violence; Government Effectiveness; Regulatory Quality; Rule of Law; Control of Corruption http://info.worldbank.org/governance/wgi/index.aspx#home	http://info.worldbank.org/governance/wgi/index.aspx#reports (click on table view tab and select Country) In 2016 (latest available year) Malaysia scores between 33.00 (for Voice and Accountability) and 75.96 (for Government effectiveness) on the percentile rank among all countries for all six dimensions (the scores range from 0 (lowest rank) to 100 (highest rank) with higher values corresponding to better outcomes).	Country	
World Bank Harmonized List of Fragile Situations:	http://siteresources.worldbank.org/EXTLICUS/Resources/511777-1269623894864/FY15FragileSituationList.pdf Malaysia does not feature on this list	Country	
Committee to Protect Journalists: Impunity Index CPJ's Impunity Index calculates the number of unsolved journalist murders as a percentage of each country's population. For this index, CPJ examined journalist murders that occurred between January 1, 2005, and December 31, 2015, and that remain unsolved. Only those nations with five or more unsolved cases are included on this index.	https://cpj.org/reports/2015/10/impunity-index-getting-away-with-murder.php Malaysia does not feature on this Impunity Index	Country	
Carleton University: Country Indicators for Foreign Policy: The Failed and Fragile States project of Carleton University examines state fragility using a combination of structural data and current event monitoring In general, a high score - 6.5 or higher - indicates that a country is performing poorly relative to other states. Such a score may be indicative of an arbitrary and autocratic government, a history of non-transparent government, the presence of significant barriers to political participation, the absence of a consistently enforced legal framework, or a poor human rights record. A low score - in the range of 1 to 3.5 - indicates that a country is performing well relative to others, or that a country's	http://www4.carleton.ca/cifp/app/ffs_ranking.php <i>Country Ranking Table 2012 (preliminary data)</i> Malaysia scores 4.24 on the State fragility map 2012 (preliminary data).	Country	

¹ A risk indication is provided for each source analyzed, except in the first part that addresses the general country context as that is not a risk indicator. A cumulative risk assessment for each risk indicator is provided in the row with the conclusion on each risk indicator, based on all the sources analyzed and evidence found.

<p>structural conditions present little cause for concern. Values in the moderate 3.5 to 6.5 range indicate performance approaching the global mean. http://www4.carleton.ca/cifp/ffs.htm (Select Country Ranking Table)</p>			
<p>Human Rights Watch: http://www.hrw.org</p>	<p>https://www.hrw.org/sites/default/files/world_report_download/wr2016_web.pdf <i>Human Rights Watch World Report 2016</i> “Malaysia’s respect for human rights plummeted in 2015, with increased harassment and persecution of human rights defenders, activists, political opposition figures, and journalists. The government reacted to rising public discontent over issues ranging from allegations of corruption to the treatment of former political opposition leader Anwar Ibrahim with a wave of repression, often relying on broad and vaguely worded criminal laws to target its critics. Freedom of Expression The biggest threat to free speech remains the Sedition Act, which has been used to prosecute those who criticize the government or the judiciary, or make remarks the government considers to be derogatory toward the sultans (traditional Malay state rulers) or disrespectful of religion. [...] The government continued to use the Printing Presses and Publication Act (PPPA) to suppress publications and limit content. The PPPA requires all publishers to obtain a license and enables the government to ban publications “likely to be prejudicial to public order,” or “likely to alarm public opinion.” [...] The government also used the PPPA to ban “any yellow coloured clothing” bearing the logo of the Coalition for Free and Fair Elections (known as Bersih, meaning “clean” in Malay) and any publications about a planned Bersih rally. [...] The government has also used laws criminalizing defamation and statements that could lead to a breach of the peace to arrest and prosecute opposition politicians and activists for critical speech. Article 233 of the Communications and Multimedia Act, which outlaws any communication the government considers “obscene, indecent, false, menacing or offensive,” has been used to prosecute users of social media, investigate media, and block websites reporting on the 1MDB scandal or publishing information about the Bersih rally in August. [...] Freedom of Assembly and Association A series of major demonstrations took place in Malaysia during 2015. In most instances, the police did not interfere with the rallies, but subsequently arrested and charged many of those involved with “unlawful assembly” or other offenses under the penal code, or with sedition, for statements they made during the rallies. Authorities declared the rallies “illegal” at least twice before they even took place. [...] In October, the Court of Appeals upheld the provision of the Peaceful Assembly Act that allows for criminal prosecution of rally organizers who fail to</p>	<p>Country</p>	

	<p>give police 10 days' advance notice, directly contradicting an April 2014 decision by the same court.</p> <p>[...] The Societies Act restricts the right to freedom of association by requiring that organizations with seven or more members register with the registrar of societies. The law gives the minister of home affairs "absolute discretion" to declare an organization illegal, and also gives the government supervisory authority over political parties.</p> <p>[...] Political Prosecution of Anwar Ibrahim The government's politically motivated prosecution of former opposition leader Anwar Ibrahim on sodomy charges—a textbook example of the political use of discriminatory laws—culminated in February, when the Federal Court upheld his conviction and sentence of five years' imprisonment. Since entering prison he has suffered from a variety of health problems, including a shoulder injury and back problems. In October, the United Nations Working Group on Arbitrary Detention determined that Anwar was being arbitrarily detained and demanded his immediate release and reinstatement of his political rights.</p> <p>[...] Police Abuse and Impunity Police torture of suspects in custody, in some cases resulting in deaths, and excessive use of force in apprehending suspects continued to be serious problems in 2015.</p> <p>[...] Criminal Justice System In December 2015, the government rushed through a broad and vaguely worded National Security Council Act that empowers the prime minister to declare security areas within which restraints on police powers would be suspended and the authorities would have the ability to conduct arrests, searches and seizures without warrants.</p> <p>[...] In April, the government passed a new, restrictive Prevention of Terrorism Act, which gives a government-appointed board the authority to impose detention without trial for up to two years, renewable indefinitely, to order electronic monitoring, and to impose other significant restrictions on freedom of movement and freedom of association, with no possibility of judicial review.</p> <p>[...] The authorities invoked the similarly restrictive Security Offenses Special Measures Act, which allows for preventive detention of up to 28 days with no judicial review, to detain two people involved in efforts to expose government corruption.</p> <p>[...] Malaysia retains the death penalty for various crimes, including drug trafficking, and is not transparent about when and how decisions are made to carry out executions. Nearly 1,000 people are estimated to be on death row.</p> <p>[...] Refugees, Asylum Seekers, and Trafficking Victims The discovery of mass graves on the Thai-Malaysia border containing the remains of suspected victims of trafficking highlights the continuing problem of trafficking in Malaysia. Approximately 99 bodies, many reportedly ethnic Rohingya from Burma, were found in May, and another 24 graves were discovered in August. Little information has been made public about progress</p>		
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	<p>in identifying and investigating suspects involved in these trafficking camps or government officials who may have aided and abetted operations.</p> <p>The Malaysian government has failed to effectively implement the amendments passed in 2014 to Malaysia's 2007 anti-trafficking law, in particular by taking the necessary administrative steps to provide assistance and work authorization to all trafficking victims who desire it, while ensuring their freedom of movement. Despite these failures, the United States government in July upgraded Malaysia in its annual Trafficking in Persons Report in what appeared to be a political move connected to the Trans-Pacific Partnership Agreement for trade.</p> <p>[...] Sexual Orientation and Gender Identity</p> <p>Discrimination against lesbian, gay, bisexual, and transgender people is pervasive in Malaysia, and that discrimination reaches the highest levels of government. Prime Minister Najib was reported to have asserted at an international seminar on August 18 that sexual and gender minorities pose a threat to Malaysian society, arguing that "groups like the Islamic State and lesbians, gay, bisexuals, and transgenders (LGBT) both target the younger generation and seem successful in influencing certain groups in society." The Federal Court decided in October to reverse a lower court ruling that the state of Negeri Sembilan's prohibition on "a male person posing as a woman" was unconstitutional. The ruling seriously undermined the rights of transgender people. In June, nine transgender women were convicted by a Sharia court in Kelantan under a similar state prohibition.</p> <p>[...] National Human Rights Commission</p> <p>In November, the Malaysian government announced plans to cut its funding to Suhakam, the national human rights commission, by 50 percent, in what is widely seen as retaliation for the commission's independent reporting."</p>		
<p>US AID: www.usaid.gov Search on website for [country] + 'human rights'</p>	<p>No information on human rights situation in Malaysia found</p>	<p>Country</p>	
<p>Global Witness: www.globalwitness.org Search on website for [country] + 'human rights'</p>	<p>https://www.globalwitness.org/en/countries/malaysia/#more</p> <p><i>Malaysia - The Malaysian state of Sarawak is losing its rainforests faster than anywhere else on earth, driven by a timber industry riddled with corruption and illegality.</i></p> <p>Put end to end, the sprawling network of logging roads carved into Sarawak's once abundant rainforests would be long enough to circle the globe twice. Until his resignation in February 2014, Sarawak's Chief Minister, Abdul Taib Mahmud, presided over the allocation of the state's land and timber licenses for thirty years. Global Witness's undercover investigations revealed how Taib had been doling out these licenses to a small elite, while ignoring the customary land rights of forest-dependent communities. The logging of ancestral forests enriched Taib and his cronies with huge personal fortunes, while leaving much of the indigenous population trapped in a cycle of poverty and dependency.</p>	<p>Country</p>	

	<p>Our 2014 Two Worlds Collide exposé revealed a key driver of Malaysia’s forest destruction: Japan’s timber consumption. Japan is the world’s second largest importer of tropical wood (after China), half of which comes from the rainforests of Sarawak. But evidence of widespread illegal and unsustainable logging in Sarawak’s logging industry abounds. We exposed how Sarawak logging company Shin Yang, one of Japan’s major timber suppliers, is involved in grossly unsustainable and potentially illegal logging, decimating over forty soccer pitches of virgin rainforest every day in a proposed national park. We are appealing to the Japanese authorities to prohibit the trade in illegal timber and for industry to adopt measures to exclude illegal and unsustainable timber from their supply chains.</p> <p>Back in Sarawak, Chief Minister Taib’s successor, Adenan Satem, has made public statements about his commitments to fighting illegal logging and corruption in the forest sector, but it remains to be seen whether he has the will and clout to take on Sarawak’s powerful logging tycoons- a politically connected group whose timber empires now extend far beyond Sarawak. Jointly, Malaysian loggers like Shin Yang, Samling and Rimbunan Hijau have come to dominate the world’s tropical timber trade, stripping rainforests across continents.”</p>		
<p>http://wwf.panda.org/about_our_earth/about_forests/deforestation/forest_illegal_logging/</p>	<p>http://wwf.panda.org/about_our_earth/deforestation/deforestation-causes/illegal_logging/ Malaysia not mentioned on this web page.</p> <p>http://indicators.chathamhouse.org/sites/files/reports/Tackling%20Illegal%20Logging%20and%20Related%20Trade_0.pdf <i>Tackling Illegal Logging and the Related Trade - What Progress and Where Next? Chatham House Report – July 2015</i> “Most illegal timber comes from three of the producer countries, but other countries have much higher shares of illegal production. The vast majority of illegal timber in 2013 came from Indonesia (around 50 per cent), Brazil (25 per cent) and Malaysia (10 per cent). This in part reflects the size of these countries’ forest sectors, as they also produce large volumes of legal timber. (p.9) [...] Malaysia has the lowest rates of illegal logging but scores poorly in terms of its policy framework; this is in part because of weaknesses in the legal framework relating to the allocation of logging rights. (p. 10) [...] Contradictions between laws are common, in particular between those that govern different sectors. In Laos, the forestry and land laws are contradictory: while the former stipulates that all forests belong to the state, the latter allows for ownership by communities or other entities with permanent title. In Cameroon, there are discrepancies between the laws on forests, mining and land, as well as a lack of coordination between the government agencies responsible for those sectors. This has resulted in multiple rights being granted to the same land, thereby raising questions about the legality of many of the</p>	Country	

permits issued.⁵⁰ Poorly implemented decentralization processes have exacerbated this situation. There are often differences in interpretation and implementation between central and regional governments, as is the case in Brazil, Indonesia and Malaysia. In Brazil (p. 29)

[...Little progress has been made in tackling corruption, considered one of the main impediments to further progress in reducing illegal logging in many of the countries assessed. Corruption in the forest sector ranges from relatively low-level activities, such as paying enforcement officials to allow illegal timber through checkpoints, to more serious offences, including paying bribes to high-ranking officials for the allocation of logging rights. With regard to the latter, many cases have been reported: in Indonesia, for example, the allocation of logging rights has been linked to political graft,⁶⁰ while the entrenched nature of corruption in the Malaysian state of Sarawak has been documented too.⁶¹” (p. 30)

[...] In Malaysia, the anti-corruption commission has been active in targeting corruption in the forest sector; and there has been a particular focus on Sarawak since the state’s new chief minister announced a crackdown on illegal logging in early 2014.⁶⁵ However, the impact of the commission’s work has been limited in part by its narrow mandate: it is able to investigate only, and cannot pursue prosecutions. (p. 31)

[...]In the DRC, Laos and Malaysia negotiations [on VPA/FLEGT] are proceeding slowly, particularly in the case of Malaysia. Negotiations in this country were launched in 2007, but they have been hampered in part by the fact that responsibility for forestry is decentralized to state level, as well as by a failure to resolve a number of governance issues. For example, a major obstacle has been a failure to address the concerns of civil-society actors who consider that the rights of indigenous communities have not been adequately taken into account in the negotiations. (p. 33)

[...] Furthermore, in some countries (Laos, Malaysia and the Congo), high-ranking officials are allowed by law to make discretionary decisions related to resource allocation, which seriously undermines the effectiveness of forest-sector legislation. (p. 34)

[...] One notable exception is Malaysia, which ranks relatively highly in the governance indices but which scores poorly in the Chatham House policy assessment. This is partly because there are a number of governance issues that are particularly problematic within the forest sector, including weak recognition of customary rights, corruption and lack of transparency in relation to the allocation of resource rights. (p. 39)

[...] Malaysia received a low score for its policy framework on account of a number of unresolved governance issues, including the lack of recognition of customary rights and corruption related to the allocation of resource rights. However, the level of illegal logging is relatively low, since much of the country’s timber production comes from long-standing rubber plantations and concessions – particularly in Peninsular Malaysia – that are not significantly

	<p>affected by those issues. In spite of these exceptions, it is apparent that improving governance remains fundamental to efforts aimed at tackling illegal logging. (p. 54)</p> <p>[...] Malaysia – estimated level of illegal logging: 35%</p> <p>In the 2008 and 2013 Chatham House expert perceptions surveys, the average response to the question about the level of illegal logging was 25 per cent and 13 per cent, respectively. Wood-balance analyses indicated a gap of just over 20 per cent in legal supply in both 2007 and 2012. Meanwhile, Forest Trends estimated that 30 per cent of timber exports were from illegal conversion in 2000–12.¹⁶⁹ The level of illegality varies from one part of the country to another: forest certification is widespread in Peninsular Malaysia, and a significant proportion of production comes from long-standing rubber plantations; but in both Sabah and Sarawak, forest governance is weaker. However, weak systems for the allocation and management of rights to harvest remain a problem throughout the country. Based on the above, Chatham House estimates that 35 per cent of timber production in Malaysia is illegal.” (p. 63)</p> <p>http://wwf.panda.org/core/general.cfc?method=getOriginalImage&ulmgID=%26%2AR%5C%27%21%3EW5%0A</p> <p>Map Illegal Logging – Countries with high rates of illegal logging Malaysia is mentioned on this map.</p>		
Chatham House Illegal Logging Indicators Country Report Card http://www.illegal-logging.info	No information found on Malaysia.	Country	
Transparency International Corruption Perceptions Index Based on expert opinion, the Corruption Perceptions Index measures the perceived levels of public sector corruption worldwide. http://www.transparency.org/	http://www.transparency.org/news/feature/corruption_perceptions_index_2016 Malaysia scores 49 points on the Corruption Perceptions Index 2016 on a scale from 0 (highly corrupt) to 100 (very clean). Malaysia ranks 55 out of 176 with rank nr. 1 being the cleanest country.	Country	
Amnesty International Annual Report: The state of the world's human rights -information on key human rights issues, including: freedom of expression; international justice; corporate accountability; the death penalty; and reproductive rights	https://www.amnesty.org/en/documents/pol10/2552/2016/en/ <i>State of the Human Rights Report 2015/16</i> “The crackdown on freedom of expression and other civil and political rights intensified . The Sedition Act was amended and a new Prevention of Terrorism Act was passed. Police used unnecessary or excessive force when arresting opposition party leaders and activists. [...] FREEDOM OF EXPRESSION The Sedition Act was amended in April resulting in a further erosion of freedom of expression. ² The scope of offences was amended to cover electronic media, including harsher penalties such as mandatory and increased prison sentences. It was used to silence government critics. [...] The authorities continued to use the Printing Presses and Publications Act to set restrictions on and suspend media outlets and publishing houses, and	Country	

	<p>ban materials critical of the government. Licences for print publications, revocable by the Home Minister and difficult for independent outlets to obtain, remained a stringent requirement.</p> <p>[...] FREEDOM OF ASSEMBLY AND ASSOCIATION Various laws were used against organizers and participants of peaceful protests throughout the year. The Peaceful Assembly Act, Sedition Act, and Sections 120, 141, 124b, 124c and 143 of the Penal Code, were used alone or in combination against individuals involved in a street demonstration in February, the #KitaLawan rally in March, and the 1 May Workers Day rally.</p> <p>[...] ARBITRARY ARRESTS AND DETENTIONS The Prevention of Terrorism Act, passed on 7 April, allowed for the detention of terrorist suspects without charge or trial for up to two years, renewable without judicial review of the reasons for detention. The Act established a Prevention of Terrorism Board which will have powers to make detention or restriction orders “in the interest of the security of Malaysia” on the advice of inquiry officers who may obtain evidence in any form, including evidence that would not be admissible in court. The Bar Council and human rights groups were concerned that the Act could lead to torture of detainees, and could facilitate repression of legitimate dissent and freedom of expression. The Security Offences (Special Measures) Act continued to be used to arbitrarily arrest and detain people alleged to have committed security offences. It allowed for indefinite, so- called preventive, detention without charge or trial and undermined fair trial rights.</p> <p>POLICE AND SECURITY FORCES Unnecessary or excessive use of force and allegations of torture and other ill-treatment of detainees by the police continued to be reported.</p> <p>[...] REFUGEES AND ASYLUM-SEEKERS Malaysia faced international criticism as thousands of refugees and migrants from Myanmar and Bangladesh attempted to land on Langkawi Island, Kedah state, in May. Malaysia and Indonesia eventually agreed to provide humanitarian assistance and temporary shelter for up to 7,000 refugees and migrants for up to one year.⁴ The discovery in May and August of more than 100 mass graves on the Thai-Malaysian border raised renewed concerns about human trafficking.</p> <p>DEATH PENALTY The death penalty continued to be retained as the mandatory punishment for drug trafficking, murder and discharge of firearms with intent to kill or harm in certain circumstances.” (p. 240-242)</p>		
<p>Freedom House http://www.freedomhouse.org/</p>	<p>https://freedomhouse.org/report/freedom-world/freedom-world-2017The status of Malaysia on the Freedom in the World 2017 index is ‘partly free’.</p>	<p>Country</p>	

	<p>https://freedomhouse.org/report/freedom-net/freedom-net-2017The status of Malaysia on the Freedom on the Net 2017 index is 'partly free'.</p> <p>https://freedomhouse.org/report/freedom-press/freedom-press-2017 The status of Malaysia on the Freedom of the Press 2017 index is 'not free'.</p>		
Reporters without Borders: Press Freedom Index Rank nr. 1 has the best press freedom. https://index.rsf.org/#/	<p>https://rsf.org/en/ranking <i>2017 World Press Freedom Index</i> Malaysia is ranked #144 out of 180 in the 2017 World Press Freedom Index with a score of 46.89.</p>	Country	
Fund for Peace - Fragile States Index - the Fund for Peace is a US-based non-profit research and educational organization that works to prevent violent conflict and promote security. The Fragile States Index is an annual ranking, first published in 2005 with the name Failed States Index, of 177 nations based on their levels of stability and capacity http://fsi.fundforpeace.org/	<p><i>Fragile States Index 2017</i> Malaysia is ranked 116 out of 178 countries on the Fragile States Index. (nr 1 being the most failed state). This ranks Malaysia in the category 'Warning' (in between "Stable" and "Elevated Warning").</p>	Country	
The Global Peace Index. Published by the Institute for Economics & Peace, This index is the world's leading measure of national peacefulness. It ranks 163 nations according to their absence of violence. It's made up of 23 indicators, ranging from a nation's level of military expenditure to its relations with neighbouring countries and the level of respect for human rights. Source: The Guardian: http://economicsandpeace.org/research/iep-indices-data/global-peace-index	<p>http://visionofhumanity.org/app/uploads/2017/06/GPI17-Report.pdf<i>2017 Global Peace Index</i> The state of Peace in Malaysia is labelled 'High' with Malaysia ranking number 29 out of 163 countries.</p>	Country	
Additional sources of information (These sources were partly found by Googling the terms '[country]', 'timber', 'conflict', 'illegal logging')	Evidence	Scale of risk assessment	Risk indication
	<p>https://casebook.icrc.org/casebook/doc/case-study/malaysia-philippines-conflict-over-the-sultanate-of-sulu.htm D. Malaysians Kill 13 Filipino Fighters Amid Fears of Wider Conflict [Source: Malaysians Kill 13 Filipino Fighters Amid Fears of Wider Conflict, by Floyd Whaley, New York Times online, 6 March 2013; available on http://www.nytimes.com] MANILA — An air and ground assault by Malaysian forces killed at least 13 of the nearly 200 militants seeking to reclaim part of Borneo Island for a Filipino sultan, Malaysian police officials said Wednesday. [...] E. Malaysia Detains 79 in Fight Against Filipinos [Source: Malaysia Detains 79 in Fight Against Filipinos, by Floyd Whaley, New York Times online, 9 March 2013; available on: http://www.nytimes.com]</p>		

MANILA — Malaysian authorities announced Saturday that they had detained 79 people they suspected of being sympathizers of Filipino fighters who recently landed on Borneo in an attempt to re-establish a historic claim to part of the island.

The government also raised the death toll in recent fighting between Malaysian forces and the militants to 61. Malaysian authorities said eight of the dead were police officers and the rest were militants. It is difficult to know if any were civilians because the government has restricted journalists' access to the area. [...] There are an estimated 800,000 Filipinos in Sabah, according to Philippine government estimates. Many are undocumented workers and some claim to have been mistreated by employers and local Malaysian authorities. Many Filipinos support Sabah being returned to their country, though they want their government to pursue that through nonviolent, legal means.

<http://thediplomat.com/2013/09/conflict-threatens-east-malaysia-again/>
Conflict Threatens East Malaysia – Again - The MNLF has vowed to defend their ethnic kin amid Malaysia's crackdown on illegal immigrants - September 11, 2013

Reports coming out of the Southern Philippines and East Malaysia paint a worrying picture. The Moro National Liberation Front (MNLF) has announced that it has mobilized 4,000 militiamen hidden among the million-plus illegal immigrants in Sabah to defend their own ethnic Tausugs against a Malaysian crackdown on illegal immigrants.

The maritime border between the two countries is extremely porous and is a well-documented transit point for jihadists, pirates, human traffickers and asylum seekers who have challenged the authorities and upset attempts at portraying the area as a paradise for well-heeled tourists.

MNLF spokesman Emmanuel Fontanilla said his forces in neighboring Malaysia would act only in self-defense against any attack from Malaysian forces after Kuala Lumpur announced it would target half-a-million illegal immigrants for repatriation in a three-month operation. The majority of the immigrants in question have fled the Philippines, Myanmar, Bangladesh, Nepal and Vietnam.

[...] Fontanilla added that MNLF fighters were acting alongside troops under the command of the Sultanate Army led by Agbimuddin Kiram, Jamalul's brother, who he says is waging an armed struggle to reclaim their ancestral land in Sabah. He claimed that five countries were supporting his rebels, known as the Bangsamoro Islamic Freedom Movement in Malaysia, with shipments of arms underway.

He is not the only sultan.

The Sulu Sultanate once stretched from Sulu to the Palawan islands, encompassing the Spratly Islands and the province of Basilan, as well as parts of Borneo, including Sabah. The Sultan of Sulu obtained Sabah from the Sultan of Brunei as a gift after helping to suppress a local insurgency. The

British later leased Sabah and transferred control over the territory to Malaysia in 1963 when Sabah, Sarawak and Singapore joined the Malaysian Federation, supposedly as equal partners with West Malaysia.”

<http://www.illegal-logging.info/regions/malaysia>

Malaysia

“Two thirds of Malaysia’s land area is covered by forests (FAO, 2015). However, this figure includes significant areas of timber and pulp plantations, and much of the natural forest area has been heavily impacted by logging activities (Chatham House, 2015).

The forest sector is a significant contributor to the country's economy. Asia is the major export market for the country’s timber products, notably Japan. The EU and US are also important markets.

Illegal logging has long been a problem in Malaysia, and Chatham House research in 2010 estimated that illegal logging accounted for between 14% and 25% of production (Chatham House, 2010).

Malaysia was one of the first countries to begin negotiating a voluntary partnership agreement (VPA) with the EU in 2007. However, progress with the negotiations has been slow. A number of governance challenges remain to be resolved. This is particularly the case in Sarawak, although an intensified focus on combating illegal logging here since 2014 could signal a turning point for the state’s forest sector. Concerns remain among stakeholders about the limited recognition of indigenous peoples’ rights by the government, as well as about corruption and a lack of transparency (Chatham House, 2015).”

http://www.illegal-logging.info/sites/files/chlogging/CHHJ2365_Malaysia_Logging_Research_Paper_A4_01_15_WEB.PDF

Illegal Logging and Related Trade, The Response in Malaysia - Research Paper - Alison Hoare, A Chatham House Assessment – January 2015

“There has been limited progress in tackling illegal logging and related trade in Malaysia since 2010. Widespread problems remain, particularly in the state of Sarawak. There are high levels of deforestation throughout the country: expansion of timber, pulp and agricultural plantations (including oil palm and rubber) is the main driver of forest loss.

Forest policy-making in Malaysia involves both the federal and state governments, but the states have prerogative rights to develop their own policies on land and forests. This poses challenges, not least since governance of the forest sector varies quite significantly from one region of the country to another.

The government has been negotiating a Voluntary Partnership Agreement (VPA) with the EU since 2007. Negotiations stalled for a number of years but resumed in 2012 without the participation of Sarawak. Concerns remain among

	<p>stakeholders about the limited recognition of indigenous peoples' rights by the government, as well as about corruption and the lack of transparency.”</p> <p>http://www.thestar.com.my/news/nation/2016/05/27/msia-haven-for-illegal-logging-and-wildlife-trade-shepherd-country-has-good-laws-but-not-enforcement/ <i>M'sia haven for illegal logging and wildlife trade – 27 May 2016</i> “PETALING JAYA: While Malaysia is a legitimate top exporter of tropical logs, agarwood and reptile skins, the United Nations World Wildlife Crime report has also highlighted the illegal aspects of such trade in the country. The inaugural report that was launched on Tuesday listed Malaysia as the top global exporter of tropical logs in 2013 with a total of 3,455,000 cubic metres being exported. The report noted Malaysia’s seizures of illegally sourced wood protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Cites). It cited Malaysia as one of the primary sources of illegal shipments of agarwood, with seven metric tonnes seized between 2005 and 2014.”</p> <p>http://www.nst.com.my/news/2016/02/129099/over-100-illegal-logging-cases-sarawak-awaiting-federal-ag-s-action <i>Over 100 illegal logging cases in Sarawak awaiting Federal AG's action – 23 February 2016</i> KUCHING: The Sarawak Forestry Department said it had submitted over 100 cases of illegal logging to the Federal Attorney-General (AG) for prosecution. Its director Sapuan Ahmad said the federal AG’s Chambers had yet to act on the cases. He said to expedite prosecution, the state government is negotiating with the federal government for prosecution power to be handed down to the state AG. “At the moment the prosecution power lies with the federal AG, not the state and for that reason it would be better for anything involving state laws to be handled by the state AG,” he told a press conference after launching a Heart of Borneo Government Agencies Workshop here today.”</p>		
From national CW RA: Info on illegal logging	Not available	Country	
<p>Conclusion on country context: Malaysia scores medium on most indicators reviewed in this context section such as on stability, peace, and governance, but scores particularly low on freedom of the press and is considered a country with a warning status on the Fragile States Index, while the entrenched nature of corruption in the Malaysian state of Sarawak has been widely documented. Serious human rights violations are reported in relation to freedom of expression, freedom of assembly and association and arbitrary arrests and detentions through the implementation of various very restrictive laws resulting in increased harassment and persecution of human rights defenders, activists, political opposition figures, and journalists. Police is reported to have used unnecessary or excessive force when arresting opposition party leaders and activists. Discrimination against lesbian, gay, bisexual, and transgender people is pervasive in Malaysia. There is a continuing problem of trafficking in Malaysia and the death penalty continued to be retained. Malaysia, which ranks relatively highly in the governance indices, but scores poorly in the Chatham House policy</p>		Country	

assessment because there are a number of governance issues that are particularly problematic within the forest sector, including the lack of recognition of customary rights, corruption and lack of transparency in relation to the allocation of resource rights. Malaysia has an estimated level of illegal logging of 35%. Malaysia was one of the first countries to begin negotiating a voluntary partnership agreement (VPA) with the EU in 2007. However, progress with the negotiations has been slow. A major obstacle has been a failure to address the concerns of civil-society actors about the limited recognition of indigenous peoples' rights by the government, as well as about corruption and the lack of transparency. Although in both Sabah and Sarawak forest governance is weaker, weak systems for the allocation and management of rights to harvest remain a problem throughout the country.			
Indicator 2.1. The forest sector is not associated with violent armed conflict, including that which threatens national or regional security and/or linked to military control.			
Guidance			
<ul style="list-style-type: none"> • Is the country covered by a UN security ban on exporting timber? • Is the country covered by any other international ban on timber export? • Are there individuals or entities involved in the forest sector that are facing UN sanctions? 			
Compendium of United Nations Security Council Sanctions Lists: www.un.org Google: "Consolidated United Nations Security Council Sanctions List" for latest version. It is regularly updated.	https://scsanctions.un.org/fop/fop?xml=htdocs/resources/xml/en/consolidated.xml&xslt=htdocs/resources/xsl/en/consolidated.xsl <i>Consolidated United Nations Security Council Sanctions List</i>	Country	Low risk
US AID: www.usaid.gov	There is no UN Security Council ban on timber exports from Malaysia.		
Global Witness: www.globalwitness.org	Malaysia is not covered by any other international ban on timber export . There are no individuals or entities involved in the forest sector in Malaysia that are facing UN sanctions .		
From national CW RA	Not available	Country	-
Guidance			
<ul style="list-style-type: none"> • Is the country a source of conflict timber? If so, is it at the country level or only an issue in specific regions? If so – which regions? • Is the conflict timber related to specific entities? If so, which entities or types of entities? 			
www.usaid.gov Conflict Timber is defined by US AID as: - conflict financed or sustained through the harvest and sale of timber (Type 1), - conflict emerging as a result of competition over timber or other forest resources (Type 2) Also check overlap with indicator 2.3	No information on conflict timber in Malaysia found.	Country	Low risk
www.globalwitness.org/campaigns/environment/forests	No information on conflict timber in Malaysia found.	Country	Low risk
Human Rights Watch: http://www.hrw.org/	No information on conflict timber in Malaysia found.	Country	Low risk
World Resources Institute: Governance of Forests Initiative Indicator Framework (Version 1)	This work resulted in a publication: Assessing and Monitoring Forest Governance: A user's guide to a diagnostic tool (available on this page)	Country	Low risk

http://pdf.wri.org/working_papers/gfi_tenure_indicators_sep09.pdf Now: PROFOR http://www.profor.info/node/1998	published by PROFOR in June 2012. This tool has not yet been applied to Malaysia.		
Amnesty International Annual Report: The state of the world's human rights -information on key human rights issues, including: freedom of expression; international justice; corporate accountability; the death penalty; and reproductive rights http://www.amnesty.org	No information on conflict timber in Malaysia found.	Country	Low risk
World Bank: Worldwide Governance Indicators - the WGIs report aggregate and individual governance indicators for 213 economies (most recently for 2006–2016), for six dimensions of governance: Voice and Accountability; Political Stability and Absence of Violence; Government Effectiveness; Regulatory Quality; Rule of Law; Control of Corruption http://info.worldbank.org/governance/wgi/index.aspx#home Use indicator 'Political stability and Absence of violence' specific for indicator 2.1	http://info.worldbank.org/governance/wgi/index.aspx#reports In 2016 (latest available year) Malaysia scores 50.00 for Political Stability and Absence of Violence/Terrorism (the scores range from 0 (lowest rank) to 100 (highest rank) with higher values corresponding to better outcomes).	Country	Low risk
Greenpeace: www.greenpeace.org Search for 'conflict timber [country]'	No information on conflict timber in Malaysia found.	Country	Low risk
CIFOR: http://www.cifor.org/ http://www.cifor.org/publications/Corporate/FactSheet/forests_conflict.htm	No information on conflict timber in Malaysia found.	Country	Low risk
Google the terms '[country]' and one of following terms or in combination 'conflict timber', 'illegal logging'	http://www.salvaleforeste.it/en/illegal-logging/3703-is-malaysian-timber-legal.html <i>Illegal logging - Is Malaysian timber legal? - 11 December 2013</i> “According to Malaysian NGOs and Indigenous Peoples Organizations, much of the timber originating from Malaysia is of questionable legality. In recent decades, indigenous peoples have used Malaysian courts to claim the rights to their ancestral lands denied them by the government, and been largely successful. The courts accept indigenous customary land rights as a form of proprietary interest in the land, protected under the Federal Constitution. This goes beyond the right to use and benefit from resources found on their land. Yet to date Malaysian Federal and State governments have refused to reform relevant policy and law in conformity with the Constitution and jurisprudence. According to FERN, the current timber licenses issued under nonconforming legislation are of uncertain legality. In addition, given high levels of corruption, lack of transparency in the chain of custody, and the highest rates of deforestation in the world, ² the situation raises broad doubts about the legality of current Malaysian timber imports. It is also unlikely that Malaysian timber meets the EUTR requirement for operators to ensure that companies have the right to harvest and that third parties are not	Country	Low risk

	harmed. The current reality casts a shadow on Malaysian negotiations towards a VPA with the EU, ongoing since 2006; there is a long way to go before an agreement can be concluded.”		
From national CW RA	Not available		
Conclusion on indicator 2.1: No information was found on Malaysia as a source of conflict timber and the forest sector is not associated with any violent armed conflict, although there are violations of rights of indigenous peoples associated with the forest sector (these are addressed under indicator 2.3.) There is no UN security ban, other ban or UN sanction. The following low risk thresholds apply: (1) The area under assessment is not a source of conflict timber ² ; AND (2) The country is not covered by a UN security ban on exporting timber; AND (3) The country is not covered by any other international ban on timber export; AND (4) Operators in the area under assessment are not involved in conflict timber supply/trade; AND (5) Other available evidence does not challenge ‘low risk’ designation.		Country	Low risk
Indicator 2.2. Labour rights are respected including rights as specified in ILO Fundamental Principles and Rights at work. Guidance <ul style="list-style-type: none"> • Are the social rights covered by the relevant legislation and enforced in the country or area concerned? (refer to category 1) • Are rights like freedom of association and collective bargaining upheld? • Is there evidence confirming absence of compulsory and/or forced labour? • Is there evidence confirming absence of discrimination in respect of employment and/or occupation, and/or gender? • Is there evidence confirming absence of child labour? • Is the country signatory to the relevant ILO Conventions? • Is there evidence that any groups (including women) feel adequately protected related to the rights mentioned above? • Are any violations of labour rights limited to specific sectors? 			
general sources from FSC-PRO-60-002a V1-0 EN	information found and specific sources	scale of risk assessment	risk indication
Status of ratification of fundamental ILO conventions: http://www.ilo.org/dyn/normlex/en/f?p=1000:11001:0::NO:: or use: ILO Core Conventions Database: http://www.ilo.org/ilolex/english/docs/declworld.htm C29 Forced Labour Convention, 1930	http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102960 Malaysia ratified 6 of the 8 ILO Core conventions and the status of 5 of these ratified Conventions is: “in force”. The status of C105 - Abolition of Forced Labour Convention, 1957 (No. 105) is “not in force” since it was denounced on 10 Jan 1990.	Country	Specified risk for forced

² “Conflict timber” limited to include “timber that has been traded at some point in the chain of custody by armed groups, be they rebel factions or regular soldiers, or by a civilian administration involved in armed conflict or its representatives, either to perpetuate conflict or take advantage of conflict situations for personal gain - conflict timber is not necessarily illegal. Please refer to FSC-PRO-60-002a V1-0.

<p>C87 Freedom of Association and Protection of the Right to Organise Convention, 1948 C98 Right to Organise and Collective Bargaining Convention, 1949 C100 Equal Remuneration Convention, 1951 C105 Abolition of Forced Labour Convention, 1957 C111 Discrimination (Employment and Occupation) Convention, 1958 C138 Minimum Age Convention, 1973 C182 Worst Forms of Child Labour Convention, 1999</p>	<p>The minimum age specified for the C138 Minimum Age Convention, 1973, is 15 years.</p> <p>Malaysia did not ratify C87 Freedom of Association and Protection of the Right to Organise Convention, 1948 and C111 Discrimination (Employment and Occupation) Convention, 1958</p> <p>Malaysia – Peninsular, Malaysia – Sabah and Malaysia – Sarawak have also ratified on their own behalf some ILO Conventions, but none of them ratified any of the 8 core conventions.</p>		<p>labour, freedom of association and discrimination</p>
<p>Ratification as such should be checked under Category 1. In Cat. 2 we take that outcome into consideration. Refer to it.</p>	<p>http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3255358:NO <i>Observation (CEACR) - adopted 2015, published 105th ILC session (2016) Right to Organise and Collective Bargaining Convention, 1949 (No. 98) - Malaysia (Ratification: 1961)</i> “The Committee notes the observations received on 1 September 2015 of the International Trade Union Confederation (ITUC) and of the Malaysian Trades Union Congress (MTUC), concerning matters addressed by the Committee as well as allegations of anti-union discrimination and interference in several sectors, including dismissals and non-recognition of unions. The Committee requests the Government to provide its comments in this respect.</p> <p>The Committee also notes the Government’s statement that Malaysia is currently conducting a holistic review of its main labour laws – the Employment Act 1955, the Trade Unions Act 1959 and the Industrial Relations Act 1967 (IRA). The Committee firmly trusts that the Government will take into account the following comments to ensure the full conformity of these Acts with the Convention and, recalling that the technical assistance of the ILO is at its disposal, it requests the Government to inform of any developments in this regard.</p> <p>Articles 1 and 4 of the Convention. Trade union recognition for purposes of collective bargaining. Duration of proceedings for the recognition of a trade union. In its previous comments, the Committee had considered that the average duration of proceedings for the recognition of a union for collective bargaining purposes indicated by the Government (nine months) was excessively long, and requested the Government to take measures to modify the legislation in order to reduce the length of proceedings. The Committee notes that, in response to this request, the Government states that the average duration of the recognition process is: (i) just over three months in proceedings resolved by voluntary recognition; and (ii) four-and-a-half months for claims resolved by the Industrial Relations Department, when these do not lead to judicial review. The Government thus affirms that a number of cases were</p>	<p>Country</p>	<p>Specified risk for</p>

	<p>settled in less than the nine-month average previously noted, depending on whether the parties concerned cooperated and whether they resorted to judicial review. Considering that the duration of proceedings can still be excessively long, the Committee requests the Government, in consultation with the social partners, to take any necessary measures to modify the legislation in order to further reduce the length of proceedings for the recognition of trade unions.</p> <p>Criteria and procedure for recognition. The Committee had noted in its previous comments that, under section 9 of the IRA, should an employer reject a union's claim for voluntary recognition for the purpose of collective bargaining, the union has to: (i) inform the Director General of Industrial Relations (DGIR) for the latter to take appropriate action, including a competency check; and (ii) when the matter is not resolved by the DGIR, the Minister decides on the recognition, a decision that may be subject to judicial review by the High Court. The Committee had requested the Government to provide information concerning the requirements to fulfil the competency check and the criteria applicable to the decisions of the DGIR and/or the Minister. The Committee notes the Government's indication that recognition on a mandatory basis is granted subject to the competency of the trade union concerned to represent the particular workpeople and the strength of their membership. The Government indicates that the competency check is stipulated under section 9(4A)(b), which refers to a secret ballot to ascertain the percentage of the workpeople or class of workpeople, in respect of whom recognition is being sought, who are members of the trade union making the claim. The Committee also notes that the MTUC criticizes the methodology to ascertain majority for union recognition by secret ballot, noting that the Industrial Relations Department is using the total number of workers on the date sought by the union instead of the total number of the participants in the ballot and that in certain instances more than 50 per cent of the workforce was migrant and had repatriated to their home country, yet was considered as counting against the union for the purposes of the secret ballot. The Committee requests the Government to provide further information on the criteria and procedure to assess the competency of a trade union to be recognized for the purposes of collective bargaining, including the percentage required in a secret ballot to attain recognition and the workers considered to calculate the percentage (whether those present at the ballot or the total number of workers and, in the latter case, the methodology and data used for such determination).</p> <p>Refusal to apply orders of recognition and of reinstatement In its previous comments, addressing the ITUC's observations to apply any sanctions against employers who opposed the directives of the authorities granting trade union recognition or refused to comply with Industrial Court orders to reinstate unlawfully dismissed workers, the Committee had requested the Government</p>	Country	<p>Right to Organise and Collective Bargaining</p> <p>Specified risk for Right to Organise and Collective Bargaining</p>
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	<p>to provide: (i) details about the institutional operation of the Legal Division of the Industrial Relations Department; and (ii) information and statistics on any sanctions against employers opposing such directives or refusing to comply with reinstatement orders. The Committee duly notes the information provided by the Government: (i) on the composition and functioning of the Legal Division of the Industrial Relations Department; and (ii) that in the last two years no cases have been reported: (a) regarding employers opposing the directives of the authorities granting trade union recognition, except in cases where the employer obtained a stay from court due to judicial review; or (b) regarding employers refusing to comply with Industrial Court orders to reinstate unlawfully dismissed workers. The Committee also notes the observations of the ITUC and the MTUC alleging continued difficulties to ensure the recognition of trade unions, anti-union discrimination practices, and backlog of cases in the Industrial Courts in Penang and Kuala Lumpur. Taking note of the information provided by the Government, as well as of the allegations of the ITUC and the MTUC, the Committee trusts that the Government will take any necessary measures to ensure the availability and swift operation of efficient remedies to protect workers against anti-union discrimination and to ensure compliance with the decisions regarding union recognition.</p> <p>Migrant workers. In its previous comments, considering that the requirement for foreign workers to obtain the permission from the Minister of Human Resources in order to be elected as trade union representatives, hinders the right of trade union organizations to freely choose their representatives for collective bargaining purposes, the Committee requested the Government to take measures in order to modify the legislation. The Committee notes that the Government simply states in its report that it has taken note of the request. Firmly hoping that it will soon be in a position to observe progress on the matter, the Committee reiterates its previous request.</p> <p>Scope of collective bargaining. The Committee had previously urged the Government to take measures to amend the legislation so as to bring section 13(3) of the IRA, which contains restrictions on collective bargaining with regard to transfer, dismissal and reinstatement (some of the matters known as “internal management prerogatives”), into full conformity with Article 4 of the Convention. The Committee notes that the Government: (i) once again indicates in its report that it intends to retain said provision to maintain industrial harmony and speed up the collective bargaining process; (ii) states that if both parties agree they may negotiate the provisions under section 13(3) during the collective bargaining process; and (iii) notes that the issue will be addressed in the holistic review of labour laws currently taking place. The Committee observes that section 13(3) of the IRA provides that the abovementioned excluded matters may not be included by a trade union in its proposals for collective bargaining. The Committee recalls again, in this regard,</p>	<p>Country</p> <p>Country</p> <p>Country</p>	<p>Specified risk for Right to Organise and Collective Bargaining</p> <p>Specified risk for Right to Organise and Collective Bargaining</p> <p>Specified risk for Right to</p>
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	<p>that measures taken unilaterally by the authorities to restrict the scope of negotiable issues are often incompatible with the Convention; and tripartite discussions for the preparation, on a voluntary basis, of guidelines for collective bargaining are a particularly appropriate method to resolve these difficulties. The Committee once again requests the Government to take measures to amend section 13(3) of the IRA so as to remove these restrictions on collective bargaining matters, and to initiate tripartite discussions for the preparation, on a voluntary basis, of guidelines for collective bargaining.</p> <p>Compulsory arbitration. In its previous comments, the Committee had noted that section 26(2) of the IRA allows compulsory arbitration by the Minister of Labour of his own motion in case of failure of collective bargaining. The Committee had requested the Government to take measures to ensure that the legislation only authorizes compulsory arbitration in essential services in the strict sense of the term, for public servants engaged in the administration of the State or in cases of acute national crisis. The Committee notes that the Government reiterates that, although the provision accords discretionary powers to the Minister to refer a trade dispute to the Industrial Court for arbitration, in practice the Minister only makes the referral when conciliation has failed to resolve the dispute amicably, and when the dispute is referred to the DGIR. The Government also indicates that the matter will be addressed in the holistic review of labour laws under way. The Committee recalls that the imposition of compulsory arbitration procedure if the parties do not reach agreement on a draft collective agreement raises problems in relation to the application of the Convention. Reiterating its previous comments, the Committee urges the Government to take measures to ensure that the legislation only authorizes compulsory arbitration in essential services in the strict sense of the term, for public servants engaged in the administration of the State or in cases of acute national crisis.</p> <p>Restrictions on collective bargaining in the public sector. The Committee has for many years requested the Government to take the necessary measures to ensure the right of public servants not engaged in the administration of the State to bargain collectively over wages, remuneration and other employment conditions. The Committee notes with regret that the Government, invoking the peculiarities of the public service, once again reiterates that the right to collective bargaining cannot be extended to employees of the public sector. The Government once again points out that the public service can discuss with its employer on matters concerning conditions of work through the Joint National Council and the Joint Agency Council. Nevertheless, the Committee, while recognizing the singularity of the public service which allows special modalities, considers that simple consultation with unions of public servants not engaged in the administration of the State do not meet the requirements of Article 4 of the Convention. Therefore, the Committee urges the Government</p>	<p>Country</p> <p>Country</p>	<p>Organise and Collective Bargaining</p> <p>Specified risk for Right to Organise and Collective Bargaining</p> <p>Specified risk for Right to Organise and Collective Bargaining</p>
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	<p>once again to take the necessary measures to guarantee the right of public servants not engaged in the administration of the State to bargain collectively over wages, remuneration and other employment conditions, in conformity with Article 4 of the Convention.”</p> <p>http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3254621:NO</p> <p><i>Observation (CEACR) - adopted 2015, published 105th ILC session (2016) Minimum Age Convention, 1973 (No. 138) - Malaysia (Ratification: 1997)</i></p> <p>Article 3(2) of the Convention. Determination of hazardous work. In its previous comments, the Committee noted the Government’s indication that the Labour Department would hold consultations with the relevant authorities, such as the Department of Safety and Health, in order to determine the types of hazardous work to be prohibited to persons under the age of 18, pursuant to section 2(6) of the Children and Young Persons (Employment) Act of 1966 (CYP Act) as amended in 2010.</p> <p>The Committee notes that the Government’s report does not contain any information on this point. The Committee therefore urges the Government to take the necessary measures to ensure that the hazardous types of work prohibited to children under 18 years of age are determined in the near future, in consultation with the organizations of employers and workers concerned. It requests the Government to provide information on the progress made in this regard.</p> <p>Article 7(1). Minimum age for admission to light work. The Committee previously noted that section 2(2)(a) of the CYP Act allows children to be employed in light work which is adequate to their capacity in any undertaking carried on by their family, but observed that no minimum age for admission to light work had been specified. The Committee recalled that Article 7(1) of the Convention provides for the possibility of admitting young persons to light work activities only from the age of 13 years.</p> <p>The Committee notes the Government’s indication that the CYP Act of 1966 is currently being revised in order to incorporate a minimum age of 13 years for light work activities. The Committee expresses the firm hope that the necessary measures will be taken, in the near future, to amend the CYP Act to establish a minimum age of 13 years for light work activities. It requests the Government to provide information on the progress made in this regard.</p> <p>Application of the Convention in practice. The Committee previously noted the statement of the International Trade Union Confederation (ITUC) that child labour in Malaysia could be found primarily in rural areas in agriculture, where children often work along with their parents without receiving a salary. In urban areas, children work in restaurants, shops and small manufacturing units usually owned by family members. The ITUC further indicated that the Government does not collect statistical data on child labour. The Committee requested the Government to provide statistical data on the employment of</p>	<p>Country</p> <p>Country</p> <p>Country</p>	<p>Specified risk for hazardous work for children under 18</p> <p>Specified risk for light work for children under 13</p> <p>Specified risk for child labour</p>
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	<p>children and young persons, including the number of children working under the minimum age of 15.</p> <p>The Committee notes that the Government's report merely indicates that, in 2014, six employers employed children and young persons. Noting the absence of statistical information on child labour in the country, the Committee urges the Government to take the necessary measures to ensure that sufficient up-to-date statistical data on the situation of working children are made available, including data on the number of children and young persons below the minimum age of 15 who are engaged in economic activities, and information on the nature, scope and trends of their work. To the extent possible, this information should be disaggregated by sex and age."</p> <p>http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3254625:NO</p> <p><i>Direct Request (CEACR) - adopted 2015, published 105th ILC session (2016) Minimum Age Convention, 1973 (No. 138) - Malaysia (Ratification: 1997)</i></p> <p>Labour inspection. In its previous comments, the Committee noted the Government's indication in its report submitted under the Labour Inspection Convention, 1947 (No. 81), that labour departments had been engaged in consultations with the police and the Immigration Department in respect of the employment of child workers, including on raising awareness among employers on child labour and the related legislation. The Government also indicated that it was in the midst of recruiting more labour officers in order to strengthen the capacity and expand the reach of the labour inspectorate, as well as introducing training programmes for labour inspectors so as to enable them to better monitor children carrying out economic activities in the agricultural sector. The Committee requested the Government to provide information on the measures taken to strengthen the capacity and expand the reach of the labour inspectorate to monitor children carrying out economic activities in the agricultural sector. The Committee notes the absence of information in the Government's report on this point. However, in its comments of 2014 under Convention No. 81, it noted the Government's statement that the newly recruited labour inspectors were required to undergo a compulsory induction course of between one and three months. Following this training period, inspectors may be given further exposure to specific relevant subjects, and may be sent to participate in training organized by other governmental agencies. The Committee requests the Government to provide information on any specific training received by the labour inspectors concerning the monitoring of child labour, including in the agricultural sector, as well as on the number of inspections carried out, the number and nature of violations detected relating to the employment of children and young persons, the number of persons prosecuted and the penalties imposed."</p>	Country	Specified risk for child labour
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	<p>http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3251784:NO</p> <p><i>Observation (CEACR) - adopted 2015, published 105th ILC session (2016)</i> <i>Worst Forms of Child Labour Convention, 1999 (No. 182) - Malaysia</i> <i>(Ratification: 2000)</i></p> <p>The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.</p> <p>Repetition</p> <p>[...] The Committee notes the information in the Government's report that the Malaysian Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants has developed an action plan to combat the trafficking of children. The Government further indicates that, as of 22 June 2011, there had been 161 child victims of trafficking rescued under a protection order, and 106 children were placed at the Government Shelter Home. The Committee requests the Government to provide information on the measures taken within the framework of the action plan to combat trafficking of children to provide for the removal, rehabilitation and social integration of child victims of trafficking. It also requests the Government to continue to provide information on the number of child victims of trafficking rescued and placed in the Government Shelter Home, as well as information on the services provided to these children for their rehabilitation and social reintegration, and where appropriate, their repatriation and family reunification.</p> <p>Article 8. International cooperation and assistance. Regional cooperation. The Committee previously noted the proposal for a Memorandum of Understanding (MoU) between Malaysia and Thailand to monitor trafficking and address the flow of young girls into Malaysia. The Committee also noted the statement in the Government's report of 19 November 2008 to the Human Rights Council for the Universal Periodic Review that due to Malaysia's porous borders, the influx of migrants, trafficked victims and refugees is increasing despite pledges by source States that they have taken progressive measures (A/HRC/WG.6/4/MYS/1/Rev.1, paragraph 94).</p> <p>The Committee notes the Government's statement that it has not yet finalized the draft of the MoU with Thailand. However, the Government indicates that currently, enforcement agencies exchange information to strengthen security between the two countries. The Committee also notes the information in the Government's report submitted under the Forced Labour Convention, 1930 (No. 29), that one of the main goals of the National Action Plan on Trafficking in Persons (2010–15) is the development of local and international partnerships to combat trafficking in persons. The Committee urges the Government to pursue its efforts, including through the National Action Plan on Trafficking in Persons (2010–15), to cooperate with the neighbouring countries, particularly Indonesia and Thailand, with a view to eliminating child trafficking for labour and commercial sexual exploitation as well as the involvement of child migrants in the worst forms of child labour."</p>	Country	Specified risk for child labour
		Country	Specified risk for child labour

	<p>http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3251788:NO</p> <p><i>Direct Request (CEACR) - adopted 2015, published 105th ILC session (2016)</i> <i>Worst Forms of Child Labour Convention, 1999 (No. 182) - Malaysia</i> <i>(Ratification: 2000)</i></p> <p>The Committee notes that the Government's report has not been received. It hopes that the next report will contain full information on the matters raised in its previous comments.</p> <p>Repetition [...] The Committee notes the information in the Government's report that the Ministry of Education continues to provide various types of assistance to poor children, including the Poor Students Trust Fund, the Federal Scholarship and the University Preparatory Class Scholarship. The Government also states that, as of 1 January 2008, parents do not have to pay a special fee for primary or secondary school, and that examination fees have also been abolished. The Committee welcomes these measures, but also notes the information in the 2011 UNESCO Global Monitoring Report that the number of out-of-school children of primary-school age has risen from 70,000 in 1999 to 125,000 in 2008. Considering that education contributes to preventing the engagement of children in the worst forms of child labour, the Committee encourages the Government to pursue and strengthen its efforts to facilitate access to free basic education to children from poor families. It requests the Government to provide information on measures taken in this regard and on the results achieved, particularly with respect to reducing the number of out-of-school children.</p> <p>[...] Migrant children. The Committee previously noted the indication of the Worker members at the Conference Committee on the Application of Standards in 2009 that, according to the INCCP, cases of forced labour of migrant workers and their children on plantations in Sabah involved an estimated 72,000 children. The Committee also noted the indication of the Worker member of Indonesia that, following a 2008 fact-finding mission to the plantations in Sabah, the INCCP reported that tens of thousands of migrant workers' children also worked in the plantations without regulated employment hours, which meant they worked all day long. Other sectors where migrant workers' children were often found were family food businesses, night markets, small-scale industries, fishing, agriculture and catering. The INCCP Secretary-General stated that the children of migrant workers born under these conditions were not provided with birth certificates or any other type of identity document, effectively denying their right to education.</p> <p>[...] However, the Committee notes the information from the UNESCO Global Monitoring Report of 2011 that there are an approximate 1 million undocumented migrants living in Malaysia, many of them children. The Committee recalls that migrant children may be particularly vulnerable to the worst forms of child labour and requests the Government to take effective and</p>	<p>Country</p> <p>Country</p> <p>Country</p> <p>Country</p>	<p>Specified risk for child labour</p> <p>Specified risk for child labour</p> <p>Specified risk for child labour and forced labour</p> <p>Specified risk for child labour</p>
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	<p>time-bound measures to ensure that these children are protected from the worst forms of child labour, and to provide information on the results achieved.”</p> <p>http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3186987:NO</p> <p><i>Observation (CEACR) - adopted 2014, published 104th ILC session (2015)</i> <i>Forced Labour Convention, 1930 (No. 29) - Malaysia (Ratification: 1957)</i></p> <p>The Committee notes the detailed discussions that took place at the Conference Committee on the Application of Standards in June 2014 concerning the application of the Convention by Malaysia. The Committee notes with regret that the Government’s report has not been received.</p> <p>Articles 1(1), 2(1) and 25 of the Convention. 1. Vulnerable situation of migrant workers with regard to the exaction of forced labour, including trafficking in persons. The Committee previously noted the observations submitted by the International Trade Union Confederation (ITUC) in 2011, according to which some workers who willingly enter Malaysia in search of economic opportunities subsequently encounter forced labour at the hands of employers or informal labour recruiters. These migrant workers are employed on plantations and construction sites, in textiles factories, and as domestic workers, and experience restrictions on movement, deceit and fraud in wages, passport confiscation and debt bondage. Domestic workers face difficult situations, including the non-payment of three to six months’ wages. The ITUC contended that there had been no criminal prosecutions of employers or labour recruiters who subject workers to conditions of forced labour. The Committee also noted the information from the International Organization for Migration (IOM) that, as of 2009, there were approximately 2.1 million migrant workers in Malaysia, and that migrant workers in the country may be subject to unpaid wages, passport retention, heavy workloads and confinement or isolation.</p> <p>The Committee noted that, in June 2013, the Conference Committee on the Application of Standards urged the Government to take immediate and effective measures to ensure that perpetrators of trafficking were prosecuted and that sufficiently effective and dissuasive sanctions were imposed, as well as to ensure that victims were not treated as offenders and were in a position to turn to the competent judicial authorities in order to obtain redress in cases of abuse and exploitation. The Conference Committee also encouraged the Government to continue to negotiate and implement bilateral agreements with countries of origin, so that migrant workers are protected from abusive practices and conditions that amount to the exaction of forced labour.</p> <p>The Committee also noted that, in its observations submitted in August 2013, the ITUC stated that the situation and treatment of migrant workers in the country had further deteriorated, exposing more migrant workers to abuse and forced labour. The ITUC indicated that the Government had not taken any</p>	<p>Country</p> <p>Country</p> <p>Country</p> <p>Country</p>	<p>Specified risk for forced labour</p> <p>Specified risk for forced labour</p> <p>Specified risk for forced labour</p> <p>Specified risk for</p>
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	<p>measures to monitor the deception of migrant workers through the use of false documentation or contract substitution upon arrival. Additionally, the ITUC pointed out that, despite protections in law, migrant workers often work long hours and are subject to underpayment or late payment of wages. An estimated 90 per cent of employers retain the passports of migrant workers, and these workers are often afraid to report abuse or even request information concerning labour rights. Migrant workers who leave their employer due to abuse become de facto undocumented workers, subject to deportation. The ITUC stated further that the Government had criminalized undocumented migrant workers, identifying 500,000 individuals for deportation without adequately investigating their statuses as potential victims of forced labour. The ITUC urged the Government to abolish the labour outsourcing system, and to include domestic workers within the scope of the Employment Act (Minimum Standards).</p> <p>In this regard, the Committee noted the information provided by the Government in its 2013 report on certain measures taken in order to protect migrant workers, including through the establishment of a Special Enforcement Team, consisting of 43 officers, to enhance enforcement activities to combat forced labour issues. However, the Committee noted with concern that such measures had not yielded tangible results with regard to detecting or punishing forced labour practices. It urged the Government to take measures to protect migrant workers from abusive practices and conditions that amount to the exaction of forced labour, and to ensure that victims of such abuses are able to exercise their rights in order to halt violations and obtain redress.</p> <p>2. Trafficking in persons. The Committee previously noted the statement from the ITUC in its observations submitted in 2011 that Malaysia is a destination, and to a lesser extent, a source and transit country for trafficking of men, women and children, particularly for forced prostitution and forced labour. The ITUC also alleged that prosecution for forced labour trafficking was rare. The Committee also noted the launching of the National Action Plan on Trafficking in Persons (2010–15), as well as information from the Government on the number of prosecutions and convictions related to trafficking, but not on the specific penalties applied to perpetrators. In the context of the discussions which took place at the Conference Committee in June 2013, it noted the concern expressed by several speakers regarding the magnitude of trafficking in persons in the country, as well as the absence of information on the specific penalties imposed on persons convicted under the Anti-Trafficking in Persons Act. In this regard, the Conference Committee urged the Government to reinforce its efforts to combat trafficking in persons and to strengthen the capacity of the relevant public authorities in this respect.</p> <p>[...] The Committee further notes that, while the various steps taken by the Government were acknowledged by the members of the Conference Committee, delegates stressed that further measures were necessary in order</p>	Country	forced labour
	<p>2. Trafficking in persons. The Committee previously noted the statement from the ITUC in its observations submitted in 2011 that Malaysia is a destination, and to a lesser extent, a source and transit country for trafficking of men, women and children, particularly for forced prostitution and forced labour. The ITUC also alleged that prosecution for forced labour trafficking was rare. The Committee also noted the launching of the National Action Plan on Trafficking in Persons (2010–15), as well as information from the Government on the number of prosecutions and convictions related to trafficking, but not on the specific penalties applied to perpetrators. In the context of the discussions which took place at the Conference Committee in June 2013, it noted the concern expressed by several speakers regarding the magnitude of trafficking in persons in the country, as well as the absence of information on the specific penalties imposed on persons convicted under the Anti-Trafficking in Persons Act. In this regard, the Conference Committee urged the Government to reinforce its efforts to combat trafficking in persons and to strengthen the capacity of the relevant public authorities in this respect.</p> <p>[...] The Committee further notes that, while the various steps taken by the Government were acknowledged by the members of the Conference Committee, delegates stressed that further measures were necessary in order</p>	Country	Specified risk for forced labour

	<p>to develop and implement effective action that is commensurate with the magnitude of the trafficking phenomenon. In light of the above considerations, the Committee strongly encourages the Government to pursue its efforts to prevent, suppress and combat trafficking in persons, and to take the necessary measures to ensure that all persons who engage in trafficking and related offences are subject to thorough investigations and prosecutions. The Committee requests the Government to continue to provide information on the number of convictions and the specific penalties applied. The Committee also requests the Government to provide information on the concrete results achieved through the implementation of the National Action Plan on Trafficking in Persons (2010–15), both with regard to prevention and repression of trafficking, and the protection and rehabilitation of victims.”</p> <p>http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3183356:NO <i>Direct Request (CEACR) - adopted 2014, published 104th ILC session (2015) Equal Remuneration Convention, 1951 (No. 100) - Malaysia (Ratification: 1997)</i> Article 2 of the Convention. Occupational segregation and gender wage gap. The Committee notes that in 2012 the labour force participation rate of women (49.5 per cent) remained low compared to that of men (80.4 per cent) (Statistics Year Book Malaysia 2012). The Committee notes that the Salary and Wages Survey Report 2013 (Department of Statistics, Malaysia, August 2014) indicates an overall gender wage gap (mean monthly salaries) of 4.5 per cent, with a monthly gender wage gap for citizens of 8.4 per cent compared to 22.2 per cent for non citizens. When looking at mean monthly salaries and wages, by occupation, the gender wage gap is lowest for Technicians and associate professionals (7.4 per cent), Clerical support workers (14.2 per cent) but widens to more than 20 per cent for Professionals (23 per cent), Skilled agriculture, forestry and fishery workers (26.8 per cent) and Elementary occupations (28.9 per cent), or even more than 30 per cent for Craft and related trade workers (39.7 per cent) and Services and sales workers (34.9 per cent). At the industry level, a considerable gender wage gap exists in Real estate activities (36.5 per cent), Accommodation and food and beverage service activities (30.1 per cent) followed by Manufacturing (25.3 per cent), Professional, scientific and technical activities (23.2 per cent), Administrative and support services activities (22.5 per cent) and Human health and social work activities (20 per cent). The gender wage gap is the lowest for Information and communication (4.9 per cent) and Arts, entertainment and recreation (5.1 per cent). [...] National Policy on Women. In the absence of information on this matter, the Committee once again asks the Government to provide information on the measures taken or envisaged to implement the National Policy on Women and</p>	Country	Specified risk for forced labour
		Country	Specified risk for gender wage gap (forestry sector)
		Country	Specified risk for equal

	<p>the Plan of Action on the Advancement of Women which are relevant to the application of the principle of equal remuneration for work of equal value.”</p> <p>http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3183352:NO</p> <p><i>Observation (CEACR) - adopted 2014, published 104th ILC session (2015)</i> <i>Equal Remuneration Convention, 1951 (No. 100) - Malaysia (Ratification: 1997)</i></p> <p>Articles 1 and 2 of the Convention. Application in law and practice. The Committee has been commenting for a number of years on the fact that the Constitution, the Employment Act and the National Wages Consultative Council Act 2011 do not reflect fully the principle of equal remuneration for men and women for work of equal value. The Committee notes that the Government in its report once again reaffirms that the principle of the Convention is enshrined in article 8 of the Constitution, the National Wages Consultative Council Act 2011 and other relevant labour legislation. The Government further reiterates that rates of remuneration are determined through market forces, the minimum wage legislation and collective bargaining, and that workers’ and employers’ organizations are giving effect to the principle of the Convention. Moreover, according to the Government, periodic inspections at workplaces are undertaken to ensure that men and women are paid equally for “the same job”. The Government does not, however, provide information to indicate that the legislation is interpreted to apply the broader concept of work of equal value, or that the principle is applied in the context of collective bargaining. The Committee also notes from the Salary and Wages Survey Report 2013 (Department of Statistics, Malaysia, August 2014) the continuing gender wage gap, which for certain occupations amounts to almost 30 or even 40 per cent. At the industry level, the gender wage gap in real estate activities is 36.5 per cent; it is 30.1 per cent in accommodation and food and beverage service activities; and 25.3 per cent in manufacturing.</p> <p>The Committee once again recalls that the concept of “work of equal value” set out in the Convention allows for a broad scope of comparison going beyond equal remuneration for “equal”, “the same” or “similar” work, and encompasses work that is of an entirely different nature, but which is nevertheless of equal value (see General Survey on the fundamental Conventions, 2012, paragraph 673). It also recalls that the fact that the wage is mutually agreed upon between the worker and the employer by no means excludes the occurrence of pay discrimination. The Committee further emphasizes that “value” in the context of the Convention also indicates that something other than market forces should be used to ensure the application of the principle, as market forces may be inherently gender-biased (see General Survey, 2012, paragraph 674). In the context of the continuing gender pay gap and the occupational gender segregation previously noted by the Committee, as well as the persistent misunderstanding of the meaning of the provisions of the</p>	<p>Country</p> <p>Country</p> <p>Country</p>	<p>remuneration</p> <p>Specified risk for equal remuneration</p> <p>Specified risk for equal remuneration</p> <p>Specified risk for equal remuneration</p>
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	<p>Convention, their scope and their application in practice, the Committee considers that giving full legislative effect to the principle of equal remuneration for men and women for work of equal value is of particular importance to ensure the effective application of the Convention. The Committee therefore asks the Government to take specific measures, in consultation with employers' and workers' organizations, as follows:(i) to review the legislation, with a view to incorporating expressly the principle of equal remuneration for men and women for work of equal value, taking into account that equality must extend to all elements of remuneration as defined in Article 1(a) of the Convention;</p> <p>(ii) to take steps to increase the ability of judges, labour inspectors and other relevant public officials to better identify and address issues related to equal remuneration for men and women for work of equal value;</p> <p>(iii) to take appropriate measures to raise awareness among workers, employers and their organizations, as well as public understanding of the concept of "work of equal value" and the principle of the Convention; and</p> <p>(iv) to provide information on any steps taken and results achieved regarding these points, including collective bargaining agreements which give effect to the principle of equal remuneration for work of equal value."</p>		remuneration
<p>ILO Declaration on Fundamental Principles and Rights at Work. Country reports. http://www.ilo.org/declaration/lang--en/index.htm Source of several reports. Search for 'racial discrimination', 'child labour', 'forced labour', 'gender equality', 'freedom of association'</p>	<p>http://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_438853.pdf <i>Indigenous Peoples in the World of Work in Asia and the Pacific: A Status Report – 2015</i> [...] The indigenous peoples of Malaysia are not clearly identified in statistical compilations associated with employment. Implicitly, however, the category of "Bumiputera", which includes "Malay" and "other Bumiputera" – covering all indigenous ethnic groups apart from the Malays – can shed considerable light on the employment situation of the indigenous peoples of Malaysia. Some key figures from the 2013 labour force survey report are provided below.²⁰ [...] Employment figures disaggregated by industry and ethnic group reflect the following: 32.4 per cent of employed other Bumiputera are engaged in agriculture, forestry and fishing, considerably higher than the 11.4 per cent for all Malaysian citizens. (p. 81) [...] These figures further disaggregated by sex show that 33.4 per cent of male other Bumiputera and 30.8 per cent of female other Bumiputera are engaged in agriculture, forestry and fishing. This industry accounts for the highest employment percentage for both sexes (p. 82). [...] Disaggregated data on indigenous children and work are not available for Malaysia. A joint UNICEF and Economic Planning Unit report notes, however, that disparities have increased significantly among different ethnic groups, with 25.6 per cent of so-called "indigenous children" (Bumiputera) and 33.3 per cent of "other children" (primarily non-Malaysian citizens) living in poverty in 2007, and that children from these groups tend to enter the labour force earlier than other children.²² Reportedly, children from poor villages have been recruited</p>		

	<p>by palm oil companies to work in Malaysian plantations for little pay.²³ In addition, there are reports of child trafficking and sexual exploitation of children for commercial purposes, in particular in the country's rural regions.²⁴ Given this trend, the vulnerability of indigenous children, who predominantly inhabit the rural areas of Malaysia, requires further examination." (p. 82-83)</p> <p>[...] Besides facing threats to their livelihoods associated directly with land, the indigenous peoples of Malaysia have also faced discrimination in other avenues of employment. It has been noted that, while there has been some increase in the overall number of Bumiputera minority recruits to the civil service, imbalances at the management and professional levels need to be addressed to avoid racial polarization. Furthermore, indigenous peoples are prevented by their low level of skills and education from participating in the modern urban sectors and this aggravates their marginal status.²⁹ In this context, efforts still need to be made to overcome the problem of ensuring the broader development of human resources among indigenous peoples in a manner that remedies their skills shortages.</p> <p>[...] Disaggregated data are available for the categories of "Bumiputera" and "other Bumiputera" and, to some extent, these cover the situation of the indigenous peoples of Malaysia. There are insufficient disaggregated data, however, on the informal sector and child labour. Moreover, disaggregated data should clearly identify the indigenous peoples of Malaysia with a view to presenting a detailed picture of their broader social and economic situation. This is instrumental to the tasks of designing future policies, assessing current ones and addressing the specific conditions of the indigenous peoples of the country." (p. 84)</p> <p>http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_447687.pdf <i>Review of labour migration policy in Malaysia, ILO 2016</i></p> <p>Although population growth has remained relatively high in Malaysia, its rapidly expanding economy, increasing urbanization and relatively low-level of labour force participation among women continue to create a major demand for migrant workers. Most estimates suggest that there are 3–4 million migrants currently employed in Malaysia, which would constitute approximately 20–30 per cent of the country's workforce. With close to full employment since 1990 and higher educational attainment among nationals, migrant workers have for many years filled substantial shortages in the supply of low-skilled labour for key economic sectors. As shown in Figure 1, approximately one-third of the agricultural, manufacturing and construction workforce are migrants, industries which collectively contributed MYR297 billion (US\$68 billion) or 35.7 per cent of Malaysia's gross domestic product in 2014 (Ministry of Finance, 2015). Even these high rates of sectoral employment of migrants are known to fall short of the reality as they do not account for irregular migrant workers.</p>	Country	Specified risk for discrimination of indigenous peoples in the labour market
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	<p>[...] However, changing the composition of its labour force has proven difficult to achieve, with employers complaining of severe shortages in some industries when more restrictive policies have been applied. Pushback from the private sector has contributed to awkward policy shifts and incoherence in some cases, such as the abrupt decision to allow payment of the migrant worker levy to be transferred back to workers after instituting a minimum wage. The goal of capping employment of migrants at 1.5 million workers as of 2015 once again appears unrealistic and has contributed to a situation where as much as half of the migrant workforce are now thought to be undocumented. (p. 1-2)</p> <p>[...] Recent years have seen the rise of increasingly virulent rhetoric against migrants within the popular media, blaming them for a host of social problems ranging from electoral fraud to increases in street crime. Scapegoating of migrants, regardless of the realities, has contributed to an environment where exploitation and abuse are sometimes viewed as acceptable. The results of a survey of public attitudes among Malaysian nationals showed that while nearly 40 per cent of respondents felt that migrants made a positive contribution to the economy, over 80 per cent believed that irregular migrants should not be entitled to any rights at work and that Government policy should be more restrictive (ILO, 2011).</p> <p>During the last several years, an increasing number of reports have documented serious labour rights abuses against migrant workers in Malaysia, including cases of forced labour and human trafficking: (1) research by a non-governmental organization in 2014 found that nearly one third of their sample of migrant workers employed in electronics factories were engaged in forced labour (Verité, 2014); (2) a Finnwatch investigation of working conditions on palm oil plantations in Peninsular Malaysia uncovered severe violations of labour rights among many of the workers interviewed, including wages below the statutory minimum, lack of overtime pay, restrictions on freedom of association, gender-based discrimination, imposition of large amounts of debt and withholding of documents (Vartiala and Ristimäki, 2014); (3) in its 2015 Trafficking in Persons Report, the US Department of State found that some migrant workers on agricultural and palm oil plantations, at construction sites, in the electronics industry and in domestic work are subjected to labour practices indicative of forced labour, such as restrictions on movement, withholding of wages, contract substitution, confiscation of passports and debt bondage. (US DOS, 2015); (4) a mission report of the United Nations Special Rapporteur on Trafficking in Persons in 2015 documented victims of trafficking employed in a similar range of sectors, including agricultural, construction, manufacturing and domestic work (Giammarinaro, 2015); and (5) noting the reports of extensive abuse by the International Organization for Migration and International Trade Union Confederation, the ILO Committee of Experts on the Application of Conventions and Recommendations strongly encouraged the Malaysian Government to increase its efforts to eliminate forced labour and</p>	Country	Specified risk for labour rights for migrant workers
		Country	Specified risk for labour rights for migrant workers

	<p>human trafficking in compliance with its obligations under the Forced Labour Convention, 1930 (No. 29) in 2014 (ILO, 2015b).” (p. 3)</p> <p>[...] In particular, several of the new measures announced in the Eleventh Malaysia Plan may potentially improve the protections afforded to migrant workers in Malaysia, signalling progress towards a more coherent and rights-based governance framework. Moreover, by joining the newly established Trans-Pacific Partnership (TPP), Malaysia has made a commitment to raising labour standards in-line with the ILO Declaration on Fundamental Principles and Rights at Work.</p> <p>[...]12. Conclusion</p> <p>Recent policy developments in Malaysia include some laudable shifts in the Government’s approach to labour migration management. In particular, the commitment to phase out the outsourcing agencies to ensure clearer statutory responsibility of employers, the enactment of a minimum wage law that includes migrant workers, the establishment of the Institute of Labour Market Information and Analysis to better assess labour market needs and the signing of bilateral MOUs with countries of origin to limit the fees charged to workers can be viewed as applying lessons learned and good practices.</p> <p>At the same time, there have also been a number of policy measures and situational developments which are widely viewed as roll-backs to progressive governance of labour migration. The inadequate response to reports of exploitation, on-going human rights concerns related to detention, punishment, and deportation, repeated problems with upholding international obligations under the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19), insufficient social dialogue in policy formulation and unequal protection afforded to domestic workers are all indications of the need for further development of the policy and institutional framework.</p> <p>Overall, Malaysia’s labour migration policies continue to be conspicuously unbalanced, primarily managing migrant workers as a security concern rather than in view of their massive contribution to the country’s economic performance. The agricultural, construction and manufacturing sectors are key engines of growth that remain heavily dependent on low-skilled migrant workers to maintain their competitiveness. Transition to a high-skilled labour force through restructuring does not appear likely to reduce the need for these workers in the immediate-term.</p> <p>Recent developments on international trade are also likely to increase the need for workers in export-oriented enterprises, as well as to ensure that their employment is in-line with international labour standards. Malaysia has become a party to the newly concluded Trans-Pacific Partnership (TPP), an agreement which will form the world’s largest free trade area along the Pacific Rim. Although the accord has yet to be ratified at national level, the Labour Chapter requires states to adopt and implement laws in accordance with the ILO Declaration on Fundamental Principles and Rights at Work (2015). As a result, Malaysia’s record on eliminating forced labour, abolishing child labour,</p>	Country	Low risk for labour rights for migrant workers
		Country	Specified risk for labour rights for migrant workers

	<p>prohibiting discrimination in employment and safeguarding freedom of association and the right to collective bargaining for migrant workers is already receiving increased scrutiny from the international community. To facilitate its participation in the TPP, the Governments of Malaysia and the United States have developed a Labour Consistency Plan that requires Malaysia to make significant legal and institutional reforms to ensure compliance with international obligations.”</p> <p>http://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/briefingnote/wcms_410196.pdf PAY EQUITY - A KEY DRIVER OF GENDER EQUALITY – 28 April 2015 Globally, the gender pay gap is estimated to be at 22.9 per cent.⁴ While the gap has been gradually closing over the last decades, there is still a substantial gender pay gap in many countries, ranging from a few per cent to over 40 per cent. Figures 7.1 and 7.2 show the gender wage gap between men and women for selected countries in recent years.⁵ Gender pay gap in Malaysia (2012) is 4%.</p> <p>http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_421678.pdf 2015 ANNUAL REVIEW UNDER THE FOLLOW-UP TO THE ILO 1998 DECLARATION COMPILATION OF BASELINE TABLES - Freedom of association and the effective recognition of the right to collective bargaining “2015 AR: According to the Government: Malaysia still doesn’t intend to ratify C.87. According to the MEF: Considering legal incompatibilities between C.87 and national laws, MEF is against ratification of this instrument, which may put industrial harmony at risk. However, the ratification is under discussion within the context Transpacific Partnership Agreement.” (p. 227)</p>	Country	Specified risk for labour rights
		Country	Low risk for gender pay gap
		Country	Specified risk for freedom of association and collective bargaining
ILO Child Labour Country Dashboard: http://www.ilo.org/ipecc/Regionsandcountries/lang-en/index.htm	Malaysia does not feature in the Child Labour Country Dashboard	Country	Low risk
Global March Against Child Labour: http://www.globalmarch.org/	http://www.globalmarch.org/content/tobacco-farmers-exploiting-child-labor Tobacco farmers exploiting child labor – 18-06-2013 “Director for the International Tobacco Control Project Mary Assunta Kolandai said that child labor in the tobacco industry was a major problem in Indonesia, Cambodia, Laos, Malaysia, the Philippines, Thailand and Vietnam. The activities of children in tobacco farming violate the UN Convention on the Rights of the Child, putting the children at a high risk of health threats and commercial exploitation. “Children in these countries take part in all tobacco farm activities from planting, watering, transplanting, applying fertilizer,	Country	Specified risk for child labour (tobacco industry)

	weeding and harvesting to post-harvesting of tobacco seedlings and leaves, which exposes them to the hazardous effect of nicotine,” she said.”		
Office of the United Nations High Commissioner for Human Rights (OHCHR), Committee on Rights of the Child: http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx	Latest available concluding observations of the UN Committee on Rights of the Child date from 2007. – outdated.	Country	-
Committee on the Elimination of Discrimination against Women http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx (Use the link to ‘Key documents’ on the left hand side. Go to ‘observations’ and search for country.) (Refer to CW Cat. 1) Or: Right top select country click on CEDAW treaty, click on latest reporting period and select concluding observations	Latest available concluding observations of the UN Committee on the Elimination of Discrimination against Women date from 2006. – outdated. Malaysia has just submitted its report which was due in 2008 by 1 September 2016, but it has not yet been reviewed by the Committee.	Country	-
Human Rights Watch: http://www.hrw.org/	https://www.hrw.org/news/2016/08/02/malaysia-new-law-gives-government-sweeping-powers <i>Malaysia: New Law Gives Government Sweeping Powers National Security Council Act Should Be Repealed - August 2, 2016</i> “(New York) – Malaysia’s new National Security Council (NSC) Act, which came into force on August 1, 2016, is a tool for repression that should be immediately repealed, Human Rights Watch said today. The government should instead revise its laws to incorporate international human rights standards into the effort to counter terrorism. In December 2015, the government rushed through the broad and vaguely worded law, which gives sweeping powers to a council headed by Prime Minister Najib Razak to declare regions, including the entire country, as security areas to protect “any interest of Malaysia.” The law suspends many restraints on police powers in those areas, allowing the authorities to conduct arrests, searches, and seizures without warrants. Each such declaration lasts for six months, renewable an unlimited number of times. “Given the Malaysian government’s recent track record of harassing and arresting government critics, the likely abuses under this new law are truly frightening,” said Phil Robertson, deputy Asia director. “There are serious concerns that this law will be used as a back door to severe rights violations, using government claims that it only seeks to protect its citizens from terror threats.”	Country	Specified risk for labour rights
Child Labour Index 2014 produced by Maplecroft. http://maplecroft.com/portfolio/new-analysis/2013/10/15/child-labour-risks-increase-china-and-russia-most-progress-shown-south-america-maplecroft-index/	https://maplecroft.com/portfolio/new-analysis/2013/10/15/child-labour-risks-increase-china-and-russia-most-progress-shown-south-america-maplecroft-index/ <i>Child Labour Index 2014</i> Malaysia is labeled “High Risk”	Country	Specified risk for child labour

<p>http://www.verite.org/Commodities/Timber (useful, specific on timber)</p>	<p>No information that leads to a specified risk conclusion found in relation to labour rights.</p>	<p>Country</p>	<p>Low risk</p>
<p>The ITUC Global Rights Index ranks 139 countries against 97 internationally recognised indicators to assess where workers' rights are best protected, in law and in practice. The Survey provides information on violations of the rights to freedom of association, collective bargaining and strike as defined by ILO Conventions, in particular ILO Convention Nos. 87 and 98 as well as jurisprudence developed by the ILO supervisory mechanisms. There are 5 ratings with 1 being the best rating and 5 being the worst rating a country could get. http://www.ituc-csi.org/new-ituc-global-rights-index-the?lang=en</p>	<p>http://www.ituc-csi.org/IMG/pdf/survey_ra_2016_eng.pdf <i>The ITUC Global Rights Index 2016</i> Malaysia is classified in Rating 4 "Systematic violation of rights" (p. 13) "Workers in countries with the rating 4 have reported systematic violations. The government and/or companies are engaged in serious efforts to crush the collective voice of workers putting fundamental rights under threat." (p. 19) Timber company continues to deny workers union recognition: Sabah Forest Industries (SFI) filed a judicial review on 14 May 2015 seeking to quash a ministerial order on the eligibility of its employees to vote in a secret ballot on whether they wanted to be represented by the Sabah Timber Industry Employees Union (STIEU). SFI workers had been battling for 24 years for union recognition, but had been thwarted at every turn by the company's legal manoeuvres. Two previous attempts to file for recognition, in 2003 under the now defunct Sabah Forest Industries Employees Union and in 2010 as STIEU, had ended with SFI management successfully filing for judicial review. Yet STIEU's 2010 secret ballot results following its claim for recognition revealed it had the support of 85.9 per cent of SFI workers. [...] By the end of 2015 STIEU had still not achieved recognition. In the meantime, STIEU reported that SFI was trying to revive the defunct in-house union, and to urge some employees to file cases against STIEU leaders before the Trade Union Activities Department, in an effort to divide members and harass leaders. Meanwhile, further to complaints filed by the Building and Wood Workers International (BWI), the company is under investigation by the Forest Stewardship Council (FSC) and Compliance Advisory Ombudsman of the World Bank for its anti-union practices and failure to comply with ILO Conventions 87 and 98 as required in certification systems and Performance Standards. [...] Companies have been known to in the past form a new separate legal entity, and then transfer assets and business from the existing company to the new entity, thereby killing off existing unions – forcing workers to start all over again to form, register and get recognition of their unions in the new entity. This strategy has also been used to get rid of workers' leaders and union activists who stood up against exploitation. Proposed legislative changes will weaken unions: The Secretary General of the Malaysian Trades Union Congress (MTUC) N. Gopal Kishnam warned that the legislative changes proposed under the "11th Malaysia Plan" announced in June 2015 would weaken industrial workers' ability to collectively bargain with their employers. The text of the 11th Plan states that amendments will be made to the Employment Act 1955, Trades Union Act 1959 and Industrial Relations Act 1967. Those amendments would "address the rigidity of existing</p>	<p>Areas managed by Company Sabah Forest Industries</p> <p>Country</p> <p>Country</p>	<p>Specified risk for freedom of association and collective bargaining</p> <p>Specified risk for freedom of association and collective bargaining</p> <p>Specified risk for freedom</p>

	<p>dismissal processes” and “increase flexibility in working hours and registration of trade union membership”. The Human Resources Ministry, tasked with amending the laws, had not yet announced what these specific amendments would be, but the Malaysian Employers Federation (MEF) set out its proposals for what they should contain. The MTUC expressed concern about several of the MEF’s proposals, especially on the reclassification of dismissals. In the case of in so-called voluntary separation schemes (VSS), for example, workers have to choose between two unpalatable options. Gopal cited a case where workers at a factory were given two choices: either sign up to a new employment agreement where they will no longer be union members or take the company’s VSS. “Staying on with the company is even worse because there will be no union to protect their interests and their welfare will not be covered by a collective bargaining agreement.”.</p> <p>The MTUC suspects that companies are resorting to more and more coercive VSS and Mutual Separation Schemes (MSS) in order to shed workers or bring down salary costs. “Unlike a retrenchment scheme, you don’t have to inform and justify your reasons to the ministry with a VSS and MSS scheme.” “The end result with such practices is that more and more workers are forced to give up their rights to unionise”, said Gopal. “It’s union-busting.”</p>		of association and collective bargaining
Gender wage gap (in OECD countries) http://www.oecd.org/gender/data/genderwagegap.htm	Malaysia is not member of the OECD	Country	-
World Economic Forum: Global Gender Gap Index https://www.weforum.org/reports/the-global-gender-gap-report-2017 Search for country rankings for the adjusted and the unadjusted pay gap	<p>http://www3.weforum.org/docs/WEF_GGGR_2017.pdf <i>Global Gender Gap Index 2017 - Malaysia</i></p> <p>Malaysia ranks no. 104 out of 144 countries with a score of 0.670. (The highest possible score is 1 (equality) and the lowest possible score is 0 (inequality)).</p> <p>On the more specific sub-index on Economic participation and opportunity Malaysia ranks no. 87 with a score of 0.654.</p> <p>Within that index, the most specific and relevant indicator is the Wage equality for similar work. Here Malaysia ranks no. 12 with a score of 0.78 which places Malaysia in the top of 142 included countries.</p>	Country	Low risk for wage equality for similar work
use, if applicable: http://www.ilo.org/global/research/global-reports/global-wage-report/lang--en/index.htm <i>Global Wage Report</i> (Use latest version) “The Global Wage Report analyses the evolution of real wages around the world, giving a unique picture of wage trends and relative purchasing power globally and by region.”	Malaysia is not included in the Global Wage Report 2014/15	Country	-
http://www.globallslaveryindex.org/	http://www.globallslaveryindex.org/index/ <i>Global slavery index 2016</i>	Country	

<p>The Global Slavery Index estimates the number of people in modern slavery in 167 countries. The Global Slavery Index answers the following questions: What is the estimated prevalence of modern slavery country by country, and what is the absolute number by population? How are governments tackling modern slavery? What factors explain or predict the prevalence of modern slavery?</p>	<p>Malaysia ranks 29 out of 167 countries.</p> <p>“The 2016 Global Slavery Index estimates 128,800 people or 0.425% percent of the total population live in conditions of modern slavery in Malaysia. This is based on a random-sample, nationally representative survey undertaken in 2015, that sought to identify instances of both forced marriage and forced labour within the general population (survey conducted in Spanish language).</p> <p>The lowest percentage is 0.018% and the highest percentage is 4.373%.</p> <p>http://www.globalslaveryindex.org/region/asia-pacific/ “Large numbers of women and girls continued to migrate internally and internationally for jobs as domestic workers. While this offers an important economic opportunity, reports of abuse, exploitation and servitude persist, particularly in wealthy countries within the region where there was high demand for live-in help—Hong Kong, Japan, Malaysia, Singapore and Taiwan. [...] Within low-skilled and loosely-regulated industries, there is a risk of modern slavery, such as human trafficking, forced labour and debt bondage. In 2015-2016, there were cases of forced labour within the Malaysian electronics industry, [9] exploitation on Malaysian palm oil plantations, [10] and debt bondage in the apparel industries of Bangladesh [11] and Vietnam [12]. The reputational risk of slavery in supply chains compelled action from global brands, including companies renowned for social responsibility. [...]North Korea is among the most repressive in the world, with the UN Human Rights Council documenting “widespread and gross human rights violations”. [28] Economic and social rights in North Korea are frequently violated by the government who criminalise market activities, limiting already meagre opportunities by which North Koreans can obtain income.[29] An estimated 50,000 North Korean citizens have been sent abroad to work in mining, logging, and the textile and construction industries.[30] Though many North Koreans were employed in neighbouring China and Russia, there was also evidence of workers in Angola, Cambodia, Ethiopia, Malaysia, Mongolia, Myanmar and Qatar.[31] While reports suggest that this workforce generates roughly US\$2.3 billion per year for the North Korean Government,[32] civil society groups say workers earn only US\$120-\$150 per month, and may be forced to work up to 20 hours per day with limited rest days.[33]”</p>	<p>Country</p> <p>Country</p>	<p>Low risk for slavery</p> <p>Specified risk for forced labour (electronics industry)</p> <p>Specified risk for forced labour</p>
<p>Google the terms '[country]' and one of following terms 'violation of labour rights', 'child labour', 'forced labour', 'slave labour', 'discrimination', 'gender pay/wage gap, 'violation of labour union rights' 'violation of freedom of association and collective bargaining'</p>	<p>http://www.finnwatch.org/en/news/213-ioi-group-suspected-of-serious-labour-rights-violations <i>IOI Group suspected of serious labour rights violations - 16 September 2014</i> Neste Oil and Paulig Group palm oil supplier IOI Group suspected of serious labour rights violations in Malaysia. A new report by Finnwatch alleges that IOI Group pays wages lower than the statutory minimum wage, confiscates its worker' passports and restricts</p>	<p>Areas managed by IOI Group</p>	<p>Specified risk for labour rights</p>

	<p>freedom of association. A large part of IOI Group's plantation workers has no understanding of their employment contract, which is written in a foreign language. Over 80 per cent of the workers at IOI plantations are migrant workers from countries such as Indonesia, Bangladesh and Nepal. [...] Many of the findings in Finnwatch's report meet with the International Labour Organization's indicators for forced labour and human trafficking. Neste Oil and Paulig Group have initiated procedures in order to investigate and correct the problems brought to light by the report. All the plantations researched by Finnwatch were RSPO and ISCC certified, and the report criticises leading palm oil certifications for inadequate monitoring of working conditions."</p> <p>http://www.humanium.org/en/asia-pacific/malaysia/ <i>Children of Malaysia - Realizing Children's Rights in Malaysia</i> The Malaysian government presents an image of a country where different ethnic groups live together in peace and harmony, but the reality is quite different. Children of ethnic and religious minorities face many obstacles, and children's rights in general are also not fully respected. The <i>Realization of Children's Rights Index</i> is visually illustrated using 5 colours indicating 5 situation levels of Children's Right. Malaysia is marked orange meaning: "Noticeable problems". [...] Discrimination towards children of ethnic minorities Malaysia's population is comprised of three main ethnicities: 60% Malays, 25% Chinese, and 10% Indians. Several years ago, Malaysian authorities developed a program of ethnic discrimination which favored Malays. The State feared that ethnic minorities would hinder unification of the country, so they tried to give Malays better opportunities to the detriment of the minority population. These policies have prevented children of Chinese, Indian, and other minority descents from accessing the same services as Malay children, particularly education. [...] Child Labour It is illegal for children under the age of 14 to work, but they are permitted to contribute to family businesses. It is also legal for children to work in entertainment, for the government, in schools, or as apprentices. In all cases, a child may not work more than six hours per day, more than six days per week, or during the night. However, these restrictions are still too permissive, and contradict the child's best interests."</p> <p>http://www.ijssh.org/vol6/704-SH30002.pdf <i>A Study on Child Labour as a Form of Child Abuse in Malaysia - International Journal of Social Science and Humanity, Vol. 6, No. 7, July 2016</i> Abstract —</p>	<p>Country</p> <p>Country</p> <p>Country</p>	<p>Specified risk for child labour</p> <p>Specified risk for discrimination of minorities in the labour market</p> <p>Specified risk for child labour</p>
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	<p>International Labour Organization (ILO) estimates that there are about 250 million economically active children worldwide. In Malaysia, although the Children and Young Persons Act (Employment) 1966 prohibits the children to be employed, previous studies proved that there are high rates of working children in certain states in Malaysia. It is believed that thousands of working children in Malaysia to be in an environment which is potentially harmful to their physical, mental, emotional, and social development. To identify the types and instances of child abuse for the working children, a study has been conducted to 454 working children in four states in Malaysia. Based on data analysis, it is found that more than half (63%) of the working children have been emotionally abused, 27% physically abused and at least 10% have been sexually abused. Majority of them are not happy with their current job and are regretful for not attending school. This represents their basic necessities to have proper education and they should not expose to work at this early age. This research contributes to increase the awareness of public and government to take care of the need of children basically on the issue of child abuse for working children.” [...] In Malaysia although the Children and Young Persons Act (Employment) Act 1966 does not encourage the employment of children, studies show that there are children in employment [3], [4]. However, similar with some other countries it is difficult to cite the number of children actually engaged in child labour in Malaysia. In fact, very little is known about the actual magnitude, nature and distribution of child labour in the country. This is because little has been done to collect and analyse current relevant data regarding the incidence of child labour in the country. Also official data on child labour is very limited. Furthermore, the Act permits some exceptions such as children are allowed to do light work in family enterprises or as an approved apprentice, although they may not work for more than six (6) hours per day, or six (6) days per week or at night. In the Population Census of 1980 it was cited that the number of children between the ages of 10 to 14 years in the work force was 43,000 [11]. The number declined to 39,746 children in the 1991 Population Census [5].”</p> <p>http://www.thestar.com.my/business/business-news/2014/12/04/malaysia-does-not-condone-forced-and-child-labour/ <i>Malaysia does not condone forced and child labour – 4 December 2014</i> KUALA LUMPUR: Malaysia does not condone any act of forced labour and child labour in oil palm plantations as alleged by the reports of the United States Department of Labour (DoL). In the past five reports in the US DoL’s List of Goods Produced by Child Labour or Forced Labour for 2009, 2010, 2011, 2012 and 2013, Malaysia has been listed as one of the countries practising forced labour in the oil palm industry. In its latest report on Dec 1, the US DoL has again listed Malaysia as one of the countries practising not only forced labour but also child labour in the said industry.</p>	Country	Specified risk for child labour
		Country	Specified risk for child labour

	<p>In a statement released yesterday, the Plantation Industries and Commodities Ministry (MPIC) said Malaysia, as a member of the International Labour Organisation (ILO), adheres to the ILO's Convention No 29 concerning forced labour and Convention No 182 concerning child labour."</p> <p>http://www.verite.org/research/electronicsmalaysia <i>Groundbreaking Research Offers Concrete Evidence of Widespread Forced Labor Among Foreign Migrant Workers in Malaysian Electronics – September 2014</i></p> <p>Verité's two-year study of labor conditions in electronics manufacturing in Malaysia found that one in three foreign workers surveyed in Malaysian electronics was in a condition of forced labor. Because many of the most recognizable brands source components of their products from Malaysia, this means that virtually every device on the market today may have come in contact with modern-day slavery. Verité interviewed more than 500 male and female workers across all major producing regions, electronics products, and foreign worker nationalities. Malaysian nationals were also surveyed. The results of these extensive interviews indicate that forced labor is present in the Malaysian electronics industry in more than just isolated cases, and that the problem is indeed widespread."</p> <p>http://www.dailymail.co.uk/wires/afp/article-2888867/No-escape-stuck-Malaysian-forced-labour.html <i>No escape for those stuck in Malaysian 'forced labour' - 28 December 2014</i></p> <p>"Electronics account for one-third of the country's exports But at least one-third -- possibly many more -- of Malaysia's 350,000 electronics workers face indentured servitude similar to "modern-day slavery," a study released in September by US-based fair-labour group Verite said. [...] Up to 60 percent of Malaysia's electronics workers are estimated to be vulnerable foreigners from impoverished countries, and Verite said 94 percent of foreign labourers it surveyed had their passports seized."</p> <p>http://www.solidaritycenter.org/malaysia-widespread-forced-labor-abuse-of-migrants/ <i>Malaysia: Widespread Forced Labor, Abuse of Migrants - July 10, 2015</i></p> <p>At a two-acre confectionary manufacturing complex in Malaysia, workers make chocolates, biscuits and other treats. But behind the pretty packaging and its candied contents, say some of the 60 Nepali migrant workers employed at the firm, is a work environment that includes physical abuse to force workers to produce sweets. The confectionary company is no outlier. Since January, the Malaysian Trades Union Congress (MTUC), and the General Federation of Nepalese Trade</p>	Country	Specified risk for forced labour and child labour (palm oil industry)
		Country	Specified risk for forced labour (electronics manufacturing)

	<p>Unions (GEFONT), both Solidarity Center allies, have documented hundreds of cases of employer abuse of migrant workers in Malaysia, often rising to the level of forced labor. Many of these workers, from India, Nepal, Sri Lanka, China and elsewhere, report that their employer has not paid them, or has given them wages far below what they had been promised before leaving their home countries. If they are injured on the job, the employer does not pay for their medical care.</p> <p>A significant number of the migrant workers say they have been physically abused by their employer and forced to live and sleep in unsanitary conditions with no electricity, running water or even mattresses to sleep on. Most are virtually held hostage by their employer, who in nearly all cases, confiscates their passports, rendering them unable to flee desperate and deplorable conditions, potentially making them victims of human trafficking.</p> <p>The widespread abuse reported across industries and the number of workers involved demonstrate that these cases are not isolated incidents involving rogue employers, but workplace practices condoned within an officially sanctioned environment that denies fundamental human rights."</p> <p>http://www.politifact.com/global-news/statements/2016/apr/12/bernie-sanders-right-migrant-laborers-malaysia-are-forced/ <i>Sanders is right: Migrant laborers in Malaysia are forced into working under 'slave-like conditions' – April 12, 2016</i></p> <p>"In Malaysia ... many of the workers are indentured servants because their passports are taken away when they come into this country and are working in slave-like conditions." — Bernie Sanders on Monday, April 4th, 2016 in an interview with the New York Daily News"</p> <p>Here, we wanted to fact-check Sanders' claim that workers in Malaysia — which would be part of the Trans-Pacific Partnership — are forced into working under "slave-like conditions."</p> <p>In a word, yes. Not only is forced labor widely documented by labor and human rights groups, it's openly acknowledged by the U.S. government.</p> <p>The Sanders campaign referred us to a 2014 report from Verité, an NGO that monitors labor standard compliance. Verité interviewed 501 workers in Malaysia's electronics industry (the country's leading sector), and found that 28 percent of them were coerced under both global standards and Malaysian law. But forced labor is by no means limited to one sector. Malaysia has the fourth-largest migrant worker population in the world, and its 3 million to 6 million foreign workers "all are vulnerable to exploitation in a variety of industries," said Abby McGill, the campaigns director for the International Labor Rights Forum.</p> <p>The State Department notes that passport confiscation was "widespread and generally unpunished," and has placed Malaysia in its Tier 3 watch list for human trafficking — the rating reserved for the worst offenders — in 2001, 2007, 2009 and 2014. In addition to electronics, the U.S. Labor Department</p>	Country	Specified risk for forced labour
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	<p>currently lists the garments and palm oil industries where labor abuses occurs (palm oil is also cited for child labor). Human Rights Watch reported on exploited migrant domestic workers in 2011. Amnesty International chronicled the stories of trafficked, trapped and physically and sexually abused workers in a variety of industries from agriculture to construction in 2010.”</p> <p>http://webcache.googleusercontent.com/search?q=cache:cfmmsAApNQIJ:humanrightsinfo.info/system/files/documents/Malaysia%2520Racial%2520Discrimination%2520Report%25202015.pdf%3Fdownload%3D1+&cd=2&hl=nl&ct=clnk&gl=nl</p> <p><i>MALAYSIA RACIAL DISCRIMINATION REPORT 2015 - Launched on March 21, 2016</i></p> <p>[...] “Discrimination based on ethnicity in education, health care, finance, workforce and welfare has been increasing in the Malaysian society in recent years. This trend is mainly attributed to the prevailing culture of racial politics practiced and exploited by different parties of the political spectrum and landscape in Malaysian since its Independence in 1957.</p> <p>[...] Recent incidents of racial discrimination, racism and strained ethnic relations within the Malaysian society have increasingly surfaced over the years despite the Prime Minister’s numerous assurances and claims at home and abroad that the government promotes moderation in the country^{7 8 9}. Many are also critical of the Malaysian authorities for their lack of enforcement and actions towards overt and public declaration of racist sentiments and statements especially those made by right wing pro-Malay rights groups such as PERKASA and ISMA.</p> <p>[...] Racism in the business environment is very prevalent in Malaysia. Groups often use Article 153 in the Malaysian Federal Constitution to justify their assertion as the Article safeguards the special position of the Malays and natives of Sabah and Sarawak and the legitimate interests of other communities by the country’s ‘Yang di-Pertuan Agong’ (King). It also allows a certain proportion of public service positions, scholarships, educational or training privileges and business permits or licenses to be reserved for Malays and natives of Sabah and Sarawak³⁸. The original intention of Article 153 was to ensure affirmative action for disadvantaged groups but it has since then been misinterpreted as a special provision to only protect the rights of the Malay ethnic group especially in policies and practices of business.</p> <p>[...] Apart from inter-ethnic discrimination in Malaysia, xenophobic behaviours were also prevalent in Malaysia. Such forms of discrimination and hostility towards migrant workers are examples of xenophobic behaviours manifesting among Malaysians today. Furthermore, it is common that migrant workers and other low income foreigners are often associated with criminal activities in the country.”</p>	Country	Specified risk for racial discrimination
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	<p>claiming to right a historical wrong, arguing that during the colonial era, British rulers favored Chinese and Indian immigrants over Malays.</p> <p>To put it mildly, the implementation of the NEP was politically disastrous. First, the policy created a rentier class. Since the contracts were awarded on racial grounds, the elite Malays with the strongest political connections were able to secure the bulk of the Malay-only contracts, with huge profits to follow. These elite became the strongest defenders of the system, forcing the government to expand the NEP to other areas. Second, the non-Malay population, comprising mainly Chinese and Indians, were oftentimes relegated to second-class citizenship, no longer able to rely on government help or attend institutions of higher learning due to the quota system. Many non-Malay businessmen were forced to employ "Ali Baba" tactics to survive. In such an arrangement, the business belonged on paper to a Malay ("Ali") while the business was actually run by a Chinese ("Baba"). Moreover, the policy has led to a dependency syndrome among the Malay population, with many Malays believing that they cannot survive without affirmative action."</p>		discrimination
Additional general sources	Additional specific sources		
	<p>https://ic.fsc.org/en/news/id/1627 <i>FSC disassociates from BILT - 16 August 2016</i> BONN, Germany (16 August 2016) - The Forest Stewardship Council (FSC) has announced that it has disassociated from Ballarpur Industries Limited (BILT) and the subsidiary company Sabah Forest Industries (SFI). This decision comes after a lengthy review process of the conclusions by an independent complaints panel that conducted a thorough investigation into the complaint filed by Building and Wood Workers International (BWI) in March 2015. The complaint alleged that SFI refused to uphold the International Labour Organization's (ILO) Core Conventions on Freedom of Association (Convention No. 87) and Collective Bargaining (Convention No. 98). The independent complaints panel concluded that there was clear and convincing evidence that SFI was not complying with both principles, leading to a decision on the case by the FSC International Board of Directors. In its assessment, the Board of Directors required BILT and SFI to submit an action plan and a progress report on recommended corrective measures no later than 24 June 2016, a deadline that was further extended to 30 June at BILT's request. Failure to submit both the action plan and progress report, as well as show a clear and significant commitment to fulfill the recommended corrective measures, have prompted the decision to disassociate, despite FSC allowing ample time for both companies to implement these actions. The FSC Policy for Association requires certificate holders to comply with ILO Core Conventions. Non-compliance is a violation of the FSC Policy for Association and prompts a review by an independent complaints panel and, when necessary, disassociation by the International Board of Directors.</p>	Areas managed by Company Sabah Forest Industries (SFI)	Specified risk for freedom of association and collective bargaining

	This resolution concludes the complaint filed by BWI under the FSC-POL-01-004 Policy for Association of Organizations with FSC. For full details on this case, please visit the BWI v. BILT case page on the FSC International website.”		
From national CW RA	Not available	Country	-
<p>Conclusion on Indicator 2.2:</p> <ul style="list-style-type: none"> Not all social rights are covered by the relevant legislation and enforced in Malaysia. For example; The methodology to ascertain majority for union recognition by secret ballot is limiting labour unions as the Industrial Relations Department is using the total number of workers on the date sought by the union instead of the total number of the participants in the ballot; The requirement for foreign workers to obtain the permission from the Minister of Human Resources in order to be elected as trade union representatives; Section 13(3) of the IRA, contains restrictions on collective bargaining with regard to transfer, dismissal and reinstatement; The imposition of compulsory arbitration procedure if the parties do not reach agreement on a draft collective agreement; The right to collective bargaining cannot be extended to employees of the public sector; The hazardous types of work prohibited to children under 18 years of age are not determined; No minimum age for admission to light work is specified; The broader concept of work of equal value, encompasses work that is of an entirely different nature, but which is nevertheless of equal value, is not applied and the principle is not applied in the context of collective bargaining; The legislative changes proposed under the “11th Malaysia Plan” announced in June 2015 would weaken industrial workers’ ability to collectively bargain with their employers. The government did not effectively enforce applicable laws: The length of proceedings for the recognition of trade unions can still be excessively long; Labour unions ITUC and the MTUC allege continued difficulties to ensure the recognition of trade unions, anti-union discrimination practices, and backlog of cases in the Industrial Courts in Penang and Kuala Lumpur; The right to freedom of association and collective bargaining is not upheld; Malaysia is ranked in Category 4 of the ITUC Global Rights Index 2016 which stands for systematic violation of the right to freedom of association, collective bargaining and strike; see also information mentioned in previous points. There is evidence confirming compulsory and/or forced labour in Malaysia: Most estimates suggest that there are 3–4 million migrants currently employed in Malaysia, which would constitute approximately 20–30 per cent of the country’s workforce. As much as half of the migrant workforce is now thought to be undocumented, while during the last several years, an increasing number of reports have documented serious labour rights abuses against migrant workers in Malaysia, including cases of forced labour and human trafficking. Since January 2016, the Malaysian Trades Union Congress (MTUC), and the General Federation of Nepalese Trade Unions (GEFONT), have documented hundreds of cases of employer abuse of migrant workers in Malaysia, often rising to the level of forced labor. There is evidence confirming discrimination in respect of employment and/or occupation: Although the New Economic Policy (NEP) technically expired in 1990, many of the NEP’s race-based policies continue to be enforced and even expanded. Discrimination based on ethnicity in education, health care, finance, workforce and welfare has been increasing in the Malaysian society in recent years; Besides facing threats to their livelihoods associated directly with land, the indigenous peoples of Malaysia have also faced discrimination in other avenues of employment. There is evidence confirming significant child labour; Malaysia is labeled “Extreme Risk” in the Child Labour Index 2014; little has been done to collect and analyse current relevant data regarding the incidence of child labour in the country, but, for example, according to the INCCP, cases of forced labour of migrant workers and their children on plantations in Sabah involved an estimated 72,000 children. 		Country	Specified risk for right to freedom of association and collective bargaining, for child labour, for forced labour and for discrimination of indigenous peoples and non-Malaya people, in the labour market Low risk for discrimination of women in the labour market

<ul style="list-style-type: none"> Malaysia is signatory to 6 fundamental ILO Conventions of which 5 in force; C105 - Abolition of Forced Labour Convention, 1957 (No. 105) was denounced on 10 Jan 1990. Malaysia did not ratify C87 Freedom of Association and Protection of the Right to Organise Convention, 1948 and C111 Discrimination (Employment and Occupation) Convention, 1958. There is evidence that any groups do not feel adequately protected related to the rights mentioned above: see information on discrimination in respect of employment and/or occupation, and/or gender above; Violations of labour rights are not limited to specific sectors: Examples of violations were found in relation to a wide variety of sectors. <p>The following specified risk thresholds apply:</p> <p>(14) The applicable legislation for the area under assessment contradicts indicator requirement(s); AND (15) There is substantial evidence of widespread violation of key provisions of the ILO Fundamental Principles and Rights at work.</p> <p>Regarding discrimination of women in the labour market the following low risk thresholds apply:</p> <p>(11) Applicable legislation for the area under assessment does not cover all key provisions of ILO Fundamental Principles and Rights at work but other regulations and/or evidence of their implementation exist. Reports do not lead to conclusions of systematic violations of rights. When labour laws are broken, cases are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities. SLIMF: Applicable legislation for the area under assessment does not cover all key provisions of ILO Fundamental Principles and Rights at work but there is no evidence of violation of ILO Fundamental Principles and Rights at work; AND (12) Other available evidence does not challenge 'low risk' designation.</p>			
<p>Indicator 2.3. The rights of Indigenous and Traditional Peoples are upheld.</p> <p>Guidance:</p> <ul style="list-style-type: none"> Are there Indigenous Peoples (IP), and/or Traditional Peoples (TP) present in the area under assessment? Are the regulations included in the ILO Convention 169 and is UNDRIP enforced in the area concerned? (refer to category 1) Is there evidence of violations of legal and customary rights of IP/TP? Are there any conflicts of substantial magnitude [footnote 6] pertaining to the rights of Indigenous and/or Traditional Peoples and/or local communities with traditional rights? Are there any recognized laws and/or regulations and/or processes in place to resolve conflicts of substantial magnitude pertaining to TP or IP rights and/or communities with traditional rights? What evidence can demonstrate the enforcement of the laws and regulations identified above? (refer to category 1) Is the conflict resolution broadly accepted by affected stakeholders as being fair and equitable? 			
<p>general sources from FSC-PRO-60-002a V1-0 EN</p>	<p>information found and specific sources</p>	<p>scale of risk assessment</p>	<p>risk indication</p>

ILO Core Conventions Database http://www.ilo.org/ilolex/english/docs/declworld.htm - ILO Convention 169	Malaysia did not ratify ILO Convention 169	Country	Specified risk for rights of IPs
Survival International: http://www.survivalinternational.org/	http://www.survivalinternational.org/tribes/penan <i>The Penan</i> “The hunter-gatherer Penan live in the rainforests of the interior of Sarawak, in the Malaysian part of the island of Borneo. Traditionally nomadic, most of the 10-12,000 Penan now live in settled communities, but continue to rely on the forest for their existence. Some still live largely nomadically. Sarawak was ruled for more than a century as the personal kingdom of the ‘Brooke Rajahs’ after the arrival of Englishman James Brooke in 1839. It was handed over to the British in 1946 and was incorporated into Malaysia in 1963. The Sarawak state government does not recognize the Penan’s rights to their land. Since the 1970s, it has backed large-scale commercial logging on tribal land across Sarawak. In 1987, many Penan communities protested against the logging of their land by blockading the roads cut through the forest by the logging companies. More than a hundred Penan were arrested. The Penan have kept up their resistance, and continue to mount blockades against the companies. Some have managed to prevent the companies from entering their land, but others have seen much of their forest devastated. Where all of the valuable trees have been cut down, the companies have started to remove the forests completely in order to establish oil palm plantations. The Sarawak government also plans to build twelve new hydroelectric dams, flooding many villages belonging to Penan and other indigenous people.”	Penan territory in Sarawak	Specified risk for land rights of IPs
Human Rights Watch: http://www.hrw.org/	No information found on indigenous peoples in Malaysia	Country	Low risk
Amnesty International http://amnesty.org	No information found on indigenous peoples in Malaysia	Country	Low risk
The Indigenous World http://www.iwgia.org/regions	http://www.iwgia.org/publications/search-pubs?publication_id=740 <i>The Indigenous world 2016</i> “As of 2015, the indigenous peoples of Malaysia are estimated to account for around 13.9% of the 31 million population. ¹ They are collectively called Orang Asal. The Orang Asli are the indigenous peoples of Peninsular Malaysia. The 18 Orang Asli subgroups within the Negrito (Semang), Senoi and Aboriginal-Malay groups account for 205,000 or 0.84% of the population in Peninsular Malaysia (24,457,300). In Sarawak, the indigenous peoples are collectively called Orang Ulu and Dayak. They include the Iban, Bidayuh, Kenyah, Kayan, Kedayan, Murut, Punan, Bisayah, Kelabit, Berawan and Penan. They constitute around 1,899,600 or 70.1% of Sarawak’s population of 2,707,600 people. ² In Sabah, the 39 different indigenous ethnic groups are called natives or Anak Negeri and make up about 2,203,500 or 60% of Sabah’s population of	Country	Presence of IPs

<p>3,736,200. The main groups are the Dusun, Murut, Paitan and Bajau groups. While the Malays are also indigenous to Malaysia, they are not categorised as indigenous peoples because they constitute the majority and are politically, economically and socially dominant.</p> <p>In Sarawak and Sabah, laws introduced by the British during their colonial rule recognising the customary land rights and customary law of the indigenous peoples are still in place. However, they are not properly implemented, and are even outright ignored by the government, which gives priority to large-scale resource extraction and the plantations of private companies and state agencies over the rights and interests of the indigenous communities. In Peninsular Malaysia, while there is a clear lack of reference to Orang Asli customary land rights in the National Land Code, Orang Asli customary tenure is recognised under common law. The principal Act that governs Orang Asli administration, including occupation of the land, is the Aboriginal Peoples Act 1954. Malaysia has adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and endorsed the Outcome Document of the World Conference on Indigenous Peoples, but not ratified ILO Convention No. 169.</p> <p>Follow-up to the National Inquiry into the Land Rights of Indigenous Peoples In 2013, the Human Rights Commission of Malaysia (SUHAKAM) published its findings from its National Inquiry into the Land Rights of Indigenous Peoples. A Task Force was appointed by the government to assess the findings and recommend steps for their implementation (see The Indigenous World 2012, 2013, 2014, 2015). The Task Force report was completed in late 2014 but made available only to the Federal Cabinet and Task Force members and not to the public. In June 2015, the Federal Cabinet “accepted” all of the Task Force’s 50 recommendations but rejected the call for a National Commission on Indigenous Peoples to be established, saying that the function of the Commission would, for the time being, be best served by a Cabinet Committee for the Land Rights of Indigenous Peoples.³ The Cabinet Committee was headed by the Deputy Prime Minister, Muhiyidin Yassin, but its work may now be shelved following his removal from office due to the current political turmoil in Malaysia. The Task Force has categorised the implementation of the recommendations into short-, medium- and long-term plans. Upon closer examination, some of the proposed plans either diverge from the original intent or are limited in their scope. For example, SUHAKAM’s original recommendation to conduct a comprehensive and independent review of the Orang Asli Development Department (JAKOA), which has been heavily criticized for acting against the interests of the Orang Asli, has instead become a request to restructure it in order to empower JAKOA.</p> <p>Another concern is the number of recommendations made by the Task Force with regard to using the legal instrument of “communal title” as a rapid way of demarcating land, despite the fact that SUHAKAM’s study revealed that</p>	Sarawak and Sabah	Specified risk for rights of IPs
	Peninsular Malaysia	Low risk for land rights of IPs
	Country	Specified risk for land rights of IPs
	Peninsular Malaysia	Specified risk for rights of IPs
Sabah	Specified risk for land rights of IPs	

	<p>applying the communal title concept in Sabah has been problematic, and has been rejected by the Orang Asal as a solution to their land rights problems. The concept was rejected because it has been used more as a land development scheme than as recognition of customary lands and territories. Another key recommendation of the Task Force that was accepted by the Federal Cabinet is the suspension of any decision by the local authorities on customary rights land that are the subject of a court process. Monitoring of the implementation of this decision and other processes is unclear, however, including the participation of Orang Asal representatives. Ensuring clear monitoring with the participation of indigenous peoples' representatives is an important component of many of the accepted recommendations but it has not been sufficiently established in the implementation plans.</p> <p>In June 2015, the Indigenous Peoples Network of Malaysia (JOAS) moved proactively to raise these points of concern with 20 Members of Parliament and presented a proposal to form a Parliamentary Select Committee on indigenous land issues. JOAS's briefing and proposal was well-received, and the MPs asked to visit communities and receive further briefings to clarify the concept of traditional lands and territories. JOAS's advocacy work on the recognition of indigenous customary laws and rights to land also included conducting research on, and mapping of, traditional lands and territories.</p> <p>Challenging encroachment on indigenous lands and territories As encroachment and aggressive economic development continues on Orang Asal traditional lands and territories, efforts to challenge such development aggression through press statements, police reports, complaints to the government and, ultimately, filing cases in court also continue.</p> <p>In 2015, two significant cases that were referred to court were the Nohing case in Peninsula Malaysia and the examination of the extent of traditional land and territories in Sarawak. In the first case, the Tok Batin (village headman) of Bukit Rok, Mohamad Nohing and five others filed a claim against the Director of the State Land and Mines Office, the state government, the Director-General of the Department of Orang Asli Development (JAKOA) and the federal government in 2007. They sought a ruling that the state authority had failed to administratively gazette 2,023 hectares of their traditional lands that they claimed were approved for gazetting in 1974. The state has handed over a significant portion of this land to FELCRA Berhad (Federal Land Consolidation and Rehabilitation Authority, a fully government-owned company) for development as an oil palm plantation for neighbouring communities (non-Orang Asli). After a five-year court battle, the Court of Appeal ruled in October 2015 that the creation of the Bera Malay Reservation in 1923 did not extinguish the preexisting native title rights of the Semelai people. It also held that they had native title rights to their customary lands as long as those lands were settled, planted, occupied and controlled by the Semelai people. However, "roaming lands" (kawasan rayau) which they did not occupy or exercise control</p>	Country	Low risk for rights of IPs
		Country	Specified risk for rights of IPs
		Settled, planted, occupied and controlled	Low risk for land rights of IPs

	<p>over were not considered part of their tanah adat or customary lands. In the second case, on 9 September 2015, a full bench of the Malaysian Federal Court heard the Sarawak government's appeals at the Kuching High Court that the pre-existing rights under native laws and customs (governed by common law) should not go beyond felled and cultivated lands and should not therefore include rights to land, trees, fruit trees, hunting, fishing, grazing areas and areas to gather food and forest produce in uncultivated areas within the broader territorial domain or communal areas. It also argued that there was no need for these non-codified native customs to be expressly given the force of law by the legislative or executive arms of the government of Sarawak. In his argument, legal counsel for the Sarawak government, JC Fong, said the government did not recognise these areas as native customary lands as they had failed to satisfy the legal requirement that the lands should be continuously occupied.⁴ The Federal Court deferred its decision without giving a date on which it would consider the arguments presented. The Federal Court's decision will potentially have major legal implications for large tracts of customary land currently occupied, used and enjoyed by indigenous peoples of Malaysia.⁵</p> <p>Anti-dam campaign In November 2015, two years of protests and blockades by the Baram community ended with a decision by the Sarawak Chief Minister to shelve the proposed 1,000 MW Baram dam in Sarawak. However, attention has now shifted to constructing the 1,200 MW Baleh dam.⁶ Meanwhile, in Sabah, protests at the construction of the Kaiduan dam along the Papar River continued throughout 2015. The government is adamant that the dam is the best option to prepare for a purported water shortage, and has shot down every recommendation made to adopt alternative water supply measures and step up efforts to reduce pipe leakages, reported to stand at more than 30% of water lost. The Sabah Water Department did not go to the public forum, attended by about 400 people, in which various alternatives were proposed and the significance of protecting the watershed that feeds the Papar River was raised. The local government, for its part, has used various tactics to intimidate the indigenous communities living in the areas directly affected by the dam. In November, the government finally announced that the cabinet had decided to go ahead with the project after keeping communities hanging on the claim that the project was still at the research stage.⁷</p> <p>Categorising indigenous peoples Criticisms on the continued use of "lain-lain" (other) on official government forms as the only ethnic category that includes indigenous peoples (the alternatives being Malay, Indian or Chinese) gathered momentum in 2015. The Sarawak Chief Minister gained political ground when he ruled that official forms should add the category Dayak, which is a generic term for many of Sarawak's Orang Ulu communities. Many accepted this as an important first step towards</p>	<p>territory of Semelai People</p> <p>Sarawak</p> <p>Sabah</p> <p>Sarawak</p>	<p>Specified risk for land rights of IPs</p> <p>Specified risk for rights of IPs</p> <p>Low risk for recognition of Dayak</p>
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		Sarawak	Specified risk for FPIC
		Sarawak	Specified risk for participation in decision making

	peoples but to advance their own development interests along with those of the larger society.” (p. 34-35)		
<p>UN Human Rights Council Universal Periodic Review http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx</p>	<p>https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/188/48/PDF/G1318848.pdf?OpenElement <i>Report of the Working Group on the Universal Periodic Review – Malaysia - 4 December 2013</i></p> <p>22. Switzerland called for a moratorium on the death penalty. It was concerned about restrictions on assembly, and shortcomings in ensuring the land rights of indigenous peoples. [...] 85. Denmark expressed concern about the lack of free, prior and informed consent to appropriation of indigenous land; and limits to freedom of expression and opinion. [...] 120. New Zealand welcomed the commitment to ensuring the rights of indigenous peoples. It noted gaps in the institutional framework, particularly with regard to the police, and challenges faced regarding irregular migration. [...] 131. The Government clarified that a task force comprising senior officials had been established to review and formulate the necessary strategy regarding the issue of indigenous peoples’ land rights, pursuant to the national inquiry into the land rights of indigenous peoples in Malaysia undertaken by SUHAKAM. 132. The Government continued to hold consultations with State authorities, other relevant agencies and indigenous groups on land issues. Progress had also been made in the survey and gazetting exercise for Orang Asli land. [...] 134. Sarawak State, with a large indigenous population comprising 27 ethnic groups, had for nearly two centuries had laws which recognized and protected indigenous rights to land. Official records confirm Sarawak has about 1.5 million hectares of native customary rights (NCR) land. A survey to demarcate boundaries and guarantee security of tenure of NCR land was ongoing under the Government Transformation Programme. 135. The current development agenda, involving the building of hydroelectric facilities, necessitated the use of NCR land. Where rights to NCR land were affected, the State Government and its utility company, Sarawak Energy Berhad: (a) adopted best international practices in engagement and consultation with indigenous peoples, which conformed with acceptable norms and standards, including principles embodied in the United Nations Declaration on the Rights of Indigenous Peoples; and (b) provided affected indigenous communities with a comprehensive compensation package, which assured them an immediate and substantial improvement in living standards, better access to basic human rights to education and health care, and better economic opportunities, whilst preserving their cultural identities and traditions.</p>	<p>Country</p> <p>Peninsular Malaysia</p> <p>Sarawak</p> <p>Country</p>	<p>Specified risk for land rights and FPIC</p> <p>Low risk for land rights of IPs</p> <p>Low risk for land rights of IPs</p> <p>Low risk for rights of IPs</p>

	<p>136. Implementation of the resettlement action plan and compensation package for those affected by the Murum Hydro-electric Project exemplified a process that recognized the rights and well-being of the indigenous people.</p> <p>137. In recognizing the challenges facing indigenous communities in Malaysia, the Government maintained that those communities must be afforded choice and be free to decide whether they wished to join mainstream society or not.</p> <p>Conclusions and/or recommendations**</p> <p>146. The following recommendations will be examined by Malaysia which will provide responses in due time, but no later than the twenty-fifth session of the Human Rights Council in March 2014:</p> <p>[...]146.46. Allow for the visit of the UN Special Rapporteur on the rights of indigenous peoples (Denmark);</p> <p>[...] 146.82. Reinforce measures to eradicate poverty across all segments of society, including among the indigenous community (Sri Lanka);</p> <p>[...] 146.209. Ensure that laws on indigenous peoples as well as their implementation comply with the Declaration on the Rights of Indigenous Peoples (Switzerland);</p> <p>146.210. Ensure the rights of indigenous peoples and local forest dependent peoples in law and practice, in particular regarding their right to traditional lands, territories and resources (Norway);</p> <p>146.211. Establish an independent National Commission on Indigenous Peoples and ensure that laws, policies and their implementations are in accordance with the United Nations Declaration on the Rights of Indigenous Peoples (Sweden);</p> <p>146.212. Establish an independent body to investigate disputes over land, territories and resources (New Zealand);</p> <p>146.213. Take measures, with full and effective participation of indigenous peoples, to address the issues highlighted in the National Enquiry into the Land Rights of Indigenous Peoples (Finland);</p> <p>146.214. Continue to implement its plans and strategies that enhance the economic and social welfare of indigenous peoples (Bolivia (Plurinational State of));</p> <p>146.215. Intensify efforts to eradicate poverty, particularly among the Orang Asli in Peninsular Malaysia and the natives of Sabah and Sarawak (Bolivia (Plurinational State of));</p> <p>146.216. Further progress in the eradication of poverty through the successful implementation of the Government Transformation Programme, particularly in the poverty zones of Orang Asli in Peninsular Malaysia, and the indigenous peoples of Sabah and Sarawak (Venezuela (Bolivarian Republic of));</p> <p>https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/158/70/PDF/G1315870.pdf?OpenElement <i>A summary of 28 stakeholders' submissions¹ to the universal periodic review of Malaysia – 25 July 2013</i></p>	Country	Specified risk for rights of IPs
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	<p>[...] 18. SUHAKAM regarded it necessary for the Government to take legal, policy and administrative measures to address issues related to indigenous peoples' right to land, including the lack of recognition of indigenous peoples' concept of native customary rights to land, inclusion of native customary land in protected areas and development projects, inadequate compensation for the loss of their land, territories, crops and resources. The Government should apply the principle of free, prior and informed consent.¹⁹</p> <p>[...]74. JKOASM stated that there had been an Islamization programme with material benefits implemented by the Department of Orang Asli Development (JAKOA) over the years designed to change Orang Asli identity, which is potentially damaging to the culture and rights as indigenous peoples.¹⁰⁸</p> <p>[...]12. Indigenous peoples 76. According to JS1, indigenous peoples continue to suffer a lack of recognition of their land rights, culture and advancement. They are continuously subjected to forced relocation and forced assimilation policies affecting their cultures and religions without prior free and informed consent, and compensation.¹¹⁰ Joint Submission 7 (JS7) also noted that many indigenous leaders appointed by their communities had been replaced by government appointed representatives who carry out the agenda of the state government, which had caused strife within communities.¹¹¹ JAKOASM expressed similar concern that the system violated and defied traditional Orang Asli leadership and decision-making systems.¹¹²</p> <p>77. JS7 noted that in the Borneo state of Sabah, the issuance of communal titles to develop native customary lands under a joint venture scheme with government agencies or private sector eroded Sabah's indigenous peoples' right to ancestral lands.¹¹³ Similarly, Society for Threatened Peoples noted that in Sabah and Sarawak, customary land rights were widely recognized by the law. However, they were not properly implemented and even ignored by the Government's providing the land for large-scale resource extractions and plantations.¹¹⁴</p> <p>78. STP stated that Orang Asli faced severe marginalization and discrimination in socioeconomic opportunities.¹</p> <p>15 BCM stated that the current protection and recognition by the Government of Orang Asli customary land rights was far from adequate. ¹¹⁶ JAKOASM and JS7 expressed similar concerns.¹¹⁷</p> <p>79. JAKOASM noted that Palm Oil Commercial Replanting (TSK), a government project, effectively destroyed crops that had been cultivated for generations and polluted and reduced the customary land area. There was no systematic or transparent information of dividend payments to Orang Asli participants.¹¹⁸</p>	<p>Country</p> <p>Peninsular Malaysia</p> <p>Country</p> <p>Country</p> <p>Sabah</p> <p>Sabah and Sarawak</p> <p>Peninsular Malaysia</p>	<p>Specified risk for rights of IPs</p> <p>Specific risk for cultural rights of IPs.</p> <p>Specified risk for rights of IPs</p> <p>Specified risk for right to self-government</p> <p>Specified risk for land rights of IPs</p> <p>Specified risk for rights of IPs</p> <p>Specified risk for rights of IPs</p>
<p>UN Human Rights Committee http://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIndex.aspx search for country</p>	<p>http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=MYS&Lang=EN <i>Reporting status for Malaysia</i></p>	<p>Country</p>	<p>Specified risk for rights of IPs</p>

<p>Also check: UN Committee on the Elimination of All Forms of Racial Discrimination http://www.ohchr.org/EN/HRBodies/CERD/Pages/CERDIndex.aspx</p>	<p>Malaysia did not sign the International Covenant on Civil and Political Rights nor did it sign International Convention on the Elimination of All Forms of Racial Discrimination</p>		
<p>Intercontinental Cry http://intercontinentalcry.org/</p>	<p>http://www.scribd.com/doc/216154458/Indigenous-Struggles-2013 Indigenous struggles 2013</p> <p>“The Indigenous Peoples Network of Malaysia or Jaringan Orang Asal SeMalaysia (JOAS) condemned remarks that the indigenous Dayak Peoples in Sarawak are ‘squatters living on state land’ and ‘natives who can be manipulated to circumvent the law.’The deplorable comments were secretly recorded by an investigator with Global Witness who spent a week in Sarawak posing as a “foreign investor” who was looking to buy land to develop new oil palm plantations. In their response, JOAS urging relevant authorities to immediately investigate and take appropriate actions against those responsible for the comments, especially in light of the huge number of existing land disputes and conflicts between the indigenous communities and some plantation companies throughout the state. (p. 25)</p> <p>[...] Hundreds of Indigenous Peoples gathered at an oil palm plantation in Malaysia to protest against a recent Federal Court decision to dismiss a disappointing ruling by the Court of Appeal (CA). The CA ruled that the communities of Long Teran Kanan, Tinjar have no Native Customary Rights (NCR) over lands that were given to a Malaysian company for the development of an oil palm plantation. A similar demonstration was carried out days later by another group of affected villagers. (p. 38)</p> <p>[...] Indigenous communities in Sarawak, Malaysia, whose lands were flooded two years ago by the controversial Bakun Dam -- forcing some communities to live on newly-created archipelagos -- are facing yet another daunting challenge. The Malaysian government wants to convert the remaining Indigenous lands into a new national park. An announcement by the Sarawak government warns that all Native Customary Rights (NCR) will be ignored in order to make the park a reality.</p> <p>After struggling for more than 20 years to protect the Suling-Selaan forest from logging companies in the Malaysian state of Sarawak, several Penan communities were abruptly given 60 days to abandon their homes so the government could convert the forest into an unpopulated national park. The shocking move follows a strong round of opposition from the Penan, who erected blockades to stop a logging company from raiding the forest of its natural bounty. The Penan protests convinced the company to walk away,</p>	<p>Sarawak</p> <p>Long teran Kanan community</p> <p>Sarawak</p> <p>Penan territory in Sarawak</p>	<p>Specified risk for rights of IPs</p> <p>Specified risk for land rights of IPs</p> <p>Specified risk for land rights of IPs</p> <p>Specified risk for rights of IPs</p>

	<p>surrendering the timber extraction license that the government had previously issued them.</p> <p>Elsewhere in Sarawak, another group of Penan communities reinstated a blockade against the controversial Murum Dam. The blockade began soon after the Penan village of Long Wat -- who would be the first to face the waters of the Murum reservoir -- reached an agreement with the government for their voluntary resettlement, an agreement that other villages found to be wholly inadequate. With the village of Long Wat seemingly out-of-the-way, and the renewed blockade in full force, Sarawak Energy started filling in the reservoir without giving notice to any of the affected villages. (p. 46)</p> <p>[...] Continuing their blockade against the Murum dam in the Malaysian state of Sarawak, the Penan gave Sarawak Energy “three days” to remove its machinery from their traditional lands. Speaking from the protest, Lugang Usang, Secretary of the Peleiran Murum Penan Affairs Committee (PEMUPA) said, “It is not true that we Penan do not want change or to improve ourselves. But don’t impose development on us. Our customary land, our ancestral burial grounds, our rivers and forest were taken away from us and now the government denies and intimidates us. These are criminal acts of the government that make our lives miserable.” (p. 52)</p> <p>[...] Some 1,000 people representing 26 Bukar villages staged a peaceful demonstration to protest the encroachment of their sacred ancestral home of Mount Sadong in Sarawak, Malaysia. Shouting their battle-cry ‘Hidup Bibukar’ (‘Long Live The Bukar People’), they carried placards and banners expressing their concern and worry, and called on relevant authorities to revoke a license issued to extract timber from the mountain. (p. 55)</p> <p>[...] An unprecedented series of statewide demonstrations were held in Sarawak to draw attention to the human rights violations against Indigenous Peoples in the Malaysian state. “Throughout the years, the natives NCR lands have been unjustly grabbed or destroyed via various development projects such as logging, oil palm and tree plantation estates, mega-dam construction, quarrying and construction of large polluting industries,” commented Mark Bujang, press liaison officer for Gerakan Rakyat Seluruh Sarawak (Grass) which organized the event. Pointing out a key detail, he added that the government restricts Native Customary Rights (NCR) to Temuda (cleared cultivated land), even though the courts have stated NCR also extends to pulau galau (reserved forest areas) and pemakai menoa (communal territory). “The Sarawak state government continues to reject the court decision,” he told reporters. (p. 63)</p> <p>http://intercontinentalcry.org/wp-content/uploads/2013/01/Indigenous-Struggles-2012.pdf</p>	<p>Penan territory in Sarawak</p> <p>Mount Sadong in Sarawak</p> <p>Sarawak</p> <p>Gua Musang,</p>	<p>Specified risk for rights of IPs</p> <p>Specified risk for rights of IPs</p> <p>Specified risk for land rights of IPs</p>
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	<p>Eight Orang Asli in Malaysia were arrested by the police for trying to set up a blockade and prevent loggers from entering their village in Gua Musang, Kelantan. The villagers were standing against the agricultural project of the local government which would require the cutting down of forest trees in their ancestral land. The blockade was their second attempt to stop the logging after failing to negotiate with the state government. (p. 7)</p> <p>Malaysian communities asked the government to immediately halt their plans to build twelve new hydro-electric dams in Sarawak and to hold a referendum on dam construction. The call arrived on the heels of an important conference that was organized by the newly formed Save Rivers Network. Participants at the conference similarly called for an end to the dams, which threatened to displace tens of thousands of Indigenous peoples. Conference members also called for government to start promoting micro-hydro, solar, wind and biomass energy generation instead of mega-dams. (p. 10)</p> <p>The Malaysian government asserted that Orang Asli Peoples are not Indigenous Peoples and that the UN Declaration on the Rights of Indigenous Peoples (UN- DRIP) applies to all Malay citizens. When asked what the Orang Asli are considered, given that the Malays are indigenous people, an official answered that they were merely 'Orang Asli' or 'Aboriginals'. The term Orang Asli means "natural people."</p> <p>Six Penan communities sent letters to the Norwegian CEO of Sarawak Energy (SEB), the Malaysian power company behind the controversial Baram megadam in Sarawak to demand that all work surrounding the dam be halted. If completed, the 1,200 MW dam would flood the Penan's heavily depleted ancestral lands, affecting a total of 20,000 people and a rainforest area exceeding 400 km². (p. 18)</p> <p>Penan communities from Upper Baram, Sarawak (Malaysia), proposed the "Penan Peace Park" as a model project that would integrate forest protection and socio-economic development. The project was considered groundbreaking by Penan people, who for the first time in their history decided to collectively model a development plan for their own future, in sharp contrast to the Sarawak government's model to exploit the land every way possible and leave the Penan with nothing. (p. 21)</p> <p>The Penan people in Sarawak issued a statement against the activities of the Malaysian-based multinational logging and timber products company Ta Ann. According to a statement, Ta Ann leased their lands for logging without prior consent or knowledge by the indigenous Sarawakians. The Huon Valley Environment Centre also released a letter, fingerprinted by Penan people,</p>	<p>Kelantan, Peninsular Malaysia</p> <p>Sarawak</p> <p>Peninsular Malaysia</p> <p>Penan territory in Sarawak</p> <p>Upper Baram, Sarawak</p> <p>Penan territory in Sarawak</p>	<p>Specified risk for rights of IPs</p> <p>Specified risk for rights of IPs</p> <p>Specified risk for rights of IPs</p> <p>Specified risk for rights of IPs</p> <p>Specified risk for rights of IPs</p> <p>Specified risk for (FPIC) rights of IPs,</p>
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	<p>formally requesting Ta Ann's removal from their land. It was an unprecedented show of opposition to the company. (p. 26)</p> <p>In Malaysia, two Kenyah longhouses erected a blockade against an oil palm company that encroached on their land in 1998, and never left. Since the company's arrival, the two communities have incurred damages to their crops and properties without permission or compensation. (p. 40)</p>	Kenyah territory	Specified risk for land rights of IPs
<p>Forest Peoples Programme: www.forestpeoples.org FPP's focus is on Africa, Asia/Pacific and South and Central America.</p>	<p>http://www.forestpeoples.org/topics/palm-oil-rspo/news/2016/04/tongod-villagers-secure-settlement-land-claim-palm-oil-developer-genting-plantations <i>Tongod villagers secure settlement of land claim with palm oil developer Genting Plantations - 8 April, 2016</i> Sabah (Malaysia) - The High Court of Sabah just settled a landmark agreement between the indigenous Dusun and Sungai peoples of Tongod District and Genting Plantations. The case, which has dragged on since 1997 and been in the courts since 2002, concerns a large-scale palm oil development on community lands in central Sabah (North Borneo). The palm oil companies secured their permits over the Dusun and Sungai peoples lands without recognising their land rights and without their Free, Prior and Informed Consent. Overriding community objections, the companies bulldozed the communities' forests' and farmlands and gradually expanded their operations, squeezing communities into a narrow settlement strip along the roadsides.</p> <p>With the support of pro bono lawyers from Kota Kinabalu, the community support group PACOS and the Malaysian national indigenous peoples' organisation, JOAS, and thanks to strong social mobilisation among the communities themselves, the indigenous peoples challenged the companies, the State Government and the lands office for the illegal take-over of their customary lands.</p> <p>Although Genting Plantations originally tried to get the case thrown out claiming the people had no right to plead, the courts found in favour of the communities and, eventually, upheld their native customary rights (NCR) to the disputed land. The judge urged and then mediated a settlement of the case between the communities and Genting Plantations. He also denied either party the right to appeal or claim costs. The details of the final settlement are confidential to the parties."</p> <p>http://www.forestpeoples.org/topics/rights-land-natural-resources/news/2015/07/new-film-denounces-forced-resettlement-dayak-peoples <i>New film denounces forced resettlement of Dayak peoples in Sarawak - 24 July, 2015</i> Sarawak, Malaysia: A new film from the Borneo project, Broken Promises: Displaced by Dams, made in conjunction of the indigenous peoples of central Sarawak and many support organisations summarises the threat posed by 17 large dams under development. Featuring interviews with numerous Dayaks</p>	<p>Dusun and Sungai communities in Tongod district, Sabah.</p> <p>Sarawak</p>	<p>Low risk for rights of IPs</p> <p>Specified risk for rights of IPs</p>

	<p>Land area: 32,855,000 ha Forest area: 20,456,000 ha (62%) reported to FAO; other sources report forest cover to be significantly less at 18,080,000 ha (55%) Population: 29.3 million Forest peoples: 8.5 million rural dwellers; 3.5 million indigenous people, many still highly forest dependent Forest land tenure: The state claims it owns and controls areas known as 'state land forests', which are superimposed on community lands and curtail and extinguish forest land under local/native customary rights (NCR); ownership of these areas by local forest communities and indigenous peoples is therefore largely unrecognised by the state Deforestation rate: 0.54%; satellite images indicate annual average tree cover loss of as much as 2% Main direct drivers of deforestation: Commercial logging; commercial agribusiness; mining; infrastructure; mega dams and urban developments Main indirect drivers of deforestation: National and state legal and policy instruments and related contradictions; governance issues (corruption, disempowerment of communities, etc.); interaction of international, national and local factors: trans-border forest crimes (e.g. global corruption, money laundering, tax evasion), powerful political and economic elites, unethical financial and investment culture, trade and consumption.</p> <p>Malaysia</p> <ul style="list-style-type: none"> • Malaysia is one of three countries in the world with the highest national deforestation rates. • Over 10% of the country's forests and tree cover were lost from 2000 to 2012, the world's highest national rate, and three times higher than the government reported to the FAO . • Malaysia is ninth in the world in area of forest loss and fourth for international capital flight (money theft). • Macro-economic policies, corruption and disregard for forest peoples' rights are driving the forest crisis. • There is scant recognition of indigenous peoples' customary land rights, but widespread human rights abuse with systematic violation of FPIC. • Curtailed access to forests impairs forest communities' livelihoods, traditions and well-being. • Affirmatory court judgments and forest peoples' initiatives and advocacy indicate the potential for change. <p>[...]Indigenous peoples and other communities sustainably inhabited, managed and used the forests of Peninsular Malaysia, Sabah and Sarawak for centuries. But recent decades have witnessed rapid destruction of, and damage to, Malaysia's once rich forests. [...]Among today's direct causes of deforestation are industrial logging, oil palm and pulp and paper plantations, road construction and dam building. Underlying factors include destructive trade and investment patterns, weak</p>	Country	Specified risk for land rights of IPs
		Country	Specified risk for rights of IPs
		Country	Specified risk for (FPIC) rights of IPs
		Country	Low risk for rights of IPs

	<p>governance and enforcement, and widespread political and economic corruption.</p> <p>Malaysia's forest peoples' customary land rights are systematically ignored and overridden, despite court decisions that open the way for greater recognition of their rights and adat (custom). Forest communities' lands and territories have been continuously encroached on and expropriated by commercial enterprises without genuine community consent, resulting in forest destruction and impairment of livelihoods, traditions and well-being. Some communities are still struggling against logging, while others face post-logging oil palm plantations, agribusiness, mining and dams. Forest peoples have put forward a broad agenda to safeguard their communal forests and to secure their rights, including community-level initiatives and non-discriminatory action by the Malaysian government, such as forest tenure and governance reform to tackle corruption, democratise land use decision-making and secure customary land rights. (p. 29-30)</p> <p>Land tenure and forest peoples' rights</p> <p>Virtually all Malaysia's forests and lands are claimed by the federal and state governments, taking little account of indigenous and forest-dependent peoples' customary rights. Malaysia has continued post-independence with laws and systems of colonial origin that have steadily eroded and extinguished communities' forest tenure and access. State legislation such as the Aboriginal Peoples Act has facilitated the expropriation of Orang Asli lands. Despite being a member of the UN Human Rights Council and signatory to the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), Malaysia disregards many of its international human rights obligations, including to protect and respect native customary rights (NCRs) to lands and indigenous peoples' right to free, prior and informed consent (FPIC). When practised at all, consultation with communities over the appropriation of forest land to companies tends to be restricted to government-appointed community leaders and state officials. NCRs to lands and territories are often extinguished without communities' knowledge and usually without adequate compensation.</p> <p>[...]Sarawak's legal code recognises customary land rights, but this has been negated by regulatory amendments making it easier for domestic and foreign investors to obtain NCR lands and requiring communities seeking to protect NCRs to prove continuous occupation from before 1958. The Sarawak government recognises only farmland under NCRs and has continuously disputed rulings by the Malaysian High Court, Court of Appeal and Federal Court that NCR lands include reserved forests and communal land. Judicial decisions in cases filed by indigenous communities have confirmed that the extinguishment of NCRs in relation to reserved forests and communal land is discriminatory and contravenes human rights guarantees, common law and native law and custom. Today more than 300 cases are going through the courts relating to NCR land disputes and to charges against logging, oil palm,</p>	Country	Specified risk for land rights of IPs
		Country	Specified risk for land rights of IPs
		Country	Specified risk for land rights of IPs
		Sarawak	Specified risk for land rights of IPs

	<p>dam construction and other companies, and against government agencies, including for failure to establish boundaries of NCR lands within concession areas and for flawed and invalid environmental impact assessments.</p> <p>[...] In Peninsular Malaysia the federal government has been reluctant to register reserves of the indigenous Orang Asli yet over-zealous in revoking the status of previously registered indigenous lands. While close to 24,000 hectares of Orang Asli land have been registered, and applications have been filed for a further 93,000 hectares, the government has pushed ahead with land privatisation despite indigenous and civil society protests. Official policy adopted in 2009, amending the Aboriginal Peoples Act, permits the government to privatise ownership of communal lands for construction of highways, airports, industrial zones, urban centres, and tourism and leisure facilities.</p> <p>[...] The government has used a 10-point 'development strategy' to subjugate the Orang Asli, including to relocate and resettle them and reconstitute their ethnicity and religion as Malay Muslims. The state can decide on matters concerning Orang Asli land without the community's FPIC, despite domestic legal provisions intended to safeguard the continuity of Orang Asli society, culture and control over traditional territories. Theoretically lands registered as Orang Asli reserve cannot be appropriated by outsiders, but Orang Asli communities do lose their customary lands through government revocation, commonly without compensation or substitute land." (p. 31-33)</p> <p>[...]Malaysia's forest peoples have lived sustainably for generations, maintaining a deep respect for the natural resources they rely on. Many today maintain customary practices such as hunting, gathering, small-scale rotational farming and their oral traditions. But these efforts are increasingly undermined by deforestation, forest damage, loss of lands and territories, and a spectrum of human rights abuses.</p> <p>[...] Forest communities are among Malaysia's poorest people. The government has promoted logging as a potential source of developmental benefits, and timber companies offer local employment. But the logging industry has done little apart from providing short-term low-skilled jobs and piecemeal aid. Community consent for logging has been engineered by officials telling villagers that to receive benefits they must cooperate. And to break resistance, elected community leaders have been replaced with more compliant company and government appointees.</p> <p>[...] Deforestation and large-scale developments have robbed Malaysia's forest peoples of access to forest lands and resources and polluted their watercourses. Land pressure has sometimes forced them to use forests unsustainably, sell land to outsiders or abandon age-old practices. Local food sovereignty, health, knowledge and traditions have suffered, while communities have experienced forced evictions, police harassment, attacks, sexual violence and denial of redress. Rules, restrictions and sanctions</p>	Sarawak	Specified risk for land rights of IPs
		Peninsular	Specified risk for land rights of IPs
		Peninsular	Specified risk for (FPIC) rights of IPs
		Country	Specified risk for rights of IPs
		Country	Specified risk for rights of IPs

	<p>are relatively flexible for business interests, but the authorities inflict heavy penalties on communities for alleged misdeeds.</p> <p>[...] Reduced access to forest resources may undermine women's negotiating power and prevent children from learning their community's history, sacred places, hunting or medicinal practices. In some areas women and girls have become more vulnerable because of the influx of logging workers. Men and youths leave villages to seek work elsewhere. Schoolgoing children lack affordable and reliable road transport, and girls have been raped when hitching a ride between home and school.</p> <p>[...] Since the 1980s the Penan have periodically mounted peaceful road blockades when their concerns and attempts to negotiate have been rebuffed. Sometimes lasting months, and days' walk from villagers' homes, blockades are arduous. The state government has made communities' blockading of roads a criminal offence. Among some Orang Asli communities in Peninsular Malaysia, quarrying has been a particular source of hardship through noise, dust, river pollution and soil erosion. Skin and respiratory problems have increased. Healers find it more difficult to obtain herbal plants. Feelings of hopelessness and frustration, and internal disharmony, grow. Men of working age and newly married couples move away. Customary leaders fear that their roles and functions will lose relevance." (p. 34-35)</p>		
<p>Society for Threatened Peoples: http://www.gfbv.de/index.php?change_lang=english</p>	No information on indigenous peoples in Malaysia found	Country	Low risk
<p>Regional human rights courts and commissions: - Inter-American Court of Human Rights http://www.corteidh.or.cr/index.php/en - Inter-American Commission on Human Rights http://www.oas.org/en/iachr/ http://www.oas.org/en/iachr/indigenous/ - African Commission on Human and Peoples' Rights - African Court on Human and Peoples' Rights - European Court of Human Rights</p>	<p>https://en.wikipedia.org/wiki/ASEAN_Intergovernmental_Commission_on_Human_Rights <i>ASEAN Intergovernmental Commission on Human Rights</i> The ASEAN Intergovernmental Commission on Human Rights (AICHR) was inaugurated in October 2009 as a consultative body of the Association of Southeast Asian Nations (ASEAN). The human rights commission exists to promote and protect human rights, and regional co-operation on human rights in the member states of (Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam).[1] The AICHR meets at least twice per year.[1] Human rights are referenced in the ASEAN Charter (Articles 1.7, 2.2.i and 14) and other key ASEAN documents. The commission operates through consultation and consensus—each of the 10 member states has veto power. The commission makes no provision for independent observers.[2] The commission has been described as "toothless" by observers including the Wall Street Journal.[2] The ASEAN chair at the time of AICHR's founding, Abhisit Vejjajiva, said that "...the commission's 'teeth' would be strengthened down the road",[7] but six years after AICHR's founding, critics charge that "...since it was launched,...[AICHR] has yet to take any action to safeguard the most basic freedoms of citizens it supposedly represents."[7]</p>	Asean region	Specified risk for rights of IPs
Data provided by National Indigenous Peoples', Traditional Peoples organizations;	Indigenous Peoples Network of Malaysia (Jaringan orang Asal Semalaysia (JOAS)		

	<p>http://www.forestpeoples.org/topics/un-human-rights-system/publication/2013/universal-periodic-review-malaysia-indigenous-peoples</p> <p><i>Universal Periodic Review of Malaysia by the Indigenous Peoples Network of Malaysia (JOAS) - 2013</i></p> <p>Indigenous Peoples Network of Malaysia (or Jaringan Orang Asal SeMalaysia, JOAS) is the umbrella network for 62 organisations [1] throughout Malaysia that represents different indigenous peoples' organisations and communities. As the focal point for indigenous rights and advocacy in Malaysia, JOAS provides the indigenous communities with representation nationally, regionally and internationally.</p> <p>Context: Basic information about indigenous peoples of Malaysia: The Orang Asal or indigenous peoples of Malaysia consist of more than 80 ethno-linguistic groups, each with its own culture, language and territory. Together we number about 4 million, or about 15 per cent of the national population. Collectively, our peoples count as among the poorest in Malaysia, due to marginalisation from the mainstream society on account of the non-recognition of our rights as contained in both national and international customary law.</p> <p>[...]Violations with Regard to Right to Land</p> <ol style="list-style-type: none"> 1. Article 26 of the UNDRIP states that indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired, and that States shall give legal recognition and protection to these. 2. Malaysian courts have in fact endorsed this in several judgments that essentially accord native title to our traditional lands, territories and resources. These include the judgments in the cases of Adong Kuwau[2], Nor Nyawai[3], Sagong Tasi[4], Rambilin[5], and Madeli Salleh[6]. 3. However, state governments continue to refuse to recognize decisions by the highest court in Malaysia. In Sarawak, sections 5(3) and (4) of the Sarawak Land Code provides wide power to extinguish all customary land rights[7]. 4. The Federal Court unanimously dismissed two appeals by several indigenous communities affected by the Bakun Dam[8] and a proposed pulp mill factory in Tatau[9], that these fore-mentioned sections of the Sarawak Land Code are inconsistent with the provisions on fundamental rights within the Federal Constitution in particular Article 5 which is "right to life". Currently, there are about 200 cases relating to violations with regards to customary native right to land, filed and pending in Sarawak courts. 5. In the Malaysian Borneo state of Sabah, the issuance of communal titles to develop native customary lands under a joint venture scheme with government agencies or private sector, further erodes Sabah's indigenous peoples' right to ancestral lands. The merging of Native Customary Rights into large plantations under this scheme is deemed dangerous to the status of 	<p>Country</p> <p>Sarawak</p> <p>Sabah</p>	<p>Specified risk for land rights of IPs</p> <p>Specified risk for land rights of IPs</p> <p>Specified risk for land rights of IPs</p>
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	<p>rights claim of indigenous communities to their traditional lands, territories and resources in the future.</p> <p>6. The indigenous people of the Tongod district of Sabah, comprising of 16 villages, are fighting for control of 38,000 acres of their ancestral land earmarked for an agropolitan project. The villagers are objecting to the offer of communal titles by the state government that has asserted that they have no 'native customary rights claims' over the contested land. Land offered in compensation to the community, is not suitable for planting purposes, as it is located on very steep and hilly terrain[10].</p> <p>7. As at 31 December 2010, only 14.21 percent of officially-acknowledged Orang Asli lands had been gazetted[11]. Yet these "officially-acknowledged" Orang Asli lands do not cover the full extent of lands, territories and resources traditionally occupied or otherwise used by Orang Asli. There are no gazetted Orang Asli lands in the state of Kelantan despite the continuous inhabitation and occupation of Orang Asli customary lands by more than 10,000 Orang Asli[12].</p> <p>8. In December 2009, an Orang Asli land titles and development policy was introduced, much to great protests by the Orang Asli, proposing to alienate individual titles of between 2 to 6 acres each to each Orang Asli head of household for cash crop cultivation. More than 2,500 Orang Asli gathered at Putrajaya (nation's administrative capital) to deliver a protest memorandum against the land titles policy to the Prime Minister. Among the complaints against the land titles policy were the potential loss of customary land and communal arrangements, lack of free, prior and informed consent and engagement and selective consultation[13].</p> <p>9. The right of indigenous peoples to our traditional lands, territories and resources continues to not be recognized by decision-makers, government agencies and at times, the highest court in Malaysia.</p> <p>Violations to the Right to Free, Prior and Informed Consent (FPIC)</p> <p>10. With such non-recognition of native customary title, the Federal and state governments have acted against the interests of indigenous Orang Asal by forcibly appropriating, acquiring and taking Orang Asal lands, territories and resources without our free, prior and informed consent.</p> <p>11. One such example takes place in the Malaysian Borneo state of Sarawak, where the state and federal governments are embarking on a major industrialization project called the "Sarawak Corridor of Renewable Energy" (SCORE), worth about USD105 billion. The backbone of this project is 50 hydroelectric dams, with a capacity of 20,000 Megawatt (MW). These dams would flood hundreds of square kilometers of forest and farmland and displace tens of thousands of indigenous people[14].</p> <p>12. A strong local opposition to the dams has since emerged, including a coalition comprising of affected indigenous communities called SAVE Rivers and the Baram Protection Action Committee. SAVE Rivers with the assistance</p>	Country	Specified risk for land rights of IPs
	<p>Violations to the Right to Free, Prior and Informed Consent (FPIC)</p> <p>10. With such non-recognition of native customary title, the Federal and state governments have acted against the interests of indigenous Orang Asal by forcibly appropriating, acquiring and taking Orang Asal lands, territories and resources without our free, prior and informed consent.</p> <p>11. One such example takes place in the Malaysian Borneo state of Sarawak, where the state and federal governments are embarking on a major industrialization project called the "Sarawak Corridor of Renewable Energy" (SCORE), worth about USD105 billion. The backbone of this project is 50 hydroelectric dams, with a capacity of 20,000 Megawatt (MW). These dams would flood hundreds of square kilometers of forest and farmland and displace tens of thousands of indigenous people[14].</p> <p>12. A strong local opposition to the dams has since emerged, including a coalition comprising of affected indigenous communities called SAVE Rivers and the Baram Protection Action Committee. SAVE Rivers with the assistance</p>	Country	Specified risk for FPIC

	<p>of the Baram Protection Action Committee, has since staged many protests against the building of the 1000MW Baram dam, including an attempted handing over of a thousand-signatures petition to the Sarawak Chief Minister[15].</p> <p>13. Other local opposition include eight Penan and Kenyah-Badeng communities[16] who staged a month-long blockade between September-October 2012, in protest of the 944MW Murum dam being built (about 70% completed) in their ancestral lands. A leaked resettlement action plan for Murum dam revealed that the 353 households (1,415 people) displaced for the dam would receive isolated land inadequate for farming, located on the fringes of oil palm plantations, and the proposed monetary compensation consists a monthly allowance (RM500 or USD161 per family for four years) below recommended minimum wage[17]. No Environmental Impact Assessment (EIA) surveys were conducted prior before commencing on work on the Murum dam. Currently, the Sarawak's environment laws are such that public participation is not mandatory in the EIA process, thus jeopardizing indigenous peoples' right to FPIC.</p> <p>14. As part of the SCORE initiative, Malaysia's first smelter plant began operation in Balingian, Sarawak in 2009. Since its operation, indigenous peoples living adjacent to the plant have suffered serious acute respiratory problems, including breathing difficulties, coughing, headaches, skin rashes, sores, dizziness and asthma. The toxic smog has polluted nearby rivers that the villagers are dependent for water supply[18]. Since then, there has been a lack of follow-up by the state authorities after the villagers' disclosure of poor health resulting from the operations of the smelter plant.</p> <p>15. The ancestral lands of the indigenous people of Johor straits, or the Orang Seletar have been appropriated for developers of a vast industrialization project called Iskandar Malaysia. Several hundred people of nine villages staged a historic protest in front of the Johor state assembly, in December 15, 2011. The community currently lives in dire poverty and poor health due to continuous appropriation of their lands, and resulting pollution from industrial projects[19].</p> <p>16. In the case of the issuance of communal title by the government of Sabah, the indigenous Orang Asal communities have never been consulted hence having no knowledge that the issuance of the title involves a joint venture scheme between the government agencies and the private sector.</p> <p>17. These case studies are a few examples of the intense pressure that indigenous peoples are facing from vast industrialization projects taking place in Malaysia. Despite vocal public protests and legal action against these projects, Malaysia's State and Federal governments continue to dismiss the legitimate claims of indigenous peoples by often saying that these protests are "instigated by so-called human rights organizations poisoning minds to go against the government and private companies who are trying to bring progress and development to them[20]."</p>		
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	<p>Violation of Right to Self-Governance</p> <p>18. The indigenous peoples have the right to maintain and develop our political, economic and social systems or institutions, according to Article 20 of the UNDRIP. However, the government has increasingly interfered in our traditional governance systems, especially in the selection and appointment of our customary leaders.</p> <p>19. Since it was reported in JOAS's UPR review in 2009, no change has been made since it was reported in JOAS's UPR review in 2009, to the provisions of the Guidelines on the Procedure for the Appointment of Orang Asli Headmen[21], that dictates that the government has the final say in who becomes the community head and has the right to prescribe the procedure for his election.</p> <p>20. The Aboriginal Peoples act of 1954 gave broad range of powers to the Department of Orang Asli Affairs (JHEOA), including the appointment and removal of Orang Asli headmen[22]. Orang Asli headmen and members of village development committees are subsequently required to attend leadership courses conducted by the government to "change their mindset"[23].</p> <p>21. In Sarawak, the state government deals with dissenting community leaders by taking away their right to govern, and stopping state allowances to headmen. According to the Community Chiefs and Headmen Ordinance, 2004, the governor has the right to designate any person to be Chief or Headmen for any particular community in Sarawak[24].</p> <p>22. Many indigenous leaders, rightly appointed by their communities, have since been replaced by appointed representatives who carry out the agenda of the state government[25]. This has caused much strife within communities, who do not agree with the newly appointed headmen.</p> <p>Violations, intimidations and harassment by authorities</p> <p>23. In trying to protect our rights to our traditional lands, territories and resources, many indigenous peoples have suffered intimidation and harassment by the authorities and law enforcement personnel.</p> <p>24. In January 2010, despite a court ruling recognising the community's native land rights, the Sarawak state government and police proceeded to demolish 25 individual houses without prior notice[26].</p> <p>25. In October 2010, Iban campaigners protesting the logging of their native forests by a company owned by the Chief Minister's sister, Raziah Mahmud, were arrested and jailed[27]. They were then accused of setting fire to the logging camp despite no evidence to substantiate the claim. Numpang Suntai, a local Iban activist, and the indigenous rights activist Nicholas Mujah were among those arbitrarily and falsely jailed[28]. Both had been helping the local community with their anti-logging campaign.</p> <p>26. In April 2010, a report by JOANGOHutan, the Malaysian Network of Indigenous Peoples and Non-Governmental Organisations, stated that in</p>	Country	Specified risk for self-government
	<p>Violations, intimidations and harassment by authorities</p> <p>23. In trying to protect our rights to our traditional lands, territories and resources, many indigenous peoples have suffered intimidation and harassment by the authorities and law enforcement personnel.</p> <p>24. In January 2010, despite a court ruling recognising the community's native land rights, the Sarawak state government and police proceeded to demolish 25 individual houses without prior notice[26].</p> <p>25. In October 2010, Iban campaigners protesting the logging of their native forests by a company owned by the Chief Minister's sister, Raziah Mahmud, were arrested and jailed[27]. They were then accused of setting fire to the logging camp despite no evidence to substantiate the claim. Numpang Suntai, a local Iban activist, and the indigenous rights activist Nicholas Mujah were among those arbitrarily and falsely jailed[28]. Both had been helping the local community with their anti-logging campaign.</p> <p>26. In April 2010, a report by JOANGOHutan, the Malaysian Network of Indigenous Peoples and Non-Governmental Organisations, stated that in</p>	Country	Specified risk for rights of IPs

	<p>NCR,” Jannie Lasimbang, Secretary General of Jaringan Orang Asal SeMalaysia (JOAS) said.</p> <p>“Companies and governments should take note of this landmark case and respect NCR to land to avoid the long and costly court process.”</p> <p>“We applaud the dedication of the Tongod community for their strength and resilience throughout the case, as well as their lawyers, Datuk Kong Hong Ming and Mary Lee for following through this case for 15 long years on a pro bono basis,” she added.</p> <p>The closure of this case however is bittersweet for those involved.</p> <p>“It has been a very pitiful and depressing experience for the villagers to have their case last this long,” Datuk Kong shared.</p> <p>“The justice system and operation is a serious disadvantage to poor people such as our villagers who are in no position financially or otherwise to go through and sustain the long and costly court process. Especially as they have to spend time away from their home and travel to the city for the trial, while having to also make ends meet at home.””</p>	Sabah	Specified risk for acces to justice
Data provided by Governmental institutions in charge of Indigenous Peoples affairs;	<p>Orang Asli Development Department (JAKOA) http://www.jakoa.gov.my/en/info-korporat/profil/visi-misi/ “VISION The moving organisation which excels in developing the Orang Asli community comparable to the nation. MISSION Implement inclusive development to improve socio-economic status and quality of life while advancing and upholding the excellent heritage of the Orang Asli community.”</p> <p>http://www.jakoa.gov.my/en/info-korporat/profil/objektif/ “Objectives Increase income of the Orang Asli and thus remove them from the poverty threshold. Expanding the scope of infrastructure coverage and social amenities to all the Orang Asli. Empowerment of the Orang Asli people through the comprehensive development of the human capital Raise the standard of health of Orang Asli people towards prosperous living. Conserving and upholding traditional knowledge and Orang Asli heritage, and Improving the effectiveness of the organisation by adopting and embracing good governance.</p> <p>http://www.jakoa.gov.my/en/info-korporat/profil/strategi/ “Strategy Implement economically viable projects, particularly land-based systems that can generate income and employment opportunities.</p>		

	<p>Develop basic amenities that are cost-effective by rounding up and reorganising the Orang Asli villages in the outskirts.</p> <p>Integrate remote Orang Asli villages into village communities or nearby towns.</p> <p>Intensify the educational programmes, training and intellectual development among children, teenagers and Orang Asli youth to prepare for the exit of economic dependence on land.</p> <p>Maintain welfare and subsidies to community members in the low income groups to enable them to respond to the Government's socio-economic programmes.</p> <p>Foster the development of social and economic institutions as well as Orang Asli NGOs through the process of participation and empowerment.</p> <p>A proactive approach in seeking candidates and participation in Government programmes.</p> <p>Enhance the Orang Asli people's image to the level of a more modern and progressive state and eliminate any negative stereotype.</p> <p>Collaborate with other government departments / agencies to implement development programmes for the Orang Asli.</p> <p>Increasing the use of IT within the Department in administrative matters as well as in the planning, implementation and monitoring of the development projects of the physical and mental state."</p> <p>http://www.jakoa.gov.my/en/ "As there are still many Orang Asli settlements that have been approved by the state government but have not been gazetted or need land perimeter surveying and engineering work for the federal development project, the JHEOA has allocated funds for the purpose. Through the facilities of issues related to the land acquisition, delineation and survey work can be carried out accordingly. Implementation of this project is subject to the jurisdiction of the land administrator and current regulations in force."</p> <p>http://www.iwgia.org/publications/search-pubs?publication_id=740 <i>The Indigenous world 2016</i> "SUHAKAM's original recommendation to conduct a comprehensive and independent review of the Orang Asli Development Department (JAKOA), which has been heavily criticized for acting against the interests of the Orang Asli), has instead become a request to restructure it in order to empower JAKOA."</p> <p>Human Rights Commission of Malaysia (Suhakam) http://www.suhakam.org.my/indigenous-people/ "(a) Land rights of Indigenous Peoples Since its establishment in 1999, the Human Rights Commission of Malaysia (SUHAKAM) has been dealing with numerous and persistent complaints from</p>	<p>Peninsular Malaysia</p> <p>Peninsular Malaysia</p>	<p>Specified risk for land rights of IPs</p> <p>Specified risk for land rights of IPs</p>
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	<p>the Orang Asli of Peninsular Malaysia as well as natives of the States of Sabah and Sarawak, collectively known as Indigenous Peoples or Orang Asal of Malaysia, pertaining to their rights, in particular, allegations of violations to indigenous customary rights to land.</p> <p>SUHAKAM was of the view that this long standing and systematic issue affecting the Indigenous Peoples of the country could best be dealt with in a comprehensive and in-depth fashion with a view of having a better understanding of the issue and how best to resolve the issue in the interest of promoting and protecting the human rights of the indigenous communities in the country. In this regard, SUHAKAM conducted its first-ever National Inquiry into the Land Rights of Indigenous Peoples in Malaysia to examine the root causes of the land issue facing Indigenous Peoples from a human rights lens. The National Inquiry, which was conducted from December 2010 to June 2012, involved a series of public hearings in Peninsular Malaysia, Sabah and Sarawak.</p> <p>The findings of this study were compiled into a comprehensive report entitled “Report of the National Inquiry into the Land Rights of Indigenous Peoples in Malaysia” (National Inquiry Report) which contains key issues and recommendations for the consideration and follow-up actions of the Government. Following the public release of the National Inquiry Report on 5 August 2013, YB Senator Datuk Paul Low Seng Kuan, Minister in the Prime Minister’s Department announced the Cabinet’s decision to set up a National Task Force to study the report.”</p> <p>https://drive.google.com/file/d/0B6FQ7SONa3PRbUlnUGcxzdEWU0/preview <i>Report of the national inquiry into the land rights of indigenous peoples - 2013</i> “General Conclusions</p> <p>10.1 Indigenous peoples are among the most marginalised and disadvantaged groups in Malaysia. Despite having provisions which recognise their land rights in the Federal Constitution, domestic and international laws, systemic issues have denied them the full enjoyment of their legal and human rights. These systemic issues evolved mainly from the successive amendments of land laws that do not recognise indigenous peoples’ perspectives of land ownership and management and therefore eroded customary rights to land. They also affected administrative decisions with respect to indigenous peoples’ land claims. The issues also evolved from the adoption of policies that give priority to approving lands for large-scale development projects over indigenous subsistence economy.</p> <p>10.2 There is a high degree of frustration and anger among indigenous communities for the inadequate response and ongoing violation of the rights conferred on them. As injustices in access and control of land are often central to the genesis of conflict that could be costly for the country as a whole if not addressed effectively, the Inquiry sees it as critical that such injustices are dealt with in an expeditious and holistic manner.</p>	Country	Specified risk for rights of IPs
		Country	Specified risk for land rights of IPs

	<p>10.3 On the basis of the facts and determinations arising from the National Inquiry, 18 key recommendations under five main themes are set out below, with some key activities for their implementation. It is recommended that all activities involving reviews and studies be conducted with the full and effective participation of indigenous peoples. The government’s commitment to adopt the recommendation to establish an independent National Commission on Indigenous Peoples will ensure that indigenous land rights issues are effectively addressed.”</p> <p>http://cfnhri.org/spotlight/suhakams-national-inquiry-into-the-land-rights-of-indigenous-peoples</p> <p>“SUHAKAM’s report on the NI was completed in April It contained findings from the NI and 18 main recommendations that were clustered under the following themes:</p> <ul style="list-style-type: none"> Recognise Indigenous Customary Rights to Land Remedy Land Loss Address Land Development Issues/ Imbalances Prevent Future Loss of NCR land Address Land Administration Issues Recognise Land as Central to Indigenous Peoples’ Identity” <p>Task Force National Inquiry into the Land Rights of Indigenous Peoples</p> <p>http://cfnhri.org/spotlight/suhakams-national-inquiry-into-the-land-rights-of-indigenous-peoples</p> <p>“In August 2014, the National Task Force that was set up completed its study on the NI report [SUHAKAM’s Report of the national inquiry into the land rights of indigenous peoples, lv] and had come up with its own report which endorsed most of the recommendations contained in SUHAKAM’s NI Report. The Task Force report was submitted to the Cabinet for its consideration and decision in June 2015. As an outcome, the Cabinet approved the formation of a Cabinet Committee for the Land Rights of Indigenous Peoples which would be headed by the Deputy Prime Minister of Malaysia. The Cabinet Committee would address, monitor and implement the recommendations in the Government’s National Task Force report. The Cabinet has agreed to the implementation of all recommendations contained in the National Task Force’s report, except for the establishment of the Commission on Indigenous Peoples.</p> <p>http://www.iwgia.org/publications/search-pubs?publication_id=740</p> <p><i>The Indigenous world 2016</i></p> <p>“A Task Force was appointed by the government to assess the findings and recommend steps for their implementation (see The Indigenous World 2012, 2013, 2014, 2015). The Task Force report was completed in late 2014 but made available only to the Federal Cabinet and Task Force members and not to the public. The Task Force has categorised the implementation of the</p>	Country	Specified risk for land rights of IPs
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	<p>recommendations into short-, medium- and long-term plans. Upon closer examination, some of the proposed plans either diverge from the original intent or are limited in their scope.”</p> <p>Cabinet Committee for the Land Rights of Indigenous Peoples http://www.thestar.com.my/news/nation/2015/06/17/cabinet-approves-indigenous-lands-rights/ <i>Cabinet forms committee on indigenous land rights - 17 June 2015</i> PETALING JAYA: The long-awaited decision on indigenous land rights is finally out. The Cabinet approved all 18 recommendations of a task force that looked into Suhakam's inquiry report on indigenous land rights, except for the setting up of the Commission on Indigenous Peoples. Minister in the Prime Minister's Department Datuk Paul Low said the Cabinet had on June 3 also approved the formation of a Cabinet Committee for the Land Rights of Indigenous Peoples to address, monitor and implement the findings of the Government's task force's report dated Aug 14. The Cabinet Committee will be headed by Deputy Prime Minister Tan Sri Muhyidin Yassin. Low said that the functions of the Commission would be best served by the Committee for now. "However, the task force would play a key role in this new Cabinet Committee," said Low in a press release on Tuesday. Low set up the task force in September 2013, with government agencies and ministries, state agencies and also civil society experts who reviewed the findings of the Human Rights Commission of Malaysia's (Suhakam) Report of the National Inquiry Into The Land Rights Of Indigenous Peoples dated July 19, 2013. "The Cabinet Committee will be calling upon state governments for their cooperation in the interest of our national heritage, the orang asli and orang asal," said Low. He said the setting up of the Cabinet Committee demonstrated the government's commitment to the challenging issue. The complex and numerous recommendations of the Suhakam Report – 51 in all – were digested by the task force and put into phases and time frames of within a year to three years. The list of 18 main headings for the 51 recommendations were: 1. Land Tenure Security 2. Clarification of Customary Cultural Right of Tenure 3. The Return (restitution) for the Rights of Indigenous Lands Which Are Not Recognized 4. Mechanisms of Justice (Redress Mechanisms) 5. Addressing Policy and Planning 6. Review of Compensation</p>	<p>Country</p> <p>Country</p> <p>Country</p>	<p>Specified risk for land rights of IPs</p> <p>Specified risk for rights of IPs</p> <p>Specified risk for rights of IPs</p>
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	<p>7. Applying Human Rights Based Approach for Legal Development and Free and Prior Informed Consent</p> <p>8. Ensure Land Development Does Not Adversely Affect Indigenous Peoples</p> <p>9. Promoting Successful Development Models</p> <p>10. Policies Which Are Environmentally Friendly and Sustainable Development</p> <p>11. Measures for the Settlement of Indigenous Peoples</p> <p>12. Recognition of Rights of Indigenous Persons in Protected Areas</p> <p>13. Encourage Active Participation of Indigenous Persons in Forest Management</p> <p>14. Establish a Comprehensive Review of JAKOA</p> <p>15. Enhance Capacity of Land Departments</p> <p>16. Reviewing the Response to Land Issues</p> <p>17. The implementation of the Immediate Improvement Measures</p> <p>18. Establish the Independent National Commission on Indigenous Peoples.</p> <p>http://www.iwgia.org/publications/search-pubs?publication_id=740 <i>The Indigenous world 2016</i> "In June 2015, the Federal Cabinet "accepted" all of the Task Force's 50 recommendations but rejected the call for a National Commission on Indigenous Peoples to be established, saying that the function of the Commission would, for the time being, be best served by a. Cabinet Committee for the Land Rights of Indigenous Peoples³ The Cabinet Committee was headed by the Deputy Prime Minister, Muhiyidin Yassin, but its work may now be shelved following his removal from office due to the current political turmoil in Malaysia."</p> <p>http://www.freemalaysiatoday.com/category/nation/2016/08/09/whats-happened-to-cabinet-committee-on-orang-asal/ <i>What's happened to Cabinet Committee on Orang Asal? August 9, 2016</i> "PUTRAJAYA: A group representing the Orang Asal has questioned the sincerity of the government in dealing with land rights matters related to the community. What has happened, the Jaringan Orang Asal SeMalaysia (JOAS), asked, to the Cabinet Committee for the Land Rights of Indigenous Peoples which was set up to address, monitor and implement the findings of a government task force in 2015. The task force was established in September 2013 to review the findings of the Human Rights Commission of Malaysia's (Suhakam) Report on the National Inquiry into the Land Rights of Indigenous Peoples dated July 19, 2013. The task force consisted of ministries, Federal and State government agencies, and civil society experts. JOAS Secretary-General Jannie Lasimbang said Tuesday the Cabinet Committee was formed on June 13, 2015.</p>	Country	Specified risk for land rights of IPs
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	<p>“We question the sincerity of the government because we received no further news on the Cabinet Committee and the report of the Task Force has not been released officially,” she said. JOAS handed over a memorandum outlining issues and demands related to Orang Asal lands, territories and resources, to the office of Minister in the Prime Minister’s Department Paul Low on Tuesday. The memorandum called on the government to be transparent about the progress of the Cabinet Committee on the Land Rights of Indigenous Peoples. The memorandum was drafted after consulting with Orang Asal across Malaysia when they met over the last four days to commemorate the International Day of Indigenous Peoples which falls on Aug 9 every year. Lasimbang said: “We handed the memorandum to Paul Low as the minister’s office has said that it remained committed and will play a key role in the Cabinet Committee.”</p> <p>The Cabinet Committee was led by former Deputy Prime Minister Muhyidin Yassin before Prime Minister Najib Razak removed him from the Cabinet. Key points of the memorandum referred to the Suhakam National Inquiry on Land Rights of Indigenous Peoples. The report which came out in 2013 has been endorsed fully by JOAS.</p> <p>The memorandum resonates with the Global Call on Action for #LandRightsNow, a campaign which puts land rights at the centre of sustainable development and climate change.</p> <p>The campaign, which is supported by over 500 organisations around the world, including JOAS, started Tuesday.”</p>		
<p>Data provided by National NGOs; NGO documentation of cases of IP and TP conflicts (historic or ongoing);</p>	<p>Sahabat Alam Malaysia (SAM) or Friends' of the Earth Malaysia http://www.foe-malaysia.org/about_us</p> <p>“Sahabat Alam Malaysia (SAM) or Friends' of the Earth Malaysia, is an independent non-profit national organisation established in 1977. SAM is a registered body under the Societies Act 1966 and has been a member of the Friends of the Earth International since 1983.</p> <p>SAM is involved in a variety of activities and campaigns to ensure that environmental justice is linked to social justice and that development choices and the management of natural resources are sustainable and ecologically-sound. It supports the struggle of the indigenous peoples in defending their indigenous customary rights and the natural resources of the tropical rainforests.”</p> <p>http://media.wix.com/ugd/e6c944_901a271120544832bccefce44e7ee26a.pdf <i>From policy to reality: 'Sustainable' tropical timber production, trade and procurement - A critical analysis on forestry governance in Malaysia and the timber importation and procurement policies of Japan, South Korea and Australia - October 2013</i></p> <p>3.5 Indigenous customary land rights violations 3.5.1 Statutory descriptions of indigenous peoples' rights</p>		

	<p>Indigenous communities in Malaysia are legally referred to as Aborigines or Orang Asli (Original Peoples) in the Peninsular Malaysia or Natives or Anak Negeri (Child of the Land) in Sabah and Sarawak. The term Bumiputra (Sons of the Soil) is also often employed in policy language, especially in Sabah and Sarawak, although such a term in actual fact does not have any constitutional or statutory origins. The people themselves however tend to advocate the collective term Orang Asal.</p> <p>In Sarawak, indigenous communities from more than 25 cultural and linguistic groups make up more than half of Sarawak's population, of which around 30 percent are the Iban who form the state's majority ethnic group. Sarawak is also home to the Penan community, who were still living by hunting and gathering until as recent as the 1960s, with a few hundred tribe members still living fully dependent on the forests until today. In Sabah, its indigenous communities of more than 30 cultural groups speaking at least 80 dialects, form close to 60 percent of the population, with the Kadazan- Dusun and Bajau being the majority ethnic groups. In the Peninsula meanwhile, its indigenous communities are made up by a very small minority of around 150,000, although they too comprise a diverse community of at least 20 cultural groups, of which the Semai, Temiar, Jakun and Temuan form some of the largest groups. In all, indigenous population makes up around 12 percent of the country's population, over more than 3 million strong.</p>	Country	Presence of IPs
	<p>In Malaysia, the protection of indigenous peoples' land rights, as with all citizens, is affirmed by the Federal Constitution through Articles 5 [Right to life] and 13 [Right to property]. In addition, the peoples' rights are also further guarded through Article 8(5) [Protection, well-being or advancement of the Orang Asli through the reservation of land or suitable positions in the public service], Article 160 [Customs and usage having the force of law] and 161A [States to protect the rights and interests of the Sarawak and Sabah natives and the fiduciary duty of the states]. Equally significant, Article 153 of the Federal Constitution bestows a special position on the natives of Sabah and Sarawak, along with the Malays, the majority ethnic group nationally. An important note on Article 153 however is the fact that the Peninsular Orang Asli are left out from this articulation on the said special position.⁴⁰</p> <p>The Sarawak and Sabah State Constitutions meanwhile guarantee state protection on native rights through their respective Articles 39 and 41. In Peninsular Malaysia, the Aboriginal Peoples Act 1954 (APA 1954) empowers the Department of Indigenous Peoples' Development (Jabatan Kemajuan Orang Asli -JAKOA)⁴¹ as the 'administrator' on the affairs of the communities. However, the colonial origin of the legislation entails that parts of the law can in fact be paternalistic in nature, encroaching into the personal affairs of the communities and can be seen as a violation of a citizen's constitutional rights.⁴²</p>	Country	Low risk for rights of IPs
		Peninsular Malaysia	Specified risk for rights of IPs

	<p>The APA 1954 is a specific law that addresses the many aspects of the lives of Peninsula's indigenous communities - it is not primarily a statute on forestry and land governance. A judicial decision from the Court of Appeal in 2005 however has ruled that this law should primarily be seen as a human right statute, that it acquires "a quasi constitutional status giving it pre-eminence over ordinary legislation."⁴³ Nevertheless the APA 1954 does not specify how indigenous customary rights can be created or the characteristics of an indigenous customary land in a manner similar to that of the Sabah and Sarawak land laws. The APA 1954 only recognises three types of indigenous territories, each with its distinct legal stature, namely Aboriginal Reserves, Aboriginal Areas and Aboriginal Inhabited Place.</p> <p>Rights of occupancy are spelt out under its Section 8, which allows for state governments to confer such rights to the people, on any non-alienated land or land which is under lease for any purpose but within Aboriginal Areas or Aboriginal Reserves only. Its Section 10 allows for the communities to continue residing in gazetted production or conservation forests although this permission is subject to further rules set by the state.</p> <p>Section 11 provides for the payment of compensation for the peoples' "fruit or rubber trees" if the people's territories are to be taken away by the state for particular purposes - mentioning nothing on the peoples' rights in the land itself and deeming that the amount of payable compensation shall be that which appears "just" to the state authority. In Peninsular Malaysia, land acquisition process and its compensation valuation procedures for affected persons are spelt out in the National Land Acquisition Act 1960. Nevertheless, state authorities have often contended that the land acquisition and compensation process for Orang Asli territories should fall under the APA 1954 provisions and that since such rights are not titled, they are limited to only the resources found on the land but not in the land itself. Nevertheless, this executive policy position was declared as erroneous in the Sagong Tasi case by the High Court in 2002, which was subsequently upheld by the Court of Appeal in 2005 and finally by the Federal Court in 2010.⁴⁴</p> <p>Sarawak and Sabah meanwhile do not have a parallel law to the APA 1954 but the identities of the Native and the range of their rights and privileges are specified in many state land, forestry and natural resource laws. The primary land legislation in Sarawak, the Sarawak Land Code 1958, describes the acquisition and characteristics of the Native Customary Rights (NCR), while the parallel legislation in Sabah, the Sabah Land Ordinance 1930 does the same - both statutes being regulated by the respective states' Department of Lands and Surveys. Unfortunately, however, such laws as well as other forestry and conservation-related legislation also provide for the termination or minimisation of these rights for a whole range of purposes, including for the establishment of production and conservation forests.⁴⁵</p> <p>On the other hand, in the Peninsula, the National Land Code 1965, the major federal land legislation, applicable only in the Peninsula and regulated by the</p>	<p>Peninsular Malaysia</p> <p>Sarawak and Sabah</p>	<p>Specified risk for rights of IPs</p> <p>Specified risk for rights of IPs</p>
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	<p>Department of Lands and Minerals (federalised, with state offices) does not describe the acquisition and characteristics of the Orang Asli customary rights. Likewise, the National Forestry Act 1984 only contains minimal references to address their usage of forest resources, but not their land rights in whole. As a matter of fact, the legal provisions that address the creation of the 11 types of PRF do not even have direct references to address claims of indigenous customary land rights and all the associated notification process to affected communities. Similarly, for conservation laws, only the Wildlife Conservation Act 2010 makes the mention for an Orang Asli to be allowed to hunt certain wildlife for "his sustenance or the sustenance of his family members" but the protected wildlife hunted "shall not be sold or exchanged for food, monetary gains or any other thing."</p> <p>3.5.2 Judicial rulings on the characteristics of indigenous customary land rights In Sarawak alone today, there are more than 100 outstanding civil actions filed by indigenous communities affected by logging operations as well as plantation and other industrial projects. Following such legal actions, in the last twenty years, the Malaysian judiciary has been able to produce a series of rulings that provide the much needed legal clarity on the many important aspects of the nature, principles and scope of indigenous customary land rights to their land. Unfortunately, however, the executive and legislative arms at both the state and federal levels have failed to integrate the legal principles expounded by these judicial decisions into concrete policy and statutory reform measures. As a matter of fact, as far as indigenous customary land rights are concerned, the country's executive machinery today continues to operate in the same manner as it had before</p> <ul style="list-style-type: none"> - Issuing logging and plantation licences without prior consultations, disregarding the authority of the pre-existing traditional laws and customs of the people, from which inherited claims of rights on customary land are rooted in. <p>[...] 3.5.3 No national policy on indigenous peoples' rights Threats to the rights, livelihoods and well-being of Malaysia's indigenous communities are real. Their high poverty rates that have been widely documented over the years are highly visible, once one leaves any modern Malaysian city and enters into their traditional territories in the interior. The benefits of logging in the country appear to have overwhelmingly profited the timber conglomerates and their political linkages at the expense of such affected communities. It is fairly easy to find some of the poorest communities of the country living in the same vicinity where logging operations, worth in their millions of ringgit, are taking place. Publicity efforts on the country's sustainable forestry practices are not quite inclined to describe how challenging the lives of such affected peoples can be and how little they stand to gain from these operations. Just walk into any Penan settlement in Sarawak</p>	<p>Peninsular Malaysia</p> <p>Sarawak</p> <p>Country</p> <p>Country</p>	<p>Specified risk for rights of IPs</p> <p>Specified risk for rights of IPs</p> <p>Specified risk for rights of IPs</p> <p>Specified risk for rights of IPs</p>
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	<p>or an Orang Asli village in Pahang or Perak, the likelihood of seeing poverty and its associated social adversities is almost very certain.</p> <p>[...] The impacts of logging operations meanwhile are well known. The quantity, quality and diversity of the people's food sources would register a significant decline, medicinal plants and other multi-purpose trees commonly utilised for housing construction, boat building and the production of other household items and crafts would disappear, clean rivers would suddenly turn muddy and polluted and income derived from forest produce and rivers would begin to become unstable. Sometimes productive rice fields, farms and orchards would also be flattened in order to construct logging roads. Even employment opportunities for local communities are often limited to temporary, low-skilled and therefore low-paying physical work, often in harsh and dangerous conditions. Such problems are systemic in nature - the country in fact does not even possess a national policy on indigenous peoples' rights.</p> <p>Therefore, if Malaysia would like to stake a claim on good forestry and land governance, a set of comprehensive policy and statutory reforms must be undertaken urgently. As a first step, the executive arms of both the Federal and State Governments should take full cognisance of all the judicial decisions above and integrate them into existing policies while the Parliament and state legislatures similarly must also ensure that the concerned judicial decisions are clearly reflected in all existing and future statutory documents.</p> <p>3.5.4 Systemic threats to indigenous customary land rights and territories</p> <p>[...] Not only have reforms not been undertaken to integrate these [court] decisions into various policy and statutory frameworks, the Government of Malaysia itself in 2008 has in fact been documented, within the FLEGT-VPA process, to resort to several erroneous, flawed and misleading interpretations of these judicial decisions, in particular those concerning the common law position on indigenous customary land rights, the pre-existing nature of such rights that do not owe their existence to modern legislation and statutes, the extent of such rights to the higher forests and the precedent-setting power of judicial decisions itself.⁵⁸</p> <p>[...] (iii) No satisfactorily systematic and highly participatory process to delineate and recognise indigenous territories</p> <p>States have yet to institute a satisfactorily systematic and highly participatory and consultative delineation process for indigenous territorial boundaries and claims, for the purpose of granting full recognition on the traditional rights and privileges of the communities. Hence, the lack of harmonisation between the peoples' claims and those asserted by the state - rendering the peoples' territories highly vulnerable to encroachments by other parties.</p> <p>The state does not appear to have a policy which promotes the voluntary dissemination of information on its version of the peoples' territorial boundaries outside of a rights termination process, perhaps out of fear of inviting disputes.</p>	Country	Specified risk for rights of IPs
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	<p>In the process, encroachments and violations of community land rights continue to take place.</p> <p>At present, the Sarawak Lands and Surveys Department estimation puts the size of indigenous territories in Sarawak at 1.6 million hectares or around 13 percent of Sarawak's total land area. We however believe that the size of such territories as defined by the peoples' customs that include the entire higher forests should be much higher than this.</p> <p>(iv) Statutory provisions to gazette indigenous territories not actively used There are in fact available statutory provisions in Sarawak, Sabah and Peninsular Malaysia that can be used to affirm and protect indigenous communities' customary land rights and traditional territories. There are generally two ways in which statutory recognition to the peoples' land rights can be enforced currently. The first is through the gazetting of the land into specific categories of reserves or areas, terms for such areas vary regionally. This is usually done for an entire community and is certainly the best way to preserve an entire community's territorial integrity and prevent internal community conflicts. This can be done by gazetting Aboriginal Reserves or Aboriginal Areas under the APA 1954 in Peninsular Malaysia, Communal Forest Reserves under the Sarawak Forests Ordinance 1954, Native Communal Reserves under the Sarawak Land Code 1958, Native Reserves under the Sabah Land Ordinance 1930 or Oomestic Forests under the Sabah Forest Enactment 1968. The second is through the issuance of indigenous land titles, through the registration of titles or special permits and the like, whether on the basis of a communal or an individual title. Registration of Native Title can be undertaken in Sarawak through the Sarawak Land Code 1958 which is without land rental charges or Native/Communal Title under the Sabah Land Ordinance 1930, which is with some minimum land rental charges. Despite the existence of such provisions, states however have been largely reluctant to actively utilise them. In Sarawak, the size of the gazetted Communal Forests is simply negligible - its percentage in relation to the size of the state 'forested area' is believed to be less than one percent currently. Throughout the decades, numerous communities have applied for such legal recognition to no avail.</p> <p>(v) Termination or loss of rights without FPIC Indigenous customary land rights can be legally lost or at least severely minimised through various methods. The establishment of conservation or production forests in all the three regions' forestry statutes are often a leading cause of it - the latter on which the forest management units of the Malaysian certification scheme operate. Land acquisition for purposes that the state deems as fit, including for large dam building projects, is also another cause for the loss of such rights. The manner in which these rights are terminated or</p>	<p>Country</p> <p>Country</p> <p>Country</p>	<p>Low risk for rights of IPs</p> <p>Specified risk for rights of IPs</p> <p>Specified risk for FPIC</p>
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	<p>compromised in all such processes above is largely lacking in Free, Prior and Informed Consent (FPIC) and a highly transparent information-disclosure process. Further, the process can be very prejudicial to communities who live away from administrative centres and are not fluent in the national language or English and lack fair complaints and objection mechanisms.</p> <p>3.6 Technical solutions to systemic conditions are inadequate [...] The most recent version of the MTCS certification standards dated January 13, 2012, the Malaysian Criteria and Indicators for Forest Management Certification (Natural Forest) [MC& I (Natural Forest)] has maintained elements pertaining to indigenous customary land rights as contained in the preceding certification standard, the Malaysian Criteria and Indicators for Forest Management Certification 2002 [MC & I 2002]. Principle 2 and 3 respectively address Tenure and Use Rights and Responsibilities (Long-term tenure and use rights to the land and forest resources shall be clearly defined, documented and legally established) and Indigenous Peoples' Rights (The legal and customary rights of indigenous peoples to own, use and manage their lands, territories, and resources shall be recognised and respected). Its Principle 1.3 states that the provisions of all binding international agreements applicable to forest management shall be respected while Principle 2.2 stipulates that local communities with legal or customary tenure or use rights shall maintain control, to the extent necessary to protect their rights or resources, over forest operations unless they delegate control with free, prior and informed consent to other parties. Current verifiers of some of the principles have also included elements such as all adat (customs) recognised and enforceable by the Native Courts, relevant decisions of the civil courts pertaining to legal or customary tenure or use rights and even the UNDRIP as well as contractual agreements entered into with free, prior and informed consent, with local communities with legal or customary tenure or use rights for use of land. However, some fundamental questions remain. Amongst the reasons for the withdrawal of the Jaringan Orang Asal dan NGO tentang Isu-Isu Hutan (The Network for Indigenous Peoples and Non-Governmental Organisations on Forestry Issues - JOANGOHutan), of which SAM is a member, from the MTCS consultation process in 2001 was due to the reality that in gazetted production forests from which the scheme's Forest Management Units operate, much of indigenous customary land rights would have been terminated or severely minimised prior to the reservation process of the production forests themselves.</p> <p>[...] 2.2 Since the MTCS only covers the certification of permanent forests, where the ownership claims by the indigenous peoples have been legally defined, the issue of 'free and informed consent' as specified in Criteria 2.2, 3.1 and Indicator 3.1.2 does not arise.</p> <p>3.7 What is legal and sustainable timber?</p>	<p>MTCS certified areas in country</p> <p>Country</p>	<p>Specified risk for recognition of Native Customary Rights and FPIC</p> <p>Specified risk for rights of IPs</p>
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	<p>news and views, assisting in court cases involving Orang Asli rights, or in developing arguments for lobbying and advocacy work.”</p> <p>http://www.coac.org.my/main.php?section=news&article_id=218 <i>Temiar in court for their land - Published: 29 May 2016</i> “One bus load of (self-paying) Temiar will be in the Kota Baru High Court on Monday 30 May 2016, for the start of the land rights case of Pos Belatim in the Gua Musang district of Kelantan. The is the retrial ordered by the Court of Appeal in November 2014 when the panel ruled that the high court judge erred in his decision to throw out the case when it was first heard in April 2014. The Temiar of Pos Belatim are seeking, among other declarations, a Certiorari Order from the court to stop the Kelantan State Government from carrying out the project and from giving their land to a private corporation. In 2011, the Temiar living in the 7 villages of Pos Belatim discovered that their traditional lands have been contracted out by the Kelantan State Government to be developed by the company as an oil palm plantation on a 99-year lease. Such a practice is already widespread in Kelantan as part of the state’s effort at land reform and agricultural development under the Ladang Rakyat concept. The majority of the Orang Asli in Kelantan however do not agree with this project as it means they will lose much of their land and even their identity as Orang Asli.”</p> <p>http://www.coac.org.my/main.php?section=news&article_id=208 <i>The Semai of Kampung Senta win their land rights case Published: 30 September 2015</i> “The Ipoh High Court affirmed on 30 September 2015 that the Semai of Kampung Senta in Bidor, Perak enjoyed native title rights to their tanah adat (customary lands) under common law. Following on the precedents of <i>Sagong Tasi</i>, <i>Nor ak Nyawai</i> and <i>Madelli Salleh</i> – important precedent-setting land rights cases in Selangor and Sarawak – Justice Dato' Che Mohd Ruzina bin Ghazah accepted the plaintiff's testimony, which was supported by the expert report and oral evidence of Colin Nicholas, that they are the traditional owners of the land since early times. The court also noted that there was no credible challenge to these testimonies from the defence side. “ “</p> <p>http://www.coac.org.my/main.php?section=news&article_id=207 <i>Orang Asli in the courts again - Published: 29 September 2015</i> The past week saw a flurry of court-related matters and activities involving Orang Asli cases in which COAC was directly involved in. The following is brief update on them. All of these cases involved work by dedicated <i>pro bono</i> lawyers, including Steven Thiru, Aaron Matthews, Yogeswaran, Amani Williams-Hunt, RS Pani,</p>	<p>Kelantan</p> <p>Peninsular Malaysia</p> <p>Peninsular Malaysia</p>	<p>Specified risk for rights of IPs</p> <p>Low risk for rights of IPs</p> <p>Specified risk for rights of IPs</p>
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	Lin & Bok. The expert report was also filed last week. (For more details of the case go to this link: http://on.fb.me/1WvNAME) ""		
National land bureau tenure records, maps, titles and registration (Google)	<p>http://media.wix.com/ugd/e6c944_901a271120544832bccefce44e7ee26a.pdf</p> <p><i>From policy to reality: 'Sustainable' tropical timber production, trade and procurement - A critical analysis on forestry governance in Malaysia and the timber importation and procurement policies of Japan, South Korea and Australia - October 2013</i></p> <p>“At present, the Sarawak Lands and Surveys Department estimation puts the size of indigenous territories in Sarawak at 1.6 million hectares or around 13 percent of Sarawak's total land area.⁶⁰ We however believe that the size of such territories as defined by the peoples' customs that include the entire higher forests should be much higher than this.”</p> <p>[...](iv) Statutory provisions to gazette indigenous territories not actively used</p> <p>There are in fact available statutory provisions in Sarawak, Sabah and Peninsular Malaysia that can be used to affirm and protect indigenous communities' customary land rights and traditional territories. There are generally two ways in which statutory recognition to the peoples' land rights can be enforced currently. The first is through the gazetting of the land into specific categories of reserves or areas, terms for such areas vary regionally. This is usually done for an entire community and is certainly the best way to preserve an entire community's territorial integrity and prevent internal community conflicts.</p> <p>This can be done by gazetting Aboriginal Reserves or Aboriginal Areas under the APA 1954 in Peninsular Malaysia, Communal Forest Reserves under the Sarawak Forests Ordinance 1954, Native Communal Reserves under the Sarawak Land Code 1958, Native Reserves under the Sabah Land Ordinance 1930 or Oomestic Forests under the Sabah Forest Enactment 1968.</p> <p>The second is through the issuance of indigenous land titles, through the registration of titles or special permits and the like, whether on the basis of a communal or an individual title. Registration of Native Title can be undertaken in Sarawak through the Sarawak Land Code 1958 which is without land rental charges or Native/Communal Title under the Sabah Land Ordinance 1930, which is with some minimum land rental charges.</p> <p>Despite the existence of such provisions, states however have been largely reluctant to actively utilise them. In Sarawak, the size of the gazetted Communal Forests is simply negligible - its percentage in relation to the size of the state 'forested area' is believed to be less than one percent currently.</p> <p>http://nhri.ohchr.org/EN/Themes/BusinessHR/Business%20Womens%20and%20Childrens%20Rights/SUHAKAM%20BI%20FINAL_CD.pdf</p> <p>REPORT OF THE NATIONAL INQUIRY INTO THE LAND RIGHTS OF INDIGENOUS PEOPLES – SUHAKAM, 2013</p> <p>[...] FINDINGS - SABAH</p> <p>Dealing with complaints</p>	1.6 million ha recognized land in Sarawak	Low risk for rights of IPs
		Country	Specified risk for rights of IPs

	<p>6.41 The Inquiry found mechanisms to deal with complaints haphazard and very much on a case-to-case basis. There were no record books of complaints nor were oral complaints systematically recorded by the Land Offices. Robotic responses to queries, and promises, or even threats were indicative of inefficiency and a non-caring attitude of some LSD staff.</p> <p>6.42 More serious and organised form of complaints from communities were treated with disdain or as being not genuine, and were frequently attributed to instigation by NGOs, instead of recognising that complaints and criticisms were legitimate rights of people, and taking the necessary actions to remedy the situation.</p> <p>[...]6.43 Most communities also often channel their complaints to their respective members of the legislative assembly or to parliament. But in most cases, the response was slow or complainants were instead influenced to accept a project and drop their complaints.</p> <p>6.45 There were numerous complaints regarding the use of force in evicting communities, including arresting community members for encroachment.</p> <p>iv. Logging and Commercial Forest Reserves</p> <p>6.77 Fifty cases were recorded under this category which involves the inclusion of NCR land into Forest Reserves. It touches on issues of the gazettal of forest reserves, harsh treatment by enforcement officers on communities living within forest reserves, co-management initiatives by the Sabah Forest Department, and impacts on the lives of affected communities.</p> <p>Land within Forest Reserves</p> <p>6.78 The Forest Enactment 1968 (Sabah No 2 of 1968) is the principal legislation containing provisions on the preservation of forests and dealing with forest produce. Both section 8 and section 9 of the 1968 Enactment provide for notice and enquiry relating to the gazetting of forest reserves. However, these provisions were not complied with in most cases resulting in indigenous communities not being informed about the proposed forest reserves that would affect their lands, including the exercise carried out in and after 1984 to regazette forest reserves throughout the State. A large-scale land re-gazetting exercise was carried out that year which led to the increase in the number of forest reserves and amendments to the 1968 Enactment.</p> <p>6.79 Forest reserve boundaries were not drawn and marked on the ground until very much later and in most cases only after the year 2000. Therefore, many affected native communities were not aware that their lands were within the forest reserves until the arrival of logging companies or the posting of notices by the authorities to warn against trespassing, [...] Most of the communities affected have been living on or farming the areas for generations. [...]</p> <p>6.83 In all the cases above, the communities have tried their best to resolve the issue through their State Assemblyman and Members of Parliament but without much success [...]</p> <p>6.85 The Inquiry finds the harsh and extreme measures taken by the Forestry Department, such as the burning and destruction of crops and</p>	<p>Sabah</p> <p>Sabah</p> <p>Sabah</p>	<p>Specified risk for rights of IPs</p> <p>Specified risk for rights of IPs</p> <p>Specified risk for rights of IPs</p>
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	<p>failed to fully recognise indigenous peoples' own concept of land use and ownership.</p> <p>6.120 The Inquiry was concerned about the number of complaints specifically on the slow and often negative administrative responses from authorities to those who had applied for land titles. Difficulties in getting an opportunity to be heard and the lack of avenues to obtain effective remedies were also among common constraints.</p> <p>6.121 Current development models that are proposed or practised by the authorities are mainly large-scale and exploitative in nature, and do not meet the needs and requirements of indigenous peoples. Poverty eradication models that involve indigenous peoples' lands do not guarantee land tenure security, and instead can actually result in loss of land by indigenous peoples. There has been no monitoring or evaluation of poverty eradication programmes that have begun in the 80's up to current date. There should be a Cost Benefit Analysis conducted on any poverty eradication programme.</p> <p>Legal Constraints</p> <p>6.122 A review of the court decisions in favour of indigenous peoples showed that these decisions were not applied or not given recognition by the Government when applying/interpreting laws related to NCR. According to officials from the LSD, their administrative decisions are based only on the relevant written land law. The departments do not take into account court decisions in interpreting the Sabah Land Ordinance in support of native customary rights to land. Court decisions have not been followed through administratively in the LSD.</p> <p>6.123 There are challenges in seeking redress through the courts especially when the ownership structure of the holding companies changes midway, making it necessary for native communities to file afresh with each entity change.</p> <p>6.124 Successive amendments to laws, particularly the land and forestry laws in Sabah, as well as other laws related to indigenous peoples as elaborated in Chapter 4 have resulted in the progressive erosion of indigenous peoples' right to land.</p> <p>6.125 Although provisions recognising NCR in the Sabah Land Ordinance 1930 do exist (sections 13, 14, 15, 16, 65, 66, 69, 76, 77, 78, 80, 81, 82, 83, 84, 85 & 86), and specific guidelines have been made, many of these were neither applied nor given priority when promoting the recognition of land rights of the natives.²⁵⁹ [...]</p> <p>[...]6.128 The Inquiry also received numerous complaints about the effects of the amendments to Section 76 of the SLO on Communal Titles, which have undermined NCR to land [...]. Although the amendment did not remove NCR as a basis for the issuance of issue Communal Titles, often the State tends to favour applications for land for the purpose of fast-track, joint-venture development programmes over applications for NCR-based Communal Titles.</p>	<p></p> <p>Sabah</p> <p>Sabah</p>	<p>access to justice</p> <p>Specified risk for rights of IPs</p> <p>Specified risk for rights of IPs</p>
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	<p>7.33 The Department's heavy reliance on aerial photographs taken in 1954 is a cause for concern as the photographs may not accurately depict the activities in NCR land over the years.</p> <p>[...]7.39 Furthermore, there is no effective monitoring mechanism to address any complaints from natives pertaining to encroachment of NCR land levied against any PL holder. Almost all the complainants informed the Inquiry that reports lodged to the police were not acted upon. However, companies have often called in the police when communities are driven to stop companies from encroaching into their NCR land and ended up arrested and jailed.</p> <p>[...]7.43 The Inquiry was also informed by the authorities and land development agencies that native titles would only be issued if applicants go through the Government's indigenous land development scheme or <i>New Concept</i>.268 A Circular to this effect dated 26 October 2005 is still being implemented. In practice, communities who are ready to accept such proposed land development schemes would be given priority in perimeter surveys of their NCR land and those who did not agree to develop their land would not be given any priority. Such a policy may well coerce NCR landowners to accept the proposed land development scheme.</p> <p>[...] iv. Logging and Planted Forest</p> <p>7.61 Many community witnesses whose NCR lands were included in areas subject to logging licences informed the Inquiry that logging licensees had caused the destruction of the <i>pulau galau</i> which was their source of sustenance. Pollution of rivers, including small streams, and destruction of forests have caused acute reduction of food resources such as fish, wildlife, vegetables and the destruction of medicinal plants, rattan and building materials.</p> <p>[...]7.62 The issuance of licences to companies to replant forests in areas that include NCR lands has similarly resulted in the same situation. In cases where NCR land has already been planted with crops, witnesses from affected communities complained that their crops were destroyed in the clearing process by the companies.</p> <p>[...]7.63 As in the case of Provisional Leases for plantations, it is the practice of the relevant Government authority to transfer its duty to excise NCR land from the area licensed for Planted Forest to the licensee company. None of the affected community witnesses knew about the requirement for the licensed company to consult communities and to excise their NCR lands from the licensed area.</p> <p>[...] 7.70 The Inquiry further noted that while the Sarawak Forest Ordinance stated that forest timber licences are issued for one-year period only, most logging companies who appeared before the Inquiry said they held licences for periods between 10-25 years.</p> <p>[...] vii. Compensation from Land Acquisition</p> <p>7.76 The Inquiry found that there were many cases where native communities who have lost their land to private land developers had received either no</p>	Sarawak	Specified risk for rights of IPs
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	<p>compensation or inadequate amount of compensation. It is noted that the non-recognition as well as delay in processing land applications from affected natives has resulted in their becoming ineligible to obtain compensation for their loss. If at all, the only amount they receive from land developers are payments described as ex-gratia payments made as goodwill gestures.</p> <p>[...] II. CONSTRAINTS THAT IMPEDE SARAWAK NATIVES' RIGHT TO LAND</p> <p>Legal Constraints</p> <p>7.79 The Sarawak Land Code 1958 (SLC) does not appear to give full recognition to <i>adat</i>, customs and practices of the natives in establishing communal land boundaries. Research shows that the <i>garis menoa</i> in Sarawak, which was accepted by the Brooke colonial administration as outlined in Secretariat Circular No 12, 1939, should still be applicable. The court has also recognized and accepted <i>garis menoa</i> as an element in determining NCR land but this has yet to be implemented by the State authorities.</p> <p>7.80 There is no legal protection for the rights of nomadic and semi-nomadic Penan communities through the recognition of their land tenure system, and no legal support for communities claiming coastal and sea areas, as there are currently no provisions dealing with them in the SLC. This was confirmed by the Sarawak LSD. It is however noted that the Penan have an elaborate customary land tenure system (see also Chapter 4).</p> <p>[...]7.82 In Sarawak, many natives have resorted to filing cases in court to determine the validity of their NCR claims. However, court cases take a long time to be heard and in the meantime evidence on the ground can be destroyed especially if a company or a development agency is not ordered to stop work through a court injunction. This slow process of redress mechanism available through judicial process is a constraint, which impedes the full enjoyment of the indigenous peoples' rights to land.</p> <p>Policy Constraints</p> <p>7.83 The Inquiry was informed by the Sarawak LSD that although it is not an officially written policy, for practical considerations priority is given to the conduct of perimeter surveys on areas that are not in dispute and where the determination of cultivated areas is based on the 1958 cut-off point. The Sarawak LSD will not carry out surveys where there are overlapping claims or boundary disputes. Many communities were often forced to agree to those terms despite their disagreement on the criteria so as to take advantage of the Federal Government allocation and to get security of tenure.</p> <p>7.84 There appeared to be allegations that land, including land claimed by natives, which had been declared as Forest Reserves (thus extinguishing NCR) was subsequently degazetted as Forest Reserve and later alienated under a Provisional Lease to private companies. This could lead to a serious impediment to natives' rights to land.</p> <p>7.85 The Inquiry also received information and heard from witnesses who had</p>	<p>Sarawak</p> <p>Garis menoa territories in Sarawak</p> <p>Sarawak</p> <p>Sarawak</p> <p>Sarawak</p>	<p>Specified risk for rights of IPs</p> <p>Specified risk for rights of IPs</p> <p>Specified risk for rights of (semi-) nomadic Penan communities</p> <p>Specified risk for access to justice</p> <p>Specified risk for rights of IPs</p>
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	<p>to be resettled when their customary land was chosen for infrastructural development. There appears to be no clear policy in terms of land ownership for those communities dislocated from old areas to new settlement sites. In the resettlement of communities to Sungai Asap as a result of the building of the Bakun dam, land ownership in the current resettlement remains a thorny issue for both residents in the area and the new settlers.</p> <p>[...]7.88 The new concept of the Government regarding indigenous land development schemes has given investors the right to carry out large-scale agribusiness without any intervention from the landowners for a period of 60 years. Since, a Government agency is appointed as the trustee for the native landowners, it is not considered necessary to include land owners in negotiation process, although such inclusion would ensure transparency and increase their trust in the scheme.</p> <p>7.91 Although redress mechanisms such as mediation has now been instituted, the remedies are usually short-term in nature as they do not address root causes. Once an issue is resolved with one company, other issues which crop up would need a whole new series of negotiation and mediation.</p> <p>Administrative Constraints</p> <p>7.92 The granting of forest concessions by the Government to logging companies and the leasing of land for palm oil cultivation have adversely affected NCR land claimants. In the granting of licences such as timber licence, licence for planted forests, and oil palm cultivation permits to companies, the authorities have included conditions to excise the NCR land from the project or development area. However, the LSD does not provide any clear guidelines to companies on how to determine NCR land. Furthermore, there is no proper monitoring of the companies' activities and responsibilities with the result that some companies appear to get away with only ex-gratia payment to NCR land claimants. Moreover, the Environmental Impact Assessment (EIA) seldom includes NCR land in the report and does not appear to have taken into account the views of affected communities.</p> <p>7.93 Many departments are faced with shortage of staff which results in either the absence or lack of cohesive inter-departmental cooperation and coordination.</p> <p>[...]7.94 Cutting across the issues is the difficulty with information. Many community witnesses were constrained by poor literacy that impedes their full enjoyment to land rights. In most cases complaints and follow-up on the status of their land were done orally. The statements from community witnesses were met with denials or that there were no official records of their complaints. When the surveyors came to their villages, they could not explain their concept of pemakai menoa properly. There was also no central office or officer where and whom native communities could turn to for assistance in dealing with problems caused by their illiteracy and inability to communicate with surveyors when defending their NCR claims.</p>	<p>Sarawak</p> <p>Sarawak</p>	<p>Specified risk for access to justice</p> <p>Specified risk for land rights of IPs</p>
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	<p>[...]7.96 Community witnesses expressed to the Inquiry, their frustration that their efforts to defend their customary rights were often met with stern actions from the police and the Government.</p> <p>Gaps in Perceptions and Understanding</p> <p>7.97 Gaps in the understanding of native perspectives to land persist because of limited open fora to discuss such perspectives and the needs of indigenous peoples. These gaps are made worse by the lack of response to requests from communities for information regarding proposed development projects.</p> <p>[...]</p> <p>Other Constraints</p> <p>7.100 Most remote villages in Sarawak have poor road and communication systems, so they rely on river travel, which is very expensive. Travelling to Government offices to check the status of their lands is therefore rare.</p> <p>Community witnesses complained to the Inquiry that they often find staff of Government departments unfriendly and not helpful and who did not record their oral enquiries or complaints.</p> <p>7.101 Another constraint is the way some indigenous community leaders are seen to be easily bought over by private companies, or threatened with sacking or actually sacked for not supporting projects planned in their communities. There were also complaints on the use of thugs by companies, and biased police and field force personnel to threaten people. Community organisations, and NGOs who assist communities with their claims or complaints are constantly harassed by special branch police.</p> <p>III. EFFECTIVENESS OF RESPONSES TO NATIVE LAND CLAIMS</p> <p>7.102 The Inquiry is conscious of the fact that there seems to be very few legal, administrative and political measures that can be considered effective responses in so far as protecting and promoting indigenous peoples' right to their land is concerned. Most of the responses from the Government are in the form of amendments to laws, but while these may primarily facilitate development in a particular area, it could curtail indigenous peoples' right to land.</p> <p>FINDINGS - PENINSULAR MALAYSIA</p> <p>General Administrative Issues</p> <p>8.3 Government agencies informed the Inquiry that all matters involving the Orang Asli are channelled through the Department of Orang Asli Development or <i>Jabatan Kemajuan Orang Asli (JAKOA)</i>, formerly known as the Department of Orang Asli Affairs or <i>Jabatan Hal Ehwal Orang Asli (JHEOA)</i>. The Department of Lands and Mines also informed the Inquiry that they only accepted applications for an Orang Asli area to be gazetted as an Orang Asli Reserve from JAKOA.</p> <p>8.4 JAKOA admitted that it had insufficient capacity and resources (financial and otherwise) to meet most of the requests of the other Government agencies, especially with regard to the securing of the customary lands of the</p>	Sarawak	Specified risk for FPIC
		Sarawak	Specified risk for rights of IPs
		Sarawak	Specified risk for rights of IPs
		Sarawak	Specified risk for rights of IPs
		Peninsular Malaysia	Specified risk for rights of IPs

	<p>Orang Asli. Compared to other financial allocation, surveying of Orang Asli land gets a relatively much lower annual budget.</p> <p>8.5 The Orang Asli's claims to their traditional lands and territories are often 'invisible' in the eyes of the District and Land Office or Pejabat Daerah dan Tanah (PDT) and/or the Lands and Mines Office or Pejabat Tanah dan Galian (PTG) at district and State levels respectively largely because the claims of the Orang Asli to their customary lands are not marked or identified in the cadastral maps of the Department of Survey and Mapping Malaysia or the Jabatan Ukur dan Pemetaan Malaysia (JUPEM).</p> <p>8.6 The cadastral maps of JUPEM in the land offices are regarded by the PTG and the State Government as definitive of the status of the land in the State. Typically, Orang Asli lands that have not been gazetted as Orang Asli Reserves are not indicated, marked, blocked or caveated as Orang Asli lands on such maps. So long as those lands are not marked as such on the JUPEM maps, it is deemed by the authorities that Orang Asli rights to these lands do not exist.</p> <p>[...] 8.9 In some cases, the Orang Asli complained that their correspondences and appeals on land-related issues to various Government agencies (eg. JAKOA, PDT, and PTG) had not received any response or were dismissed.</p> <p>8.10 There were also complaints of fraudulent or dishonest land deals and transfers involving Orang Asli traditional lands and territories in the land office.</p> <p>[...]</p> <p>Gazetting of Orang Asli lands</p> <p>8.11 There are three categories of Orang Asli customary lands, as recognised by the Government: Gazetted Orang Asli Reserves, Orang Asli areas approved for gazetting as Orang Asli Reserves but not gazetted as yet, and Orang Asli lands applied for gazetting but not approved yet. The approving body in this case is the State Authority, or in practical terms, the State Executive Committee or <i>Majlis Mesyuarat Kerajaan Negeri</i> (MMKN).</p> <p>8.12 Data as presented to the Inquiry by JAKOA on the status of Orang Asli lands as at 1990 and 2010 can be summarised as follows:</p> <table border="1" data-bbox="801 986 1637 1236"> <thead> <tr> <th>Status of Land (hectares)</th> <th>1990</th> <th>2010</th> <th>Change</th> <th>% change</th> </tr> </thead> <tbody> <tr> <td>Gazetted Orang Asli Reserves</td> <td>20,666.96</td> <td>20,670.83</td> <td>3.87</td> <td>0.02</td> </tr> </tbody> </table>	Status of Land (hectares)	1990	2010	Change	% change	Gazetted Orang Asli Reserves	20,666.96	20,670.83	3.87	0.02	<p>Peninsular Malaysia</p> <p>Peninsular Malaysia</p> <p>Non-gazetted Orang Asli territory</p>	<p>Specified risk for rights of IPs</p> <p>Specified risk for land rights of IPs</p> <p>Specified risk for rights of IPs</p>
Status of Land (hectares)	1990	2010	Change	% change									
Gazetted Orang Asli Reserves	20,666.96	20,670.83	3.87	0.02									

	Approved but not gazetted	36,076.33	26,288.47	(9,787.86)	(27.13)		
	Applied for gazetting but not approved	67,019.46	85,987.34	18,967.88	28.30		
	Total	123,762.65	132,946.64	9,183.99	7.42		
	<p>8.13 The data shows that there has been only a very small increase (3.87 hectares or 0.02 per cent) in the number of gazetted Orang Asli reserves over the 20-year period. The data also shows that a total of 9,787,86 hectares of Orang Asli lands approved for gazetting by the State authorities never became Orang Asli reserves. Some of these approvals were made in the 1960s and 1970s.</p> <p>8.14 There was an increase in size of Orang Asli lands applied to be gazetted as Orang Asli reserves (18,967.88 hectares or 28.30 per cent). However, the status of such land applications to be gazetted as Orang Asli reserves is not guaranteed particularly in the context of the new Policy on the Alienation and Development of Land for Orang Asli for Agricultural and Residential Purposes or the <i>Dasar Pemberimilikan Tanah kepada Orang Asli Untuk Kegunaan Pertanian dan Kediaman</i> (DPTOA).</p> <p>8.15 Nevertheless, the overall statistics do not reveal the local situation within specific Orang Asli localities. The recognition and security of Orang Asli traditional lands and territories are being jeopardised by one or a combination of three administrative shortcomings: <i>Under-gazetting</i>. This occurs when the full extent of the Orang Asli customary land is not taken into account when an Orang Asli settlement is gazetted as an Orang Asli reserve. <i>Non-gazetting</i>. This occurs when lands which have been approved by the State Authority to be gazetted as Orang Asli reserves are not gazetted because of an administrative shortcoming. In most cases, this is due to the failure to produce a properly-surveyed map of the area to be reserved, in compliance with normal land alienation procedures. <i>De-gazetting</i>. This occurs when an Orang Asli reserve is degazetted as such, and the land reverts to the State and/or is given to another entity.</p> <p>[...] 8.18 The data in the table above only refers to lands recognised by the Government as being occupied by the Orang Asli, which in 2010, amounted to 132,946.64 hectares. It is estimated that this area represents only 17 per cent²⁷² of the lands claimed by the Orang Asli.</p>					Peninsular Malaysia	Specified risk for land rights of IPs
						Peninsular Malaysia	Specified risk for land rights of IPs
						Peninsular Malaysia	Specified risk for land rights of IPs

	<p>8.57 Despite opposition and appeals by Orang Asli not to go ahead with the DPTOA, State PTGs have already started to implement the policy.</p> <p>[...] Plantations/Agribusiness</p> <p>8.62 Fifty statements recorded during the consultations in Peninsular Malaysia contained allegations against plantations/agribusinesses within the lands and territories claimed by the Orang Asli. These include private companies, Government-linked companies (GLC), Government agencies, and in some cases by individuals.</p> <p>8.63 Apart from loss of land, many community witnesses complained that the opening of plantations has resulted in destruction of graveyards and crops, and pollution of rivers and loss of livelihoods and traditional ways of life. The Department of Environment also confirmed that the Environmental Impact Assessments (EIA) done were incomplete. Compensation is usually not paid because the Orang Asli's right to the land is not recognized.</p> <p>[...] 8.68 A majority of the cases reported to the Inquiry accused either the Government or private entities of failing to adequately consult villagers prior to their operations. Consultations with the intention of reaching free, prior and informed consent are deemed to be extremely important for the Orang Asli as the opening up of plantations have various impacts on their rights and livelihood.</p> <p>[...] 8.72 Orang Asli villagers who reside and live off the land which have not been gazetted face higher risks of being sidelined, or worse, not even considered to be included in any form of consultation as they are not deemed to be the rightful owners of the land. While some agencies and private entities had earlier maintained that they had consulted the affected Orang Asli communities, further examination of the witnesses revealed that the 'consultations' conducted were merely meetings with the community to inform them that the land in question had been awarded or leased to a third party. The meetings were not meant for the Orang Asli to negotiate the terms of use of their lands over which they claim to have traditional ownership.</p> <p>8.73 The size of land awarded or leased to companies and GLCs can sometimes include more than one village involving vast areas of the Orang Asli's <i>kawasan rayau</i> or foraging areas. These areas are then destroyed for commercial logging, and subsequently, plantations. Many Orang Asli are then left without adequate livelihood options. [...] Since they have lost their foraging areas, the Orang Asli also find it difficult to gather food and continue their traditional ways of life. In addition, water has become increasingly scarce as the rivers, which they depend heavily on are now severely polluted and not suitable for consumption.</p> <p>[...] 8.76 In almost all the cases heard by the Inquiry, the Orang Asli said that they have lodged complaints with both the companies operating on their land as well as agencies such as the JAKOA and the PDT/PTG. Most of them said that their complaints went unheeded. When asked by the Inquiry, witnesses from agencies explained that they were unable to take action because the</p>	<p>Peninsular Malaysia</p> <p>Peninsular Malaysia</p> <p>Peninsular Malaysia</p>	<p>Specified risk for land rights of IPs</p> <p>Specified risk for FPIC</p> <p>Specified risk for access to justice</p>
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	<p>generations, thus, eliminating evidence of their continued occupation in the area.</p> <p>8.96 Loggers/foresters/administrators also declared that they were unfamiliar with or not informed of the nature of Orang Asli traditional markers (eg. graves, orchards, old village sites, sacred sites). Such a situation had resulted in the properties and sacred sites of the Orang Asli being destroyed by logging activities.</p> <p>[...]8.97 Most State Forest Departments dismiss claims of Orang Asli rights to land within forest reserve, even if Orang Asli settlements are older than the forest reserve itself. [...]</p> <p>8.98 At the Inquiry, the Forestry Department of Pahang acknowledged that it did not apply the principle of free, prior and informed consent (FPIC) as stipulated by the UNDRIP when granting logging licence in areas where Orang Asli resided. [...]</p> <p>8.101 Many of the Forest Reserves in Peninsular Malaysia were established in early 1930s to 1960s, but the boundaries were never marked on the ground. Orang Asli who were already living in the area were not aware of the existence of the Forest Reserve.</p> <p>[...]8.102 Although all States testified that they applied the Malaysian Timber Certification Council's Criteria and Indicators (MC&I) for all their logging concessions, Orang Asli complainants asserted that the loggers and the Forestry Department did not seek their consent when entering their customary lands, which is contrary to the requirements of the MC&I. [...]</p> <p>Compensation Issues</p> <p>8.125 The Aboriginal Peoples Act provides for compensation to the Orang Asli only for the loss of their crops or dwellings, not for the land. However, the Inquiry-commissioned research and expert witnesses informed the Inquiry of the decision in <i>Sagong Tasi</i> that decrees that Orang Asli customary lands should also be compensated in accordance with the Land Acquisition Act. Nevertheless, such compensation if paid or accounted for, is usually on the basis of negotiations and goodwill, not as of right. Also, it is noted that the recent trend appears to be compensation in the form of another piece of land but in another locality.</p> <p>8.126 A majority of the Orang Asli witnesses who had lost their land to private land developers had also complained of non-payment or inadequate amount of compensation paid. After examining the relevant agencies, the Panel of Inquiry found that the non-recognition and the delay in gazetting Orang Asli land has made the Orang Asli ineligible to obtain compensation for the loss of their land." [...]</p> <p>II. CONSTRAINTS THAT IMPEDE ORANG ASLI RIGHT TO LAND</p> <p>Legal constraints</p> <p>8.130 Section 3(3) of the Aboriginal Peoples Act (APA) empowers the Minister having charge of Orang Asli affairs to determine any question whether a person is an Orang Asli. This is clearly a provision allowing for the unilateral</p>	<p>MTCS certified areas in Peninsular Malaysia</p> <p>Peninsular Malaysia</p> <p>Peninsular Malaysia</p>	<p>Specified risk for FPIC</p> <p>Specified risk for rights of IPs</p> <p>Specified risk for self-identification as IPs</p>
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	<p>regulation and control of membership in a community by the Executive. While it is to be appreciated that this provision was meant as a safeguard against infiltration by communist insurgents of the Orang Asli community at the time of passing of the APA in 1953, the fact that the Emergency and that period of communist insurgency has long passed raises the question as to whether this kind of legislation is still relevant or even legitimate. Its contemporary relevance is called into question as it goes against Orang Asli self-ascription and self-determination.</p> <p>8.131 On the structure of land law in the country, where jurisdiction over land matters is vested in the individual States, this creates a number of issues, especially since the responsibility for the well-being and progress of the Orang Asli is vested in the Federal Government, in accordance with the Ninth Schedule of the Federal Constitution.</p> <ul style="list-style-type: none"> • Firstly, there is no uniformity in the policies affecting Orang Asli among States. • Secondly, States are reluctant to create Orang Asli reservations under the Aboriginal Peoples Act 1954, since in so doing the State would have to assign the said land to the Director-General of the Department of Orang Asli Development, effectively losing control over the land. Instead, reservation of land for Orang Asli is usually done under section 62 of the National Land Code, as a State reserve. • Thirdly, where Orang Asli settlements are on State land or in forest reserves, there is usually no recognition of their customary rights to the land; the land continues to be treated as State land or forest reserves as the case may be. [...] Fourthly, whether an Orang Asli reserve is created under the Aboriginal Peoples Act or under Section 62 of the National Land Code, there is still no security of tenure for the Orang Asli. The State Government can revoke the status of the land as an Orang Asli reserve with much ease, in contrast with revoking a piece of Malay Reserve land. <p>[...]8.133 There is also no legal definition or understanding or concept of '<i>kawasan rayau</i>' (foraging areas) or 'traditional territories'. Neither is there an appreciation as to why Orang Asli need large areas of customary lands.</p> <p>Policy Constraints</p> <p>8.134 The Government's policy of integrating the Orang Asli with the mainstream society operates in a way that is similar to that of assimilation. The Inquiry was informed of a number of instances where a whole community of Orang Asli was simply uprooted from their traditional village and moved elsewhere without any regard for their right, safety and needs. Such a policy goes against Article 8 of the UNDRIP and is discriminatory, especially since a number of court decisions have found that rights to land among the Orang Asli are linked to the continuous occupation of the land.</p> <p>8.135 The new Orang Asli Land Policy (DPTOA) also does not appear to recognise the concept of communally-held Orang Asli customary land or <i>adat land</i>. Instead, what is envisaged are individual land titles to be granted to</p>	<p>Peninsular Malaysia</p> <p>Peninsular Malaysia</p> <p>Peninsular Malaysia</p>	<p>Specified risk for land rights of IPs</p> <p>Specified risk for land rights of IPs</p> <p>Specified risk for rights of IPs</p>
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	<p>Orang Asli. All other lands are labelled as <i>kawasan rayau</i> or ‘foraging areas’. There is no proper definition or understanding of the concept of ‘<i>kawasan rayau</i>’ in the new land policy, nor any discussion as to why Orang Asli need large areas of customary lands. [...]</p> <p>Administrative Constraints</p> <p>8.141 The administrative constraints of land rights of the Orang Asli in Peninsular Malaysia can be seen through the improper exercise by JAKOA of its duties under the law in governing the affairs of the Orang Asli. Submissions from the Bar Council and several experts called to give evidence at the Inquiry commented that JAKOA (and its previously-named entity, JHEOA) is not effectively fulfilling its fiduciary duty as provided for by the Federal Constitution and court rulings.</p> <p>8.142 Most officers from the State Land and Mines Office, and District Officers are ignorant of the Aboriginal Peoples Act, and court decisions and precedents on Orang Asli land matters.</p> <p>8.149 Many of the JAKOA staff are not well-versed with Orang Asli issues and are dependent on the experience and advice of long-serving JHEOA staff, who still take an assimilationist stance rather than understanding the evolving needs of the Orang Asli. However, most Government departments are of the view that problem lies with the Orang Asli’s mindset, rather than that of JAKOA. [...]</p>		
Relevant census data	<p>https://www.statistics.gov.my/index.php?r=column/cone&menu_id=ZHJlbWFBSTVEcHY1ait6akR3WmtVUT09</p> <p>“The Population and Housing Census is conducted once in every 10 years [for the first time in 1970]. The last Census was conducted in 2010.</p> <p>https://www.statistics.gov.my/mycensus2010/images/stories/files/Taburan_Penduduk_dan_Ciri-ciri_Asas_Demografi.pdf</p> <p><i>Population distribution and basic demographic characteristics 2010</i> [...]⁵. Ethnic composition</p> <p>The total population was 28.3 million of which 91.8 per cent were Malaysian citizens and 8.2 per cent were non-citizens. Malaysian citizens consist of the ethnic groups Bumiputera (67.4%), Chinese (24.6%), Indians (7.3%) and Others (0.7%).</p> <p>Among the Malaysian citizens, the Malays was the predominant ethnic group in Peninsular Malaysia which constituted 63.1 per cent. The Ibans constituted 30.3 per cent of the total citizens in Sarawak while Kadazan/Dusun made up 24.5 per cent in Sabah.”</p> <p>http://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_438853.pdf</p> <p><i>Indigenous Peoples in the World of Work in Asia and the Pacific: A Status Report – 2015</i></p>	Country	Specified risk for recognition as IPs

	<p>[...] “The indigenous peoples of Malaysia are not clearly identified in statistical compilations associated with employment. Implicitly, however, the category of “Bumiputera”, which includes “Malay” and “other Bumiputera” – covering all indigenous ethnic groups apart from the Malays – can shed considerable light on the employment situation of the indigenous peoples of Malaysia.”</p> <p>http://www.iwgia.org/publications/search-pubs?publication_id=740 <i>The Indigenous world 2016</i> “As of 2015, the indigenous peoples of Malaysia are estimated to account for around 13.9% of the 31 million population.¹ [footnote 1: Data sourced from the Statistics Department on 27.1.2015 at http://pqi.stats.gov.my/searchBI.php “current population estimates” for ethnic groups for Sabah and Sarawak. For Sabah and Sarawak, the figure used is under “bumiputera” which includes the Malays i.e. the “Brunei Malays” (Sabah) and “Malays” (Sarawak). The actual number of natives should therefore be lower than this estimate. There is no breakdown by ethnic group. There is no current population data available for the Orang Asli but this is sourced from the estimate of the Department for Orang Asli Development (JAKOA).] They are collectively called Orang Asal.</p> <p>The Orang Asli are the indigenous peoples of Peninsular Malaysia. The 18 Orang Asli subgroups within the Negrito (Semang), Senoi and Aboriginal-Malay groups account for 205,000 or 0.84% of the population in Peninsular Malaysia (24,457,300).</p> <p>In Sarawak, the indigenous peoples are collectively called Orang Ulu and Dayak. They include the Iban, Bidayuh, Kenyah, Kayan, Kedayan, Murut, Punan, Bisayah, Kelabit, Berawan and Penan. They constitute around 1,899,600 or 70.1% of Sarawak’s population of 2,707,600 people.² [footnote 2: Ibid. NB. The estimated percentage of indigenous peoples in Sarawak given by the Statistics Departments has risen from 45.5% in 2014 to 70.1% in 2015. There is no explanation offered for this sudden increase.]</p> <p>In Sabah, the 39 different indigenous ethnic groups are called natives or Anak Negeri and make up about 2,203,500 or 60% of Sabah’s population of 3,736,200. The main groups are the Dusun, Murut, Paitan and Bajau groups. While the Malays are also indigenous to Malaysia, they are not categorised as indigenous peoples because they constitute the majority and are politically, economically and socially dominant.</p> <p>[...] Categorising indigenous peoples Criticisms on the continued use of “lain-lain” (other) on official government forms as the only ethnic category that includes indigenous peoples (the alternatives being Malay, Indian or Chinese) gathered momentum in 2015. The Sarawak Chief Minister gained political ground when he ruled that official forms</p>	<p>Peninsular</p> <p>Sarawak</p> <p>Sabah</p>	<p>Presence of IPs</p> <p>Presence of IPs</p> <p>Presence of IPs</p>
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	<p>should add the category Dayak, which is a generic term for many of Sarawak's Orang Ulu communities. Many accepted this as an important first step towards recognition of Sarawak's indigenous peoples. The Dayak category was later also approved by the Federal Cabinet and will now be included on all official government forms.⁸</p> <p>The Sabah government, taking its cue from Sarawak, held a Sabah Ethnic and Sub-Ethnic Listing and Classification Workshop in an effort to endorse Sabah's 42 ethnic and over 200 sub-ethnic groups. The Sabah Tourism, Culture and Environment Minister Datuk Seri Masidi Manjun said he would submit the list to the government, particularly the National Registration Department, to be gazetted as a reference on Sabah's ethnic groups.⁹</p>	Sarawak	Low risk for recognition of IPs
		Sabah	Low risk for recognition of IPs
- Evidence of participation in decision making; - Evidence of IPs refusing to participate (e.g. on the basis of an unfair process, etc.);	See sources above.	Country	-
National/regional records of claims on lands, negotiations in progress or concluded etc.	See findings above, in particular from the Suhakam National Inquiry on Land Rights.	Country	-
Cases of IP and TP conflicts (historic or ongoing). Data about land use conflicts, and disputes (historical / outstanding grievances and legal disputes).	See many cases presented above	Country	-
Social Responsibility Contracts (<i>Cahier des Charges</i>) established according to FPIC (Free Prior Informed Consent) principles where available.	Not applicable	Country	-
<p>Google the terms '[country]' and one of following terms 'indigenous peoples organizations', 'traditional peoples organizations', 'land registration office', 'land office', 'indigenous peoples', 'traditional peoples', '[name of IPs]', 'indigenous peoples+conflict', 'indigenous peoples+land rights'</p>	<p>http://www.aljazeera.com/indepth/features/2015/03/malaysia-indigenous-hit-hard-deforestation-150329101349832.html</p> <p><i>Malaysia's indigenous hit hard by deforestation - The clear-cutting of forests is thought to have played a role in Malaysia's worst flooding in decades - 2 April 2015</i></p> <p>Kuala Wok, Malaysia - High up in the remote mountain jungles of Malaysia's eastern state of Kelantan, massive deforestation and the country's worst flood in decades have left indigenous tribes reeling.</p> <p>In the village of Kuala Wok, the Temiar people's Sewang ceremony is held to worship and seek guidance from the spirits and nature, and forms an important part of their religion and culture.</p> <p>[...] The Temiar place a high value on respecting the environment and its destruction by outsiders is threatening their way of life.</p> <p>The logging businesses have long had a presence in the region's expansive jungles, but the rate of deforestation has increased in the past decade as private companies clear-cut the forests.</p> <p>[...] Indigenous peoples' claims of ownership to their land are rarely acknowledged by the Malaysian government when it decides to grant logging concessions to private companies.</p> <p>Clearing the forests</p> <p>[...] Many environmental activists and some scientists believe deforestation was a contributing factor to the size of the flooding that hit the region in</p>	Country	Specified risk for rights of IPs

	<p>December last year, killing 23 people and forcing more than 200,000 from their homes. While flooding is an annual occurrence, December's floods were the worst on record in Malaysia for 30 years.</p> <p>"If you don't respect the forest, this is what happens," Dendi told Al Jazeera. Villages higher up in the mountains were cut off from the outside world for a month due to landslides, but were spared the worst of the flooding. Those living further down in the valley, however, were not so lucky.</p> <p>Slow rebuilding effort</p> <p>The Malaysian government has promised millions of dollars for infrastructure repairs, housing and aid. However, more than two months since the floods, there were few signs of reconstruction in the Gua Musang region, one of the worst affected by the flooding, when Al Jazeera visited in February.</p> <p>[...] Mohamed Thajudeen bin Abdul Wahab, secretary of the National Security Council, the government body that oversaw the response, told Al Jazeera [...] "Being poor, most of them are squatters and do not own land," [...] "They were squatting on land not belonging to them. As such again, the government couldn't rebuild these houses. As land was a state matter, not a federal matter, the federal government [has] had to wait for the state government to identify suitable land for reconstruction of these houses."</p> <p>But Colin Nicholas from the Centre for Orang Asli Concerns (COAC), a Malaysia-based non-governmental organisation that assists in legal cases and advocates for Orang Asli rights, told Al Jazeera that the government had essentially left NGOs to provide services to some Orang Asli villages affected by the flooding.</p> <p>COAC plans to build 28 houses, and has already begun construction in the devastated Temiar village of Sintip.</p> <p>Nicholas said that while the state of Kelantan was one of the worst for indigenous land rights and deforestation, the same issues had affected indigenous communities across the country for decades."</p>	Country	Specified risk for rights of IPs
Additional general sources for 2.3	Additional specific sources	scale of risk assessment	risk indication
From national CW RA	Not available	Country	-
Conclusion on Indicator 2.3:			
<ul style="list-style-type: none"> As of 2015, the indigenous peoples of Malaysia are estimated to account for around 13.9% of the 31 million population. They are collectively called Orang Asal. The Orang Asli are the indigenous peoples of Peninsular Malaysia. The 18 Orang Asli subgroups within the Negrito (Semang), Senoi and Aboriginal-Malay groups account for 205,000 or 0.84% of the population in Peninsular Malaysia (24,457,300). In Sarawak, the indigenous peoples are collectively called Orang Ulu and Dayak. They include the Iban, Bidayuh, 		Country	Specified risk for territories claimed by indigenous peoples

Kenyah, Kayan, Kedayan, Murut, Punan, Bisayah, Kelabit, Berawan and Penan. They constitute around 1,899,600 or 70.1% of Sarawak's population of 2,707,600 people.² In Sabah, the 39 different indigenous ethnic groups are called natives or Anak Negeri and make up about 2,203,500 or 60% of Sabah's population of 3,736,200. The main groups are the Dusun, Murut, Paitan and Bajau groups. (IWGIA, 2016).

There is criticism on the continued use of "lain-lain" (other) on official government forms as the only ethnic category that includes indigenous peoples (the alternatives being Malay, Indian or Chinese). The Sarawak Chief Minister ruled that official forms should add the category Dayak, which is a generic term for many of Sarawak's Orang Ulu communities. Many accepted this as an important first step towards recognition of Sarawak's indigenous peoples. The Dayak category was later also approved by the Federal Cabinet and will now be included on all official government forms. The Sabah Tourism, Culture and Environment Minister said he would submit the list of Sabah's 42 ethnic and over 200 sub-ethnic groups to the government, particularly the National Registration Department, to be gazetted as a reference on Sabah's ethnic groups. Section 3(3) of the Aboriginal Peoples Act (APA) empowers the Minister having charge of Orang Asli affairs to determine any question whether a person is an Orang Asli.

- In Sarawak and Sabah, laws introduced by the British during their colonial rule recognising the customary land rights and customary law of the indigenous peoples are still in place. However, they are not properly implemented, and are even outright ignored by the government, which gives priority to large-scale resource extraction and the plantations of private companies and state agencies over the rights and interests of the indigenous communities. In Sarawak, sections 5(3) and (4) of the Sarawak Land Code provides wide power to extinguish all customary land rights. In the Malaysian Borneo state of Sabah, the issuance of communal titles to develop native customary lands under a joint venture scheme with government agencies or private sector, further erodes Sabah's indigenous peoples' right to ancestral lands.

In Peninsular Malaysia, while there is a clear lack of reference to Orang Asli customary land rights in the National Land Code, Orang Asli customary tenure is recognised under common law. The principal Act that governs Orang Asli administration, including occupation of the land, is the Aboriginal Peoples Act 1954. Data as presented to the Inquiry by JAKOA on the status of Orang Asli lands as at 1990 and 2010 can be summarised as follows:

Status of Land (hectares)	1990	2010	Change	% change
Gazetted Orang Asli Reserves	20,666.96	20,670.83	3.87	0.02
Approved but not gazetted	36,076.33	26,288.47	(9,787.86)	(27.13)
Applied for gazettement but not approved	67,019.46	85,987.34	18,967.88	28.30
Total	123,762.65	132,946.64	9,183.99	7.42

The overall statistics do not reveal the local situation within specific Orang Asli localities. The recognition and security of Orang Asli traditional lands and territories are being jeopardised by one or a combination of three administrative shortcomings: *Under-gazetting*. This occurs when the full extent of the Orang Asli customary land is not taken into account when an Orang Asli settlement is gazetted as an Orang Asli reserve. *Non-gazetting*. This occurs when lands which have been approved by the State Authority to be gazetted as Orang Asli reserves are not gazetted because of an administrative shortcoming. In most cases, this is due to the failure to produce a properly-surveyed map of the area to be reserved, in compliance with normal land alienation procedures. *De-gazetting*. This occurs when an Orang Asli reserve is degazetted as such, and the land reverts to the State and/or is given to another entity. The data in the

<p>table above only refers to lands recognised by the Government as being occupied by the Orang Asli, which in 2010, amounted to 132,946.64 hectares. It is estimated that this area represents only 17 per cent of the lands claimed by the Orang Asli. The Suhakam National Inquiry identified many legal, policy and administrative constraints to the protection of the rights of indigenous peoples in Malaysia.</p> <ul style="list-style-type: none"> • Malaysia did not ratify ILO Convention 169 but voted in favour of the UN Declaration on the Rights of Indigenous Peoples. Article 26 of the UNDRIP states that indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired, and that States shall give legal recognition and protection to these. Malaysian courts have in fact endorsed this in several judgments that essentially accord native title to indigenous peoples' traditional lands, territories and resources. However, state governments continue to refuse to recognize decisions by the highest court in Malaysia. • In 2001 indigenous peoples organisations withdrew from the Malaysian Timber Certification System (MTCS) consultation process due to the reality that in gazetted production forests from which the scheme's Forest Management Units operate, much of indigenous customary land rights would have been terminated or severely minimised prior to the reservation process of the production forests themselves, among other reasons. Orang Asli asserted that the loggers and the Forestry Department did not seek their consent when entering their customary lands, which is contrary to the requirements of MTCS. In March 2008 indigenous peoples organisations chose to withdraw from the FLEGT-VPA consultation process. At a minimum, they have demanded that the definition of legal timber must be incorporated with the guarantee that: <i>such timber and its products shall be free from indigenous customary claims and free from indigenous territorial boundaries</i>. This provision is highly critical since a significant bulk of the Malaysian logging operations tend to take place within indigenous peoples' territories without their FPIC. • There is significant evidence of violations of legal and customary rights of IPs as is well recorded by SUHAKAM, The United Nations, indigenous peoples organizations, NGOs and others. Deforestation and large-scale developments have robbed Malaysia's forest peoples of access to forest lands and resources and polluted their watercourses. Land pressure has sometimes forced them to use forests unsustainably, sell land to outsiders or abandon age-old practices. Local food sovereignty, health, knowledge and traditions have suffered, while communities have experienced forced evictions, police harassment, attacks, sexual violence and denial of redress. Rules, restrictions and sanctions are relatively flexible for business interests, but the authorities inflict heavy penalties on communities for alleged misdeeds. • There are conflicts of substantial magnitude³ pertaining to the rights of Indigenous Peoples; For example, in Sarawak more than 300 cases are going through the courts relating to NCR land disputes and to charges against logging, oil palm, dam construction and other 		
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³ For the purpose of the Indicator 2.3, a conflict of substantial magnitude is a conflict which involves one or more of the following:

- Gross violation of the legal or customary rights of indigenous or traditional peoples;
- Significant negative impact that is irreversible or that cannot be mitigated;
- A significant number of instances of physical violence against indigenous or traditional peoples;
- A significant number of instances of destruction of property;
- Presence of military bodies;
- Systematic acts of intimidation against indigenous or traditional peoples.

Guidance:

In the identification of conflicts of substantial magnitude one must also be aware of possible parallel activities of other sectors than the forest sector that also impact the rights of indigenous/traditional peoples and that there can be a cumulative impact. This cumulative impact can lead to a 'gross violation of indigenous peoples' rights' or 'irreversible consequences' but

<p>companies, and against government agencies, including for failure to establish boundaries of NCR lands within concession areas and for flawed and invalid environmental impact assessments. In trying to protect their rights to their traditional lands, territories and resources, many indigenous peoples have suffered intimidation and harassment by the authorities and law enforcement personnel.</p> <ul style="list-style-type: none"> • There are recognized laws and/or regulations and/or processes in place to resolve conflicts of substantial magnitude pertaining to TP or IP rights and/or communities with traditional rights, but these are not recognized by affected stakeholders as being fair and equitable; Although Malaysian courts have essentially accorded native title to indigenous peoples' traditional lands, territories and resources, state governments continue to refuse to recognize decisions by the highest court in Malaysia. At the same time, court cases take a long time to be heard and in the meantime evidence on the ground can be destroyed especially if a company or a development agency is not ordered to stop work through a court injunction. • IPs may not always have presence on their claimed territories due to forced removal in the past. It is not always clearly identifiable due to lack of or difficult access to clear maps and lack of recognized, agreed boundaries. Therefore, the precautionary approach is applied and the whole country is designated as specified risk. <p>The following specified risk thresholds apply, based on the evidence:</p> <p>(23) The presence of IP and/or TP is confirmed or likely within the area. The applicable legislation for the area under assessment contradicts indicator requirement(s) (refer to 2.2.6); AND</p> <p>(24) Substantial evidence of widespread violation of IP/TP rights exists; AND</p> <p>(26) There is evidence of conflict(s) of substantial magnitude pertaining to the rights of IP and/or TP. Laws and regulations and/or other legally established processes do not exist that serve to resolve conflicts in the area concerned, or, such processes exist but are not recognized by affected stakeholders as being fair and equitable. Note under threshold No 20 applies.</p>		
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the extent of the contribution of forest management operations needs to be assessed. The substance and magnitude of conflicts shall be determined through NRA development process according to national/regional conditions. NRA shall provide definition of such conflicts.

Controlled wood category 3: Wood from forests in which high conservation values are threatened by management activities

Overview

Peninsular Malaysia

Malaysia is one of 17 mega-diverse countries in the world. The flora and fauna of Malaysia is exceedingly rich and is conservatively estimated to contain about 12,500 species of flowering plants, approximately 306 species of mammals, more than 742 species of birds, and 567 species of reptiles, including a large number of endemics. According to the National Policy on Biological Diversity 2016-2025, Malaysia has a forest cover of about 54.5% of the total land area (Ministry of Natural Resources and Environment, 2016).

Major forest types in Malaysia are lowland dipterocarp forest (LDF), hill dipterocarp forest (HDF), upper hill dipterocarp forest, oak-laurel forest, montane ericaceous forest, peat swamp forest and mangrove forest. In addition, there are also smaller areas of freshwater swamp forest, heath forest, forest on limestone and forest on quartz ridges. While most of the country was covered with LDF in the past, today the majority has been cleared for other land uses. The few remaining pockets are under intense pressure from development and these islands of natural lowland forests are shrinking rapidly. Most of the dipterocarp forest left in Malaysia is HDF because HDF terrain is usually hilly and rugged – making it difficult to access and extract timber, but advancing technology may change this situation (WWF, 2016a).

According to Ministry of Natural Resources and Environment (NRE), Malaysia has 3,400,000 ha of terrestrial protected areas (PAs) which is approximately 10% of the land base. Timber harvesting is prohibited in these areas. Official figures state that Peninsular Malaysia has approximately 13% of its land under protection, consisting of protection forests within Permanently Reserved Forests (PRFs), wildlife areas/sanctuaries and State Parks. PAs under different networks are governed by different laws with varying degrees of protection status, and gazetting and de-gazetting procedures (UNDP, 2013). In general, PAs in Malaysia can be grouped according to the laws used for their establishment:

- National parks and state parks under the park laws
- Sanctuaries or reserves under the wildlife laws
- Protection forests under the forestry laws
- Marine parks and fisheries prohibited areas under the National Fisheries Act 1985
- Areas reserved for a public purpose under the land laws

Timber can be harvested from 3 different sources in Peninsular Malaysia (Category 1 assessment):

- Natural (or semi-natural) forests: forests under state ownership (in Permanently Reserved Forests (PRF) or outside PRF), except for some alienated (privatised) land where forest clearance is permitted for private use.
- Timber plantations: often established in the PRF, where management rights are transferred to private parties via private concessions. Timber plantations are rarely established on state land, although state land which has a former status of PRF could hold timber plantations. In these cases the management rights

are transferred to private parties via harvesting permits. Timber plantations are seldom established on private land, since it is usually more profitable to grow oil palm or rubber (for latex).

- Agricultural areas: Rubber plantations on agricultural areas account for approximately 1 million hectares of the total area of planted forest, being the main timber source from agricultural areas. This timber originates mainly from rubber plantations that are being cleared for oil palm or for another rotation of rubber. The land is primarily privatised (alienated) land, but to a limited extent also state-owned land in or outside PRF.

Forested land in Peninsular Malaysia is classified into three major types, namely Permanent Reserved Forests (PRF), State Land, and Alienated Land (Category 1 assessment).

- Permanent Reserved Forests (PRF): forests gazetted under the National Forestry Act, 1984 for sustainable forest management for economic, social and environmental benefits. The state government, by notification in the Gazette, classifies every PRF based on one or more of the functional classes in subsection 10(1) of the National Forestry Act 1984, namely Timber production forest under sustainable yield, Soil protection forest, Soil reclamation forest, Flood control forest, Water catchment forest, Forest sanctuary for wild life, Virgin jungle reserved forest, Amenity forest, Education forest, Research forest, and Forest for federal purposes.

- State Land (SL): Land areas owned by the State Government (managed by Lands & Surveys Department and Natural Resources Office). In 2014, 17,528 ha or 17% of the total licensed timber production area was in State Land (Forestry Department Peninsular Malaysia, 2014).

- Alienated Land (AL): Land areas alienated from other categories for development and handed to individuals or companies, i.e. generally for agriculture (oil palm or other tree plantations owned by private sector companies or individuals) either via Country Lease or Native Title (managed by Lands & Surveys Department). In Peninsular Malaysia, Alienated Land contributes to 26,901 ha or 26.2% of the total licensed timber production area in 2014 (Forestry Department Peninsular Malaysia, 2014). In Sarawak, Alienated Land refers to any land held under a 'document title' as defined in Section 2 of the Land Code (Cap. 81). It is unclear how much of it is harvested for timber.

Malaysia's national HCVF interpretation and toolkit was developed in 2009 by WWF-Malaysia following consultation with the relevant forestry stakeholders. The toolkit generally covers the six categories of HCV as well as the relevant legal references as required by the FSC Principles and Criteria. However, not all harvestable areas require consideration or assessment of HCV; with the exception being production forest gazetted under the Forest Enactment 1968. In this case, forest managers must submit a forest management plan that includes HCV as one of the chapters. In terms of protected areas, a master list (<http://www.nationalparks-worldwide.info/malaysia.htm>) was created by the Ministry of Natural Resources as the main reference for all areas that fall into this category.

Sabah

One of the largest states in Malaysia, Sabah is unique in terms of the variety of ecosystem types that it supports, ranging from lowland Dipterocarp to montane forests. Land in Sabah is categorised as one of three major types, namely:

Permanent Forest Estate (PFE) includes the Forest Reserves (managed by Sabah Forest Department (SFD): 3,551,246 ha), the State Parks (managed by Sabah Parks: 245,172 ha), and the Wildlife Sanctuaries (managed by the Sabah Wildlife Department: 26,103 ha). This category accounts for circa 53% of Sabah's total land mass of 7.4 million ha. State Parks and Wildlife Sanctuaries are governed under Parks Enactment 1984 and Wildlife Conservation Enactment

1997, respectively, which provide the jurisdictional power to Sabah Parks (SP) and Sabah Wildlife Department (SWD) to manage their respective areas, excluding them from logging operations; such that any extraction from these areas is deemed illegal.

Forest Reserves are categorised into seven classes (see below) based on specific function. There are 249 forest reserves of various types and ecosystems throughout the State.

State Land (SL): Land areas that are owned by the Government and not developed for any specific purpose (managed by Lands & Surveys Department and Natural Resources Office);

Alienated Land (AL): Land areas that have been alienated for development to individuals or companies, i.e. generally for agriculture (oil palm or other tree plantations owned by private sector companies or individuals) either on Country Lease or Native Title (managed by Lands & Surveys Department).

The Forest Reserves (FR) classification is as follows:

- Class I, Protection FR (1,260,098 ha): Forests conserved for the protection of watersheds and maintenance of soil stability, water conservation, and other essential climatic and environmental factors. Logging is not permitted in these areas.
- Class II, Commercial FR (1,750,521 ha): Forests allocated for harvesting to supply timber and other forest produce, contributing to the State's economy. Harvesting is to be carried out according to Sustainable Forest Management (SFM) principles. (Also known as Permanent Forest Reserves, PFR.)
- Class III, Domestic FR (4,673 ha): The produce derived from this forest classification, including small amounts of timber, is for the consumption of local communities only and commercial use is discouraged.
- Class IV, Amenity FR (11,149 ha): Forests providing amenity and recreation to local inhabitants. Recreational facilities may be provided in attractive sites, often along roadsides, within these reserves. Exotic tree species are sometimes planted to enhance the amenity value of these areas.
- Class V, Mangrove FR (280,002 ha): mangrove timber and other forest produce to meet general demands and multi-uses. There are a number of varieties but the *Rhizophora* sp. is the most common species harvested, and the products range from fishing stakes to firewood and charcoal. These sites can also be used for recreation and tourism.
- Class VI, Virgin Jungle (106,812 ha): Forests conserved intact strictly for forestry research purposes including biodiversity and genetic conservation. Logging is strictly prohibited in this type of forest reserve.
- Class VII, Wildlife Reserve (137,991 ha) (not to be confused with Wildlife Sanctuary): Forests conserved primarily for the purposes of wildlife protection, conservation and research. The Sumatran Rhinoceros is one of the endangered wild animals living in the Wildlife Reserves. Logging is prohibited.

In Sabah then, the significant timber sources are Commercial FR (Class II, - Permanent Forest Reserve - 1,750,521 ha as at December 2015); Forest Reserve-Industrial Timber Plantations [FR-ITP] (239,786 ha as at December 2015), State Land (land owned by Government) and Alienated Land (privately owned). As with such activities occurring on Commercial FR and FR-ITP tenures, harvesting and removal of timber from SL or AL still requires the necessary approval from SFD as well as the mandatory documentation; however, the detail as to the number of the latter timber sources is not publicly available from the website of the Lands and Surveys Department in Sabah.

Sabah started the Sustainable Forest Management (SFM) journey about two decades ago and continues to advance its policy of sustainable timber production. Trees harvested from State Land and Alienated Land may not necessarily require forest management plans; if the licensee is undertaking a forest management certification process of any internationally recognized forest certification scheme (such as Malaysian Timber Certification Scheme (MTCS) or Forest Stewardship Council (FSC)), or is already certified against such a scheme, forest management plans will be required. Therefore, the risk can be considered higher if the timber in question originated from non-certified State Land or Alienated Land compared to a forest reserve – in which latter case a forest management plan must be prepared and approved prior to any activities.

Threats to HCV areas in Sabah result mainly from the harvesting of timber from (e.g.) steep slopes (HCV 4.2), buffer zones adjacent to intact forest landscapes (HCV 1.1), areas with a high presence of critically endangered (CR) species (as evidenced by the increase in human–animal conflict) (HCV 1.2), wildlife corridors (HCV 2) and within watershed areas where – due to lack of legal gazettal – the water quality of nearby streams and water bodies is detrimentally affected (HCV 4.1). Threats to HCV may also arise in situations where users' rights are not clear, leading to conflict between the local communities and forest managers (HCV 5); and lack of genuine multi-stakeholder consultation to find amicable solutions to the problems faced by local communities. This assessment will look, in a site-specific manner, into the safeguards that are readily available.

Reduced impact logging (RIL) is being applied in Sabah and this technique has proven to be the best safeguard during timber harvesting – due to the minimum cutting limit, construction of skid trails and logging roads up to the point of extraction in natural forests. For natural forest areas in which RIL is being employed, the threats listed above can be minimized to a great extent. To further support the assessment of threats to HCVs from forestry activities in natural forests and plantations, the level of compliance with the Sabah Timber Legality Assurance System (TLAS) was used as a means of assessing the effectiveness of statutory protection for mitigating threats to HCVs. The safeguards offered by RIL and the co-benefits of sustainable forest management, e.g. forest management certification, were also studied to evaluate the risk.

Sarawak

Sarawak is the largest state in Malaysia (12,381,679 hectares), occupying the northern quarter of the island of Borneo. It has 1.7 million hectares of peatlands, and the largest area of tropical heath forests in Malaysia. The rest of the State is tropical mixed dipterocarp forests.

Land in Sarawak is categorised under seven types:

1. Permanent Forest (PF) - 6 million ha [PRIMARY MATERIAL SOURCE]

The Sarawak Forests Bill (2015), which is not publicly available, defines five categories of permanent forests. Their definitions are based on allowed uses of the forests. The PF represents the bulk of the State's production forests. These reserved production forests are diminishing from de-gazettement for oil palm plantations.

- Forest Reserve: Forest reserves constituted over State land (SL).
- Communal Forest: A communal forest constituted over SL.
- Protected Forest: Protected forests constituted over SL. Hunting is not prohibited.

- Government Reserve: Land reserved to the Government under the Land Code [Cap. 81 (1958 Ed)].
- Planted Forest: A crop of trees planted on Forest Reserve, Communal Forest, State land or Alienated land under a licence and forming part of the PF in the State.

2. Totally Protected Areas (TPA) - 1-1.2 million ha [NO SOURCING PERMITTED]

National Parks (Under National Parks & Nature Reserves Ordinance, 1998): 35 national parks with total land area of 464,981ha (2013 data). An additional 229,789ha is open water (sea).

Nature Reserves (Under National Parks & Nature Reserves ordinance, 1998): 14 nature reserves with total land area of 2,539ha (2015 data)

Wildlife Sanctuaries (Under Wild Life Protection Ordinance 1998): 6 wildlife sanctuaries with total land area of 206,460ha (2013 data)

Ramsar Sites One site, Kuching Wetlands National Park (6,610ha)

3. Native Customary Rights Land (NCRL) [NO SOURCING PERMITTED]

These are lands where claims have been recognised by a court of law. Evidence is provided for occupation and use of these lands prior to 1958. The Forest Bill 2015 allows for use of these lands by communities. No commercial harvesting of forest products (including timber) is permitted. These lands can be purchased (compensated) by the State for other uses, thus becoming alienated land (Category 7).

4. Water Catchment Areas (Under Water Ordinance, 1994) [NO SOURCING PERMITTED]

These are lands gazetted under the Ordinance for the protection of water resources. No encroachment or harvesting of forest produce is permitted.

5. Oil Palm Land. [MATERIAL SOURCING PERMITTED PRIOR TO CONVERSION]

Designated under State Landuse Policy, with a target of three million ha. As of 2016, 1.6m ha has been converted, all from categories 1 (PF) and 3 (NCRL).

6. State Land (SL). [NO SOURCING PERMITTED]

State land within the meaning of the Land Code [Cap. 81 (1958 Et)], that is owned by the Government and not developed for any specific purpose (managed by Lands & Surveys Department and Natural Resources Office). State Land Forests (defined under the Forests Bill, 2015), are any forests in the State other than forest reserves, protected forests, communal forests, Government reserves and planted forests. Note: when a licence is issued for tree plantations on State land, it is reclassified as planted forest under Permanent Forest.

7. Alienated Land (AL). [NO SOURCING PERMITTED]

Land that has been alienated from a previous category (State Land, Community land, Permanent Forest) under the Land Code [Chap. 81 (1958 Ed.1.1, 1999)], that has been alienated for development to individuals or companies, i.e. generally for agriculture (oil palm plantations owned by private sector companies or individuals) either on Country Lease or Native Title (managed by Land & Surveys Department). Note: when a licence is issued for tree plantations on Alienated land, it is reclassified as planted forest under Permanent Forest.

It is noted that under PF, there can be either SL (see number 6 for more details) or Alienated Land (AL – see number 7 for more details). Whenever planted forest licences are issued on SL or AL, these are immediately considered as Planted Forests, and come under the Permanent Forest (PF) category (Sarawak

Forest Ordinance, Section 66). Officially, the land remains as State or Alien Land, but its land use category is transferred to Permanent Forests (PF) until the expiry of the licences.

Sarawak's political leadership has always set itself apart of the rest of Malaysia, pursuing its own identity and ways of doing business. Forestry has been the State's main source of revenue since the mid-1960s, emerging as one of the world's largest timber producers in the seventies and eighties. Several Sarawak timber companies grew into global conglomerate giants, and maintained close relations with the political leadership of Sarawak. The 80s and 90s saw global attention and condemnation focused on Sarawak for its rampant exploitation of its forests, and consequently, its native peoples. The emergence of forest certification in the early 90s began to put pressure on Sarawak. Sarawak has resisted certification and sustainable forestry for many years, and it was only in 2010 that some of the large timber companies began seeking certification.

Sarawak does not require HCVs to be identified or managed under its timber licencing system. The concept of HCVs has emerged in parallel with the advent of forest certification in 1994, and the Sarawak Forest Department (SFD) did not require its licensees to seek certification. In 1998, the SFD and Samling Corporation undertook the State's first sustainable forest management "project", with GTZ funding. Although not referred to as an HCV assessment, this was effectively the first FMU-based assessment of conservation values in relation to forest management. Subsequently, the licence owner (Samling) sought and achieved certification under the Malaysian Timber Certification Scheme (MTCS). This certification was subsequently withdrawn following failed audits. In 2014, Samling obtained MTCS certification (by this time, PEFC endorsed) for a 10,800ha industrial tree plantation (ITP) in Segan, Bintulu, the first tree plantation to be certified in Sarawak. A second licence-holder, the Anap Muput FMU, also achieved MTCS certification in 2014, and is currently the only certified natural forest FMU in Sarawak.

In 2014, a new Chief Minister was elected, and a new era for forestry began in Sarawak. Several new State policies were put into immediate effect, addressing illegal logging and sustainable forestry. In April 2015, the Forest Bill 2015 was passed in the state legislative assembly, replacing the Forest Ordinance 1958.

In 2015, the State Forest Department issued a directive to the six biggest timber companies (together holding 85% of licences) and the Sarawak Timber Industry Development Corporation (STIDC) to obtain certification for at least one FMU by July 2017. The STIDC is one of the largest holders of timber licences in the State. The six large companies (referred to as the BIG SIX) are required to obtain certification for one of their concessions within the Heart of Borneo (HOB) area by July 2017 [57, 60]. Licence tenures will be reviewed and can be extended up to 60 years for those who achieve certification.

To provide context on plantation development, Sarawak embarked on tree plantation development in 1997, and a licence for planted forests (LPF) was created, with a minimum of 1,000ha for each application. As of 2014, 43 LPFs had been issued, for a total of 2,819, 974 ha. Of this, only 56.6% (1,595,790 ha) is plant-able, after deductions of protection forests, community areas and unsuitable terrain. This 56.6% is the State's target for planted forests. As of 2014, only 350,049ha have been cleared for planting, 22% of the State's target. However, not all of this 22% has actually been planted, and the state's policy has been to stop issuance of new licences until it has been. Failure of companies to plant their designated areas will result in non-renewal of their licences and as a result, several companies have already given up their licences.

The Land and Survey department cannot recognise demarcated conservation areas under Sarawak law. The only legal recognition of conservation areas is through the Forest Management Plan, which is a Forest Department approved plan.

The six companies referred to above have all initiated HCV assessments in their concessions. Some have begun in all their FMUs, others in a selected FMU within the HOB area. The State, through the Sarawak Forestry Corporation (SFC), is assisting these companies in conducting HCV assessments. There are no consultancy firms in Sarawak at present with capacity to conduct HCV assessments. Some firms are building teams and seeking the required accreditation to begin providing this service to the industry. The assessments are currently being piloted in selected coupes. No FMUs are being assessed for HCVs in their entirety.

As the forest owners and the forest managers grapple with this “new” concept of HCVs related to obtaining, and maintaining a certificate, undoubtedly safeguards will be developed. At present, no safeguards exist except the stipulated requirement to manage HCVs within a FMU.

HCVs in Plantations: LPFs have no requirements for HCV identification or protection. The term HCV is not used in Sarawak policy. However, under the State Natural Resources and Environment Ordinance (2001), there are basic requirements for the identification and protection of “conservation areas” within PF. These requirements are general, covering the protection of riparian reserves, steep slopes and community lands. They cover some of the elements of HCV4.

There is also an unverifiable overlap between the areas under LPF (tree plantations) and T licences (natural forest). This overlap is believed to be significant. T licences are usually for periods of 1 to 5 years, while LPF licences are for up to 60 years. With the recent changes in state policy, and the struggle with unproductive T licence areas, conversion of licences has occurred, resulting in overlaps.

Malaysia is a signatory to the Convention on Biological Diversity (CBD). Malaysia’s Fifth National Report to the Convention on Biological Diversity states that the country’s monitoring against CBD targets is weak. Lastly, Malaysia has a 2016 corruption perception index of 49 (http://www.transparency.org/news/feature/corruption_perceptions_index_2016), which is just below the threshold used by FSC (50) when using the CPI as an indicator of risk.

Experts consulted – Peninsular Malaysia

	Name	Organisation	Area of expertise (category/sub-category)
1.	Preetha Sankar	Preetha Sankar & Co.	HCV 1-4
2.	Surin Sukswan	Proforest Malaysia	HCV 1-6
3.	Adrian Choo Cheng Yong	WWF-Malaysia	HCV 1-4
4.	Eric Wakker	Aidenvironment Asia	HCV 1-6

Experts consulted – Sabah

	Name	Organisation	Area of expertise (category/sub-category)
1.	Dr. Anna Wong (UMS)	UMS	Biodiversity
2.	Dr. John Tay/ Tan Hao Jin	WWF-Malaysia	All aspects of HCV (except social)
3.	Dr. Agnes Agama	SEARRP	Social
4.	Dr. Reza Azmi	Wildasia	All aspects of HCV
5.	Dr. Reuben Nilus	Sabah Forestry Department	Biodiversity

Experts consulted – Sarawak

	Name	Organization	Area of expertise (category/sub-category)
1.	Oswald Braken Tisen	Sarawak Forestry Corporation	Biodiversity, Protected Areas (HCVs 1-3)
2.	Nicholas Ting	Ta Ann Holdings Berhad	Forest Management (all HCVs)
3.	Cynthia Chin	WWF Malaysia (Sarawak)	Social HCVs (HCVs 5 & 6)

Risk assessment – Peninsular Malaysia

Indicator	Sources of Information	HCV occurrence and threat assessment	Functional scale	Risk designation and determination
3.0	All	<p>Occurrence Data is available but insufficient and scattered for effective determination of HCV distribution in Peninsular Malaysia. There are 22 HCVFs that are established by the state forestry departments in Peninsular Malaysia but they are very small and in those HCVFs timber harvesting is prohibited. However, given the recognised importance of the conservation values of Malaysian forests, a variety of relevant proxy information is available that, in combination with the application of a precautionary approach, can be used to conclude whether particular HCVs occur or may occur.</p> <p>For the current assessment, HCVs are identified as follows, using the High Conservation Value Forest (HCVF) Toolkit for Malaysia:</p> <p>HCV 1: Biodiversity values</p>	Peninsular Malaysia	Low risk. The thresholds (1) Data available are sufficient for determining HCV presence within the area under assessment; AND (2) Data available are sufficient for assessing threats to HCVs caused by forest management activities, are met.

		<p>HCV 1.1 Protected Areas – All gazetted terrestrial protected areas, based on The Master List of Protected Areas in Malaysia commissioned by the Ministry of Natural Resources & Environment:</p> <ul style="list-style-type: none"> • National parks and state parks under the park laws • Sanctuaries or reserves under the wildlife laws • Protection forests under the forestry laws • Areas reserved for a public purpose under the land laws <p>HCV 1.2 Threatened and Endangered Species – Any forest containing species categorised as either Critically Endangered (CR), Endangered (EN) or Vulnerable (VU) on the IUCN Red List, Appendix I of CITES or listed as protected under Malaysian legislation (federal or state):</p> <p>HCV 1.3 Endemism – Any forest containing endemic species as identified by FRIM, MNS, SFC, Forestry Departments and published literature, particularly in high concentrations or highly restricted distribution:</p> <p>HCV 1.4 Critical Temporal Use – Any forest area which is important to wildlife for feeding, nesting, roosting, migration or contains saltlicks:</p> <p>HCV 2 Landscape-level Forest – Intact Forest Landscapes (IFL) as defined by the maps at http://intactforests.org, and any forest area that forms or is part of a linkage between larger forest complexes, and can thus provide connectivity between fragments or act as a wildlife corridor for the movement of animals from one complex to another:</p> <p>The Central Forest Spine that consists of 4 Forest Complexes and Linkages identified by the National Physical Plan:</p> <p>Titiwangsa Range-Bintang Range-Nakawan Range Taman Negara-Timur Range South East Pahang, Chini and Bera Wetlands Endau Rompin Park-Kluang Wildlife Reserves</p> <p>HCV 3 Ecosystems – Any forest area that contains an ecosystem/habitat type identified as a priority for protection by the National Conservation Strategy (NCS), PERHILITAN Ecosystem Assessment report, Forestry Departments, FRIM, or SFC, and/or is confirmed as such by current expert opinion.</p> <p>HCV 4</p> <p>HCV 4.1 Watershed Protection – includes dam catchment areas and any forest area legally gazetted as a Protection Forest for water catchment under the National Forestry Act 1984, or areas gazetted for watershed protection under any other state or federal legislation e.g. the National Land Code 1965.</p>		
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	<p>HCV 4.2 Erosion Control: includes forest areas that have been legally gazetted for soil protection or conservation under federal and state laws e.g. the National Forestry Act 1984 (Peninsular Malaysia), and riparian areas covered under the DID guidelines. Peninsular Malaysia: PRF - soil protection forest</p> <p>HCV 4.3 Barriers to Destructive Fire: Any specific areas that can act as barriers to provide protection of forests, especially forests with high conservation values, from fire, in areas that are generally fire-prone and where the consequences are potentially severe.</p> <p>HCV 5 Basic Needs of Local Communities: A forest area may be considered HCV 5 if it contains or is adjacent to settlements which depend on produce from that forest for basic subsistence or health needs. Examples include hunting grounds or areas from which minor forest products such as bamboo, rattan and medicinal plants are collected, and which are regularly visited by community members for this purpose. The community may be living either in or adjacent to the forest. General information documents the presence of indigenous peoples in Peninsular Malaysia and their use of the forest (that would indicate the presence of this HCV), but it is not sufficient to determine specific locations. The National Interpretation of HCV for Malaysia notes that identification and management of this HCV must always involve participation of the communities themselves.</p> <p>HCV 6 Cultural Identity of Local Communities: A forest is considered HCVF 6 if it has been important for a local (particularly indigenous) community's cultural, ecological, or religious activities. The community may be living either in or adjacent to the forest. Examples of such sites within a forest include burial grounds or sacred areas which cannot be replaced with alternatives and/or would cause drastic cultural change within the community. General information documents the presence of indigenous peoples in Peninsular Malaysia and their use of the forest (that would indicate the presence of this HCV), but it is not sufficient to determine specific locations. The National Interpretation of HCV for Malaysia notes that identification and management of this HCV must always involve participation of the communities themselves.</p> <p>Threats Governmental reports on forest management activities tend to be very general and focused on positive policy statements rather than reflections of what is happening on the ground in terms of risks to HCVFs. News and NGO reports tend to be more specific to the risks of timber operations to the HCVs and more accurately reflect</p>		
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		<p>the reality on the ground. However, even with great efforts from NGOs, information on the actual implementation of timber harvesting operations in Peninsular Malaysia is scarce, incomplete and scattered.</p> <p>Risk specification Low risk. The following thresholds are met: (1) Data available are sufficient for determining HCV presence within the area under assessment; AND (2) Data available are sufficient for assessing threats to HCVs caused by forest management activities.</p>		
3.1 HCV 1	1, 2, 3, 4, 5, 8, 10, 12, 19, 25, 30, 31, 32, 33, 36, 41, 45, 47,	<p>Occurrence Natural forest in Peninsular Malaysia contains a number threatened and endangered species. It is home to Endangered mammals such as Asian elephant (<i>Elephas maximus</i>), Malayan sun bear (<i>Helarctos malayanus</i>), Malayan tapir (<i>Tapirus indicus</i>), and various bats: Leschenault's Rousette fruit bat (<i>Rousettus leschenaultia</i>), Marshall's Horseshoe Bat (<i>Rhinolophus marshalli</i>), and Shamel's Horseshoe Bat (<i>Rhinolophus shameli</i>) (ZOO COPENHAGEN, 2010). Environmentally Sensitive Areas (ESA) exist in PRF and State/Alienated Land forests and contain important habitats of the Malayan Tiger (<i>Panthera tigris ssp. Jacksoni</i>), an Endangered species in Peninsular Malaysia (Department of Wildlife and National Parks Peninsular Malaysia, 2008). 85% of the confirmed tiger habitats are in PRF, while the rest are in State/Alienated Land forests (Department of Wildlife and National Parks Peninsular Malaysia, 2008).</p> <p>Peninsular Malaysia is also home to threatened and endangered species of plants. The majority of those studied are Dipterocarpaceae, which is the most important timber family in Malaysia in terms of timber production (Saw, Chua, Suhaida, Yong, & Hamidah, 2010). Ninety two taxa of dipterocarps (56.1%) occurring in Peninsular Malaysia have an IUCN threatened category nationwide: 42 are Vulnerable, 35 are Endangered, 15 are Critically Endangered (CHUA, SUHAIDA, HAMIDAH, & SAW, 2010). Aquilaria and Gyrinops (Agarwood/Gaharu), Gonystylus (Ramin), Podocarpus neriifolius (Podocarp) and Taxus (Yews) are the major species/genera of CITES-listed tree species found in Malaysia (Groves & Rutherford, 2015).</p> <p>Peninsular Malaysia has 165 dipterocarp taxa of which 34 taxa are endemic, and 22 of these endemic taxa have an IUCN threatened category (CHUA, SUHAIDA, HAMIDAH, & SAW, 2010). Of these 22, six are Critically Endangered: <i>Hopea</i></p>	Peninsular Malaysia	Specified risk: Threshold (8) is met: HCV 1 is identified and/or its occurrence is likely in the area under assessment and it is threatened by management activities.

		<p><i>auriculata</i>, <i>H. bracteata</i> var. <i>penangiana</i>, <i>H. subalata</i>, <i>Shorea lumutensis</i>, <i>Vatica flavida</i> and <i>V. yeechongii</i>.</p> <p>Endemic mammal species in Peninsular Malaysia are as follows (WWF-Malaysia, 2009): Social Sprite vesper bat (<i>Pipistrellus societatis</i>), found in Gunung Benom (Pahang; Selangor) Malayan Mountain Spiny Rat (<i>Maxomys inas</i>), found in Gunung Inas, Perak Malayan Leaf-nosed Bat (<i>Hipposideros nequam</i>), found in Klang, Selangor Selangor Pygmy Flying Squirrel (<i>Petaurillus kinlochii</i>), found in Klang, Selangor <i>Hipposideros 'bicolor'</i> (142 kHz) roundleaf bat, found in Krau, Pahang Krau Woolly Bat (<i>Kerivoula krauensis</i>), found in Krau, Pahang</p> <p>There are 55 Important Bird Areas in Malaysia, 21 are classified as protected; 8 partially protected; 26 unprotected (BirdLife International, 2004). The lowlands of Peninsular Malaysia have suffered widespread forest clearance and fragmentation, but some large forest IBAs remain with important populations of threatened lowland forest specialists, including three species confined to the Thai-Malay Peninsula Malaysian Peacock-pheasant (<i>Polyplectron malacense</i>), Whitefronted Scops-owl (<i>Otus sagittatus</i>) and Plain-pouched Hornbill (<i>Aceros subruficollis</i>) (BirdLife International, 2004). Certain coastal wetlands in Peninsular support important concentrations of waterbirds, and some have populations of threatened waterbirds such as Chinese Egret (<i>Egretta eulophotes</i>), Milky Stork (<i>Mycteria cinerea</i>) and Lesser Adjutant (<i>Leptoptilos javanicus</i>) (BirdLife International, 2004). These large forest IBAs are of outstanding importance for threatened forest birds in Peninsular Malaysia: Belum-Temenggor, Central Titiwangsa Range, Endau-Rompin, Panti forest, Krau Wildlife Reserve and Taman Negara National Park (BirdLife International, 2004).</p> <p>In Ulu Muda where there are more than 15 saltlicks, elephants, gaur, deers, wild boar and tapirs are frequent visitors to saltlicks. Ulu Muda is an outstanding area for wildlife conservation and one of its special features is the abundance of wildlife saltlicks, making it excellent habitat for large mammals (Ali, 2014).</p> <p>The above values are found in natural forest ecosystems. Plantations and agricultural land may contain areas of natural forest and be adjacent to natural forest and therefore may also contain this HCV.</p>		
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		<p>Threats & Safeguards</p> <p>In terms of forest management, threatened and endangered species are primarily threatened by habitat removal and fragmentation. The endangered status of the tiger in the larger part of the last century is a direct consequence of habitat loss and active persecution of tigers, and while the majority of tiger habitat appears to be secured from large-scale forest conversion, there is great concern that PRFs are criss-crossed by logging roads, causing various negative effects to the tiger population (Department of Wildlife and National Parks Peninsular Malaysia, 2008). The loss and fragmentation of forest is the main cause for elephant decline in Malaysia (Saaban, et al., 2011). Although selective logging might have a positive effect on elephant habitat by creating open spaces and promoting food-rich secondary growth, logging generally occurs in association with detrimental habitat alterations, such as the construction of roads and the increased presence of people in the forest (Saaban, et al., 2011). Humans-elephants conflicts are increasing in the Endau-Rompin forest landscape, as a result of significant loss and fragmentation of forest habitats (UNDP, 2014). The extensive destruction of the natural landscape due to logging and agriculture has shrunk the roaming areas for wildlife, forcing the elephants into closer contact with humans (UNDP, 2014).</p> <p>Requirements for the management of natural forest include a licensee-to-be must prepare a Forest Harvesting Plan (which may not include robust requirements for species protection) for the approval of the State Forestry Department before a license is issued for the PRF (Category 1 assessment). The licensee must then register its classification mark with the State Forestry Department (Category 1 assessment). However, in practice there is significant risk of corruption in the award of timber concessions, logging licenses and restrictions on re-entry logging in PRF areas (TRANSPARENCY INTERNATIONAL MALAYSIA, 2011). The number of enforcement personnel also remains insufficient, as do resources for effective enforcement (Hoare, 2015). There are thus still cases reported of companies overharvesting or logging under a license in an area that does not apply to the actual permit area (Category 1 assessment). Based on stakeholder input there are indications that the Forest Department Rangers seldom conduct on-ground patrols and that it is common for bribes to be paid to forest officials (Category 1 assessment).</p> <p>The regulation of licensed timber harvesting from natural forest is less stringent in State/Alienated Land forests, as compared to the situation in PRF. Logs harvested legally from the State/Alienated Land forests are not required to be marked with an official tag, only a generic logging tag is required (Category 1 assessment). State Land forests do occur near the boundaries of PRF protection forests and logging is</p>		
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		<p>licensed. For example, the Gunung Ais Forest Reserve in Ulu Tembeling is adjacent to State Land forests where active logging has happened in 2016 (Tan, 2016). A Forest Harvesting Plan is not required for logging on the State/Alienated Land forests (Category 1 assessment). Logging in State/Alienated Land forests are not subject to requirements such as pre-felling inventory and assessment or tree tagging prior to logging (Category 1 assessment). The lack of these requirements implies threats to potential habitat removal of threatened and endangered species in those forests, including important tiger and elephant habitats.</p> <p>A total of 32 timber species has been identified by the State Forestry Departments to be retained from selective harvesting in the PRF (Forestry Manual 2003 and Field Manual for Selective Management System) (Category 1 assessment). However, this prescription does not apply to forest clearance activities (even inside forest reserves), and there are no such requirements for logging on State Land and Alienated Land (Category 1 assessment). Furthermore, the requirement for selective logging within forest reserves to identify and protect the specified retention species is not always observed (Category 1 assessment). Often the control of an active logging site takes place primarily at the Forest Checking Station and there is often inadequate monitoring of logging within the forest (Category 1 assessment).</p> <p>Enforcement procedures and processes exist for the identified timber species for conservation, but they are generally not specifically catered to meet CITES obligations. There is also inadequate training of enforcement officers in various agencies on issuing CITES permits according to CITES obligations (Chen & Perumal, 2002). For example, the Gaharu tree (<i>Aquilaria malaccensis</i>) is under serious threat and until now the Forestry Department of Peninsular Malaysia has been unable to stem the influx of foreigners illegally harvesting it from the forests (UNDP, 2013).</p> <p>Malaysia is a signatory to the Convention on Biological Diversity (CBD). Malaysia's Fifth National Report to the Convention on Biological Diversity states that the country's monitoring against CBD targets is weak: "The lack of cohesive and comprehensive monitoring mechanisms/indicators towards the National Policy on Biological Diversity has posed some challenges towards measuring actual progress in certain conservation areas. Malaysia recognises the need to step up efforts on awareness raising on the importance and significance of biodiversity conservation, protection and management across all levels of society in Malaysia (Ministry of Natural Resources and Environment, Malaysia, 2014)."</p>		
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	<p>Currently, endemic plants are not shielded under any legislation. Only those that happen to grow in protected areas such as state or national parks or wildlife reserves, are safeguarded (TAN C. L., Protecting native flora and fauna, 2010).</p> <p>Based on the IUCN Red List of Threatened Species, the endemic species of mammals in Peninsular Malaysia face different level of threats (IUCN, 2016): Social Sprite vesper bat (<i>Pipistrellus societatis</i>): Deforestation from logging is one of the major threats to this species. Malayan Leaf-nosed Bat (<i>Hipposideros nequam</i>): The threats to this species are not known. Selangor Pygmy Flying Squirrel (<i>Petaurillus kinlochii</i>): This species is threatened by forest loss. Krau Woolly Bat (<i>Kerivoula krauensis</i>): This species is threatened by forest loss.</p> <p>These endemic mammal species appear unprotected by legislation or regulations. There is no information on any safeguards to these species from logging operations.</p> <p>Logging is among a variety of threats to the forest IBAs in Malaysia (BirdLife International, 2004). Logging of mangroves is among threats to wetlands that are important bird habitats (BirdLife International, 2004). While the birds themselves may have some formal protection under national or state law, the habitat within which they live and which supports them often does not, rendering their protection of little value to their long-term survival (Harrison, 2011).</p> <p>In logging regulations in Peninsular Malaysia, there are no specific recommendations for protecting these sensitive areas (Chong, Tang, & Suksuwan, 2005). Therefore, there is no guarantee that saltlicks in forest reserves are free from risk of disturbance and degradation during logging operations (Chong, Tang, & Suksuwan, 2005). While a certain portion of the Ulu Muda Forest Reserve (UMFR) has been proposed for gazettelement as Kedah's very first state park, a large part of the PRF is classified as production forest reserve and is currently undergoing selective logging in certain areas (Ali, 2014). In the UMFR, which is predominantly classified as production forest reserve, logging activities could potentially degrade or even destroy saltlicks (Chong, Tang, & Suksuwan, 2005), rendering them unsuitable for wildlife. Disturbances caused by logging may also deter wildlife from approaching saltlicks, while unsustainable logging practices may create a less suitable habitat for species of wildlife which prefer high vegetation densities (Rayan, et al., 2013). Furthermore, the construction of extensive logging road networks and logging camps in the forest may promote poaching activities by</p>		
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		<p>easing access into the forest and to saltlicks, thereby increasing the likelihood of poaching both by outsiders as well as by workers of logging concessionaires (Ali, 2014).</p> <p>No logging is allowed in totally protected areas, but logging operations have been detected inside national parks in the past (see category 1 assessment).</p> <p>Risk specification Specified risk. Threshold (8) is met: HCV 1 is identified and/or its occurrence is likely in the area under assessment and it is threatened by management activities within all source types: Permanent Reserved Forests (PRF), State Land, and Alienated Land.</p>		
3.2 HCV 2	9, 16, 29, 42, 47	<p>Occurrence The Central Forest Spine (CFS) of Peninsular Malaysia is an important natural landscape of Malaysia, supplying 90% of the population's water supply and harbouring the remaining population of Malayan tigers in its forests (UNDP, 2014). For this assessment, forest within the CFS is considered HCV2.</p> <p>The CFS runs down the length of Peninsular Malaysia, straddling eight states, comprising of four main forest complexes: Banjaran Titiwangsa – Banjaran Bintang – Banjaran Nakawan; Taman Negara – Banjaran Timur; South-East Pahang, Chini and Bera Wetlands; and Endau-Rompin National Park – Kluang WR (UNDP, 2014). Within those forest complexes, UNDP identified three forest landscapes as priority landscapes in improving the connectivity of the CFS: The Taman Negara forest landscape in Pahang, the Belum-Temengor forest landscape in Perak, and the Endau-Rompin forest landscape in Johor (UNDP, 2014). The CFS covers an area of approximately 5.3 million ha; over 40% of the total terrestrial area and over 91% of forest areas in Peninsular Malaysia; roughly 80% are in PRF, and 20% are Alienated Land and State Land forests (UNDP, 2014).</p> <p>There are four Intact Forest Landscapes in Malaysia according to 2013 data (Global Forest Watch, 2016). These IFLs are subsets of the forest complexes of Taman Negara – Banjaran Timur range, Krau Wildlife Reserve, Royal Belum State Park, and Temenggor Forest Reserve.</p> <p>HCV2 are deemed to not be present within plantations and agricultural land in Peninsular Malaysia. An Intact Forest Landscape (IFL) is a seamless mosaic of forest and naturally treeless ecosystems within the zone of current forest extent,</p>	<p>Natural forest</p> <p>Plantation and agricultural land</p>	<p>Specified risk: Threshold (12) is met: HCV 2 is identified and/or its occurrence is likely in the area under assessment, and it is threatened by management activities.</p> <p>Low risk: Threshold (9) is met: There is no HCV 2 identified and its occurrence is unlikely in the area under assessment, is met.</p>

		<p>which exhibit no remotely detected signs of human activity or habitat fragmentation (The IFL Mapping Team, 2014). Plantations and agricultural land do not conform with this definition, nor do they conform with other sub-categories within this HCV, which focus on naturalness of ecosystems and great scale. Furthermore, ecologically speaking, plantations are areas that have been cleared of original vegetation, possibly drained and cut and maintained with an alternative plant cover (Copenhagen Zoo, 2010). These lands are considered ecologically altered – cleared and no longer in their original state or maintained in a state of arrested or deflected succession (Copenhagen Zoo, 2010).</p> <p>Threats & Safeguards Logging licence holders, contractors and sub-contractors have private interests throughout the CFS, and some companies hold long-term logging concessions within it (UNDP, 2014). The logging threats by these license holders to the CFS HCV 2 values include forest degradation by logging, and fragmentation by illegal logging and logging road infrastructure.</p> <p>Unfortunately, Malaysia is among countries with the highest IFL degradation in both absolute terms (area) and relative terms (percentage) (Intact Forest Landscapes, 2014). It seems that logging does not occur in three of the four IFLs as they appear to overlap with protected areas, namely Taman Negara, Krau Wildlife Reserve and Royal Belum State Park. However, this cannot be confirmed without a fine scale analysis. There is a logging concession area constituting part of Temenggor Forest Reserve within Hulu Perak district, Perak which covers 9000 ha. The company has been granted a 30-year license to log and manage, under the sustainable forest management (SFM) principles (Perak Integrated Timber Complex Sdn Bhd, 2016). It's not known if logging has already begun, or will soon.</p> <p>Risk specification Specified risk. Threshold (12) is met: HCV 2 is identified in the area under assessment and it is threatened by management activities either through fragmentation by habitat and forest removal and/or logging road infrastructure and/or commercial logging in the IFL area of the Temenggor Forest Reserve within Hulu Perak district.</p>		
3.3 HCV 3	7, 21, 24, 25, 34, 43, 44, 45, 48	<p>Occurrence According to the PERHILITAN Ecosystem Assessment for Peninsular Malaysia in 2004, ecosystems threatened with high risk are Montane quartz, Montane sandstone, BRIS forest, Mangrove, Burmese lowland forest, Hill dipterocarp quartz, Lowland dry quartz, Upper dipterocarp quartz, Hill dipterocarp limestone, Oak-</p>	Peninsular Malaysia	Specified risk: The following thresholds are met: Threshold (17): HCV 3 is identified and/or its occurrence is likely in the area under assessment and it is

	<p>laurel quartz, and Upper dipterocarp limestone (Department of Wildlife and National Parks, 2004). Per the National Conservation Strategy (NCS), forest ecosystems that have highest priority for conservation actions in different states in Peninsular Malaysia are the Extreme lowland forests, Lowland dipterocarp forests, Hill dipterocarp forests, Heath forests, Limestone forests, Quartz ridge forests, Neram forests on river banks, Freshwater swamp forests, Peat swamp forests, Mangrove forests, and forests around major lakes in Pahang (WWF-Malaysia, 2009). In 2014, ecosystems that were poorly represented, with less than 5 per cent occurring within Protected Areas in Peninsular Malaysia, included mangroves, beach vegetation, peat swamp forest, limestone and ultra-basic habitats, and heath (kerangas) forest (Zuraidah & Sukswan, 2014). According to the National Policy on Biological Diversity 2016-2025, lowland dipterocarp forests, wetlands and limestone hills are especially vulnerable ecosystems in Malaysia (Ministry of Natural Resources and Environment, 2016).</p> <p>The above values are found in natural forest ecosystems. Plantations and agricultural land may contain areas of natural forest and be adjacent to natural forest and therefore may also contain this HCV.</p> <p>Threats & Safeguards Although the PERHILITAN Ecosystem Assessment is cited in the HCV toolkit and several NGO sources, the detailed report of the assessment is not publicly available and it is unclear how it is being used for enforcement to protect rare and threatened ecosystems.</p> <p>Logging both in the highlands and lowlands causing fragmentation and loss of forests is one of the predominant threats to the Peninsular Malaysian Lowland and Montane Forests (WWF Global, 2016). Between 2001 and 2012, some 25,810ha of mangrove tracts – more than three times the global mangrove forest loss rate during the same time – had been cut down in Malaysia (LEE, 2015). Unfortunately, lowland dipterocarp forests, wetlands and limestone hills are underrepresented ecosystems in Malaysia’s terrestrial protected area (PA) network (Ministry of Natural Resources and Environment, 2016).</p> <p>Malaysia is a signatory to the Convention on Biological Diversity (CBD). Malaysia’s Fifth National Report to the Convention on Biological Diversity states that the country’s monitoring against CBD targets is weak: “The lack of cohesive and comprehensive monitoring mechanisms/indicators towards the National Policy on Biological Diversity has posed some challenges towards measuring actual progress in certain conservation areas. Malaysia recognises the need to step up efforts on</p>	<p>threatened by forest management activities; AND Threshold (18): There is no progress in achieving Aichi biodiversity targets.</p>
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		<p>awareness raising on the importance and significance of biodiversity conservation, protection and management across all levels of society in Malaysia (Ministry of Natural Resources and Environment, Malaysia, 2014).”</p> <p>Risk specification Because HCV 3 is identified in the area under assessment and are threatened by forest management activities (threshold (17)), and because there has been limited progress in achieving Aichi biodiversity targets (threshold (18)), specified risk is assigned to this indicator.</p>		
3.4 HCV 4	6, 11, 15, 17, 18, 22, 23, 26, 35, 38, 39,	<p>Occurrence <u>Watershed protection</u> Dam and water catchment areas in natural forests would be classified as Protection Forest under PRF under the National Forestry Act, in which logging is prohibited. However, many water catchment areas in PRF and State/Alienated Land are not gazetted as such. According to the 2008 Auditor General’s Report, there are many states that have yet to gazette water catchment areas that have been identified, including the states of Kedah, Johor, Pahang (Idris, 2012). Plantations and agricultural land may be adjacent to gazetted and non-gazetted dam and water catchment areas.</p> <p><u>Erosion control</u> Soil protection or conservation areas in natural forests would be classified as Protection Forest under PRF under the National Forestry Act, in which logging is prohibited. However, many soil protection or conservation forests are not gazetted as such in PRF and State/Alienated Land. Other than soil protection and conservation areas, there are also riparian areas and river reserves under Department of Irrigation and Drainage (DID) guidelines and respective state laws (Department of Irrigation and Drainage, 2009). Plantations and agricultural land may contain riparian areas covered under DID guidelines</p> <p><u>Barriers to destructive fire</u> In Peninsular Malaysia, no major forest fires have been documented recently. Records show that the highest number of fires (333) occurred in 1994, of which 84% was attributed to land clearing for farming. Fires occurred sporadically in the natural forests, and more frequently in the secondary and peat swamp forests, the gelam forests on raised sand beaches on the east coast, and in forest plantations (International Forest Fire News, 2001). Most of the secondary and degraded forests that were burned were not forest reserves but state forests that were earmarked for</p>	Peninsular Malaysia	Specified risk: Threshold (22) is met: HCV 4 is identified and/or its occurrence is likely in the area under assessment and it is threatened by management activities.

	<p>conversion. Fires in natural forests on Alienated Land stem from land clearing by farmers and private land owner (International Forest Fire News, 2001).</p> <p>According to the Malaysian HCVF Toolkit, fire-prone areas include peat swamps, forest areas that have been burned previously, and areas with podzolic or edaphic soils. Areas adjacent to forests containing any other HCV and areas adjacent to plantations are also used to identify HCV4. Given the presence of plantations in the state, occurrence of fires in the past (records referred to above), peat soils, and presence of other HCVs (assessed within this risk assessment), forests that serve as barriers to destructive fire are likely to occur in Peninsular Malaysia.</p> <p>Threats & Safeguards <u>Critical ecosystem services</u> Given that many identified water catchment areas have not been gazetted for protection, it is possible that logging is occurring in these areas. One example where logging is occurring is the Ulu Muda forest reserve in the state of Kedah. Ulu Muda forest reserve is a vital water catchment area that supplies water to three states in Peninsular Malaysia (Perlis, Kedah and Penang), but rampant logging has been reported taking place in a large portion of the forest reserve (Tan, 2016; The Star Online, 2016). Villagers have complained of water pollution affecting their main water source as a result of soil erosion due to rampant logging (Tan, 2016). Another example is Ulu Tembeling in Pahang, another vital water catchment forest that is also only partially gazetted as water catchment forest and the rivers have been polluted by erosion from logging activities (Lokman, 2016). Environmentalists want the Pahang government to remap and gazette water catchment areas, mainly in Ulu Tembeling's mountainous area, in a bid to save the rivers from further pollution (Lokman, 2016).</p> <p>An EIA must be carried out when forest land is logged or converted into other land use within the catchment area of reservoirs used for municipal water supply, irrigation, or hydro power generation, or in areas adjacent to state, or national parks and national marine parks (Lim, 2013). It has been reported that very few EIAs for forest clearance have been produced due to a lack of enforcement by the Department of Environment, and deliberate circumvention of the law, facilitated by the Forestry Department, by dividing area greater than 500ha into smaller areas (Lim, 2013). Recent audits by the Malaysian Auditor General and reports in local newspapers have highlighted six prominent cases where laws are alledged to have been flouted</p>		
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		<p>by failure to produce an EIA or failure to comply with prescribed mitigating measures (Lim, 2013).</p> <p><u>Erosion control</u> Sedimentation of rivers from logging areas (especially logging roads) can have a pronounced effect on water quality and stream life (Department of Irrigation and Drainage, 2009). The Forestry Department of Peninsular Malaysia is responsible for ensuring that mitigation measures are implemented to minimise sedimentation from logging activities, especially in the construction of logging roads and skid trails (Department of Irrigation and Drainage, 2009). There are threats to riparian areas from felling operations or construction of logging roads within riverine buffer zones (TRANSPARENCY INTERNATIONAL MALAYSIA, 2011). There is also risk of bribery that leads to felling within buffer zones (Transparency International Malaysia, 2011).</p> <p>There isn't sufficient public information about gazetted river reserves. In Selangor (as an example), The Water Enactment (1920) provides protection for a 50 foot wide riparian zone or "river reserve", but only if it is specifically gazetted (Hamzah & Mohkeri, 2011). It is likely that river reserves are not gazetted in areas where appropriate in many parts of Peninsular Malaysia.</p> <p><u>Barriers to destructive fire</u> No evidence of requirements for identifying forest areas that may act as barriers to fire, and prescriptions for managing them has been found. This includes whether water bodies and riparian areas, and intact natural forest are maintained.</p> <p>Risk specification Given water and river catchment areas are either not yet gazetted and/or the safeguards are not appropriately applied for these areas and other important areas such as riparian areas and there is evidence forest management activities are reducing the water quality through increased sedimentation etc. for HCV 4 it is considered specified risk. Threshold (22) is met: HCV 4 is identified and/or its occurrence is likely in the area under assessment and it is threatened by management activities.</p>		
3.5 HCV 5	13, 14, 20, 27, 28, 37, 39, 40, 46, 49-52	<p>Occurrence <u>Natural forest</u> Officially, forested areas of Orang Asli (Aborigines) reserves fall under Alienated Land Forests (Transparency International Malaysia, 2013). However, many Orang Asli villages that have not been gazetted are located within forest reserves (Human</p>	Peninsular Malaysia	Specified risk: Threshold (26) is met: HCV 5 is identified and/or its occurrence is likely in the area under assessment

	<p>Rights Commission of Malaysia (SUHAKAM), 2013). Orang Asli villages could also be encroached by logging companies that purchased the land as Alienated Land (Human Rights Commission of Malaysia (SUHAKAM), 2013).The state claims it owns and controls state land forests, and ownership of these areas by local forest communities and indigenous peoples is largely unrecognized (Yong, SACCESS, & JKOASM, 2014). In many cases where the state claims ownership the Orang Asli claim these lands as their traditional territories as they state the lands were passed down from their ancestors as customary lands for the present and future generations of Orang Asli (Yong, SACCESS, & JKOASM, 2014). It has been stated that around half of the Orang Asli live in or close to forests, may be involved in hill rice cultivation or traditional hunting and gathering activities [World Directory of Minorities and Indigenous Peoples, 2016].</p> <p><u>Plantations and agricultural land</u> As the majority of Orang Asli villages are on state land (Nicholas, 2012), and states continue issuing logging and plantation licences on state land claimed under indigenous customary land rights/title which is causing ongoing land conflicts (Yong, SACCESS, & JKOASM, 2014), it is likely that HCV5 are also found in plantations and agricultural land</p> <p>Threats & Safeguards The Federal Constitution provides for Orang Asli rights to property, association and religion as well as a set of special rights and protections (Nicholas, 2010, p. 5). Despite this constitutional and statutory protection, the Orang Asli face difficulties achieving their rights (Subramaniam, 2015). In Peninsular Malaysia the main statute in relation to customary rights is the Aboriginal Peoples Act 1954, which allows for the designation of aboriginal areas. However, it also provides for revocation of any such designated areas. In addition, the Orang Asli cannot obtain individual titles to their land and thus occupy the status of ‘tenants’ subject to the will of their landlord (Aiken & Leigh, 2011, p. 472). The Federal Constitution places the welfare of the Aboriginal Peoples as a federal responsibility, who in turn acts as landlord. In addition, and according to the National Land Code 1965, the State government has authority over all state land except for alienated- or reserved land. Consequently, the State controls all aboriginal land not declared customary rights land.</p> <p>The laws of Malaysia provide the State authority with incontestable power to seize private land for public development purposes. This legislation has been used systematically by both the Federal- and State government to prioritize development projects over indigenous/customary claims to land, consequently bringing about forceful dislocation, dispossession and marginalization (Duncan, 2004).</p>		<p>and it is threatened by management activities.</p>
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		<p>2013). There are also complaints that crops that Orang Asli planted were being cut down by workers of timber plantations (Human Rights Commission of Malaysia (SUHAKAM), 2013). Many loggers/foresters/administrators declared that they were unfamiliar with or not informed of the nature of Orang Asli traditional markers of their crops (Human Rights Commission of Malaysia (SUHAKAM), 2013). Such a situation had resulted in the crops of the Orang Asli being destroyed by logging activities (Human Rights Commission of Malaysia (SUHAKAM), 2013).</p> <p>Risk specification Given the displacement Orang Asli communities caused by forest management activities and/or the degradation of sites and resources fundamental for satisfying the basic necessities of the Orang Asli, HCV 5 is considered specified risk. Threshold (26) is met: HCV 5 is identified and/or its occurrence is likely in the area under assessment and it is threatened by management activities.</p>		
3.6 HCV 6	14, 20, 39, 49	<p>Occurrence <u>Natural forest</u> Because the customary land (and waters) of an Orang Asli community is very localized and site-specific, it is not surprising that this specific ecological niche invariably becomes the basis of the community's subsistence, spirituality, culture, history and identity (Human Rights Commission of Malaysia (SUHAKAM), 2013). The Malaysian government's declared policy states that it recognises and protects the cultural identity and customary lands of the Orang Asli and officially forested areas of Orang Asli (Aborigines) reserves fall under Alienated Land Forests (TRANSPARENCY INTERNATIONAL MALAYSIA, 2011).</p> <p><u>Plantation and agricultural land</u> Because the customary land (and waters) of an Orang Asli community is very localized and site-specific, it is not surprising that this specific ecological niche invariably becomes the basis of the community's subsistence, spirituality, culture, history and identity (Human Rights Commission of Malaysia (SUHAKAM), 2013). Important cultural and spiritual sites of Orang Asli could be occupied by timber plantations. The Kelantan State Forestry Department, for example, states on its website that the establishment of Latex Timber Clone (LTC) plantations need to take into account the occurrence of Orang Asli ancestral graveyards (Kelantan State Forestry Department, 2016). Foraging areas or what is often referred in Malay as "kawasan rayau" are precise areas within an Orang Asli traditional territory, which are non-residential or non-cultivated (Human Rights Commission of Malaysia (SUHAKAM), 2013). The size of a foraging area will depend on the degree in which a particular Orang Asli community rely on the forests for food and</p>	Peninsular Malaysia	Specified risk: Threshold (30) is met: HCV 6 is identified and/or its occurrence is likely in the area under assessment and it is threatened by management activities.

		<p>other needs, and the overall size of their traditional territory (Human Rights Commission of Malaysia (SUHAKAM), 2013). The size of land awarded or leased to companies and GLCs can sometimes include more than one village involving vast areas of the Orang Asli's kawasan rayau or foraging areas (Human Rights Commission of Malaysia (SUHAKAM), 2013).</p> <p>Threats & Safeguards <u>Natural forest</u> Many Orang Asli villages that have not been gazetted are within forest reserves (Human Rights Commission of Malaysia (SUHAKAM), 2013) even though those lands were passed down from their ancestors as customary lands for the present and future generations of Orang Asli (Yong, SACCESS, & JKOASM, 2014). As for State Land, the state claims it owns and controls state land forests, and ownership of these areas by local forest communities and indigenous peoples is largely unrecognized (Yong, SACCESS, & JKOASM, 2014). Some Orang Asli customary lands are still not gazetted yet, which the state regards as state land; However, those lands were passed down from their ancestors as customary lands for the present and future generations of Orang Asli (Yong, SACCESS, & JKOASM, 2014).</p> <p>There is compelling evidence across the states in Peninsular Malaysia that logging in Orang Asli traditional territories has gone on for decades (Human Rights Commission of Malaysia (SUHAKAM), 2013, & Yong, SACCESS, & JKOASM, 2014). Logging is still a major cause of depletion of forest resources and forest areas of Orang Asli (Yong, SACCESS, & JKOASM, 2014) . Even individual officers of the Department of Orang Asli Development may have placed pressure on the Orang Asli to allow logging in their traditional forests (Yong, SACCESS, & JKOASM, 2014) . Orang Asli rights to the lands are deemed to be in designated aboriginal reserves and can be abolished at any time because they have no legal title to the land and are not recognised by the government, unlike Malay reservations (Yong, SACCESS, & JKOASM, 2014) . The Aboriginal Peoples Act 1954 and various colonial and post-independence executive and legal documents, have been applied to claim indigenous customary land rights and forests as state-owned (Yong, SACCESS, & JKOASM, 2014) . States continue issuing logging and plantation licences on state land claimed under indigenous customary land rights/title, without the consent of affected communities, or any prior process to clearly extinguish their rights and pay adequate compensation for the loss of the rights (Yong, SACCESS, & JKOASM, 2014).</p> <p>Many Orang Asli witnesses – whose villages were included in logging concession areas within forest reserves – have testified that logging licensees had destroyed</p>		
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	<p>their sacred areas and old grave sites that had existed for generations, thus eliminating evidence of their continued occupation in the area (Human Rights Commission of Malaysia (SUHAKAM), 2013)</p> <p><u>Plantation and agricultural land</u> The Auditor-General's Report 2012 criticised the Ladang Rakyat Latex Timber Clone project in Kelantan, covering an area of 76,780 acres, with 41,472 acres in Gua Musang, as unsatisfactory and noted the local Orang Asli community's concerns of encroachment into their traditional lands (Category 1 assessment). Unfortunately, there is no legal definition or understanding or concept of 'kawasan rayau' (foraging areas) or 'traditional territories' (Human Rights Commission of Malaysia (SUHAKAM), 2013). Neither is there an appreciation as to why Orang Asli need large areas of customary lands (Human Rights Commission of Malaysia (SUHAKAM), 2013), even though the Malaysian government's declared policy states that it recognises and protects the cultural identity and customary lands of the Orang Asli (TRANSPARENCY INTERNATIONAL MALAYSIA, 2011). Many loggers/foresters/administrators declared that they were unfamiliar with or not informed of the nature of Orang Asli traditional markers (eg. graves, orchards, old village sites, sacred sites) (Human Rights Commission of Malaysia (SUHAKAM), 2013). Such a situation had resulted in the properties and sacred sites of the Orang Asli being destroyed by logging activities (Human Rights Commission of Malaysia (SUHAKAM), 2013).</p> <p>Risk specification Given the displacement Orang Asli communities cause by forest management activities and/or the degradation of critical cultural, and/or religious/sacred importance sites of the Orang Asli, HCV 6 is considered specified risk. Threshold (30) is met: HCV 6 is identified and/or its occurrence is likely in the area under assessment and it is threatened by management activities.</p>		
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Risk assessment – Sabah

Indicator	Sources of Information	HCV occurrence and threat assessment	Functional scale	Risk designation and determination
3.0	All	<p>Occurrence Sabahan forest reserves are well-surveyed in terms of boundaries but the method of reporting HCV identification in the context of forest management activities is inconsistent. Few details are provided in a forest management plan, which is mandatory for all long-term licensees. Detailed surveys are carried out independently by either the</p>	Sabah	<p>Low Risk The thresholds (1) Data available are sufficient for determining HCV</p>

		<p>Sabah Forestry Department (SFD) or a forest management enterprise (FME). The HCV assessments are done at FMU level by multi-disciplinary teams with experienced assessors from various fields. There is currently enough information relating to the presence of HCVs within production forest reserves; but major gaps in knowledge of HCVs exist for State Land and Alienated Land as these types of land do not require HCV assessments. Most important forest areas are designated as protected areas at the State level.</p> <p>Generally, not all six types of HCVs will necessarily be relevant to or present within a FMU, and forest managers are required only to manage whatever HCVs do exist; hence, appropriate management and monitoring actions are planned and discussed with the management team before further actions are undertaken. The quality of the assessment, on the other hand, varies between FMUs; as does the implementation on the ground for which the guidance provided is mostly general.</p> <p>For the current assessment, HCVs are identified as follows, using the High Conservation Value Forest (HCVF) Toolkit for Malaysia: HCV 1 – All gazetted protected areas fall into this category: - State parks (Kinabalu Park, Crocker Range Park and Tawau Hills Park) - conservation areas (Danum Valley, Maliau Basin and Imbak Canyon) - wildlife sanctuaries - Any forest containing species categorised as either Critically Endangered (CR), Endangered (EN) or Vulnerable (VU) on the IUCN Red List, Appendix I of CITES or listed as protected under Malaysian legislation (Wildlife Conservation Enactment 1997, Schedules I & II) - Any forest containing endemic species as identified by Sabah Forestry Department through its Forest Research Centre (FRC), and published literature; particularly such species in high concentrations or with highly restricted distributions - Any forest area that is important to wildlife for feeding, nesting, roosting, migration or which contains salt licks. (See FRC list of trees protected for wildlife.) HCV 2 - Any forest area that forms or is part of a linkage between larger forest complexes, and can thus provide connectivity between fragments or act as a wildlife corridor for the movement of animals from one complex to another. For instance, the forest between Danum Valley and Maliau Basin that serves as an important linkage between two conservation areas. HCV 3 - Any forest area that contains an ecosystem/ habitat type identified by Sabah Forestry Department, Forest Research Centre, or another expert(s) as a priority for protection. The priority habitats for Sabah, according to the National Conservation Strategy, are Extreme Lowland Forest, and Freshwater Swamp Forest; as well as Dipterocarp Forest; see full details in subcategory sections.</p>		<p>presence within the area under assessment; AND (2) Data available are sufficient for assessing threats to HCVs caused by forest management activities, are met.</p>
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3.1 HCV 1	10, 13,14, 60	<p>Occurrence HCV1 occurs throughout Sabah. The region contains over 270 threatened and endangered land species according to the IUCN redlist (2016). It is home to endangered mammals such as the Sumatran Rhino (<i>Dicerorhinus sumatrensis</i>), the Orang utan (<i>Pongo pygmaeus</i>) and the Proboscis Monkey (<i>Nasalis larvatus</i>).</p>	Sabah	Specified risk Threshold (8) is met: HCV 1 is identified and/or its occurrence is likely in the area under
Subcategories:	1.1: 61			

<p>1.1 - Protected areas All forest areas that have been legally gazetted as protected areas under Sabah legislation are HCV 1.1</p> <p>1.2 – Any forest containing species categorised as either Critically Endangered (CR), Endangered (EN) or Vulnerable (VU) on the IUCN Red List, Appendix I of CITES or listed as protected under Malaysian legislation (Sabah Wildlife Conservation Enactment 1997).</p> <p>1.3 - Any forest containing endemic species as</p>	<p>1.2: 31, 41; 9, 11, 12, 13, 19, 36, 38, 42, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 63, 64, 65</p> <p>1.3: 9, 62, 15, 16, 17, 41; 35</p> <p>1.4: 18, 39,45</p>	<p>On the Global Forest Watch website through using proxy HCV 1 and 3 map layers linked to where there are Protected Areas, BirdLife Endemic Bird Areas and Conservation International Biodiversity Hotspots are in Sabah the final output of the GFW layered map indicates the whole area is a Biodiversity Hotspot.</p> <p>1.1 – All RTE species that reside in gazetted protected areas fall into this category: - State parks (Kinabalu Park, Crocker Range Park and Tawau Hills Park) - Conservation areas under forest reserves (Danum Valley, Maliau Basin and Imbak Canyon) - Wildlife sanctuaries</p> <p>1.2 - There have been quite a number of research projects completed throughout Sabah focusing on the distribution and population density of flagship species (used as a proxy in this sub-category as being an important indicator to the health of the forest/ functioning ecosystem, with the understanding that research into Sabahan endemism is ongoing); such as orang utan (<i>Pongo pygmaeus morio</i>), Asian elephant (<i>Elephas maximus</i>), Sunda clouded leopard (<i>Neofelis diardi</i>), Sumatran rhinoceros (<i>Dicerorhinus sumatrensis</i>) and also Banteng (<i>Bos javanicus lowi</i>) from the large mammal group; and e.g. hornbills for birds. These big mammal group species are mostly found on the east coast of Sabah, particularly in the lowland Dipterocarp forest in Sandakan, Lahad Datu and Tawau regions (where most of the forest reserves are located). The status of the species based on IUCN classification are as follows: <i>Elephas maximus</i> (EN), <i>Pongo pygmaeus morio</i> (EN), <i>Neofelis diardi</i> (VU), <i>Dicerorhinus sumatrensis</i> (CR, however it is declared EN in Sabah), <i>Bos javanicus lowi</i> (EN).</p> <p>From the flora perspective, it is worth noting also that Malaysia is one of the largest suppliers to the international market of Agarwood (<i>Aquilaria spp.</i>), with harvesting occurring from wild plants and plantations. Other valuable species include <i>Gonystylus spp.</i> (Ramin).</p> <p>1.3 - While this is a work in progress for herbaceous plants, the endemism for mammals and birds is considered well-documented. There are at least 33 known species of birds that are endemic to Sabah and found in various locations throughout the State, ranging from freshwater environments to lowland forests and mountain ranges. There are also endemic species (subspecific endemism), such as the Sumatran rhino, pygmy elephant and orang utan, that are closer to the equivalent Sumatran genera and known to be distributed throughout Borneo. Nonetheless, most of the important bird areas in Sabah are located outside of production areas.</p>	<p>assessment and it is threatened by management activities.</p>
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<p>identified by Forestry Departments/ Forest Research Centre and published literature, particularly in high concentrations or highly restricted distribution</p> <p>1.4 - Any forest area which is important to wildlife for feeding, nesting, roosting, migration or contains saltlicks</p>		<p>There are at least six Dipterocarp species that are endemic to Sabah (namely <i>Dipterocarpus ochraceus</i>, <i>Hopea ovoidea</i>, <i>Shorea micans</i>, <i>S. kudatensis</i>, <i>S. symingtonii</i> and <i>S. waltonii</i>) that were given emphasis in the Sabah Plant Red List.</p> <p>It is common that, during EIA or HCV assessment, the wildlife that are known to be present in the area (e.g. because they have been identified in protected areas nearby and are known to move) are not sighted and site reconnaissance was not thorough due to access difficulties or limited time/ resources. However, another common method is the use of camera traps at strategic locations to capture the images during both day and night.</p> <p>1.4 - All natural forests may present occurrences of important areas for wildlife for feeding, nesting, roosting, migration or saltlicks. Without information on the specific occurrences of these (which would require a fine-scale on-the-ground assessment, which doesn't exist), the precautionary approach dictates that all natural forests should be considered to contain HCV1.</p> <p>The forest management plan shall prescribe the management and monitoring components of HCV areas in all FMUs in line with the certification requirement. Areas known to wildlife for feeding, nesting, roosting, migration or saltlicks are considered in the FMP and EIA as sensitive areas and must be mapped. In addition, close supervision must occur during harvesting activities adjacent to sensitive areas. See example in http://www.deramakot.sabah.gov.my/PDF/DFR_FMP2.pdf, page 52. A comprehensive global HCV assessment is nevertheless not carried out for all production forests, as they vary: some have clear ongoing monitoring requirements while others are still in transition regarding the implementation process associated with the new requirements for Forest Management Plans. The mandatory EIA for logging compartments is expected to cover this, but some of the attributes might exceed the scope of the EIA (which covers only the logging area).</p> <p>Threats and Safeguards</p> <p>1.1 - No timber may be sourced from forest areas that have been legally gazetted as protected areas under Sabah legislation; however, as detailed under Category 1, particularly under indicator 1.9 Protected sites and species, there is a threat of illegal logging in these areas thus could threatened the status of RTE species residing in these protected areas through impacts such as habitat removal and/or fragmentation. Please see indicator 1.9 for more details on the threat of illegal logging and the recommended control measures.</p>		
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		<p>1.2 - These flagship species share the same habitat and are an important indicator of the health of the forest/ functioning ecosystem. As most of the forests have been relogged, their habitat continues to shrink due to habitat fragmentation and removal via forest conversion. Fire can also be a threat to flagship species (indeed to most HCV), although this is further considered in the risks to ecosystems below – given the occurrence would be mainly on the borders of the forest, as reflected in the fire hotspot study. In any case, all Forest Management Plans contain an integrated fire management plan. In addition, the flagship species are under threat from human–wildlife conflict and poaching. Hence they are vulnerable to the threats that are posed by human-inflicted activities. The flagship species form an important element of the food web as well as helping to stabilize and regenerate the habitats.</p> <p>For the past few years, researchers have been monitoring the movement of the big mammals, a subject that is of interest as well as allowing forest managers to be alerted should the elephant herds that were collared move towards their management unit. This was evident, e.g. in the Kalabakan region, whereby the number of human-wildlife conflicts increases with mounting land pressure, as was tragically seen in Sabah in January 2013 where 14 elephants were found to have been poisoned.</p> <p>Malaysia ratified CITES in 1977. The export of goods made from the main timber species, Ramin or Karas/Gaharu (Agarwood) (which are listed under CITES Appendix I and Ramin is considered a vulnerable species according the IUCN redlist), is governed by CITES Commercial Regulations under Appendix II. Aquilaria spp. (Agarwood), is a fragrant, extremely valuable wood used to produce incense, perfume and traditional medicine – which has led to its overharvesting and subsequent listing as a species on CITES. Several Aquilaria spp. are considered vulnerable and critically endangered according to the IUCN redlist.</p> <p>A harvesting licence is dependent on many conditions including being able to supply the State Forestry Department with Aquilaria seedlings. Malaysia sets a quota for how much may be exported for wood chips, blocks, and essential oil. Ramin is a highly prized tree, popular for use as a decorative timber for furniture and interior designs, veneer and plywood production. Excessive harvest by illegal logging for international trade is the reason for its decline. Concerns have been raised regarding the illegal harvest of Ramin in Indonesia, with illegal trade between Indonesia and Malaysia also impacting the Malaysian Gonystylus population.</p> <p>Importing countries have contacted the Malaysian Timber Industry Board (MTIB) to verify the authenticity of CITES documents, and thereby several cases of false CITES documentation have been detected, which shows that there is a risk of fraud with</p>		
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		<p>CITES permits. The responsibility for CITES documentation has recently moved from MTIB to SFD, and the risk may therefore change; however a precautionary approach has been maintained for this assessment.</p> <p>A very high level of corruption in the system allegedly encourages corruption and illegal logging owing to the lack of accountability of the concessionaires and loggers. Moreover, corruption is tolerated in the upper echelons means that mixed signals are being given to enforcers on the ground who are often not very well remunerated and it is acknowledged that bribery takes place at the enforcement level as well. See Category 1 for more details on the illegal logging which is both connected to forest management and logging linked to land use conversion/habitat removal.</p> <p>Environmental Impact Assessments (EIAs) shall be conducted for logging areas greater than 500 hectares whether in PFR, AL or SL and whether for selective logging or clearance for plantations and whether natural forest or planted timber. Forest enterprises are required to fulfil this requirement prior to harvesting being conducted. The sensitive areas are normally identified in the approved harvest map. Logging of some areas below 500 ha may also be subject to environmental requirements if the area is deemed to be particularly sensitive by the EPD. In some cases, an EIA may be required for such logging. The main risks linked to EIAs and forest management are that in many cases where logging is taking place linked to land conversion EIAs are not submitted. In cases, where EIAs are submitted by forest management companies the main issues are non-compliance with the approved mitigation measures prescribed and the weak enforcement of these requirements, i.e., Sabah's EPD has only 13 enforcement officers and non-compliance fines are not high enough to act a deterrent. See indicator 1.10 Environmental requirements, for more details.</p> <p>Sabah Forestry Department enforces Reduce Impact Logging (RIL) since 2000 whereby road planning aims to reduce damage to the forest. The Sabah Timber Legality Assurance System (TLAS), that logging concessions are audited against annually by an independent party, requires the company to have systems for entry and access control to concession.</p> <p>Consumption of wildlife meat – such as wild boar, sambar deer, barking deer and many other species – is quite common in Sabah. Certain species are known to be traded domestically and internationally, including pangolin, porcupine, Malayan sun bear, python and helmeted hornbill. Illegal hunting and wildlife trade are closely related to habitat destruction, i.e., habitat removal and/or fragmentation, and are assisted by the increasing number of logging trails which provide better access to forested areas (Clements et al., 2014; Traffic, 2010 & WWF, 2017).</p>		
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		<p>1.3 - It is common that, during EIA or HCV assessment, the wildlife that are known to be present in the area (e.g. because they have been identified in protected areas nearby and are known to move) are not sighted and site reconnaissance was not thorough due to access difficulties or limited time/ resources. However, another common method is the use of camera traps at strategic locations to capture the images during both day and night.</p> <p>These flagship species share the same habitat and are an important indicator of the health of the forest/ functioning ecosystem. As most of the forests have been relogged, their habitat continues to shrink due to fragmentation and forest conversion. Fire can also be a threat to flagship species (indeed to most HCV), although this is further considered in the risks to ecosystems below – given the occurrence would be mainly on the borders of the forest, as reflected in the fire hotspot study. In any case, all Forest Management Plans contain an integrated fire management plan. In addition, the flagship species are under threat from human–wildlife conflict and poaching. Hence they are vulnerable to the threats that are posed by human-inflicted activities. The flagship species form an important element of the food web as well as helping to stabilize and regenerate the habitats.</p> <p>See HCV subcategory 1.2 above for more details on summary of illegal logging threats and lack of safeguards connected to EIAs. More details on these threats can also be found under Category 1 – particularly under indicators 1.9 and 1.10.</p> <p>As well the threat on RTE species by hunting and consumption of wildlife meat which is facilitated by forest management via road access and a lack of control by FME enterprises to prohibit access into forest areas by hunters – see HCV subcategory 1.2 above for more details.</p> <p>1.4 - All natural forests present occurrences of important areas for wildlife for feeding, nesting, roosting, migration or saltlicks.</p> <p>Without proper planning and early identification, areas that contain saltlicks or any other of the listed attributes might be destroyed or not enough buffer provided to ensure the important values are being maintained; (a buffer zone should be provided so that wildlife can continue to use the area and e.g., get the natural minerals from the site).</p> <p>The forest management plan shall prescribe the management and monitoring components of HCV areas in all FMUs in line with the certification requirement. Areas known to wildlife for feeding, nesting, roosting, migration or saltlicks are considered in the FMP and EIA as sensitive areas and must be mapped. In addition, close</p>		
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		<p>supervision must occur during harvesting activities adjacent to sensitive areas. See example in http://www.deramakot.sabah.gov.my/PDF/DFR_FMP2.pdf, page 52. A comprehensive global HCV assessment is nevertheless not carried out for all production forests, as they vary: some have clear ongoing monitoring requirements while others are still in transition regarding the implementation process associated with the new requirements for Forest Management Plans. The mandatory EIA for logging compartments is expected to cover this, but some of the attributes might exceed the scope of the EIA (which covers only the logging area).</p> <p>It is either prohibited to harvest/source from Sabah Permanent Forest Reserve Classes I & III-VII, or harvest is for consumption purposes of local communities. Therefore, there are no safeguards for protecting HCVs from the harvest/sourcing of material, should it occur.</p> <p>Furthermore, Malaysia is a signatory to the Convention on Biological Diversity (CBD). Malaysia's Fifth National Report to the Convention on Biological Diversity states that the country's monitoring against CBD targets is weak: "The lack of cohesive and comprehensive monitoring mechanisms/indicators towards the National Policy on Biological Diversity has posed some challenges towards measuring actual progress in certain conservation areas. Malaysia recognises the need to step up efforts on awareness raising on the importance and significance of biodiversity conservation, protection and management across all levels of society in Malaysia (Ministry of Natural Resources and Environment, Malaysia, 2014)." Thus, it is difficult to ascertain a clear picture on the level of progress of the Malaysian government against its CBD Aichi targets.</p> <p>The threats identified in this section relate to habitat removal and fragmentation. The threat to HCVs (by forest management activities) caused by the introduction of alien and invasive species is unknown due to a lack of information, and therefore the precautionary approach must be explicitly applied for this issue.</p> <p>Risk specification In conclusion, HCV 1 is identified in the area under assessment and it is threatened by management activities, thus this indicator is considered specified risk (threshold (8) is met).</p>		
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3.2 HCV 2	32, 33, 34; 19, 20, 29, 40	<p>HCV Occurrence HCV 2 is demonstrated in Sabah, with many forest reserves being contiguous.</p> <p>Based on the Global Forest Watch interactive map, there are three areas that are considered Intact Forest Landscapes (IFLs) and currently gazetted as protected areas (Maliau Basin, Kinabatangan, and the Crocker Range, all of which are high in elevation and free from logging operations). In addition to this, there is a major wildlife corridor sandwiched between forest management activities (Class II, Commercial Forest Reserve) and two protected areas, i.e. Maliau Basin and Danum Valley. This area is a potential material source type (wood supply area).</p> <p>The attributes for HCV 2 are not found in Plantation (FR-ITP, State Land and Alienated Land) and Natural Forest State Land and Alienated Land in these forest management areas. An Intact Forest Landscape (IFL) is a seamless mosaic of forest and naturally treeless ecosystems within the zone of current forest extent, which exhibit no remotely detected signs of human activity or habitat fragmentation (The IFL Mapping Team, 2014).</p> <p>Plantations, agricultural land, and other developed land do not conform with this definition, nor do they conform with other sub-categories within this HCV, which focus on naturalness of ecosystems and great scale. Furthermore, ecologically speaking, plantations are areas that have been cleared of original vegetation, possibly drained and cut and maintained with an alternative plant cover (Copenhagen Zoo, 2010). These lands are considered ecologically altered – cleared and no longer in their original state or maintained in a state of arrested or deflected succession (Copenhagen Zoo, 2010).</p> <p>Threats and Safeguards The HCV toolkit for Malaysia refers to umbrella species, i.e. sensitive, wide-ranging wildlife species that are particularly susceptible to forest fragmentation and human population pressures. Due to the widespread distribution of flagship species such as elephant, landscape connectivity and the presence of wildlife corridors is deemed very important to ensure the survival of such large mammal species. The species' distributions and ranges can be found in the three species Action Plans that were jointly developed by the wildlife conservation agencies in Sabah.</p> <p>The threats to be considered for this category – mainly fragmentation, including through establishment of roading for access as well as logging – are limited due to the safeguards. These include the requirement for an EIA (which follows the measures provided by the different species' Action Plans), selective logging, and Reduced Impact Logging (RIL), which are mandatory in Sabah. RIL and the Actions Plan of all logging concessions in Sabah are audited under the Sabah Timber Legality Assurance System</p>	<p>Sabah Permanent Forest Reserve Class II</p> <p>Sabah Natural Forest State Land and Alienated Land, and Sabah Plantation (FR-ITP, State Land and Alienated Land)</p> <p>Sabah Permanent Forest Reserve Classes I & III-VII</p>	<p>Low Risk Threshold (11) is met: HCV 2 is identified and/or its occurrence is likely in the area under assessment, but it is effectively protected from threats caused by management activities.</p> <p>Low risk Threshold (9) is met: There is no HCV 2 identified and its occurrence is unlikely in the area under assessment.</p> <p>Specified risk Threshold (12) is met: HCV 2 is identified and/or its occurrence is likely in the area under assessment, and it is threatened by management activities.</p>
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		<p>(TLAS) annually by an independent party. Public summaries of the Sabah TLAS audit reports are available online. After reviewing the available audit reports, no concerns of non-compliances have been found.</p> <p>In addition, recent intervention by experts led to the re-design of land use, ensuring the provision of wildlife corridors. This has also resulted in reclassification of production areas to areas with 'protection' status.</p> <p>It is either prohibited to harvest/source from Sabah Permanent Forest Reserve Classes I & III-VII, or harvest is for consumption purposes of local communities. Therefore, there are no safeguards for protecting HCVs from the harvest/sourcing of material, should it occur.</p> <p>Risk specification In conclusion, there is no HCV 2 identified in Plantation (FR-ITP, State Land and Alienated Land) and Natural Forest State Land and Alienated Land forest management areas, and thus is considered low risk (low risk threshold (9) is met).</p> <p>For Natural Forest in Class II Forest Reserve forest management areas there is HCV 2 identified but it is effectively protected from threats caused by management activities thus is considered low risk (low risk threshold (11) is met).</p> <p>For Natural Forest in Forest Reserves Classes I & III-VII there is HCV 2 identified but there are no safeguards for protecting HCVs from the harvest/sourcing of material for controlled wood, should it occur (specified risk threshold (12) is met).</p>		
3.3 HCV 3	2, 12, 19, 20, 21, 43, 60, 67,	<p>HCV Occurrence In Sabah, there are several types of forests that are rare including Extreme Lowland Forest, Freshwater Swamp Forest, Limestone Forests and Peat Swamp Forests. (NB: the only Peat Swamp Forest in Sabah is located on the Klias Peninsula and is excluded from forest harvesting activities.) Limestone Forests appear in several types of ecosystem, i.e., lowland and upland. The large ones have been set aside as conservation areas (e.g. in Class I) and thus it is assumed that the remainder are quite small in area. Nevertheless, as discussed during the communications with national experts, these ecosystems are not well-studied.</p> <p>On the Global Forest Watch website through using proxy HCV 1 and 3 map layers linked to where there are Protected Areas, BirdLife Endemic Bird Areas and Conservation International Biodiversity Hotspots are in Sabah the final output of the GFW layered map indicates the whole area is a Biodiversity Hotspot.</p>	Sabah	Specified Risk Threshold (17) is met: HCV 3 is identified and/or its occurrence is likely in the area under assessment and it is threatened by forest management activities.

		<p>Threats and Safeguards</p> <p>Based on the assessment of existing locations of Limestone Forest and Peat Swamp Forest, the threats from forest management activities are limited. Nevertheless, these ecosystems are not well-studied and there is therefore a risk of HCV 3 values not being identified during the EIA (which is limited to the logging area), and thus not being protected at a sufficient level and there is a risk of forest management activities potentially impacting the HCV 3 values via habitat removal and/or fragmentation.</p> <p>Commercial logging is among the main causes identified by WWF as responsible for the ongoing disappearance of lowland forests on the island of Borneo. The UNDP has noted that major threats to globally significant forest biodiversity in Sabah are associated with the following sources: forest conversion, forest degradation, over-harvesting, fire and infrastructure expansion – contributing to habitat removal and/or fragmentation. Information on forest management effects on Sabah’s highest priority habitats has not been found, but given the above information, it appears there is a risk that forest management effects on forest ecosystems could also apply to HCV 3 areas if they are not specifically identified and managed for thus there is a risk of forest management activities potentially impacting the HCV 3 values via habitat removal and/or fragmentation.</p> <p>It is either prohibited to harvest/source from Sabah Permanent Forest Reserve Classes I & III-VII, or harvest is for consumption purposes of local communities. Therefore, there are no safeguards for protecting HCVs from the harvest/sourcing of material, should it occur.</p> <p>Malaysia is a signatory to the Convention on Biological Diversity (CBD). Malaysia’s Fifth National Report to the Convention on Biological Diversity states that the country’s monitoring against CBD targets is weak: “The lack of cohesive and comprehensive monitoring mechanisms/indicators towards the National Policy on Biological Diversity has posed some challenges towards measuring actual progress in certain conservation areas. Malaysia recognises the need to step up efforts on awareness raising on the importance and significance of biodiversity conservation, protection and management across all levels of society in Malaysia (Ministry of Natural Resources and Environment, Malaysia, 2014).” Thus, it is difficult to ascertain a clear picture on the level of progress of the Malaysian government against its CBD Aichi targets.</p> <p>Using the precautionary approach due to the potential lack of HCV 3 identification and potential risk to HCV 3 values by forest management activities, which may include habitat removal and fragmentation, this indicator is considered specified risk.</p>		
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		<p>Risk specification In conclusion, HCV 3 is identified and/or its occurrence is likely in the area under assessment and it is threatened by forest management activities (specified risk threshold (17) is met).</p>		
<p>3.4 HCV 4</p> <p>Subcategories:</p> <p>4.1 - Includes dam catchment areas and any forest area legally gazetted as a Protection Forest for water protection area under the Water Resources Enactment 1998 or Class I Protection Forest Reserve under the Forest Enactment 1968, forest management plan, and Forest Timber Licence, or areas gazetted for watershed protection under any other State or</p>	<p>4.1: 1, 2, 9, 44</p> <p>4.2: 2,3, 9, 30, 44, 46</p> <p>4.3: 2, 22, 23, 44</p>	<p>HCV Occurrence</p> <p>4.1 - During the wet season, major rivers in Sabah are commonly flooded and sedimentation clearly occurs throughout the season. In areas where forest has been converted to other uses such oil palm, flooding is more severe compared to forested land. HCV values occur mostly in upstream areas of the river or even at the headwaters.</p> <p>Designated areas that are critical for watershed protection will normally be demarcated and mapped as per the requirement in the forest management plan (FMP).</p> <p>4.2 - This HCV subcategory can often be found in natural forest areas greater than 2 ha in size and where slopes are greater than 25 degrees. Geographically, Sabah's forested area structure is a mix of mountainous regions, beaches and tropical rainforests. The western side is mostly mountainous, incorporating three of Malaysia's highest mountains. The Crocker Range is the most famous, with mountains up to 4,000 meters in height. Mount Kinabalu is the highest mountain at 4,095 meters. The tropical rainforests of Sabah include the Kinabalu Park which was declared as a World Heritage Site in 2000 due to its ecological diversity.</p> <p>Because of this, slopes greater than 25 degrees are 'no go' areas for logging, unless proper machinery is employed (such as helicopter logging: note that in exceptional cases logging up to 35 degrees can be accepted). The effects of logging on steeper slopes will normally cause soil erosion and embankment failure which may in turn cause landslides.</p> <p>4.3 - Fire may happen anywhere in the forest, especially during dry periods or a prolonged drought. Fire-prone areas – such as Peat Swamp Forest and frequent fire 'hot spots', e.g. acacia plantations must be identified; but the only Peat Swamp Forest in Sabah is in the Klias Peninsula. (Refer to 2010 map of fire-prone areas of Sabah; note fire-prone areas are disjunct. NB Map is to be periodically revised.)</p> <p>Threats and Safeguards HCV 4.1 must be managed carefully by forest managers as this value is critical for human uses such as provision of drinking water, cooking, washing, irrigation and fishing. The threat is greater if there is a water intake point further downstream. The</p>	<p>Sabah Permanent Forest Reserve class II</p> <p>Sabah Permanent Forest Reserve Classes I & III-VII, Sabah Natural Forest State Land and Alienated Land, Sabah Plantation (FR-ITP, State Land and Alienated Land)</p>	<p>Low risk Threshold (21) is met: HCV 4 is identified and/or its occurrence is likely in the area under assessment, but it is effectively protected from threats caused by management activities.</p> <p>Specified risk Threshold (22) is met: HCV 4 is identified and/or its occurrence is likely in the area under assessment and it is threatened by management activities.</p>

<p>federal legislation, if any.</p> <p>4.2 - Erosion Control HCV 4.2 includes forest areas that have been legally gazetted for soil protection or conservation under State laws including forest areas that lie on slopes greater than 25 degrees; forest management plan and riparian areas covered under the Department of Irrigation and Drainage (DID) Guidelines.</p> <p>4.3 - Any specific areas that can act as</p>		<p>management prescription prohibits any harvesting activities in this area and requires restoration of areas that have been disturbed. Hence the impact will be very low on water quality and/or human health and no intervention will be needed.</p> <p>These areas would be designated as sensitive and excluded from harvesting activities. However, there are no clear guidelines on how the catchment is to be managed. It is therefore to be identified and managed as per the prescriptions provided in the FMP using the EIAs. If the catchment areas are identified, they are to be defined as 'no-go' zones and – as stated in relation to Class II Forest Reserves and Plantation (FR-ITP, State Land and Alienated Land) in HCV2 – there is control over the EIAs and the activities are following the regulations and thus there is no threat to water quality or water for human consumption due forest management activities.</p> <p>However, lack of gazettal for protection purposes in Natural Forest State Land and Alienated Land renders this sub-category vulnerable to losing its HCV 4 values in Natural Forest State Land and Alienated Land.</p> <p>In conclusion, HCV4.1 is identified in the area under assessment and is effectively protected from threats caused by management activities in Class II Forest Reserves and Plantation (FR-ITP, State Land and Alienated Land). However, for Natural Forest State Land and Alienated Land its HCV 4.1 values may be threatened by forest management activities, as there are no safeguards if land is not gazetted for protection purposes.</p> <p>4.2 A policy has been put in place so that forest management activities strictly follow the RIL operating procedure in these 4.2 areas. Furthermore, the Government has adopted the Sabah Land Utilization Policy which promotes sustainable development principles and discourages any development on slopes greater than 25 degrees except with permission of the Forestry Department and the use of suitable machinery.</p> <p>Logging at slopes of 25 degrees and above often affects rates of erosion and is considered as high risk. The forest management plan and EIA must be able to identify these areas and identify them on the map and on the ground. It is also recognized that in some cases when other data are not available, then slope may be the only available indicator of erosion hazard. In the event of heavy rainfall, the exposed areas will be affected and landslides might occur.</p>		
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<p>barriers to provide forests with protection from fire, especially forests with high conservation values, in areas that are generally fire-prone and where the consequences are potentially severe, can be considered HCV</p>		<p>Land with natural forest cover provides some protection from erosion – due to the presence of canopy, understorey and leaf litter. The risk of erosion in plantations is greater as most of the land cover is lost during site preparation.</p> <p>Additionally, forest management activities shall conform to the RIL Guidelines whereby forestry activities shall not encroach within 30 metres of each bank of the river, with directional felling to occur away from the riparian zone. This is analysed in the mandatory EIA, which is controlled by SFD. This only applies to PFR; Plantation, and Natural Forest State Land and Alienated Land are managed by Lands & Surveys Department and Natural Resources Office, and available information does not enable an assessment of whether the safeguards are enforced there.</p> <p>HCV4.2 is identified in the area under assessment, but it is effectively protected from threats caused by management activities in Natural Forest in Class II Forest Reserve. HCV4.2 is identified in the area under assessment and it is not effectively protected from threats caused by management activities in Plantation (FR-ITP, State Land and Alienated Land) Natural Forest State Land and Alienated Land.</p> <p>4.3 There is historical evidence of El Niño occurring in many forested areas in Sabah in the late 1990s. This occurrence will aggravate the condition of some forest given that some areas were already degraded. The Sabah Forestry Department cautioned signs of recurrence of the El Niño phenomenon, which will lead to hot weather and prolonged drought in the State (e.g. there were a few incidents between 1997-98 during which 130,000 hectares of permanent forest reserves were destroyed). Therefore, this threat is not occurring all the time but increases during certain seasons. Consequently, all management units must have a fire control unit within the organization and to be ready for this kind of incident. The Sabah Forest Department has also made it mandatory that all FMUs must have a fire prevention action plan, with this to be incorporated in the forest management plan. Water bodies, e.g. rivers, provide good fire barriers; therefore, riparian areas must be maintained to provide barriers to fires. The provision of fire breaks is also an important consideration which has been practised in Sabah, with every worker required to undergo firefighting training. Fire towers are also important structures within any management unit.</p> <p>Open burning is an offence, with the Forest Enactment 1968, and legal action can be taken if anyone is found to have committed open burning. Nevertheless, there are also human-caused incidents that result in forest fires. Therefore, as part of occupational health and safety arrangements, all workers are prohibited from smoking in the forest.</p>		
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		<p>On the other hand, human-caused forest fires do occur but in Sabah these are isolated cases, with no major fire events occurring over the past few years.</p> <p>In conclusion, the fire barrier provisions for Sabah forest management enterprises are a sufficient safeguard and HCV 4.3 areas are not threatened by forest management activities exacerbating threat of fire on the HCV 4.3 values.</p> <p>It is either prohibited to harvest/source from Sabah Permanent Forest Reserve Classes I & III-VII, or harvest is for consumption purposes of local communities. Therefore, there are no safeguards for protecting HCVs from the harvest/sourcing of material, should it occur.</p> <p>Risk specification Low risk for Sabah Permanent Forest Reserve class II. Threshold (21) is met: HCV 4 is identified and/or its occurrence is likely in the area under assessment, but it is effectively protected from threats caused by management activities.</p> <p>Specified risk for Sabah Permanent Forest Reserve Classes I & III-VII, Sabah Natural Forest State Land and Alienated Land, Sabah Plantation (FR-ITP, State Land and Alienated Land). Threshold (22) is met: HCV 4 is identified and/or its occurrence is likely in the area under assessment and it is threatened by management activities.</p>		
3.5 HCV 5	24, 25, 26, 27, 28, 30, 47, 48, 49	<p>HCV Occurrence A forest area may be considered HCV 5 if it contains or is adjacent to settlements that depend on products from that forest for basic subsistence or health needs. Examples include hunting grounds or areas from which minor forest products such as bamboo, rattan and medicinal plants are collected, and which are regularly visited by community members for this purpose. The community may be living either in or adjacent to the forest. However, identification and management of this HCV must always involve participation of the communities themselves.</p> <p>Most settlements are situated at the fringe of or outside the forest management unit. That said, Indigenous people in Sabah still occasionally or seasonally practise customary hunting to supplement their diets – although this use frequently conflicts with biodiversity conservation.</p>	Sabah	Specified Risk Threshold (26) is met: HCV 5 is identified and/or its occurrence is likely in the area under assessment and it is threatened by management activities.

		<p>Threats and Safeguards</p> <p>Within a community, individual fields (ladang) and orchards (dusun) are assigned to families belonging to the community that originally cleared the forest and planted the area. Certain areas (particularly village water catchments) are zoned as protected forest (hutan tagal) which is subject to various controls, with clearance not permitted. It is accepted that outsiders may enter the unprotected parts of a community's territory for hunting or the collection of forest produce. However, clearance of natural forest for plantations requires the consent of the community.</p> <p>Communities can gain communal property rights through applying for an indigenous reserve. Temporary Occupation Licences (TOL) are not allowed to be issued on areas with Native Customary Right (NCR) claims described under the Land Ordinance.</p> <p>Sustainable Forest Management License Agreements (SFMLA) / Long Term License (LTL) holder or its appointed consultant must conduct a Social Baseline Survey of the licensed forest area during the preparation of a 10-year Forest Management Plan to identify or get details of the population and area of the existing village within the Licensed Area. Local community and native people living within and adjacent to the SFMLA area have free access into the forest area for hunting or fruits collection as well as using the forest enterprise's facilities such as school and clinic. They are also allowed to practice the Tagal and Sogit system along the river (a traditional way of fish farming). Ownership in forest reserves is not permitted and to formalize the presence of communities in forest reserves, Sabah Forestry Department has introduced the use of Occupation Permits (OPs). Although the community participates in deciding the duration of and total area covered by the permit, the final decision remains with Sabah Forestry Department.</p> <p>SFMLAs require that land within forest reserves be set aside for communities and that community forestry projects be developed. To formalize the presence of communities in forest reserves, Sabah Forestry Department has recently introduced the use of Occupation Permits (OPs) that can be on PFR, SL, and AL. Although the community participates in deciding the duration of and total area covered by the permit, the final decision remains with Sabah Forest Department. According to Toh and Grace (2013) "Communities tend to have only limited understanding of their indigenous rights as provided in the Land Ordinance, and many communities have not formally registered their traditional claims through Occupation Permits (OP)." However, these issues relate, to State land, and, to a lesser extent, to Forest Reserves although there are a few issues on land tenure right disputes between forest enterprise/private sector and local community.</p>		
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3.6 HCV 6	24, 25, 26, 27, 28, 30, 47, 48, 49	<p>HCV Occurrence Forests are used by the Indigenous people for subsistence farming and forest resources for their daily needs. Households usually clear small areas of land to cultivate hill rice (as a main staple crop), maize, sweet potatoes and other vegetables for subsistence. Most communities also cultivate fruit trees in forest clearings or home gardens. Regarding forest resources, Indigenous communities collect fuelwood, hunt wild animals, harvest wild fruits and plants for food, and gather rattan and timber for the</p>	Sabah	Specified Risk Threshold (30) is met: HCV 6 is identified and/or its occurrence is likely in the area under assessment and it is

		<p>construction of dwellings and for crafts. Forest resources are collected for communities' own consumption and/or for sale.</p> <p>There are significant cultural features recorded and most native chiefs will have knowledge of this detail. Some features are also documented. In addition, all those archaeological sites gazetted under Sabah Museum should be incorporated within the master list for HCV 6.</p> <p>Threats and Safeguards</p> <p>It is not known if any buffer zones have been created to protect cultural values that are present within or outside forest management units. There are sites recognized as having high cultural value within state policy or legislation. However, sites such as burial grounds, and religious and sacred sites at which traditional activities take place, are not being recognized, unless there is evidence and claims are proven to be genuine. There are cases where indigenous peoples have been prevented from accessing burial grounds and sacred sites, and some sites have been permanently removed.</p> <p>There are examples where Natives wanting to register native land have been wrongfully informed by the Lands and Survey Department about procedures and have provided with incorrect forms, resulting in communities given up their land. Courts have ruled that mistakes have been made and should be corrected by the Lands and Survey Department, but according to a local social NGO this has not yet taken place (personal communication, Lanash Thanda).</p> <p>Insufficient notice given of gazettal of areas gazettal – as well as failure to properly consult forest communities – has resulted in communities losing their customary rights to land when it is gazetted as forest reserve or other protected area or when it is alienated for development projects. In early 2015 a ruling was made by the High Court that a proposed alienation of land was withdrawn because the Lands and Survey Department had not given sufficient notice to the Natives claiming native land under Section 13 of the Sabah Land Ordinance (Daily Express http://www.dailyexpress.com.my/news.cfm?NewsID=96067).</p> <p>In Sabah, it is a requirement by the Forestry Department that forest managers must conduct social baseline survey and proper consultation must be done. The minutes of the consultation must be assessed and if possible, interview with the indigenous people can be done to verify such occurrences. Most settlements are located outside the forest management unit and are at the fringes of the forest reserve. If such vales are found within the forest reserve, the forest managers must consult with the local communities by having dialogue between the two parties.</p>	<p>threatened by management activities.</p>
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		<p>On the other hand, the local communities must be able to prove the claims are genuine based on evidence. Therefore, this needs to be scrutinized and hence there is likely a threat to HCV 6.</p> <p>Forest managers should be proactive and have regular consultation with the local communities to address any social issues related to forest and the rights of the native. Social baseline survey must be carried out by forest managers to gather socio-economic data which will also include in-depth cultural study of the local communities living adjacent to the forest reserve. Through the studies, the forest managers will ensure that needs of the local communities are addressed in the preparation of forest management plans.</p> <p>Despite all the safeguards in place, there are issues that happened on the ground pertaining validating the claims by the indigenous people. In most FMUs, the public are prohibited to enter unless there is permission given by the FMU managers for any purposes e.g. collecting forest produce etc. This could only happen when there is genuine consultation take place.</p> <p>Risk exists thus for native people losing their right to ancestral land despite recognized legislative rights to keep this land. Several court cases are ongoing, but there is still need for changed practices when allocating FMEs.</p> <p>It is either prohibited to harvest/source from Sabah Permanent Forest Reserve Classes I & III-VII, or harvest is for consumption purposes of local communities. Therefore, there are no safeguards for protecting HCVs from the harvest/sourcing of material for controlled wood, should it occur.</p> <p>Risk specification In conclusion, HCV 6 is identified and/or its occurrence is likely in the area under assessment and it is threatened by management activities, thus this indicator is considered specified risk (threshold (30) is met).</p>		
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Risk assessment – Sarawak

Indicator	Sources of Information	HCV occurrence and threat assessment	Functional scale	Risk designation and determination
3.0	1-13	<p>Occurrence There is currently no HCV assessment for the whole of Sarawak.</p>	Sarawak	Low risk. The thresholds

		<p>The boundaries of Forest Management Units in Sarawak are surveyed by staff of the Forest Department. They are depicted as waypoints and distances, and described in the licence. Except for the two PEFC (MTCS) certified FMUs (Anap Muput [1] & Segan [2]), licenced FMUs do not have HCV boundaries. Identification and designation of HCVs within a FMU is not required (by law) in Sarawak. A Forest Management Plan is mandatory for all long-term licensees, but these do not require HCV assessments or identification. Some basic requirements for setting aside areas such as riparian areas and steep slopes are required for forest management plans, and therefore these areas which can be proxies for some HCVs should be identified. Biodiversity and social values, however, are not required to be assessed, except in concessions of greater than 500ha. Here, an environmental impact assessment is required, the purpose of which is to determine the impact of logging on the existing values of the forest, vaguely defined as important habitats and important species. However, there are no safeguards to ensure the quality of these assessments, and ensure that they do identify and record special species and habitats in practice.</p> <p>Forest managers of FMUs targeted for certification are required to manage the HCVs that are present, but apart from that, HCV assessments are not carried out as part of forest management in the state. Coupe-specific management actions introduced through standard operating procedures (SOPs) following a HCV assessment are implemented. There is currently no means to determine the quality of the HCV assessments.</p> <p>Given the recognised importance of the conservation values of Malaysian forests, a variety of relevant information is available that can be used as proxies for the various HCVs. This includes information about endangered species, maps of forest ecosystems, and reports on indigenous peoples. In combination with the application of a precautionary approach, these can be used to conclude whether HCVs may occur in forest areas.</p> <p>There is current and relevant information on HCV presence for a selected few FMUs. These are a result of "projects" that have been conducted within those FMUs, e.g. Selaan Linau FMU [9], Kubaan Puak FMU [10, 11]. WWF Malaysia has been working with the Sarawak Timber Association to increase awareness amongst industry and government on the need for HCV assessments for Sarawak [12].</p>		<p>(1) Data available are sufficient for determining HCV presence within the area under assessment; AND (2) Data available are sufficient for assessing threats to HCVs caused by forest management activities, are met.</p>
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	<p>Zone (SPFZ), in the Bintulu region. Its LPF covers 500,000ha, with 180,000ha planted and over 100,000ha designated as conservation areas. These conservation areas include ancestral community fishing grounds and wetlands (Binyo Penyilam) [4] and karst outcrops (Bukit Sarang) [5], well managed and well researched areas over many years. Both these conservation areas have been proposed as national parks [6]. The SPFZ has not sought certification to date. If it does, these areas would fulfil all the HCV requirements. For LPF holders who have no plans for certification, no HCVs are being identified.</p> <p>Threats and Safeguards</p> <p>There is little specific information available on the effects of forest management on the high conservation values of Sarawak's forests. Much of what is available covers deforestation and forest degradation quite generally in terms of how the impacts and their causes are described. For example, there is information on threatened and endangered species in the State, but descriptions of causes are broad, often referring to deforestation and forest degradation as the causes (where broader land use issues such as conversion and agricultural expansion are relevant), rather than forest management (or any other specific cause) specifically. Forest management and land clearing/conversion (for timber or other plantations, or other reasons) are often grouped together, and little published information on forest management at present is published. Information on forest management and impacts on the rights of communities and indigenous (relevant to HCVs 5 and 6) is somewhat more prevalent.</p> <p>The State Wild Life Protection ordinance 1998 [3] lists two categories of protection for species, and the CITES App 1 listing is applicable. The Malaysian National Wildlife Act 2010 has not been ratified in Sarawak. The Forests Bill 2015 [8] is silent on extraction of wildlife from all classes of forests. Safeguards do exist for listed protected species (Wild Life Protection Ordinance, 1998) and CITES species, and selected species (e.g. Orang Utan, Rafflesia) have special status linked to tourism value.</p> <p>The requirements and stipulations of Forest Licences in Sarawak are confidential documents, and cannot be examined. EIAs for timber licences are, likewise, not-for-public consumption.</p> <p>Risk specification</p> <p>Low risk. The following thresholds are met:</p>		
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		(1) Data available are sufficient for determining HCV presence within the area under assessment; AND (2) Data available are sufficient for assessing threats to HCVs caused by forest management activities.		
3.1 HCV 1	3, 8, 14-21, 26, 33, 37, 44-47, 54, 64, 65	<p>HCV Occurrence</p> <p>All gazetted protected areas (national parks, wildlife sanctuaries, and nature reserves) are used as a proxy to partly identify HCV1, and no timber may be sourced from these areas. However, there are a host of endangered/threatened species that are confined to the main forest types subjected to timber extraction. Furthermore, endemic species are present, and while forest areas that are important to wildlife for feeding, nesting, roosting, migration or contain saltlicks are unsurveyed and undocumented, at least some of these are likely to exist in some parts of the AuA.</p> <p>Sarawak's forests exhibit a diverse and iconic assemblage of terrestrial plant and animal life. Its eight hornbill species [45], and eleven primates, including an unprecedented five sympatric endemic colobines (Leaf-monkeys, including the iconic Proboscis Monkey <i>Nasalis larvatus</i> [44], are examples of this diversity. Intra-specific variations are dramatically demonstrated, with several sub-species and melanistic forms exhibited from west to east. The Prevost's Squirrel (<i>Callosciurus prevostii</i>) [46] and the White-rumped Shama (<i>Copsychus malabaricus</i>) are examples.</p> <p>With respect to endangered species, the Sundaic Lowland Forests and Sundaic Montane Forests (Biomes) are present in the AuA and these two biomes are characterised by one of the most endangered avifaunal assemblages in the world [14]. Level lowland forest species such as the wrinkled hornbill (<i>Aceros corrugatus</i>), and hill forest specialists such as the Bornean Kauri (<i>Agathis borneensis</i>) (EN), are particularly vulnerable, and the White-shouldered Ibis (<i>Pseudibis davisoni</i>) (CR), Bornean Peacock Pheasant (<i>Polyplectron schleiermacheri</i>) (EN) and the Mountain Serpent Eagle (<i>Spilornis kinabaluensis</i>) (VU) are representatives of globally significant endangered species [15]. The Bornean Orang Utan (<i>Pongo pygmaeus</i>) is endemic, recently differentiated from the Sumatran species, and is listed as critically endangered [14]. [37]</p> <p>Borneo has a high level of endemism, and concentrations of restricted-range species of mammals, birds (the best documented – [see 14, 16] and plants. Around 5,000 species (34% of those found on the island) of flowering plants,</p>	Sarawak	Specified risk. Threshold (8) is met: HCV 1 is identified and/or its occurrence is likely in the area under assessment and it is threatened by management activities.

		<p>and 44 mammal species are endemic to Borneo [17]. There are 27 species of globally threatened birds, and fifty-one endemic species [14, 16].</p> <p>Forest areas that are important to wildlife for feeding, nesting, roosting, migration or contain saltlicks are unsurveyed and undocumented. However, limited information exists on the mass migrations of the Bornean Bearded Pig (<i>Sus barbatus</i>), and the large congregations of the Giant Flying Fox (<i>Pteropus vampyrus</i>). Forest migrants from the northern hemisphere are a significant addition to the avifauna. Maps of Endemic Bird Areas on the Global Forest Watch [33] show a considerable area of these in Sarawak, particularly near the Indonesian border and in the north-east of the state.</p> <p>The above values are found in natural forest ecosystems. Plantations may also contain areas of natural forest and be adjacent to natural forest and therefore may also contain this HCV.</p> <p>Threats and Safeguards</p> <p>All endangered/threatened species that are confined to the main forest types subjected to timber extraction are at risk from direct management activities. Furthermore, logging operations have been detected inside protected areas in the past (see category 1 assessment). The most impactful activities are, in order of severity: a) lack of control of entry into concessions, allowing the workforce and outsiders to hunt and trap within active concessions; b) severely damaging extraction methods, both to forest structure and to terrain such as riverine zones and steep slopes which is linked to habitat removal and/or fragmentation; and c) no set-asides (conservation areas or HCV areas).</p> <p>LPFs issued within PF directly result in habitat removal, habitat fragmentation and eventually, introduction of invasive species through tree planting. The government incentive of allowing 20% of a licenced area to be converted to oil palm is a major cause of further immediate removal and fragmentation of habitat once a LPF is issued.</p> <p>Forest management plans are required by the Forest Bill (2015) to set aside particular areas such as riparian areas and steep slopes for protection, but there is no requirement for protection of species. This is because species protection does not come under the Forest Bill, but under the wildlife protection ordinance, which relates to protected areas, rather than forest management activities. This division between areas protected for land conservation/forest protection and</p>		
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		<p>wildlife protection results in no effective protection of wildlife species, protected or otherwise.</p> <p>Similarly, forest management plans must also contain standard operating procedures for operational activities. These include harvesting plans, storage of chemicals, use of machinery, etc., but do not cover protection of species. The only relevant area that is covered by FMPs is surveillance/patrolling of the FMU boundaries, which should prevent hunting. However, there is no provision within the Forest Bill to prevent hunting of wildlife within FMUs, which is covered under the Wildlife protection ordinance.</p> <p>Environmental impact assessments are required for logging licences above 500ha [47, 54]. The purpose of these is to determine the impact of logging on the existing values of the forest, vaguely defined as important habitats and important species. Normally, species and habitats that are likely to occur in the area are listed, but the areas are not comprehensively surveyed for any of these values. Instead, projections are made from cursory surveys in a pilot area determined by the logging company. Pilot areas are allocated by the company, and can be allocated where it is unlikely that protected species may be found. It is also possible that a record of a certain species could be ignored, due to arguments that it is unlikely to occur in the rest of the area to be harvested. A key issue is that there are no safeguards for ensuring that these assessments are conducted to a certain quality or level of rigour that would correctly identify relevant habitats, or that even if a habitat is identified, that it is effectively protected.</p> <p>Hunting is the single-most factor affecting continued survival of wildlife in Sarawak [21]. It is both unregulated and intensive throughout the state, and within FMUs as well. Logging operations and roads provide access to forests (as well as fragment the habitat itself) [19, 61, 64, 66], and uncontrolled hunting is decimating wildlife throughout the State. Forest Managers are unable to control hunting within their concessions. Political patronage and "cultural practices" are firmly entrenched in the State, and any attempts to manage hunting are met with fierce resistance. Blurred lines between "subsistence hunting" and "sport hunting" complicates the issue.</p> <p>Many FMUs are adjacent to protected areas and often there are minimal or almost no buffers between them [18]. Management activities do not control access to areas outside their boundaries by workers and outsiders. Likewise, protected areas do not have surveillance and patrolling of their boundaries.</p>		
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		<p>While no timber sourcing is permitted from protected areas [65], the risk assessment for legality designated specified risk for the indicator for protected sites and species (1.9), noting that logging operations have been detected inside national parks in the past.</p> <p>A number of species have protection status within the State, with the Wildlife Protection ordinance listing two categories of protection: totally protected species, and protected species [3]. The Orang utan is the only endangered species researched throughout the area under assessment, and protected wherever it occurs through legal gazettelement [19]. This protection is not effective, however, as the law merely states that orang utans cannot be hunted, and not that logging cannot happen where orang utans occur. That being said, once detected, the licence for the area will eventually be revoked, but this is a special case for a very famous species, and it is unlikely to be the case for other, lesser-known, protected species. For Planted Forests, the LPFs are extinguished if orangutans are detected. Note: the distribution of orang utans in the State can be considered to be well-documented now, and no licences are issued in areas where they occur (anon, pers. comm).</p> <p>The Forests Bill 2015 [8] is silent on extraction of wildlife from all classes of forests. Safeguards do exist for listed protected species (Wild Life Protection Ordinance, 1998) and CITES species, and selected species (e.g. Orang Utan, Rafflesia) have special status linked to tourism value. Bornean Ironwood (<i>Eusideroxylon zwageri</i>) is banned from export. These safeguards/bans are considered ineffective in protecting the species from being threatened by commercial logging because they are not implemented on the ground. The Forestry department does not have jurisdiction to conduct patrolling or require protection measures for endangered species. Only the wildlife department has this jurisdiction, but they are not permitted to enter FMUs without explicit permission from the forestry department.</p> <p>Based on the lack of control hunting within FMUs, severely damaging extraction methods, both to forest structure and to terrain such as riverine zones and steep slopes which is linked to habitat removal and/or fragmentation, and no set-asides (conservation areas or HCV areas), Specified Risk is assigned. The most impactful activities are, in order of severity: a) lack of control of entry into concessions, allowing the workforce and outsiders to hunt and trap within active concessions; b) severely damaging extraction methods, both to forest structure and to terrain such as riverine zones and steep slopes which is linked to habitat</p>		
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		<p>removal and/or fragmentation; and c) no set-asides (conservation areas or HCV areas).</p> <p>It is prohibited to harvest/source from Sarawak Totally Protected Areas, Sarawak Native Customary Rights Land, Sarawak Water Catchment Areas, Sarawak State Land, and Sarawak Alienated Land. Therefore, there are no safeguards for protecting HCVs from the harvest/sourcing of material, should it occur. Sarawak Oil Palm Land is cleared and converted to palm oil plantations. Therefore, any HCVs present will be lost completely.</p> <p>Malaysia is a signatory to the Convention on Biological Diversity (CBD). Malaysia's Fifth National Report to the Convention on Biological Diversity states that the country's monitoring against CBD targets is weak: "The lack of cohesive and comprehensive monitoring mechanisms/indicators towards the National Policy on Biological Diversity has posed some challenges towards measuring actual progress in certain conservation areas. Malaysia recognises the need to step up efforts on awareness raising on the importance and significance of biodiversity conservation, protection and management across all levels of society in Malaysia" [26].</p> <p>Risk specification Threshold (8) is met: HCV 1 is identified and/or its occurrence is likely in the area under assessment and it is threatened by forest management activities. It is therefore considered specified risk for this indicator.</p>		
3.2 HCV 2	32, 33, 42, 43, 47-51, 61, 62	<p>HCV Occurrence HCV 2, occurs as intact forest landscapes within the area under assessment, primarily along the borders with Indonesia and Brunei [32, 33].</p> <p>The "Heart of Borneo" refers to the main part of the island of Borneo where forests remain intact [48 – 51]. Well-noted for its biodiversity, the Heart of Borneo is one of the largest transboundary rainforests remaining in the world, covering 22 million hectares in both Sabah and Sarawak, as well as in Indonesia and Brunei Darussalam. In 2007, the governments of Brunei Darussalam, Indonesia and Malaysia agreed that the remaining vital areas of the rainforest needed protecting, and the Heart of Borneo Initiative was established [50, 51]. The aim of the programme is to conserve the biodiversity of the Heart of Borneo for the benefit of the people who rely upon it through a network of protected areas, sustainable management of forests and other sustainable land uses [51]. The Sarawak Forestry Department reports that out of 2.1 million ha of forested</p>	<p>Natural Forest</p> <p>Plantation and Agricultural Land</p>	<p>Specified risk. Threshold (12) is met: HCV 2 is identified and/or its occurrence is likely in the area under assessment, and it is threatened by management activities.</p> <p>Low risk. Threshold (9) is met: There is no HCV 2 identified and its occurrence is unlikely in the area under assessment.</p>

		<p>land within the Heart of Borneo area, about 1.6 million ha are occupied by Permanent Forest, while Protected Areas occupy about 526,652 ha [51]. The rest of the Heart of Borneo area in Sarawak is said to be agriculture plantations, native customary rights (NCR) land and alienated land.</p> <p>Assessments for landscape-level ecosystems have not been conducted at the state level. Apart from the Forestry Department, there is no agency involved in forests, forestry or forest-related matters. The national parks and species conservation needs of the state are also under the jurisdiction of the Forestry Department. Therefore, any assessment of a landscape ecosystem would be conducted under the Forestry Department.</p> <p>HCV2 are deemed to not be present within plantations in Sarawak. An Intact Forest Landscape (IFL) is a seamless mosaic of forest and naturally treeless ecosystems within the zone of current forest extent, which exhibit no remotely detected signs of human activity or habitat fragmentation (The IFL Mapping Team, 2014).</p> <p>Plantations and agricultural land do not conform with this definition, nor do they conform with other sub-categories within this HCV, which focus on naturalness of ecosystems and great scale. Furthermore, ecologically speaking, plantations are areas that have been cleared of original vegetation, possibly drained and cut and maintained with an alternative plant cover (Copenhagen Zoo, 2010). These lands are considered ecologically altered – cleared and no longer in their original state or maintained in a state of arrested or deflected succession (Copenhagen Zoo, 2010).</p> <p>Threats and Safeguards From the maps available [32, 33], the western IFL is entirely consistent with the boundaries of Lanjak Entimau Wildlife Sanctuary and Batang Ai National Park, both contiguous with Bentuang Karimun National Park across the border in Indonesia. The northernmost IFL is also consistent with the boundary of Mulu National Park. These are the two largest protected areas in Sarawak, and with dipterocarp-dominated forests.</p> <p>The IFLs marked to the east, from Ba'Kelalan southwards are largely the National parks of Pulong Tau, and Usun Apau. These are highland areas, with limited commercial timber value. The degraded areas along their boundaries are (continuing) logging activities along the lower slopes.</p>		
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3.3 HCV 3	16-18, 22-26, 47, 54, 58-60	<p>HCV Occurrence HCV3 occurs within the area under assessment. Habitats of high conservation significance include peat swamp forests, level dry lowland mixed dipterocarp forests, freshwater swamp forests, and tropical heath forest. The whole of the island of Borneo is considered a biodiversity hotspot [58, 60].</p> <p>Level lowland dipterocarp forest is mixed dipterocarp forest growing on flat terrain below 100m in elevation. It has the highest diversity of tree species, and the dipterocarp trees grow to their largest on this terrain. This forest type has almost disappeared completely in Sarawak, and the small remaining areas are mostly within protected areas. Areas of this habitat are usually found on lowland riparian environments, and within FMUs, are almost always the first to be harvested because it has the largest trees, and highest stocking. Plant and animal diversity is usually highest in this habitat. Most of the globally threatened species of mammals and birds are those confined to, or largely restricted to this habitat. [16 – 18]</p> <p>Freshwater swamp forest is a successional swamp forest type, between mangrove forests and peat swamp forests. It has always been a rare habitat compared with the other habitat types on Borneo, and in Sarawak. It is occasionally found within mixed dipterocarp forest, in depressions or basin formations. It is characterized by a specific faunal and floral assemblage. Only very small patches remain. [22]</p> <p>Tropical heath forest is locally known as kerangas forest, an iban word meaning “where rice will not grow”. Tropical heath forest grows on nutrient-poor sandy soils found in western Sarawak and on sub-montane elevations. This habitat is confined to western Borneo, and most of its distribution is in Sarawak. It is characterized by short stature trees, and a proliferation of drought-tolerant plant species. It is a remnant habitat of an ancient Sundaland ecosystem, today called Riau-Pocket vegetation. [23]</p> <p>Peat swamp forests used to be extensive in Sarawak, but unlogged areas of this habitat can only be found in Brunei. The peat swamps of Sarawak are unique, with an endemic dipterocarp defining this peat swamp ecosystem – the Alan tree (<i>Shorea albida</i>). This habitat occurs on rising elevated domes from river channels, and forms concentric circles of six different phasic communities. Alan grows in monotypic stands in phasic communities, reaching heights of over 70m. [24]</p>	Sarawak	Specified risk. Threshold (17) is met: HCV 3 is identified and/or its occurrence is likely in the area under assessment and it is threatened by forest management activities.
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	<p>low stocking of commercial species, so there is less risk that this habitat type will be threatened by logging.</p> <p>Tropical heath forests are less scattered than previous two habitats, and where present, are usually in contiguous extents. These are not identified as HCVs in Sarawak, and are commonly harvested. The risk for this habitat type is particularly high.</p> <p>Peat swamp forests in their original unharvested state do not occur in Sarawak any longer. There is minimal harvesting in this habitat type and the risk to this habitat type is therefore low. It is however, one of the most critically endangered habitat types in Sarawak. There is very little information on the long-term effects of logging on the flora and fauna of peat swamp forests, however, evidence from forestry assessments indicates that selective logging causes changes in forest structure and composition [25].</p> <p>It is prohibited to harvest/source from Sarawak Totally Protected Areas, Sarawak Native Customary Rights Land, Sarawak Water Catchment Areas, Sarawak State Land, and Sarawak Alienated Land. Therefore, there are no safeguards for protecting HCVs from the harvest/sourcing of material, should it occur. Sarawak Oil Palm Land is cleared and converted to palm oil plantations. Therefore, any HCVs present will be lost completely.</p> <p>Malaysia is a signatory to the Convention on Biological Diversity (CBD). Malaysia's Fifth National Report to the Convention on Biological Diversity states that the country's monitoring against CBD targets is weak: "The lack of cohesive and comprehensive monitoring mechanisms/indicators towards the National Policy on Biological Diversity has posed some challenges towards measuring actual progress in certain conservation areas. Malaysia recognises the need to step up efforts on awareness raising on the importance and significance of biodiversity conservation, protection and management across all levels of society in Malaysia" [26].</p> <p>Risk specification Based on the existence of at least four highly endangered ecosystems within the area under assessment, high likelihood of management activities impacting on the highly endangered ecosystems and unassessed remaining areas of this HCV, specified risk is assigned. Threshold (17) is met: HCV 3 is identified and/or its occurrence is likely in the area under assessment and it is threatened by forest management activities.</p>		
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<p>3.4 HCV 4</p>	<p>27, 63</p>	<p>HCV Occurrence HCV 4 occurs throughout natural forests in Sarawak in the form of steep slopes (areas under Terrain 4 areas (slopes exceeding 35 degrees)) and water catchment areas identified by the Drainage and Irrigation Department (DID) [27]. Publicly available information does not map these areas out, nor describe specific locations. Areas under Terrain 4 are identified prior to the issuance of licenses, so individual companies should have information on these areas.</p> <p>With respect to planted forests, HCV 4 are mapped out for some of the larger LPF holders seeking certification. The two PEFC certified concessions will have detailed maps of their HCV demarcations, but only low-resolution images are publicly available.</p> <p>Anecdotal evidence, through anonymous personal communication, suggests that some licensed areas overlap entirely with designated water catchment areas.</p> <p>Threats and Safeguards Following the issuance of a licence, the forest manager or contractor is required to present a plan for extraction from steep slopes, sometimes using heli-logging. These steep slopes are not assessed for their role in erosion control or water-catchment functioning, although their role is recognised. The result is the extraction plan is not evaluated for its protective functions – it is solely evaluated on how much timber can be extracted. The protection of steep slopes can only be ensured by appropriate protection and monitoring measures being implemented and enforced. Without this enforcement, the slopes continue to be threatened.</p> <p>Water catchment areas are identified by the DID [27], but timber licenses are issued by the Forestry Department. There are no legal safeguards to ensure licenses are not issued for water catchments areas. This is particularly significant with regards to LPFs, where conversion is implicit. Widespread incidents of periods of flooding and drought in downstream agricultural and urban areas in the past has been attributed to licensing in water catchments, but this information is quite old. [63]</p> <p>Riparian areas are generally identified within concessions, but legal requirements are insufficient to protect buffers from management activities [27]. These narrow strips of riparian forests quickly become degraded due to wind</p>	<p>Sarawak</p>	<p>Specified risk. Threshold (22) is met: HCV 4 is identified and/or its occurrence is likely in the area under assessment and it is threatened by management activities.</p>
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		<p>damage, intensive hunting and cutting of wood by locals. There is no management activity to effectively protect these conservation zones.</p> <p>For LPFs, the biggest threat to these riparian areas (which are not cleared when forest is cleared for plantation establishment) is that planting (for plantation establishment) does not end up going ahead). They quickly become degraded due to wind damage, intensive hunting and cutting of wood by locals. There is no management activity to effectively protect these conservation zones.</p> <p>It is prohibited to harvest/source from Sarawak Totally Protected Areas, Sarawak Native Customary Rights Land, Sarawak Water Catchment Areas, Sarawak State Land, and Sarawak Alienated Land. Therefore, there are no safeguards for protecting HCVs from the harvest/sourcing of material, should it occur. Sarawak Oil Palm Land is cleared and converted to palm oil plantations. Therefore, any HCVs present will be lost completely.</p> <p>Risk specification Due to the high likelihood that management activities have adverse impacts on Terrain 4 areas, water catchments identified by the DID, and riparian zones, specified risk is assigned. Threshold (22) is met: HCV 4 is identified and/or its occurrence is likely in the area under assessment and it is threatened by management activities.</p>		
3.5 HCV 5	28-31, 34-36, 40, 43, 44	<p>HCV Occurrence HCV5 is present unevenly across the area under assessment. There is no area of forest that has not been used by indigenous communities at some point, and all licensed areas either have communities within their boundaries, or have claims upon their areas by communities who are not present within their boundaries. Sarawak is also widely known to be populated by a wide range of ethnic communities. LandMark has published an (incomplete) interactive map of lands that are collectively held and used by Indigenous Peoples and local communities worldwide. In Sarawak, such lands are mapped in the north-east of the state [40].</p> <p>Officially, Sarawak comprises some 40 ethnic groupings. However, in reality there are over 60 distinct tribes, distinguished by languages and dialects. “Dayak” is a collective term used to group all indigenous communities [28]. They all identify with the forest in numerous ways, and strongly assert their rights to use the forest. Many sub ethnic indigenous groups are forest based. For example, Colchester et al refer to a Penan community that still depends greatly</p>	Sarawak	<p>Specified risk. Threshold (26) is met: HCV 5 is identified and/or its occurrence is likely in the area under assessment and it is threatened by management activities.</p>

	<p>on forest products and wildlife from the surrounding forest areas and nearby rivers and streams for their daily needs [29].</p> <p>The Penans are the most nomadic native tribe, although most have abandoned their nomadic lifestyles out of necessity, and the disappearance of the large forested landscapes that supported them in the past. Although today largely living in permanent settlements, they still depend on the forests for satisfying almost all their fundamental basic necessities. Their settlements are extremely remote with poor access or connection to the road networks.</p> <p>The greater grouping of Dayaks has their permanent settlements in close proximity to navigable stretches of rivers or confluences and are highly skilled in shifting agriculture while still maintaining a dependence on forest and river resources [30]. In a study of a community in the Bau district, it was concluded that the community's dependency towards the forest is "fairly high", with forest dependencies including sites to build houses, for agriculture purposes and as a source of water supply [31].</p> <p>The primary critical uses of the forest by local communities are: hunting, fishing, timber for buildings and boats, medicinal plants, fruits and other edible plants, various sources of oils, NTFPs for household materials and handicrafts, resins for buildings, cooking and sealants for boats, etc.</p> <p>Threats and Safeguards</p> <p>Lands that have a Native Customary Rights (NCR) title are excluded from a licenced area. Lands that are claimed as NCR, but have not been resolved (by court or other means) are not excluded from licenced areas. An NCR titled area may be harvested if there is an agreement between the company and the owner of the NCR title. This requires the approval of the Forest Department.</p> <p>Under the Forest Ordinance, at the request of a community, the State can constitute any Stateland as a Communal Forest (CF). The community can take any forest produce from this area for their domestic use. Communities themselves need to apply for allocation of their land as Community Forest. Due to lack of knowledge of the community, this is often not done, which leads to the possibility that forest land will be allocated as forest concession, or converted to agriculture despite communities using the land. Some cultural areas, such as burial sites, are automatically protected by law.</p> <p>Although land ownership is legally prescribed and clear, there are issues with</p>		
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		<p>Native Customary Rights disputes between forest enterprise/State Government and local community/tribes. Local Indigenous people have constructed blockades against forest enterprises and, similarly, the former have been denied access to their customary lands [34]. Various indigenous groups continued to resist logging and other activities being carried out through protests and legal actions to prevent the loss of their traditional lands [43]. These include the Penan community of Long Benali, the Iban longhouse of Rumah Nyawin and four Iban longhouses in Sungai Naman in Durin.</p> <p>"Allegations of NCR breaches in the allocation of leases over forestland have been the most contentious issue in plantation development in Malaysia for the last 20 years. Though federal and state laws enshrine the rights of local people to the land on which they have traditionally depended, affected communities and nongovernmental organizations claim that these rights have been almost universally abused in the issuance of logging and plantation licenses. NCR conflicts are a feature in almost every new plantation project in Malaysia, with the situation being particularly serious in ... Sarawak" [35]. Despite the requirement that communities be provided with the opportunity to raise their claim to an area to be gazetted, the process of gazettal might however be made public with a discreet notice that is not read by communities, with no claims therefore raised. Thus, tenure rights disputes between forest enterprises and local communities still occur after gazettal of a forest area. Several legal cases are currently in court; in 2014 more than 300 NCR land cases were pending in the High Court; and ten cases had been settled in favour of the native people [36]. Global Witness has reported that indigenous communities across Sarawak have filed over a hundred cases in the courts, suing the government and companies for encroachment onto their ancestral lands [43]. Further, they state that logging and land clearance usually continue while cases are pending, meaning communities' legal victories often come too late to save their forests.</p> <p>The biggest risk to HCV 5 is the prevalent perception of many forest managers, and many political leaders in the State government, that all native tribes should be brought into the mainstream economy. This is consistent with Malaysia's objective of becoming a developed nation by 2020. Critical needs of native peoples should be provided by the government, or through human development programmes. Companies are expected to bring development and poverty alleviation to local communities, who should not be depending on forests for their basic needs.</p>		
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	<p>Nevertheless, forest managers are usually extremely cautious when dealing with communities, and will usually adapt their harvesting operations and plans according to locations and claims of local communities (anonymous personal communication). This is seen as one of the three major obstacles to the development of planted forests in the State.</p> <p>Because of long standing confrontations and un-resolved claims, forests providing for critical needs of communities are under lower risk than other forests. Management activities are usually sensitive to these forests where identified. There are of course exceptions with recalcitrant companies, but these are very much the exception. What is critical, however, is that while these approaches are adopted across much of the licensed areas in the state, there is still risk of HCV5 being damaged or destroyed because of the following:</p> <p>Documented discussions, engagements and agreements with communities are generally kept confidential. Without transparency, the details of agreements with communities cannot be verified by third parties. It is widely known (anonymous personal communication) that community leaders who negotiate agreements with license holders are appointed by the government, and their loyalties to their communities are frequently questioned.</p> <p>The sheer number of conflict cases brought to court is an indication that the issue remains, and a consistent and publicly acceptable solution has yet to be found. The time taken for cases to go through legal proceedings is long, and more cases continue to be filed. The education level, and knowledge of the local people remains low, and it must be assumed that there are other areas which qualify as HCV5 but have not been identified, and these continue to be converted.</p> <p>The widespread distribution of the various ethnic groups in Sarawak will always pose a challenge. Communities do not remain in one place for ever. New areas are constantly being settled. This means that an area serving a critical need for one community may cease to serve that function in the future, and likewise, new areas will begin serving that function as well.</p> <p>It is prohibited to harvest/source from Sarawak Totally Protected Areas, Sarawak Native Customary Rights Land, Sarawak Water Catchment Areas, Sarawak State Land, and Sarawak Alienated Land. Therefore, there are no safeguards for protecting HCVs from the harvest/sourcing of material, should it</p>		
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		<p>occur. Sarawak Oil Palm Land is cleared and converted to palm oil plantations. Therefore, any HCVs present will be lost completely.</p> <p>Risk specification Based on a) widespread occurrence of indigenous communities within the area under assessment, b) non-transparent publicly available records of consultations and agreements with local communities, c) continuing conflict cases being brought to court arbitration and ultimately d) a high likelihood of forest management activities threatening sites and resources fundamental for satisfying the basic necessities of local communities or indigenous peoples, specified risk is assigned. Threshold (26) is met: HCV 5 is identified and/or its occurrence is likely in the area under assessment and it is threatened by management activities.</p>		
3.6 HCV 6	36, 38, 39, 41-43, 57	<p>HCV Occurrence There is virtually no forest in Sarawak that has not been touched or lived in by its native people. Therefore, the entire area under assessment is treated (and claimed) by the peoples of Sarawak as HCV6. In the absence of a state-wide assessment of HCVs through engagement, there will always be disputes and conflicts between companies and natives. However, unlike HCV5 which can be subjective or temporal in their locations, HCV6 tend to be more permanent, and independent of the current location of a specific community.</p> <p>Examples of HCV6 in the light of native perspectives include: forests that have historically been left as hunting grounds, some small, some extending several thousands of hectares; areas where nomadic tribes used to (but no longer) wander, and represent to them a visible, standing statement of their heritage and identity; mosaics of lakes and rivers where communities have traditionally fished; specific features like mountain tops, outcrops in the forest, caves, and stretches of rivers which have mystical legends attached to them; burial areas which are not a single site, but extend over several river systems and ridges; areas where historical battles have occurred between tribes; ancestral routes used by migrating tribes across Borneo.</p> <p>The Bruno Manser Fund's Sarawak Geoportal has mapped the area (but not specific HCV6 areas) of the Eastern Penan ("Penan Selungo"), in which HCV6 is likely to occur, however the area of Western Penan is not mapped, and neither are the areas of other indigenous peoples [41]. In some cases, areas such as those containing megaliths are documented or mapped (e.g. [38, 39]), but aside</p>	Sarawak	<p>Specified risk. Threshold (30) is met: HCV 6 is identified and/or its occurrence is likely in the area under assessment and it is threatened by management activities.</p>

	<p>to these instances, specific areas that can be considered HCV6 are generally not documented and/or mapped.</p> <p>Some license holders have engagement programmes with local communities, and HCV6 has been identified in some FMUs (anonymous personal communication). These are highly confidential, and therefore they cannot be assessed. HCV6 that has been identified are mapped out and designated as community cultural sites. The term HCV is not evenly applied to these designations, but the purpose and outcomes are the same. For planted forests on SL or AL, and subsequently added to PF, such community values will be subjected to the same engagements. The records of these engagements, and the agreements that have emerged from them, are presumably included within the Forest Management Plans, and endorsed by the Forest Department. These are not publicly available documents.</p> <p>Threats and Safeguards</p> <p>For a long time, forest operations have not identified and documented cultural areas, and the fundamental risk to this HCV in Sarawak is that this has not been done, and is not being done in the present. The biggest risk comes from planted forests, where forests are converted to tree plantations, thereby permanently eliminating the cultural attributes within any specific area. Logging of natural forest is less damaging; however, risk still applies to these forests.</p> <p>There are few legal requirements for the protection of HCV 6. However, after years of conflict, high value is placed on good community relations. It has been said (anonymous personal communication with some forest managers) that where identified, HCV6 are generally well protected from forest operations. The primary safeguard is the establishment of company-community relations committees, which oversee the adherence to agreements. This is supported by the Forest Bill 2015, which clearly articulates the protection to be afforded to cultural sites such as burial grounds. These agreements are however, not public documents, and therefore cannot be verified by third parties.</p> <p>The number of court cases is probably testament to the fact that not all companies have obtained such agreements with the communities, or that there is no agreement on what areas are HCV6. There is no publicly accessible register of relevant court cases, however anecdotal evidence exists about some of them [36, 42, 43, 55-57]. Various indigenous groups continued to resist logging and other activities being carried out through protests and legal actions to prevent the loss of their traditional lands. Concessions have been mapped</p>		
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		<p>over areas where indigenous peoples have filed land claims in courts, and logging roads have been mapped within these areas [41, 42].</p> <p>It is likely that only a very small number of cultural sites have been identified by a few companies, and the majority have yet to do so. Per (anonymous) personal communication, the proposed six guiding documents (to be published by SFC and STA) are meant to cover values that would come under HCV6, but these have yet to be completed since being commissioned in 2000.</p> <p>It must be also assumed that once a licensed area obtains a forest management certificate, the risks to these values should diminish, if not be removed entirely.</p> <p>It is prohibited to harvest/source from Sarawak Totally Protected Areas, Sarawak Native Customary Rights Land, Sarawak Water Catchment Areas, Sarawak State Land, and Sarawak Alienated Land. Therefore, there are no safeguards for protecting HCVs from the harvest/sourcing of material, should it occur. Sarawak Oil Palm Land is cleared and converted to palm oil plantations. Therefore, any HCVs present will be lost completely.</p> <p>Risk specification Based on a) a high likelihood of cultural sites occurring within the area under assessment, b) no evidence that cultural sites are identified, and incorporated into forest management plans, c) continuing conflict cases brought to court arbitration and d) a high likelihood of forest management activities destroying or significantly damaging HCV 6 values, specified risk is assigned. Threshold (30) is met: HCV 6 is identified and/or its occurrence is likely in the area under assessment and it is threatened by management activities.</p>		
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Recommended control measures – Peninsular Malaysia

The recommended control measures here are only indicative in nature, and are not mandatory. Organizations shall evaluate and devise appropriate control measures to mitigate the risks identified in this risk assessment as applicable.

Indicator	Recommended control measures
3.0	N/A
3.1 HCV 1	<p>Generic</p> <ul style="list-style-type: none"> - Environmental and/or Social Impact Assessments shall be in place and approved by the legally competent authority if legally required. - Requirements for environmental monitoring shall be observed. - Environmental restrictions shall be followed in the field, such as requirements related to soil damage, buffer zones, retention trees, seasonal restrictions etc. <p>Country Specific</p>

	<ul style="list-style-type: none"> - Ensure an EIA has been prepared for any FME greater than 500 ha. - Third party verification of the implementation of the mitigation measures as prescribed in the EIA should be observed and cross-checked. - Evidence of CITES export permits issued by Department of Agriculture for CITES Appendix I and Appendix II species of plants excluding timber species (this also include Agarwood or gaharu <i>Aquilaria malaccensis</i> an Appendix III listed tree species considered as non-timber) - CITES certificate of origin issued by Malaysian Timber Industry Board (MTIB) for Appendix III listed timber species i.e. <i>Ramin gonystylus</i> spp
3.2 HCV 2	<ul style="list-style-type: none"> - Confirm wood material does not originate from Intact Forest Landscapes: verify via www.globalforestwatch.org and IFL boundaries should be cross checked with forest management concession boundaries - Forest management activities will not result in fragmentation of the HCV2 landscape through evidence such as: <ul style="list-style-type: none"> • Evidence in buffer areas adjacent to IFL or HCV 2 that reduced impact harvesting operations (e.g. reduced impact logging techniques or continuous forestry cover) have been included in forest management plans to minimise forest fragmentation, including through roads and forest cover. • Plans that include the creation of wildlife corridors between forest blocks
3.3 HCV 3	<p>Generic</p> <ul style="list-style-type: none"> - Environmental and/or Social Impact Assessments shall be in place and approved by the legally competent authority if legally required. - Requirements for environmental monitoring shall be observed. - Environmental restrictions shall be followed in the field, such as requirements related to soil damage, buffer zones, retention trees, seasonal restrictions etc. <p>Country Specific</p> <ul style="list-style-type: none"> - Ensure an EIA has been prepared for any FME greater than 500 ha. - Third party verification of the implementation of the mitigation measures as prescribed in the EIA should be observed and cross-checked.
3.4 HCV 4	<p>Generic</p> <ul style="list-style-type: none"> - Environmental Impact Assessments shall be in place and approved by the legally competent authority if legally required. - Requirements for environmental monitoring shall be observed. - Environmental restrictions shall be followed in the field, such as requirements related to soil damage, buffer zones, retention trees, seasonal restrictions etc. <p>Country Specific</p> <ul style="list-style-type: none"> - Ensure an EIA has been prepared for any FME greater than 500 ha. - Third party verification of the implementation of the mitigation measures as prescribed in the EIA should be observed and cross-checked.
3.5 HCV 5	<p>Country Specific</p> <ul style="list-style-type: none"> - The absence of conflicts over customary rights is a good verifier to determine how well customary rights are respected in a given case and evidence of determining of a presence or absence of land disputes should be demonstrated by: <ul style="list-style-type: none"> • Documents or records of consultations with local communities for any land or rights dispute resolutions. • Newspaper reviews and interviews can be part of the set of verifiers to assess the situation. - Stakeholder consultation shall confirm that customary rights are observed during harvesting activities.
3.6 HCV 6	<p>Country Specific</p> <ul style="list-style-type: none"> - The absence of conflicts over customary rights is a good verifier to determine how well customary rights are respected in a given case and evidence of determining of a presence or absence of land disputes should be demonstrated by: <ul style="list-style-type: none"> • Documents or records of consultations with local communities for any land or rights dispute resolutions. • Newspaper reviews and interviews can be part of the set of verifiers to assess the situation. - Stakeholder consultation shall confirm that customary rights are observed during harvesting activities.

Recommended control measures – Sabah

The recommended control measures here are only indicative in nature, and are not mandatory. Organizations shall evaluate and devise appropriate control measures to mitigate the risks identified in this risk assessment as applicable.

Indicator	Recommended control measures	Functional scale
3.0	N/A	All
3.1 HCV 1	<p>1.1 – N/A</p> <p>1.2 - - Material does not originate from areas where HCVs are present, as demonstrated by an FSC certificate, an HCV assessment report performed by an HCVRN ALS-accredited auditor, or an approved EIA explaining that these specific HCV are either not present or not threatened; OR - Sourcing from forests where there is either an FSC or MTCS certificate or an approved EIA showing that these specific HCVs are not threatened</p> <p>References: Deramakot Forest Management Plan and HCV assessment (http://www.deramakot.sabah.gov.my/PDF/DFR_FMP2.pdf)</p> <p>Measures for buyers - FSC or MTCS certificate - HCV assessment report by an ALS-accredited assessor - Approved Environmental Impact Assessment</p> <p>1.3 - - Material does not originate from areas where HCVs are present, as demonstrated by an FSC certificate, an HCV assessment report performed by an HCVRN ALS-accredited auditor, or an approved EIA explaining that these specific HCV are either not present or not threatened; OR - Sourcing from forests where there is either an FSC or MTCS certificate or an approved EIA showing that these specific HCVs are not threatened</p> <p>References: Deramakot Forest Management Plan and HCV assessment (http://www.deramakot.sabah.gov.my/PDF/DFR_FMP2.pdf)</p> <p>Measures for buyers - FSC or MTCS certificate - HCV assessment report by an ALS-accredited assessor - Approved Environmental Impact Assessment</p> <p>1.4 - - Material does not originate from areas where HCVs are present, as demonstrated by an FSC certificate, an HCV assessment report performed by an HCVRN ALS-accredited auditor, or an approved EIA explaining that these specific HCV are either not present or not threatened; OR - Sourcing from forests where there is either an FSC or MTCS certificate or an approved EIA showing that these specific HCVs are not threatened</p> <p>References: Deramakot Forest Management Plan and HCV assessment (http://www.deramakot.sabah.gov.my/PDF/DFR_FMP2.pdf)</p> <p>Measures for buyers - FSC or MTCS certificate - HCV assessment report by an ALS-accredited assessor - Approved Environmental Impact Assessment</p>	Natural Forest in Forest Reserve
	1.1 – N/A	Plantation (FR-ITP, stateland and alienated land)

<p>1.2 - - Material does not originate from areas where HCVs are present, as demonstrated by an FSC certificate, an HCV assessment report performed by an HCVRN ALS-accredited auditor, or an approved EIA explaining that these specific HCV are either not present or not threatened; OR</p> <ul style="list-style-type: none"> - Sourcing from forests where there is either an FSC or MTCS certificate or an approved EIA showing that these specific HCVs are not threatened <p>References: Deramakot Forest Management Plan and HCV assessment (http://www.deramakot.sabah.gov.my/PDF/DFR_FMP2.pdf)</p> <p>Measures for buyers</p> <ul style="list-style-type: none"> - FSC or MTCS certificate - HCV assessment report by an ALS-accredited assessor - Approved Environmental Impact Assessment <p>1.3 - - Material does not originate from areas where HCVs are present, as demonstrated by an FSC certificate, an HCV assessment report performed by an HCVRN ALS-accredited auditor, or an approved EIA explaining that these specific HCV are either not present or not threatened; OR</p> <ul style="list-style-type: none"> - Sourcing from forests where there is either an FSC or MTCS certificate or an approved EIA showing that these specific HCVs are not threatened <p>References: Deramakot Forest Management Plan and HCV assessment (http://www.deramakot.sabah.gov.my/PDF/DFR_FMP2.pdf)</p> <p>Measures for buyers</p> <ul style="list-style-type: none"> - FSC or MTCS certificate - HCV assessment report by an ALS-accredited assessor - Approved Environmental Impact Assessment <p>1.4 - - Material does not originate from areas where HCVs are present, as demonstrated by an FSC certificate, an HCV assessment report performed by an HCVRN ALS-accredited auditor, or an approved EIA explaining that these specific HCV are either not present or not threatened; OR</p> <ul style="list-style-type: none"> - Sourcing from forests where there is either an FSC or MTCS certificate or an approved EIA showing that these specific HCVs are not threatened <p>References: Deramakot Forest Management Plan and HCV assessment (http://www.deramakot.sabah.gov.my/PDF/DFR_FMP2.pdf)</p> <p>Measures for buyers</p> <ul style="list-style-type: none"> - FSC or MTCS certificate - HCV assessment report by an ALS-accredited assessor - Approved Environmental Impact Assessment 	
<p>1.1 – N/A</p> <p>1.2 - - Material does not originate from areas where HCVs are present, as demonstrated by an FSC certificate, an HCV assessment report performed by an HCVRN ALS-accredited auditor, or an approved EIA explaining that these specific HCV are either not present or not threatened; OR</p> <ul style="list-style-type: none"> - Sourcing from forests where there is either an FSC or MTCS certificate or an approved EIA showing that these specific HCVs are not threatened <p>References: Deramakot Forest Management Plan and HCV assessment (http://www.deramakot.sabah.gov.my/PDF/DFR_FMP2.pdf)</p> <p>Measures for buyers</p> <ul style="list-style-type: none"> - FSC or MTCS certificate - HCV assessment report by an ALS-accredited assessor - Approved Environmental Impact Assessment 	<p>Natural Forest State Land and Alienated Land</p>

	<p>1.3 - FSC certification: HCV assessment report performed by an HCVRN ALS-accredited auditor demonstrating that these specific HCV are either not present or not threatened. Approved EIA explaining that these specific HCV are either not present or not threatened.</p> <p>1.4 - - Material does not originate from areas where HCVs are present, as demonstrated by an FSC certificate, an HCV assessment report performed by an HCVRN ALS-accredited auditor, or an approved EIA explaining that these specific HCV are either not present or not threatened; OR - Sourcing from forests where there is either an FSC or MTCS certificate or an approved EIA showing that these specific HCVs are not threatened</p> <p>References: Deramakot Forest Management Plan and HCV assessment (http://www.deramakot.sabah.gov.my/PDF/DFR_FMP2.pdf)</p> <p>Measures for buyers - FSC or MTCS certificate - HCV assessment report by an ALS-accredited assessor - Approved Environmental Impact Assessment</p>	
3.2 HCV 2	N/A	Natural Forest in Class II Forest Reserve
	N/A	Plantation (FR-ITP, stateland and alienated land) and Natural Forest State Land and Alienated Land
	Intentionally left blank – Organizations shall evaluate and devise appropriate control measures to mitigate the risks identified in this risk assessment as applicable.	Natural Forest in Permanent Forest Reserve Classes I & III-VII
3.3 HCV 3	<p>- Material does not originate from areas where HCVs are present, as demonstrated by an FSC certificate, an HCV assessment report performed by an HCVRN ALS-accredited auditor, or an approved EIA explaining that these specific HCV are either not present or not threatened; OR - Sourcing from forests where there is either an FSC or MTCS certificate or an approved EIA showing that these specific HCVs are not threatened</p> <p>References: Deramakot Forest Management Plan and HCV assessment (http://www.deramakot.sabah.gov.my/PDF/DFR_FMP2.pdf)</p> <p>Measures for buyers - FSC or MTCS certificate - HCV assessment report by an ALS-accredited assessor - Approved Environmental Impact Assessment</p>	Natural Forest in Forest Reserve
	<p>- Material does not originate from areas where HCVs are present, as demonstrated by an FSC certificate, an HCV assessment report performed by an HCVRN ALS-accredited auditor, or an approved EIA explaining that these specific HCV are either not present or not threatened; OR - Sourcing from forests where there is either an FSC or MTCS certificate or an approved EIA showing that these specific HCVs are not threatened</p> <p>References: Deramakot Forest Management Plan and HCV assessment (http://www.deramakot.sabah.gov.my/PDF/DFR_FMP2.pdf)</p> <p>Measures for buyers</p>	Plantation (FR-ITP, stateland and alienated land)

	<p>- FSC or MTCS certificate - HCV assessment report by an ALS-accredited assessor - Approved Environmental Impact Assessment</p> <p>- Material does not originate from areas where HCVs are present, as demonstrated by an FSC certificate, an HCV assessment report performed by an HCVRN ALS-accredited auditor, or an approved EIA explaining that these specific HCV are either not present or not threatened; OR - Sourcing from forests where there is either an FSC or MTCS certificate or an approved EIA showing that these specific HCVs are not threatened</p> <p>References: Deramakot Forest Management Plan and HCV assessment (http://www.deramakot.sabah.gov.my/PDF/DFR_FMP2.pdf)</p> <p>Measures for buyers - FSC or MTCS certificate - HCV assessment report by an ALS-accredited assessor - Approved Environmental Impact Assessment</p>	<p>Natural Forest State Land and Alienated Land</p>
<p>3.4 HCV 4</p>	<p>4.1 – N/A</p> <p>4.2 – N/A</p> <p>4.3 – N/A</p>	<p>Natural Forest in Class II Forest Reserve</p>
	<p>4.1 – N/A</p> <p>4.2 - 1. Can the products be traced back to the logging site in the forest? 1.1 If yes, go to 2. 1.2 If no, the products cannot be sourced.</p> <p>2. Is there a felling permit issued? 2.1 If yes, go to 3. 2.2 If no, the products cannot be sourced.</p> <p>3. Has the forest owner applied Reduced Impact Logging (RIL) practices? 3.1 If yes: go to 4. 3.2 If no: the products cannot be sourced.</p> <p>4. Has the forest owner complied with the Sabah RIL requirement? 4.1 If the compliance is verified by the Forestry Department: the products can be sourced. 4.2 If the compliance audit is not verified by the Forestry Department: the products cannot be sourced. Reference: RIL Guidelines</p> <p>Below are possible options to maintain or enhance various HCVs, including:</p> <ul style="list-style-type: none"> • Conservation set-asides (e.g. appropriately designed protected areas, buffer zones, habitat corridors) • Restoration (e.g. remediation of previous damage to ecosystems, reintroduction of hunted species, creation of wildlife corridors between forest blocks) • Reduced impact harvesting operations (e.g. reduced impact logging techniques or continuous cover forestry) • Infrastructure planning (e.g. improved road building and skid trail construction) • Scheduling of operations (e.g. planning logging coupe schedules to benefit wildlife and avoid harvesting during wet seasons) 	<p>Plantation (FR-ITP, stateland and alienated land)</p>

	<p>Measures for buyers Conduct checks on the source of the wood including obtaining information such as product type, volumes, species, origin, supplier (1 tier) buyers as well as the status of certification or verification from the third party. Collect additional documentation about the supplier and the whole supply chain (from source to point of sale) where necessary Check evidence of legal documents and certificate from certification scheme with the supplier on whether it indicates compliance with the applicable legislation Conduct interview with the authority to verify the authenticity of the documents Conduct supply chain mapping if necessary Apply risk assessment and mitigation to determine whether the risk is negligible or non-negligible Source certified products or materials that have been verified to be legal</p> <p>4.3 – N/A</p>	
	<p>4.1 - - Material does not originate from areas where HCVs are present, as demonstrated by an FSC certificate, an HCV assessment report performed by an HCVRN ALS-accredited auditor, or an approved EIA explaining that these specific HCV are either not present or not threatened; OR - Sourcing from forests where there is either an FSC or MTCS certificate or an approved EIA showing that these specific HCVs are not threatened</p> <p>References: Deramakot Forest Management Plan and HCV assessment (http://www.deramakot.sabah.gov.my/PDF/DFR_FMP2.pdf)</p> <p>Measures for buyers - FSC or MTCS certificate - HCV assessment report by an ALS-accredited assessor - Approved Environmental Impact Assessment</p> <p>4.2 - - Material does not originate from areas where HCVs are present, as demonstrated by an FSC certificate, an HCV assessment report performed by an HCVRN ALS-accredited auditor, or an approved EIA explaining that these specific HCV are either not present or not threatened; OR - Sourcing from forests where there is either an FSC or MTCS certificate or an approved EIA showing that these specific HCVs are not threatened</p> <p>References: Deramakot Forest Management Plan and HCV assessment (http://www.deramakot.sabah.gov.my/PDF/DFR_FMP2.pdf)</p> <p>Measures for buyers - FSC or MTCS certificate - HCV assessment report by an ALS-accredited assessor - Approved Environmental Impact Assessment</p> <p>4.3 – N/A</p>	<p>Natural Forest State Land and Alienated Land and Natural Forest in Permanent Forest Reserve Classes I & III-VII,</p>
<p>3.5 HCV 5</p>	<p>- Material does not originate from areas where HCVs are present, OR - Sourcing from forests where there is documentation confirming local communities' or Indigenous peoples' engagement and accommodation.</p> <p>References: Case Study: Sabah forest ownership There is a variety of possible options to maintain or enhance various HCVs, which include: • Community development and livelihoods projects (e.g. employment and healthcare)</p> <p>Measures for buyers</p>	<p>Natural Forest in Forest Reserve</p>

	<ul style="list-style-type: none"> - Records of consultation with natives - Long-term timber licence agreement - Sustainable Forest Management Licence Agreement - Record on decision by the Civil Court and Native Court - Contract agreement with local communities with land use rights - Established Native Customary Rights 	
	<ul style="list-style-type: none"> - Material does not originate from areas where HCVs are present, OR - Sourcing from forests where there is documentation confirming local communities' or indigenous peoples' engagement and accommodation. <p>References: Case Study: Sabah forest ownership There are a variety of possible options to maintain or enhance various HCVs, which include:</p> <ul style="list-style-type: none"> • Community development and livelihoods projects (e.g. employment and healthcare) <p>Measures for buyers</p> <ul style="list-style-type: none"> -Records of consultation with natives -Long term timber licence agreement -Sustainable Forest Management License Agreement -Record on decision by the Civil Court and Native Court -Contract agreement with local communities with use rights for use of land -Established Native Customary Rights 	Plantation (FR-ITP, stateland and alienated land)
	<ul style="list-style-type: none"> - Material does not originate from areas where HCVs are present, OR - Sourcing from forests where there is documentation confirming local communities' or Indigenous peoples' engagement and accommodation. <p>References: Case Study: Sabah forest ownership There is a variety of possible options to maintain or enhance various HCVs, which include:</p> <ul style="list-style-type: none"> • Community development and livelihoods projects (e.g. employment and healthcare) <p>Measures for buyers</p> <ul style="list-style-type: none"> - Records of consultation with natives - Long-term timber licence agreement - Sustainable Forest Management Licence Agreement - Record on decision by the Civil Court and Native Court - Contract agreement with local communities with land use rights - Established Native Customary Rights 	Natural Forest State Land and Alienated Land
3.6 HCV 6	<ul style="list-style-type: none"> - Material does not originate from areas where HCVs are present, OR - Sourcing from forests where there is documentation confirming local communities' or Indigenous peoples' engagement and accommodation, or proof of court case resolved in favour of local communities or Indigenous peoples. 	Natural Forest in Forest Reserve

<p>References: Social baseline survey</p> <p>Measures for buyers</p> <ul style="list-style-type: none"> - Records of consultation with natives - Long-term timber licence agreement - Sustainable Forest Management Licence Agreement - Record on decision by the Civil Court and Native Court - Contract agreement with local communities with land use rights - Established Native Customary Rights 	
<ul style="list-style-type: none"> - Material does not originate from areas where HCVs are present, OR - Sourcing from forests where there is documentation confirming local communities' or Indigenous peoples' engagement and accommodation, or proof of court case resolved in favour of local communities or Indigenous peoples. <p>References: Social baseline survey</p> <p>Measures for buyers</p> <p>Conduct checks on the source of the wood including obtaining information such as product type, volumes, species, origin, supplier (1 tier) buyers as well as the status of certification or verification from the third party.</p> <p>Collect additional documentation about the supplier and the whole supply chain (from source to point of sale) where necessary</p> <p>Check (with the supplier) evidence of legal documents and certificate from certification scheme as to whether it demonstrates compliance with the applicable legislation</p> <p>Conduct interviews with the authority to verify the authenticity of the documents</p> <p>Conduct supply chain mapping if necessary</p> <p>Apply risk assessment and mitigation to determine whether the risk is negligible or non-negligible</p> <p>Source certified products or materials that have been verified to be legal</p>	<p>Plantation (FR-ITP, stateland and alienated land)</p>
<ul style="list-style-type: none"> - Material does not originate from areas where HCVs are present, OR - Sourcing from forests where there is documentation confirming local communities' or Indigenous peoples' engagement and accommodation. <p>References: Case Study: Sabah forest ownership</p> <p>There is a variety of possible options to maintain or enhance various HCVs, which include:</p> <ul style="list-style-type: none"> • Community development and livelihoods projects (e.g. employment and healthcare) <p>Measures for buyers</p> <ul style="list-style-type: none"> - Records of consultation with natives - Long-term timber licence agreement - Sustainable Forest Management Licence Agreement - Record on decision by the Civil Court and Native Court - Contract agreement with local communities with land use rights - Established Native Customary Rights 	<p>Natural Forest State Land and Alienated Land</p>

Recommended control measures – Sarawak

The recommended control measures here are only indicative in nature, and are not mandatory. Organizations shall evaluate and devise appropriate control measures to mitigate the risks identified in this risk assessment as applicable.

Indicator	Recommended control measures
3.0	N/A
3.1 HCV 1	<ul style="list-style-type: none"> Evidence that areas of high conservation significance (HCV1) are identified (by an HCVRN ALS-accredited HCV assessor, [or an approved EIA explaining that these specific HCV are either not present or not threatened]) and RTE set asides have been delineated and/or forest management plans have been adapted to ensure the HCV 1 values will not be threatened (e.g., through Reduced Logging Impact etc). Evidence of control of hunting activities, e.g., evidence of patrols.
3.2 HCV 2	<ul style="list-style-type: none"> Evidence that wood supply material does not originate from Intact Forest Landscapes regions. Verify if a wood supply area is in or near IFL and, if so, the IFL boundaries should be cross checked with boundaries of the supply area (http://www.globalforestwatch.org/map (under Land Cover click the IFL map layer option)) Evidence that material is not sourced from the Heart of Borneo area, OR, if it is, ensure that if material is sourced from the Heart of Borneo (compare location of FMUs with the map of the Heart of Borneo at http://wwf.panda.org/what_we_do/where_we_work/borneo_forests/borneo_rainforest_conservation/greenbusinessnetwork/map/), there is evidence that management activities in Heart of Borneo areas do not contribute to/increase forest fragmentation by seeking evidence such as: <ul style="list-style-type: none"> satellite images demonstrating no road infrastructure in HVC 2 areas buffer forest management zones adjacent to HCV 2 and IFL core areas are using low impact forestry Reduced Impact Logging) to minimize forest cover loss and fragmentation Management plans do not include development of industrial logging
3.3 HCV 3	<ul style="list-style-type: none"> Evidence that areas of high conservation significance (HCV3) are identified (by an HCVRN ALS-accredited HCV assessor, or an approved EIA explaining that these specific HCV are either not present or not threatened) and set asides and/or forest management plans have been adapted to ensure the HCV 3 values will not be threatened (e.g., through Reduced Logging Impact etc.).
3.4 HCV 4	<ul style="list-style-type: none"> Evidence that wood material does not originate from mapped watersheds that are supplying local communities with drinking water, or from designated catchments for reservoirs or hydro dams. Verifier: forest management plans and timber licenses are publicly available. Check forest management plans for evidence that operations are not occurring in water course buffers and steep slopes and there are restrictions for equipment, road building, protection against contamination, and pesticides use, and cross-check with on-site visits.
3.5 HCV 5	<ul style="list-style-type: none"> Material sourced from such areas can be verified as coming from areas that are not under “negotiation” or dispute resolution to agree upon its designation as HCV5. Verifier: <ul style="list-style-type: none"> Evidence of an absence of significant disputes on land use (including court cases) and/or tenure and corroborated by local stakeholders and/or evidence of consent of indigenous and/or traditional communities has been obtained. This may include evidence that a High Conservation Value (HCV) assessment to identify HCV 5 has been undertaken. [It is highly recommended that the HCV assessment was/is conducted by an HCV lead assessor licensed under the HCV Resource Network (HCVRN) Assessor Licensing Scheme (ALS)]. Evidence there is a mutually agreed and documented system for dealing with complaints and grievances and is accessible and agreed upon by all affected parties and that where conflicts have arisen the conflict resolution mechanism is being used and outcomes are considered mutually agreed including by affected parties.
3.6 HCV 6	<ul style="list-style-type: none"> Evidence that a High Conservation Value (HCV) assessment to identify HCV 6 has been undertaken. [It is highly recommended that the HCV assessment was/is conducted by an HCV lead assessor licensed under the HCV Resource Network (HCVRN) Assessor Licensing Scheme (ALS)]. Evidence that consultations, FPIC and agreements with communities have been conducted and are integrated into forest management plans. Field audit, to check that forest management plans that contain safeguards for cultural values are implemented in practice.

Information sources – Peninsular Malaysia

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51	CITES Country Profile: Malaysia: http://www.cites.org/eng/cms/index.php/component/cp/country/MY	HCV1, 3.1
52	CITES Species Checklist: http://checklist.cites.org/#/search/country_ids[]=127&cites_appendices[]=I&cites_appendices[]=II&cites_appendices[]=III&output_layout=alphabetical&level_of_listing=0&show_synonyms=1&show_author=0&show_english=1&show_spanish=1&show_french=1&scientific_name=Plantae&page=1&per_page=20&locale=en	HCV1, 3.1
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Information sources – Sarawak

No.	Source of information	Relevant HCV category and indicator
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2	Samling Certification. http://www.samling.com/certification.php	3.0
3	The Wildlife Protection Ordinance, 1998. http://lawnet.sarawak.gov.my/lawnet_file/Subsidiary/SUB_Swk.%20%20L.N.%20%2094_98%20watermark.pdf	HCV1, 3.0 & 3.1
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16	BirdLife International (2003) Saving Asia's threatened birds: a guide for government and civil society. Birdlife International. Cambridge, UK	HCV1 & HCV3, 3.1 & 3.3
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18	WWF. 2016. Borneo Plants. WWF. http://wwf.panda.org/what_we_do/where_we_work/borneo_forests/about_borneo_forests/borneo_animals/borneo_plants/	HCV1 & HCV3, 3.1 & 3.3
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Controlled wood category 4: Wood from forests being converted to plantations or non-forest use

Risk assessment

Indicator	Source of information	Functional scale	Risk designation and determination
4.1	<p>Peninsular</p> <ul style="list-style-type: none"> National Land Code 1965, Act 56. https://www.ecolex.org/details/legislation/national-land-code-act-no-56-of-1965-lex-faoc005145/ National Forestry Act 1984, Act 313. http://www.chm.frim.gov.my/getattachment/b3ef13c6-7e18-4fc8-b5b8-d2b3c008c6c4/National-Forestry-Act-313-1-.pdf.aspx Environmental Quality Act 1974- Sec.3A https://www.env.go.jp/en/recycle/asian_net/Country_Information/Law_N_Regulation/Malaysia/Malaysia_mal13278.pdf Environmental Quality Order 1987- Item 6 of Schedule https://www.ecolex.org/details/legislation/environmental-quality-prescribed-activities-environmental-impact-assessment-order-1987-lex-faoc013290/ The Town and Country Planning Act 1976, Act 172. http://www.pht.org.my/legislation/T 	-	<p>Peninsular</p> <p>Assessment based on legality</p> <p><i>Content of law</i></p> <p>According to the National Forestry Act and National Land Code, conversion is legally allowed and must get prior approval from State Forestry Department particularly in areas alienated from state land. Conversion of state land forest into plantation or other land use is legal provided it is approved by the State Executive Committee (EXCO) and published in the Gazette. It is necessary to note that, currently there is no legal requirement to identify presence of HCVs prior to conversion. Even if HCVs are present, there is no legislation preventing HCV areas from being cleared, but the HCVs have to be marked on the map of the converted area. If a forest reserve is being cleared (and taken out of forest reserve), an area equal in size has to be protected as forest reserve. Oil palm and rubber are classified as forest in Peninsular Malaysia and forest can be converted to these forest types while still being classified as Permanent Reserved Forest.</p> <p>Under the National Forestry Act 1984 (NFA, revised 1993 (Act 313)) and the respective State forest enactments, 4.7 million hectares were gazetted as Permanent Reserved Forest. All forest clearance for plantations involving the extraction of timber requires a license to be issued under this Act. For plantations established inside forest reserves, these licenses may contain provisions for environmental protection (stream buffers, steep zone exclusions, etc.). The Act also requires that all timber removed as a result of the forest clearance be subject to the payment of royalties to the state.</p> <p>The Environmental Quality Act (EQA) requires that an environmental impact assessment (EIA) be carried out prior to engaging in several prescribed activities (s 34A). Item No. 6 of the 1987 Order prescribes the following Forestry activities as requiring EIAs:</p> <ul style="list-style-type: none"> Conversion of hill forest land to other land use covering an area of 50 hectares or more. Logging or conversion of forest land to other land use within the catchment area of reservoirs used for municipal water supply, irrigation or hydropower generation or in areas adjacent to state and national parks and national marine parks.

	<p>own_and_Country_Planning_Act.pdf</p> <ul style="list-style-type: none"> • Forest Trends (2014). Consumer Goods and Deforestation: An Analysis of the Extent and Nature of Illegality in Forest Conversion for Agriculture and Timber Plantations. Available at: http://www.forest-trends.org/documents/files/doc_4719.pdf • Lim (2013). Malaysia: Illegalities in Forest Clearance for Large-Scale Commercial Plantations. Forest Trends. Accessed 24 February 2015 at http://www.forest-trends.org/publication_details.php?publicationID=4195 • Transparency International (2011). Forest Governance Integrity Report - Peninsular Malaysia. Accessed 24 February 2015 at http://transparency.org.my/wp-content/uploads/sites/3/2013/09/Publication-Report-Peninsular-Malaysia.pdf. Lim 2013. Malaysia: Illegalities in Forest Clearance for Large-Scale Commercial Plantations. Forest Trends. Accessed 24 February 2015 at http://www.forest-trends.org/publication_details.php?publicationID=4195 • Expert consultation 2015 including personal communication 1 		<ul style="list-style-type: none"> • Logging covering an area of 500 hectares or more. • Conversion of mangrove swamps for industrial, housing or agricultural use covering an area of 50 hectares or more. • Clearing of mangrove swamps on islands adjacent to national marine parks <p>The Town and Country Planning Act provides for the proper control and regulation of town and country planning in local authority areas in the states of Malaysia. The agency responsible for enforcing this law is the Department of Town and Country Planning which has approved a National Physical Plan (covering Peninsular Malaysia) and Development Plans (structure plans (state, district, local area plans) and detailed plans). These plans have several provisions of relevance to forest clearance for commercial plantations. In particular, the plans specify where plantations are allowed to be situated. The plans also identify environmentally sensitive areas (ESAs) (Lim, 2013).</p> <p>The state forestry department keeps forest conversion records including maps/aerial photographs/satellite images.</p> <p><i>Is the law enforced?</i></p> <p>In summary, there are several types of illegality that do not usually occur in large-scale forest clearance in Malaysia. Operations generally have the requisite licenses from the forestry authorities and are usually in compliance with the relevant land laws (such as the need to pay land premiums). Operations are also broadly in compliance with the need to pay royalties per cubic meter of timber harvested. Plantation company staff generally comply with the criminal and penal codes and rarely take the law into their own hands. Similarly, the requirement to obtain an EIA is generally met if this is required by the environmental authorities (Lim, 2013).</p> <p>The key types of illegality that are identified in this category are:</p> <ul style="list-style-type: none"> - Corruption: The Malaysian Anti-Corruption Commission (MACC) has announced that it is giving special attention to illegal logging, with a number of reported arrests of corrupt forest officials in Peninsular Malaysia (Lim, 2013). According to Transparency International (2011), an area of specific weakness for corruption in Peninsular Malaysia relates to forest zoning changes – establishment and excision of Permanent Reserved Forests and conversion of high forest to plantation forest. That report further states the research found that there is a tendency for state governments to use their discretion to excise forests and convert them to other land uses, even if they are in the process of being gazetted as Permanent Reserved Forests (PRF). This is largely due to the
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	<p>Sabah</p> <ul style="list-style-type: none"> • Environment Protection (Prescribed Activities) (Environmental Impact Assessment) Order 2005 • The Forest Enactment 1968 (Sabah En. 2/68) • Environmental Quality Act 1974- Sec.3A https://www.env.go.jp/en/recycle/asian_net/Country_Information/Law_N_Regulation/Malaysia/Malaysia_mal13278.pdf • Lim (2013). Malaysia: Illegalities in Forest Clearance for Large-Scale Commercial Plantations. Forest Trends. Accessed 24 February 2015 at http://www.forest-trends.org/publication_details.php?publicationID=4195 <p>Sarawak</p> <ul style="list-style-type: none"> • Forest Estate of Sarawak, 1999 • Forest Ordinance, 1958 http://www.sarawakforestry.com/pdf/laws/forests_ordinance_chapter_126.pdf • Forest Trends (2014). Consumer Goods and Deforestation: An Analysis of the Extent and Nature of Illegality in Forest Conversion for Agriculture and Timber Plantations. Available at: http://www.forest- 		<p>excessively long process involved in designating land as PRF and the discretion at the hands of the state government to override objections made by the Forestry Department.</p> <ul style="list-style-type: none"> - Planning laws: The National Physical Plan and the various development plans under its jurisdiction give extensive provision for forest protection through the spatial zonation of the country's protected areas. However, in practice there appear to be extensive and regular breaches of these provisions. Six prominent cases have been identified in which state forestry departments issued permits for large-scale forest clearance in violation of the Environmentally Sensitive Area status of the area as designated by the development plans. The Department of Town and Country Planning is rarely consulted before the decision is made to proceed with conversion to plantations inside forest reserves. The National Physical Plan only applies to Peninsular Malaysia. Of the six cases identified where there have been alleged breaches of the planning laws, all are in Peninsular Malaysia (Lim, 2013). - The implementation of forestry and environmental protection laws on the ground: In Peninsular Malaysia, very few EIAs for forest clearance for LTC [latex timber clone] and OPP [oil palm plantation] have actually been produced since the Department of Environment rarely enforces this requirement and the Forestry Department deliberately facilitates projects to circumvent the EIA requirement by issuing licenses below the 500 ha threshold (even though the total project area is much larger such as in the Ladang Umno case, a 10,000-acre logging concession that was separated into 10 subplots to bypass EIA regulations). Recent audits by the Malaysian Auditor General and reports in local newspapers have highlighted six prominent cases in Peninsular Malaysia where the Environmental Quality Act 1974 is alleged to have been flouted by failure to produce an EIA or failure to comply with prescribed mitigating measures (Lim, 2013). - Encroachment (license): Malaysia's National Auditor General, reviewing the performance of State Forestry Departments in 2008, noted that many of Peninsular Malaysia's forest reserves had been encroached by oil palm and rubber plantations. Concerns were raised by the Auditor General about the extent to which regulations had been properly followed when the licenses for these plantations were issued. (Forest Trends 2014, p. 53). - Conversion by small holders: Locals converting small scale areas for agriculture, palm oil, banana trees, rubber wood (Personal communication 1).
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	<p>trends.org/documents/files/doc_4719.pdf</p> <ul style="list-style-type: none"> • FAO (2015). Global Forest Resources Assessment 2015 – Desk reference. Rome. Available at: http://www.fao.org/3/a-i4808e.pdf (last accessed on 28 November 2017) • Lim (2013). Malaysia: Illegalities in Forest Clearance for Large-Scale Commercial Plantations. Forest Trends. Accessed 24 February 2015 at http://www.forest-trends.org/publication_details.php?publicationID=4195 <p>For the three regions</p> <ul style="list-style-type: none"> • FAO (2015) Global Forest Resources Assessment 2015 – Desk reference. Rome. Available at: http://www.fao.org/3/a-i4808e.pdf (last accessed on 18 April 2018) • FAO (2014): Global Forest Resources Assessment 2015 – Country Report, Malaysia. Rome. Available at: http://www.fao.org/3/a-az266e.pdf (last accessed on 18 April 2018) 	<p><i>Is it possible to conclude that the spatial threshold can be met by assessing the enforcement of legislation?</i></p> <p>Based on the information provided above, it is not possible to conclude that the spatial threshold is met based on legislation, nor enforcement.</p> <p>Sabah</p> <p>Assessment based on legality</p> <p><i>Content of law</i></p> <p>The Forest Enactment 1968 (Sabah En. 2/68) provides for the issuance of Sustainable Forest Management Licensee Agreements (SFMLAs) (s 15(1)). The long-term SFMLAs for concessions on PFR allow license holders to establish designated Industrial Tree Plantations within the Forest Management Unit. The license agreements include some environmental protection provisions such as requiring buffer zones at least 30 m wide on all perennial streams and rivers and prohibiting felling on slopes greater than 25 degrees (Lim, 2013).</p> <p>The Environmental Quality Act requires that an environmental impact assessment (EIA) be carried out prior to engaging in several prescribed activities (s 34A). Item No. 6 of the 1987 Order prescribes the following Forestry activities as requiring EIAs:</p> <ul style="list-style-type: none"> • Conversion of hill forest land to other land use covering an area of 50 hectares or more. • Logging or conversion of forest land to other land use within the catchment area of reservoirs used for municipal water supply, irrigation or hydropower generation or in areas adjacent to state and national parks and national marine parks. • Logging covering an area of 500 hectares or more. • Conversion of mangrove swamps for industrial, housing or agricultural use covering an area of 50 hectares or more. • Clearing of mangrove swamps on islands adjacent to national marine parks. <p>State and Alienated Land can be clear cut or converted to other land use such as agriculture or development. Form IIB can be issued for harvesting on Alienated Land (private land), where timber can be harvested for land clearance for agricultural purposes (mostly oil palm, rubber and other short-term crops) (See category 1, overview section and indicator 1.4 Harvesting permits). State Land can be alienated by applying through Schedule</p>
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		<p>III of the Land Ordinance, Cap 63, which can allow for establishing plantation/agriculture by private persons or companies (Land Ordinance, Cap 96).</p> <p><i>Is the law enforced?</i></p> <p>Large-scale commercial clearfelling of natural forest for plantations in Sabah and elsewhere in Malaysia is indeed generally in compliance with the bureaucratic aspects of the legislation such as the requirements to obtain a license under the forestry statutes. In large-scale forest clearance in Malaysia operations generally have the requisite licenses from the forestry authorities and are usually in compliance with the relevant land laws (such as the need to pay land premiums). Operations are also broadly in compliance with the need to pay royalties per cubic meter of timber harvested. Plantation company staff generally comply with the criminal and penal codes and rarely take the law into their own hands. Similarly, the requirements to obtain an EIA are generally met if this is required by the environmental authorities (Lim, 2013).</p> <p>Key types of illegality relating to land conversion are:</p> <ul style="list-style-type: none"> - Corruption: extensive allegations of corruption against the chief ministers of Sabah and Sarawak in the form of kickbacks and cronyism connected with the clearance of natural forest for plantations. The high level corruption in the system allegedly encourages corruption and illegal logging owing to the lack of accountability of the concessionaires and loggers. On the other hand, the fact that corruption is tolerated in the upper echelons means that mixed signals are being given to enforcers on the ground who are often not very well remunerated and it is acknowledged that bribery takes place at the enforcement level as well (Lim, 2013). - Violation of Native Customary Rights (NCR): more common in Sarawak, but there are also reports of violations in Sabah, see e.g. residents of Kg. Tampat, Beluran, Sabah, in Lim, 2013. - The implementation of forestry and environmental protection laws on the ground: Most forest conversion projects produce EIAs. In Sabah, it is reported that some companies apply for EIAs retrospectively (after the forest has been felled) (Lim, 2013). Around 90% of EIAs submitted are eventually approved with a number of mitigation measures prescribed. Mitigation measures can be habitat restoration or landscape treatment, but the measures can also be measures to reduce impact, such as off-site water disposal, reduced impact logging, and are thus no guarantee for reforestation of cleared areas. In practice, there is also considerable non-compliance with mitigation due to ambiguities regarding the implementation of these measures. The environmental authorities face a number of challenges in enforcing the mitigation measures highlighted
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			<p>above. They recognize that streams and slopes identified by 1:50k scale maps inadequately represent the reality on the ground. However, the maximum fine for non-compliance is limited (in Sabah this is only RM20,000 per compliance audit visit). Such fines are hardly a deterrent when the additional revenue gained by noncompliance can be in the order of hundreds of millions of ringgits. Sabah's EPD [Environmental Protection Department] has only 13 enforcement officers to monitor more than 300 active projects. (Lim, 2013).</p> <p><i>Is it possible to conclude that the spatial threshold can be met by assessing the enforcement of legislation?</i></p> <p>It is not possible to conclude that the spatial threshold is met based on legislative requirements, nor enforcement.</p> <p>Sarawak</p> <p>Assessment based on legality</p> <p><i>Content of law</i></p> <p>Conversion is legally allowed in Sarawak with the requisite prior approval. To be legal conversion must comply with native customary rights.</p> <p><i>Is the law enforced?</i></p> <p>There are numerous reports about the prevalence of illegal land conversion in the state involving land clearance for oil palm plantations; with this activity also occurring within National Parks, peat swamps etc. (Forest Trends, 2014). A study commissioned by Forest Trends identified 53 separate documented cases from the last ten years of alleged illegalities in forest conversion for commercial plantations in Malaysia, with 36 of these cases occurring in Sarawak. The remaining 17 took place within Sabah and Peninsular. Of these 36 cases, 35 were related to oil palm plantations and one for a timber plantation. The alleged illegalities were associated with corruption and violation of native customary rights (Forest Trends, 2014, p. 52).</p> <p>Key types of illegality relating to land conversion are:</p> <p>Native Customary Rights: Allegations of NCR breaches in the allocation of leases over forestland have been the most contentious issue in plantation development in Malaysia for the last 20 years. Though federal and state laws enshrine the rights of local people to the</p>
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		<p>land on which they have traditionally depended, affected communities and nongovernmental organizations claim that these rights have been almost universally abused in the issuance of logging and plantation licenses. NCR conflicts are a feature in almost every new plantation project in Malaysia, with the situation being particularly serious in Sarawak (Lim, 2013).</p> <p>Corruption: Three-quarters of the cases of alleged illegalities in agro-conversion in Malaysia documented by the author include allegations of corruption. Almost all of these cases relate to political patronage, cronyism, and nepotism in the issuance of licenses, usually at a very high level. The most serious evidence of corruption comes from the states of Sabah and Sarawak in Malaysian Borneo (which together account for two-thirds of Malaysia's remaining forests). The former Chief Minister of Sarawak has been (...) the subject of investigations by the Malaysian Anti-Corruption Commission for alleged corruption related to the issuance of logging and plantation licenses). (Forest Trends 2014, p. 53).</p> <p>The implementation of forestry and environmental protection laws on the ground: Most forest conversion projects produce EIAs. Around 90% of EIAs submitted are eventually approved with a number of mitigation measures prescribed. Mitigation measures can be habitat restoration or landscape treatment, but the measures can also be measures to reduce impact, such as off-site water disposal, og reduced impact logging, and are thus no guarantee for reforestation of cleared areas. In practice, there is considerable non-compliance with mitigation due to ambiguities regarding the implementation of these measures. The environmental authorities face a number of challenges in enforcing the mitigation measures and recognize that streams and slopes identified by 1:50k scale maps inadequately represent the reality on the ground. However, the maximum fine for non-compliance is limited. Such fines are hardly a deterrent when the additional revenue gained by noncompliance can be in the order of hundreds of millions of ringgit (Lim, 2013).</p> <p>Thus, there is risk of illegalities relating to conversion of natural forest to palm oil and timber plantations in particular. There are reports of abuse of Native Customary Rights, corruption and breach of environmental requirements.</p> <p><i>Is it possible to conclude that the spatial threshold can be met by assessing the enforcement of legislation?</i></p> <p>No. As legislation does not prohibit conversion it is not possible to state that the spatial threshold is met.</p> <p>Taking into consideration that legislation in the three regions of Malaysia allows forest conversion to plantations or non-foret uses, and based on the fact that the the spatial</p>
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		<p>threshold cannot be met by assessing law enforcement of legislation, the assessment based on spatial data is done for the whole country, using best available information, as it follows:</p> <p>Assessment based on spatial data</p> <p><i>Is it possible to conclude that the spatial threshold (0.02% or 5000 ha) is met?</i></p> <p>According to the Global Forest Resources Assessment 2015 for Malaysia prepared by FAO, the forest area decreased by 272,000 ha between the years 2010 and 2015 (from 20,501,000 ha to 20,229,000 ha), with an annual change rate of 54,400 ha/year. There is no clear data available about how much natural forest was converted to plantations or non-forest uses, but the primary forest area increased between 2010-2015 (174,000 ha) and the naturally regenerated forest areas have decreased by 446,000 ha in the same period of time (2010-2015).</p> <p>Regarding planted forests, they have increased by 343,000 ha between the years 2010 and 2015 (from 1623,000 ha to 1966, 000 ha), of which most of them are for commercial purposes (mainly exotic species plantations).</p> <p>According to the spatial data provided above, conversion of natural forests to plantations or non-forest use in the area under assessment is above the threshold of 0.02% or 5000 hectares average net annual loss.</p> <p>Risk designation: Specified risk.</p> <p>Threshold (4) is met: There is more than 5000 ha net average annual loss or there is more than 0.002% net average annual loss of natural forest in the assessment area in the past 5 years.</p>
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Recommended control measures

Intentionally left blank - Organizations shall evaluate and devise appropriate control measures to mitigate the risks identified in this risk assessment as applicable.

Controlled wood category 5: Wood from forests in which genetically modified trees are planted

Risk assessment

Indicator	Sources of information	Functional scale	Risk designation and determination
5.1	<p>The Biosafety Act of Malaysia 2007 (effective 1 December 2009), Act 678, section 36 (risk assessment), 37 (Emergency response plan) http://www.biosafety.nre.gov.my/act_regulations/biosafety-act2007.pdf</p> <p>Biosafety (approval and Notification) regulations 2010 (Under the Biosafety Act 2007) http://irdi.imu.edu.my/pdf/Biosafety%20Regulations%20%202010.pdf</p> <p>Department of Biosafety (N.Y). – Food, feed, processing. Approval for release. [Online]. Available at: http://www.biosafety.nre.gov.my/country_decision/app_ffp.shtml</p> <p>Protection of New Plant Varieties Act http://www.wipo.int/wipolex/en/details.jsp?id=3143</p> <p>Gain Report, 01/05/2015. Report Number MY5001: http://gain.fas.usda.gov/Recent%20GAIN%20Publications/GE%20Rubber%20Trees_Kuala%20Lumpur_Malaysia_12-4-2014.pdf</p> <p>Wahab (2015): GE Rubber Trees. Global Agricultural Information Network: http://gain.fas.usda.gov/Recent%20GAIN%20Publications/GE%20Rubber%20Trees_Kuala%20Lumpur_Malaysia_12-4-2014.pdf</p> <p>Expert consultation conducted by NEPCon in 2015.</p>	-	<p>Low risk</p> <p>The following thresholds are met:</p> <p>(2) There is no commercial use of GM tree species in the area under assessment; AND (3) Other available evidence does not challenge 'low risk' designation.</p> <p>Since 2009 Malaysia has had legislation in place to regulate GMO with the Biosafety Act 2007. To date there is no commercial use of GM trees in Malaysia. However, it is worth pointing out that an application for trial of transformed rubber wood is being considered by the National Biosafety Board. These trees are to be used for rubber production, however, as rubber trees are being logged and used for rubber after end rubber</p>

			extraction, this is considered relevant to include in the assessment of GMO trees.
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	GMO Context Question	Answer	Sources of Information (list sources if different types of information, such as reports, laws, regulations, articles, web pages news articles etc.).
1	Is there any legislation covering GMO (trees)?	Yes. The Biosafety Act of Malaysia 2007, Act 678.	The Biosafety Act of Malaysia 2007, Act 678 http://www.biosafety.nre.gov.my/act_regulations/biosafety-act2007.pdf
2	Does applicable legislation for the area under assessment include a ban for commercial use of GMO (trees)?	No. According to the legislation, no person shall undertake any release of living modified organisms without the prior approval of the National Biosafety Board. To receive approval, a risk assessment and a risk management report shall be prepared as well as an emergency response plan. If at a later point it is found that there is a risk posed to human, plant or animal health, the environment or biological diversity, the Board may revoke the approval.	The Biosafety Act of Malaysia 2007, Act 678 http://www.biosafety.nre.gov.my/act_regulations/biosafety-act2007.pdf
3	Is there evidence of unauthorized use of GM trees?	No.	After a thorough search in the internet, no evidences have been found.
4	Is there any commercial use of GM trees in the country or region?	NoGM trees are allowed for commercial cultivation in Malaysia. However, after a thorough search in the internet and communication with experts, no evidences have been found about commercial use of GM trees in the country.	Department of Biosafety (N.Y). – Food, feed, processing. Approval for release. [Online]. Available at: http://www.biosafety.nre.gov.my/country_decision/app_ffp.shtml Expert consultation conducted by NEPCon in 2015.

5	Are there any trials of GM trees in the country or region?	There are potentials for trials to be conducted as a proposal was submitted that at the time of writing (2016) was being assessed. MRB will do the trial at the Rubber Research Centre in Penawar, Kota Tinggi Johore. The purpose of the trial is to evaluate expression of transgenes in leaf tissue and latex at different growth stages. Purpose of the GMO tree is for agricultural use, but as rubber tree is logged after finished cycle it is still considered applicable for forestry.	Wahab (2015): GE Rubber Trees. Global Agricultural Information Network: http://gain.fas.usda.gov/Recent%20GAIN%20Publications/GE%20Rubber%20Trees_Kuala%20Lumpur_Malaysia_12-4-2014.pdf
6	Are licenses required for commercial use of GM trees?	Yes. No person shall undertake any release activity, or any importation of living modified organisms (including trees), or both without the prior approval of the National Biosafety Board. To receive the approval a risk assessment and a risk management report shall be prepared, as well as an emergency response plan.	The Biosafety Act of Malaysia 2007, Act 678 http://www.biosafety.nre.gov.my/act_regulations/biosafety-act2007.pdf
7	Are there any licenses issued for GM trees relevant for the area under assessment? (If so, in what regions, for what species and to which entities?)	No. At the time of the GMO assessment (2016) no GM trees were approved for commercial cultivation in Malaysia.	Gain Report, 01/05/2015. Report Number MY5001: http://gain.fas.usda.gov/Recent%20GAIN%20Publications/GE%20Rubber%20Trees_Kuala%20Lumpur_Malaysia_12-4-2014.pdf Department of Biosafety (N.Y). – Food, feed, processing. Approval for release. [Online]. Available at: http://www.biosafety.nre.gov.my/country_decision/app_ffp.shtml
8	What GM 'species' are used?	None are currently used, but potential trials species to be used are: Transformed Rubber Trees (<i>Hevea brasiliensis</i>).	Wahab (2015): GE Rubber Trees. Global Agricultural Information Network: http://gain.fas.usda.gov/Recent%20GAIN%20Publications/GE%20Rubber%20Trees_Kuala%20Lumpur_Malaysia_12-4-2014.pdf
9	Can it be clearly determined in which MUs the GM trees are used?	NA. There are no GM trees in MUs to date.	See question 7.

Recommended control measures

N/A