

The Malaysian Timber Certification scheme and the FSC¹

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Key issues identified³

- FSC through its 'collaboration' with MTCC has been lending legitimacy to a national certification scheme principally set up in order to revive Malaysia's timber exports to Europe.
- FSC has been lending legitimacy to a 'standard development process' which disregards NGO concerns and Indigenous Peoples rights, while potentially legitimizing the extinction of Native Customary Rights to land and forests.
- FSC's name has been used for public relations purposes by the MTCC in their 'flawed' standard development process.

1. Introduction

In order to understand the background for the current confusion and disputes over 'timber certification' involving both the MTCC and FSC in Malaysia, it is useful to get an overview of Peoples and forests in Malaysia, land and forest jurisdiction, and the conflicts underpinning forestry in this country. The first section therefore presents such a brief overview.

1.1 Malaysia, Peoples and Forests

Malaysia is comprised of 11 states in Peninsular Malaysia, and two states in East Malaysia i.e. Sabah and Sarawak, on the island of Borneo. The largest state in Malaysia, Sarawak, is approximately equal in area to the whole of Peninsular Malaysia, while Sabah is the second largest state.

Approximately 80% of the population is found in Peninsular Malaysia and 20% in Sabah and Sarawak. The Orang Asli are the indigenous minority peoples of Peninsular Malaysia, comprising just 0.5 per cent of the current national population of 22.8 million. The term 'Orang Asli', meaning 'first peoples', is a collective term for the 18 ethnic subgroups officially classified for administrative purposes under Negrito, Senoi and Aboriginal Malay. The smallest among these three categories are the Negritos, comprising a little over three per cent of the Orang Asli population. The Senoi are the largest group, with about 54 per cent of the Orang Asli population and the Aboriginal Malays are the second largest group at about 43 per cent. The major groups in Peninsular Malaysia are the Malays, Chinese and Indians, and others such as Eurasians, and Indonesian and Filipino migrants.

The majority population of Sabah and Sarawak are indigenous peoples. There are 39 indigenous groups and sub-groups in Sabah, with the largest being the Kadazandusuns. In Sarawak, there are 37 different indigenous groups and sub-groups, the largest being the Ibans. The indigenous peoples of Sabah, Sarawak and Orang Asli of Peninsular Malaysia are collectively termed 'Orang Asal'⁴, which means 'Original Peoples'. Although they have distinct languages, cultures, lifestyles and livelihoods, they share one thing in common: a close physical, cultural and spiritual relationship with the land and forests. To the indigenous peoples in Malaysia, land and forest is a living entity, with spirituality and a sacredness of its own. This means that the land and forests provides them with food, clothing, medicines, fuel, and all materials necessary for their existence. Land and forests is also the school for the present and future generation, and the abode of their ancestors. Land and forests, therefore, gives life and meaning to their whole being; for it is in the land that their history and identity is contained.

1.2 Land and Forest Legislation and Policies

In the Malaysian Federation, the 13 states have jurisdiction over land, forests, fishery, agriculture, water resources and local authority areas. This means that individual states have power of decision over the use and allocation of resources. In the administration and management of forestry resources, for example, each State has its own Forestry Department and related agencies to implement forestry policies at state, district and local administrative levels. Constitutionally though, the federal government has the power to establish departments or ministries for resource conservation and inform local government of their plans. State agriculture and forestry departments are obliged, under the constitution, to refer to the federal counterparts on certain matters.

In practice, however, there are contradictions between federal and state policies on land, forests and the environment. The states have pursued their own land and forest policies, even where they appear to contradict federal policies, and vice versa. In practice, too, there are two contrasting/conflicting views of the forests. On the one hand, forests are seen as physical and economic resources, controlled by the state, private logging companies and individuals whose main concern is in the commercial value of trees to generate revenue and income. On the other hand, forests are generally seen by indigenous and forest-dependent peoples as a physical, social, cultural and spiritual resource, for livelihoods as well as the basis of beliefs, identity and survival. The state recognises only that the forestry department is the 'custodian' of forest resources, and this being so, disregards that indigenous peoples have been stewards of the forests since time immemorial.

The development options, undertaken by federal and state governments, which view forests as a land resource for commercial agricultural development and timber extraction for domestic consumption and exports, have led to loss of land and livelihoods for indigenous and forest-dependent peoples (see Appendix 2). In particular, the customary rights to land and forests of the Orang Asal (indigenous) communities have been revoked by such practices by states, which deemed it illegal and punishable to occupy lands when legal certificates and titles are not issued to them by the state. As a result, indigenous peoples found accessing or traversing 'state-owned' forest areas have been evicted from their ancestral lands and resettled by the state. Indigenous women have even less power to defend their customary land rights and are often most affected when community access to, and control over, forest and land resources are prohibited or restricted by the state.

1.3 Forests Conflicts and Problems

The forest is thus a contested resource, given the many different values, functions and interests it holds for different people. The state and the powerful private corporations and individuals often have the upper hand in decision-making and control of forests resources. In almost all contested forest areas, there is a long running struggle by indigenous and forest-dependent peoples to defend their rights. Indigenous peoples have been, and still are struggling to defend forests against exploitation or development that has adverse impacts on livelihoods and social, cultural, political and spiritual heritage.

When all efforts at negotiations have failed, the affected communities, or activists, have had no other option but to resort to peaceful demonstrations and have often ended up being arrested, imprisoned, beaten, or even murdered, allegedly by the police, military or hired thugs. In the case of Sarawak, large-scale arrests occurred in the 1980s when indigenous peoples mounted blockades and demonstrations to prevent the encroachment of logging companies into their forests. Today, peaceful blockades and demonstrations against the encroachment of logging and large-scale commercial agriculture projects such as oil palm plantations are still continuing. More recently, the indigenous peoples have begun to resort to the courts to settle disputes, especially over rights to their traditional territories⁵.

2. The Malaysian Timber Certification Scheme for 'Sustainable Forest Management'

This section briefly considers how the interest in certification among Malaysian industry and government was conceived and how it has developed since the 1980's.

2.1 Background on the development of certification in Malaysia

Indigenous and local forest communities have alleged that logging companies were encroaching into their ancestral lands and forests, threatening their survival and livelihoods. Since the early 1980s, the indigenous Penan, Kenyah, Kayans and Ibans of Sarawak, driven into desperation, began setting up human blockades to defend their tenure and user-rights over ancestral lands and forests. This alerted the national and international communities to support the indigenous cause. Because native livelihood issues are inextricably linked to logging, consumer countries with active environmental movements, such as those of Western Europe, called for the boycott of tropical timber sourced from indigenous peoples' forest areas⁶. Many timber producing and exporting countries, like Malaysia, have had to look for solutions to be able to sell to European markets that increasingly demand 'independent' verification that production is socially and environmentally 'sustainable'.

As international attention on the logging and native land issues grew, the Malaysian state and federal governments became increasingly concerned that the continued calls for boycott of tropical timber could have implications for the highly lucrative timber business. In view of this, various steps were taken such as inviting ITTO to send a study team to look into Sarawak's forestry (ITTO, 1990). Other measures were continually in use to protect the timber industry & timber interests including the on-going move to 'develop certification in Malaysia'.

2.2 Developing the national certification scheme⁷

The Malaysian Timber Certification Council (MTCC) was created in October 1998 "as an independent non-profit organisation to establish and operate a voluntary national timber certification scheme in Malaysia"⁸ (NTCC 1999). The underlying purpose of the MTCC was stated by Primary Industries Minister Datuk Seri Dr Lim Keng Yaik, in 2002:

"Malaysia wanted to revive its timber-product exports to Europe where the trade has suffered from the ill-founded perception that the products did not come from well-managed forests." (Lim 2002)

As such, the MTCC was, from the outset, principally intended as a way to avoid boycotts and get market access especially to the European and North American markets for Malaysian timber.

The process of developing a national certification standard for Malaysia comprised two phases:

- Stage 1: From 1994 to October 1998 - A technical design phase culminating in the establishment of the National Timber Certification Council and a draft set of standards (MC&I) to be used as the basis of the Malaysia's national certification scheme. The NTCC (henceforth referred to as MTCC) became operational in January 1999.
- Stage 2: From January 1999 to present - Refinement and modification of the standard to ensure international recognition and capacity building (Sandom and Simula 2001).

The first draft of the national certification standard was produced in 1996, which was largely based on the ISO 14000 generic forestry standards and ITTO Guidelines for Sustainable Forest Management. The National Committee on Sustainable Forest Management coordinated the work and largely consisted of government agencies, State Forestry Departments, the timber industry and the research community. NGOs hardly participated, nor were asked to contribute to the process at this early stage (Sandom and Simula 2001).

In 1998 the MTCC started its work for the development of a more detailed national certification standard, called the Malaysian Criteria and Indicators (MC&I) for Sustainable Forest Management (SFM) within the ITTO framework. In mid-1999, MTCC opened up the discussion process by inviting a broader spectrum of social and environmental groups including community-based indigenous groups and communities to be involved in the process "to review, discuss and improve the MC&I". These groups included the Borneo Resources Institute (BRIMAS), KERUAN Association, and the Institute for Development and Alternative Living (IDEAL) from Sarawak, Partners of Community Organisations (PACOS) from Sabah, Center for Orang Asli Concerns (COAC) from Peninsular Malaysia, as well as the national Sahabat Alam Malaysia (Friends of the Earth Malaysia).

The certification criteria, indicators, activities and standards of performance (SOP) were identified and finalized in 14 months and comprised 7 criteria and 50 indicators. The revised version was published on December 29th, 1999 as the "Malaysian Criteria, Indicators, Activities and Standards of Performance (MC&I) for Forest Management Certification (Forest Management Unit Level)" (Sandom and Simula, 2001).

However the concerns and suggestions raised which related to the protection of Indigenous Peoples rights had not been adequately addressed despite numerous inputs and submissions being made to this effect.

On the 6th and 7th of December 2000, the MTCC together with FSC, WWF-Malaysia, Tropical Forest Trust (TFT) and the German Agency for Technical Cooperation (GTZ) jointly organised a Workshop on Forest Certification as a step "to initiate work towards the formation of the Malaysia Working Group" (MTCC 2000). The workshop was also aimed at providing information on the MTCC and FSC certification schemes as well as explaining the purpose and requirements for forming the Malaysia Working group. At the workshop it became apparent that many things had been decided between MTCC and FSC without relevant stakeholders being kept informed. At the meeting several NGOs issued a statement saying:

"We continue to be involved in this process because we are genuinely interested in achieving sustainable forest management in Malaysia, which fully recognises the rights of indigenous and local communities, is ecologically sound and economically sustainable. ...

We are surprised that since the regional and national consultations in 1999, specific

steps have taken place without any information communicated to those of us who took part in those meetings, let alone any consultation over these decisions which culminate in the current workshop.

The FSC and NTCC Malaysia have finalised the Terms of Reference, which leaves little or no opportunities for any serious consultation. ...

We had clearly expressed our views and position over the draft MC & I, as attached. If those issues are not seriously pursued, then any discussion of harmonising the MC & I with the FSC principles and criteria would be premature and inconsistent with the spirit of genuine consultation.

Our aim is not to have a greenwash where a system considered "international" is adopted to certify timber trade that bears no relation to the reality of the forest and its peoples.

We therefore call for continuing and wider consultations on the issues identified at the 1999 regional and national meetings, with full and effective participation of affected communities, including the timely availability of full information, in local languages". (POASM et al⁹, 2000)

The workshop proceeded and resulted in the formation of a National Steering Committee (NSC) to examine the terms and conditions for further FSC-MTCC collaboration. The NSC consisted of four interest groups namely Economic, Environment, Social and Direct Resource Managers¹⁰, despite there never being any real consensus about the validity of these four 'chambers'. Furthermore the MTCC Chair was also to lead the NSC, while claiming that it was 'independent'.

The MTCC apparently hoped that the deliberations of the NSC would lead to the formation of a working group that the FSC would endorse as an 'FSC working group'. This, however, has not happened.

The community-based groups and NGOs, despite being concerned about the process as stated above, continued to participate in the MTCC/MC&I process hopeful that their concerns and the aspirations of the indigenous peoples would be adequately addressed. However, during 2001, they became further disillusioned with the MTCC and the reasons for initiating the MC&I. In fact, it became evident that their continued participation in the MTCC/MC&I process would only have lent legitimacy to the violation of the rights of the indigenous communities involved.

Thus, in July 2001, 10 social and community-based NGOs¹¹ which had been involved with the MTCC consultations, plus five nominated members in the NSC, announced their withdrawal from the MTCC/MC&I process and the NSC, stating that:

"We had agreed to participate, and during the process, we have seen how the NTCC is not able to resolve critical "stakeholders" main issues. More importantly, the NSC meeting and other processes give very little room for real dialogue and our presence may only be used to legitimise indigenous and local forest communities' participation in the process.

Furthermore, we expect that critical stakeholders, especially indigenous and local forest communities, will be informed in their own language(s) about the certification processes, rights and responsibilities, and that participation will be genuine and credible. Yet the NTCC and WWFM are cooperating to form a Multi-Stakeholder Working Group, that for some reason other NGOs and communities are not directly involved, and that is in clear violation of FSC's guidelines on Working Group Procedures (FSC Document 4.2). Yet, despite NTCC claiming to be independent of the National Steering Committee (NSC), the fact is that it is NTCC's Dr. Freezailah who heads it. ... There has been no consensus on proceeding with four 'chambers', yet the NTCC/NSC is currently proceeding along this path" (POASM et al 2001).

Their withdrawal was supported by two other NGOs and an Orang Asli community group¹² not connected with the MTCC consultations, which endorsed the NGOs Statement to MTCC, July 2001 (see Appendix 2). In September 2001, the groups issued a follow up statement to MTCC, reiterating their firm intention to withdraw "both our involvement in, and endorsement of, the MTCC/MC&I process". Also in September 2001, the groups decided to form a coalition of indigenous commu-

nities and NGOs working on certification and forest issues vis-à-vis indigenous and local forest communities ownership rights, user rights and access to resources, known collectively as JOANGOHutan.

Despite the JOANGOHutan groups' withdrawal and stated concerns, the NSC meetings went ahead with the formation of a 'Technical Working Group' (TWG) within the NSC to draft an 'FSC-compatible standard'.

Subsequently, MTCC organized regional-level consultations to identify Verifiers for the respective Indicators. These were held in Sabah, Sarawak and Peninsular Malaysia between April and July 2002. The MTCC claimed that from Sabah, "There was good representation of the social and environmental stakeholder groups" given that 17 representatives from 11 organisations attended the two Sabah Regional Consultations held on 17-18 April and 25-26 June 2002 in Kota Kinabalu. The MTCC also claimed that "These representatives [of Sabah] participated very actively and provided useful inputs into the formulation of the Verifiers, especially for Principle 2: Tenure and Use Rights and Responsibilities, and Principle 3: Indigenous Peoples' Rights". MTCC also reported that:

"Just like in Sabah, the response from the social and environmental stakeholder groups in Sarawak was indeed encouraging...Even though the representatives of the indigenous people did not attend the Peninsular Malaysia Regional Consultation held from 24-26 July 2002 in Kuala Lumpur, there was active participation from a sociologist who is an expert on the local indigenous people (Orang Asal)." (MTCC 2002a)

The increasing numbers of social and environmental stakeholder groups invited by MTCC to be involved in the MC&I Development Process may appear encouraging. However, in the perspective of JOANGOHutan:

"The MTCC in proceeding with its voluntary certification scheme without adequately addressing the call of the communities and NGOs for a moratorium on further logging ... in areas where indigenous peoples are asserting their native rights to land, demonstrates the total lack of genuine concern of indigenous peoples rights and the basic principles of forest management" (JONGOHutan 2002).

So, the question remains as to whether or not the presence of added social and environmental stakeholders - in particular those 'representing' indigenous groups but not calling for the amendment or repeal of legislation that impinges on indigenous and local forest communities' rights, is only being used to legitimize indigenous and local forest communities' participation in the standards development process. The composition, functions and objectives of some of these groups may have provided the local identification of them as being indigenous groups, representing, for example the Iranun, Tidung and Kedayan of Sabah, or the Dayak and Orang Ulu of Sarawak. However, they tend to be oriented towards the more traditional and cultural aspects such as indigenous art and crafts, dances, traditional costumes, handicrafts, etc and not fundamental issues pertaining to protection and recognition of rights.

In community workshops in the regions of Sabah, Sarawak and Peninsular Malaysia in February-April 2001, which were initiated by NGOs and communities, and funded by the Tropical Forest Trust, it was concluded that the way to accord legal recognition and protection to native customary rights over land for the indigenous peoples is to amend the laws on land (Yong et al 2001). The workshops emphasized that:

"The NTCC and FSC must ensure that certifiers of FMUs and concessionaires seeking FSC-certification of forest products adhere to FSC Principles and Criteria and to guidelines established on a consultative and participatory basis for certification. In this context, consultative and participatory means the full prior informed and consent of indigenous peoples and forest communities to the establishment of the Forest Management Units or concession areas that does not threaten or diminish, either directly or indirectly, the customary land rights, tenure rights and resources of indigenous peoples. Sites of special cultural, ecological, economic or religious significance to indigenous peoples shall be clearly identified in cooperation with the indigenous peoples, and recognized and protected by the federal and State governments and their statutory bodies, logging concessionaires or license holders, certifiers, the public" (Yong et. al. 2001).

3. MTCC and the FSC

3.1. How the collaboration started:

According to Timothy Synnott, the FSC's Executive Director at the time:

"In September 1994, the FSC ED met representatives who had little enthusiasm for collaboration with FSC. In 1995 - 1988 [sic], further meetings were held in KL [Kuala Lumpur], and with the Malaysian Timber Council (MTC) representatives in Europe, but there was little scope for collaboration....

At the end of 1998, Malaysia officials indicated that they wanted to collaborate with FSC. The Minister of Primary Industries [Mr Lim Keng Yaik] announced in London that Malaysia was extremely interested in collaboration with FSC, and the impression that Malaysia was hostile to FSC was a misunderstanding. The ED and two FSC members met the London director of the Malaysian Timber Council in December 1998. The ED went to Kuala Lumpur in March 1999 for meetings with the Minister, forestry officials, NGOs,¹³ and timber exporters... NTCC and FSC agreed to collaborate in revising the MC&I, to make them compatible with latest ITTO and FSC documents" (Synnott 2001).

As was candidly noted in an article in The Star newspaper, the 1998 decision by MTCC to engage with FSC was a '180 degree turn' from the mid 1990's, when Primary Industry Minister Datuk Seri Dr Lim Keng Yaik used words like "discriminatory, undemocratic, divisive, misleading and dishonest, impractical and costly, and counter-productive" when describing the FSC certification drive (Yoga 2001a).

In December 2000, in conjunction with the mentioned workshop in Kuala Lumpur, a Memorandum of Understanding (MoU) was signed between MTCC and FSC, with agreement to carry out a 'Gap Analysis' and a comparative study of the MC&I as well as to carry out a comparative study of MTCC and FSC requirements. The objectives of the 'Gap Analysis' study were "to help MTCC fill the gaps, improve its standards and systems and help the NSC in setting up the standards."

Work on the FSC-MTCC Comparative Study started in January 2001. Two 'independent expert consultants' were appointed, James Sandom by FSC and Markku Simula by MTCC, to do the assessment and to write the report. According to Sandom and Simula, "The process of developing national standards in Malaysia has been comprehensive and opportunities have been provided for the main interest groups to participate - at both the national and regional levels." (Sandom and Simula, 2001). The comparison of the MC&I and the FSC P&C was completed in late March, while the study of FSC Process requirements was completed in June 2001.

However, there are reasons to question the motivations of MTCC in collaborating with FSC. From early on, it seems to have been a deliberate strategy for the MTCC to use the collaboration in order to gain international recognition. For example, at a session with Orang Asli communities in Peninsular Malaysia in April 2001, the MTCC told the participants that "the MTCC would try to cooperate with the FSC towards a long-term collaboration" and added that, "the Malaysian standard was compatible with the FSC and thus Malaysian [timber] products are now gaining acceptance in the international market". In December 2001, the MTCC announced that they would anyway be going ahead with a voluntary scheme using a set of old criteria which has 29 indicators, and which had been formulated under a Malaysia-Netherlands cooperation program for timber certification in 1996¹⁴.

The MTCC further announced that the first phase of the certification process would be using the interim Malaysian Criteria and Indicators for Forest Management Certification (MC&I). The MTCC also said that this interim standards would become "FSC compatible" in 'Phase 2'. The MTCC scheme was officially launched by the Malaysian government in January 2002.

3.2. MTCC in search of international acceptance

The MTCC sudden 'u-turn' with respect to their 'perspectives on the FSC' seems to have come from a realization that without any international acceptance the Malaysian certification scheme would not be an effective tool for the promotion of Malaysian timber and timber products in foreign markets. As noted in the article 'Lumbering process of certification':

"The NTCC concedes that FSC-endorsement of the MC&I is crucial since it would be difficult to convince the international market to accept the MC&I' (Yoga 2001a).

MTCC has however continued to 'put pressure' on the FSC by stating that it will work with 'other schemes' if there is no FSC-endorsement of their standards. As noted in the article referred to above:

"if there is no FSC-endorsement, the NTCC will work with other international certification schemes" (Yoga 2001a).

In the Minutes from the 5th NSC meeting of the MTCC the Chairman further states that:

'... MTCC is also currently collaborating with the Pan European Forest Certification (PEFC) Council, as well as collaborating with other ASEAN member countries to develop a Pan ASEAN Certification Scheme' (MTCC 2002b).

This indicates that MTCC's 'commitment to the FSC' goes only as far as FSC is a useful institution with which to be associated in order to legitimise the MTCC and its practices (see Box 1 below).

Impatient for certification: Time is money

The text below is quoted verbatim from an article in the Business Times (Malaysia) 19th of June 2001 entitled 'Timber exporters turn to Mexico-based standards' (Zaidi Isham Ismail 2001).

MALAYSIAN timber exporters are, for now, left with no alternative but to subscribe to the Mexico-based Forest Stewardship Council (FSC) timber certification to achieve greater success in the developed nation markets. Industry sources said the environment-conscious consumers of these countries trust the timber certification of FSC, a non-governmental organisation (NGO). "Until the National Timber Certification Council can come up with an inter-nationally-recognised label, the exporters have to rely on FSC's certification," a source told Business Times in Kuala Lumpur.

He noted that the local timber exporters without FSC certification will continue to lose out on markets until Malaysia's very own certification programme is drawn up soon. Certification is important as it indicates that Malaysia's timber come from a sustainable and well-managed forest and certification allows better pricing and value for money. With such labelling, Malaysian timber products should have greater access to overseas markets particularly the US, Europe and other markets that insist on certification for their timber imports.

The National Timber Certification Council (NTCC) was established in 1998 to undertake the task of overseeing the certification process of Malaysia's timber. But progress has been slow somewhat because the international community views Malaysia's certification programme with scepticism. To counter this negativity, NTCC has since sought out the powerful FSC to endorse the council.

An industry source said the NTCC has yet to come up with a timber certification standard that suits FSC criteria on forest sustainability. He noted that at present, NTCC faces too many hurdles before such a labelling can be set up for Malaysia's timber exporters. "I'm afraid timber companies cannot afford to lose markets from waiting because time is money. It is a matter of dollars and sen to them," the source said.

In the fifth meeting of the NSC, WWF Malaysia raised a concern with regard to the MTCC's use of the acronym 'FSC' in the documents related to the MTCC's standard development process. They argued that the use of the initials 'FSC' should be dropped from the draft standard document. To this the Chairman of the NSC replied that:

"... there is a history behind the use of the FSC in the draft standard. Hence it would not be appropriate to stop using the term FSC, as it would be denying the existence of the MTCC-FSC collaboration" (MTCC 2002b).

When drawing up what MTCC has repeatedly referred to as the 'FSC compatible standard' the name 'FSC' is used by the MTCC on documents related to this standard development process within the MTCC. This seems to be in violation of FSC regulations, but nevertheless it has continued up until October 2002, creating confusion as to whether or not the NSC-appointed TWG is actually FSC endorsed, and to what extent the collaboration between MTCC and FSC is still ongoing or has ended.

4. Assessing the MTCC-FSC Collaboration and standards development process

4.1 The process

The MTCC/MC&I process apparently lacked transparency, accountability, full consultation and fair decision-making. Furthermore, the ongoing process has been painted by MTCC as a rosy picture of NGOs participation, by mere fact of the enduring involvement of NGOs such as WWF Malaysia and International Federation of Building and Wood Workers (IFBWW).¹⁵ With time, more and more 'social and environmental stakeholder groups' have been invited to participate in the MTCC workshops and 'alternate' NSC members have been accepted. However, the majority of these groups and individuals are those that tend to be more 'culturally-oriented', rather than those that take a more independent position on issues of indigenous and local forest communities' rights.

Malaysian NGOs and community groups who have withdrawn from the MTCC process still believe that, whilst social and environmental groups increasingly participate in the development of MC&I to comply with FSC requirements, the process remains questionable when fundamental issues of indigenous and local forest communities' rights that had been raised several times to the MTCC have continuously been ignored and not resolved (see Appendix 2). As an indigenous representative from a Sarawak NGO aptly noted:

"At the 1st NTCC meeting...in KL about one and a half years ago, we, the NGO groups present had already made our stand very clear that the National Timber Certification process is not acceptable for Sarawak...Our opposition was on the ground that the NTCC process will only be implemented within areas gazetted as permanent forest estate (PFE) - which means within the Sarawak context - within areas gazetted as protected forests and forest reserves¹⁶ ... As Native Customary Rights (NCR) are extinguished or cannot exist within the PFE, i.e. within the areas to be logged and where the NTC process will apply, how can the natives be called "a stake holder" in the NTC process? Without NCR or any right, how can the natives [be] asked to be consulted, to participate or to share in the benefits of this NTC process?" (Indigenous representative from a Sarawak NGO, pers. comm, 2002)

The resignation of WWF Malaysia as a member of the MTCC Board of Trustees validated what the NGOs and community-based groups that withdrew from the MTCC/MC&I process had been saying:

"On the 31st January 2002, the MTCC certification scheme was launched by the Honourable Minister of Primary Industries. However, it is in WWF Malaysia's view that the MTCC scheme is not an adequate mechanism to improve forest management as the standards that is being used did not undergo the due consultative process with stakeholders. Therefore, after due consultations with forestry related staff, it was decided that WWF Malaysia could not share in the responsibility of the MTCC scheme in its current form" (WWF Malaysia 2002).

4.2 Stakeholder Participation

The participation and involvement of community-based groups and indigenous community members in the MTCC certification process has been misconstrued as giving consent and approval to the standards drawn up by the MTCC. It is clearly stated in the numerous NGO Statements to MTCC that:

"The objections that we have raised several times to the MTCC have continuously been ignored and not resolved. We, therefore, had no other choice but to withdraw our involvement from the MTCC process at the end of July last year.

We deeply regret efforts by the timber industry in this country and the MTCC in proceeding to certify timber from Malaysia as being "sustainably produced" when the concerns of indigenous communities and local communities have not been taken into account and their rights ignored" (JOANGOHutan 2002).

Among the NGOs, WWF Malaysia has been the most involved in the MTCC/MC&I process. WWF Malaysia also sat on the MTCC Board of Trustees, until their resignation on 30 January 2002. However, it is still coordinating the four-member Technical Working Group (TWG) formed to work on revising the MC&I to make them 'compatible with the FSC P&C'. As affirmed in WWF's Position Statement:

"WWF Malaysia's resignation from the Board [of MTCC] does not signal our withdrawal from the entire certification process. Rather, WWF Malaysia will remain actively in-

volved in the current multi-stakeholder participatory consultative process, which is running in parallel with the current MTCC scheme" (WWF Malaysia 2002).

Nonetheless, the MTCC and the timber industry tend to assume that WWF Malaysia represents the NGO community, particularly the environmental sector. However, it must be made clear that the WWF Malaysia does not represent the concerns of indigenous, non-governmental and community organisations as a whole, and it is noticeable that WWF Malaysia has never openly and actively supported all the Joint NGOs Statements to MTCC.

4.3 Certification for whom and for what?

The fundamental difference between the objectives of the MTCC in developing certification standards and that of the community-based groups and NGOs is that, according to JOANGOHutan:

"the MTCC is structured to find ways to sell our timber while we are mandated to protect our forests and to secure the livelihoods and interests of indigenous peoples and local communities who live in, depend on and derive their spiritual and cultural identity from the forests" (POASM et al 2001).

To further illustrate this difference, MTCC has yet to provide an adequate and satisfactory response to the concerns repeatedly raised by NGOs and community-based groups that participated in the MTCC process. These concerns were summarized by JOANGOHutan in a press statement in January 2002:

"We had since 1999 been involved in the process to review, discuss and improve the Malaysian Criteria, Indicators, Activities and Standards of Performance (MC&I) for Forest Management Certification because we were genuinely interested in achieving sustainable forest management in Malaysia.

However, we have also clearly communicated to the MTCC about a number of fundamental issues throughout the process that needed to be addressed and resolved before any credible and effective certification scheme can be in place.

The issues centered on the rights of indigenous peoples to customary lands and forests and livelihoods of the people who live in and around the forests. ...

Among the serious concerns that we had raised with the MTCC included -

1. The encroachment of Forest Management Units, Protected Areas and logging concessions into the community's forest areas which take away or restrict the community's ownership rights, user rights and access to resources. Many of these areas are still being disputed because they involve either part or the whole of lands and forests over which native communities have native customary rights and claims;
2. The concept and process of sustainable forest management and certification is difficult for many of the indigenous and local communities to understand because of the technical terms and lack of full information in local languages. Further, the concept of Sustainable Forest Management (SFM) as enforced through legislation and forest management plans is different from communities who see SFM as a means to ensure the continuity of forest resources for food, medicines, other daily needs and inheritance to the future generations;
3. Indigenous peoples have particular rights to land and use of forestland, which is different from other forest users. There must be due recognition and respect for indigenous values, knowledge and practice related to land and forest;
4. Involuntary relocation of villages in the FMU results in the loss of ownership and user rights. Besides, governments and development agencies often make decisions to move the communities without consulting them first, resulting in further impoverishment of the communities; and
5. Participation of indigenous and local forest communities must not be limited to just a few appointed leaders or members of the community. The entire village must be informed, consulted and involved in decision-making processes in order to have meaningful participation before they give their informed consent to the planning or implementation of development on their land or forest areas.

We had demanded that the process for the development of standards and criteria for timber

certification be participatory, consultative, open, transparent and involve representation of all key stakeholder groups at all levels who have a genuine interest in forest management and conservation in Malaysia" (JOANGOHutan 2002).

The MTCC, in proceeding with the process of developing the national certification scheme and 'harmonization of the MC&I with FSC' without adequately addressing the concerns of the communities and NGOs, thus continue to demonstrate the lack of genuine protection and recognition of indigenous peoples rights and basic principles of sustainable forest management.

4.4. FSC encouraging MTCC to 'proceed rapidly'

In all the NGO Statements to MTCC, it has been made clear that a major concern was the inadequacy of the MC&I to give due recognition to the rights of, and user rights on, the traditional territories of local indigenous and forest communities. Yet Primary Industries Minister Lim Keng Yaik at a press conference at the launch of MTCC's Timber Certification Scheme on the 31st of January 2002, accused NGOs and community groups pulling out of the MTCC/MC&I process due to MTCC's refusal "to give in to our demands, which amounted to asking the MTCC to break the country's laws and regulations." Commenting on the pullout, at the same press conference, MTCC's Chair, Dr Freezailah, said,

"Even though the FSC includes a provision to include representation of the social and indigenous groups, it was the group who pulled out... The FSC knows that we have tried to get them back into the process and I'm sure they will make the necessary adjustments to take this into account."

An FSC international Board member, Sian Tuan Mok, who is Malaysian and has been involved in the MTCC process, has also indicated that those who have pulled out 'have unrealistic demands' and that their places can be taken over by others. For instance, the minutes of the third meeting of the National Steering Committee stated that:

"Mr. Mok believed that the NGOs may have some misperceptions about FSC and therefore they keep on making unrealistic demands ... He however stressed the need to deal with this situation cautiously, and not to be seen to be chasing them away. He saw the need to send the minutes of the NSC meetings to the NGOs concerned, and to let the NGOs concerned know that they have to come in and participate in the NSC. If not, other parties will be invited to represent their interests' (MTCC 2001).

It is apparent from this statement that it is maintaining the illusion of 'multi-stakeholder processes and participation' which is important, and not actual participation and democratic standard development processes based on FSC's Principles and Criteria. FSC's board member from Malaysia has thus instead of stressing the importance of true transparent multi-stakeholder processes and respect for Indigenous Peoples rights in their own territories, rather emphasized that speed is essential. On the 12th June 2001 it could be read in the Star that:

"Mok thinks Malaysia should work fast to have certification in place, otherwise it would at the losing end. As it is, Brazil and Ecuador already has FSC-certified plywood and sawn timber" (Yoga2001a).

5. Concluding remarks

FSC's 'collaboration' has been used by the MTCC to legitimize a process which aims to serve those with a vested corporate interest in certification occurring quickly in Malaysia, whilst ignoring difficult and time consuming issues such as Indigenous Peoples' rights and tenure. Those 'representing the FSC' seem even to have encouraged MTCC to 'speed up the process' with little apparent regard for the issues raised by social and indigenous stakeholders. . The FSC thus finds itself in a position where it is currently being used by MTCC to legitimize its practices and agendas. This increasingly serves to undermine FSC's own credibility.

As the MTCC 'went alone' to launch their own scheme (see 3.1.) in January 2002, the JOANGOHutan groups, who had all withdrawn half a year earlier in protest, stated that:

"In relation to the forest management performance standards, we had insisted that the indigenous communities' legal and customary tenure or user rights (adat) be recognised.

Establishment of FMUs and concessionaires seeking certification of forest products must comply with the criteria and indicators established on a consultative and participatory basis and the adat. Consultative and participatory means the full prior informed and consent of indigenous peoples and forest communities to the establishment of the FMUs or concession areas that does not threaten or diminish, either directly or indirectly, the customary land rights, tenure rights and resources of indigenous peoples.

Land and forest disputes between the communities on the one hand, and the government, logging concessionaires and licensees on the other hand, are serious and continue to exist in the country. Violations of the rights of indigenous peoples continue and the timber certification process does not acknowledge such concerns" (JOANGOHutan 2002).

At the time of writing it still seems unclear if there is any 'collaboration' ongoing between the FSC and the MTCC. While it has been claimed by staff members of the FSC that the formal collaboration has ended, FSC was represented at the 6th NSC meeting at the end of October 2002. While there appear to be confusion both within the MTCC and the FSC regarding what the content of the 'collaboration' now is, or is not, it is perfectly clear that as of November 2002, MTCC continues to use FSC's name in its standard development process, and refers to the standards as 'FSC-Compatible Malaysian Standards'. They do this despite the fact that the whole JOANGOHutan network has withdrawn, the demands raised since 1999 (see Appendix 2) have not been taken into consideration, and neither the 'working group' nor the 'standard' has any official endorsement from the FSC.

There are important decisions to make for the FSC. Many observers are watching if the FSC will continue to lend support to the Malaysian industry and government's calculated efforts to avoid boycotts and get better access to markets for Malaysian timber, without addressing the violations of indigenous peoples rights and destruction of their livelihoods. If the FSC continues to lend its name to MTCC's development of flawed certification standards and practices, while ignoring Indigenous Peoples rights to their lands and forests, the FSC will be seen to have become a hindrance to, instead of a catalyst for, the promotion and respect for Indigenous Peoples rights.

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Appendix 1

Member groups in JOANGOHutan

- #1. Persatuan Orang Asli Semenanjung Malaysia (POASM), Semenanjung Malaysia
- #2. Sinui Pai Nanek Sngik (SPNS), Perak
- #3. Komuniti Orang Asli Daerah Slim River, Perak
- #4. Center for Orang Asli Concerns (COAC), Selangor
- #5. Partners of Community Organisations (PACOS Trust), Sabah
- #6. KERUAN Association, Sarawak
- #7. Borneo Resources Institute (BRIMAS), Sarawak
- #8. SILOP, Sarawak
- #9. Indigenous Peoples' Development Centre (IPDC), Sarawak
- #10. Institute for Development and Alternative Living (IDEAL), Sarawak
- #11. SACCESS, Sarawak
- #12. Sahabat Alam Malaysia (SAM), Malaysia
13. SOS Selangor (Save Our Sungai Selangor), Selangor
14. Suara Rakyat Malaysia (SUARAM), Selangor

These groups have participated in the MTCC workshops since August 1999 until they withdrew from the MTCC/MC&I process in July 2001.

¹ This paper is based on various sources, including the authors' involvement in the earlier stages of the MTCC, MC&I and NSC processes between August 1999 and July 2001, NGOs statements to the MTCC and press releases by JOANGOHutan. Contact: joangohutan@yahoo.co.uk.

² JOANGOHutan is a network of 14 non-governmental, community- and Indigenous Peoples organizations. The list of members in the JOANGOHutan coalition can be found in Appendix 1.

³ Issues concerning 'Mutual Recognition' between MTCC and FSC, especially in terms of FSC (non) compliance with FSC Motion 11/1999 are not discussed in this case study. For elaboration on this specific issue see section 2.5.2 of the report.

⁴ The Indigenous delegates from Sabah, Sarawak and Peninsular Malaysia unanimously agreed the use of the term 'Orang Asal' during the First National Conference on Land Rights for the Indigenous Peoples of Malaysia (Hak Tanah dan Jatidiri Orang Asal SeMalaysia) 2nd and 3rd September 1996, Kuala Lumpur, Malaysia.

⁵ In two exceptional cases, the courts have ruled in favour of the indigenous communities: (1) Sarawak High Court Judge Ian Chin's verdict on the Rumah Nor case (an indigenous Iban longhouse community), that the Borneo Pulp and Paper (BPP) and Sarawak State Government had illegally acquired their land. Following the Rumah Nor victory, based in part on the evidence of community-based maps of their traditional lands, the Sarawak legislature passed a new law in November 2001 that outlawed community-based mapping; and (2) in April 2002, seven Temuan Orang Asli in Peninsular Malaysia won their case when Federal High Court Judge Mohd. Noor Ahmad ruled that the federal government, the Selangor state government, construction firm United Engineer Malaysia (UEM) and the Malaysian Highway Authority (LLM) had unlawfully appropriated the Orang Asli traditional territories for the Kuala Lumpur International Airport.

⁶ Although Europe is a relatively small market, it exerts significant influence in the global timber trade.

⁷ Information for this section is largely extracted from Sandom and Simula 2001.

⁸ Malaysian Timber Certification Council was formerly known as the National Timber Certification Council (NTCC) the terms NTCC and MTCC are both used inter-changeably to describe the same institution.

⁹ The statement was signed by: Persatuan Orang Asli Semenanjung Malaysia (POASM), Center for Orang Asli Concerns (COAC), Partners of Community Organisations (PACOS), KERUAN Association, Borneo Resources

Institute (BRIMAS), Indigenous Peoples' Development Centre (IPDC), SILOP, Institute for Development and Alternative Living (IDEAL), SACCESS, Sahabat Alam Malaysia (SAM), Umui Pai Mamek Group, SOS Selangor (Save Our Sungai Selangor), Suara Rakyat Malaysia (SUARAM).

- ¹⁰ Direct Resource Managers in MTCC's context refers principally to Ministries, State Forestry Departments, government agencies and statutory bodies, and research/scientific community.
- ¹¹ The groups were Center for Orang Asli Concerns (COAC), Persatuan Orang Asli Semenanjung Malaysia (POASM), Partners of Community Organisations (PACOS Trust), Keruan Association, Borneo Resources Institute (BRIMAS), Indigenous Peoples' Development Centre (IPDC), SILOP, Institute for Development and Alternative Living (IDEAL), SACCESS and Sahabat Alam Malaysia (SAM).
- ¹² The two NGOs were Save Our Sungai Selangor (SOS) Selangor and Suara Rakyat Malaysia (SUARAM), an environmental coalition and human rights organisation, respectively. The Orang Asli group was the Umui Pai Mamek Group, based in the northern state of Perak.
- ¹³ The NGOs met were bigger environmental NGOs such as WWF-Malaysia, whose views and priority on environmental conservation (soil erosion, wildlife conservation, etc.) do not necessarily represent the concerns of indigenous peoples and community-based social NGOs. For example, conflicts happen between WWF-Malaysia and villagers as in the case when WWF-Malaysia is more concerned with limiting the number of animals hunted, whereas the villagers go hunting to meet subsistence needs respecting the traditional custom of 'not depleting the resource'.
- ¹⁴ In 1996, pilot forest and CoC Certification were conducted by SGS Malaysia in three states in Peninsular Malaysia i.e. Selangor, Pahang and Trengganu against the requirements of the Keurhout Foundation within the bilateral Dutch-Malaysia Cooperation programme. If the forests in the three states were found to be in compliance with the Keurhout Standard, comprising of 29 'indicators', the timber would have been labelled with the Dutch Keurhout Hallmark System. However, SGS Malaysia found major contraventions. All three states failed to receive 'certification' (Yoga 2001b). However SGS Malaysia then issued 'audit statements' (not certificates) to the three states, which committed the three pilot states to achieve compliance with MC&I by 2000 (Sandom and Simula, 2001). The three states eventually passed their assessments by SGS Malaysia against this flawed standard between November 2000 and February 2001, after which the final reports went to review by the Keurhout Foundation. However the Forestry Department and MTCC immediately proclaimed the forests in the three states as being certified as sustainably managed. Furthermore MTCC's senior manger Harnarinder Singh informed the Star newspaper that 93,552 cubic meter of 'audited' timber had been exported up to February 2001. The article in the Star concludes that: 'The three states failed even to meet Kerhout's 29 indicators, when the current MC&I has 53. Detractors claimed that the Kerhout guidelines were watered down-after all, the foundation represents the Dutch timber industry which wants to ensure a supply of processed timber'. (Yoga 2001b).
- ¹⁵ The IFBWW is the appointed coordinator for the 'social' groups while WWF Malaysia coordinates the environmental groups in the NSC. It was pointed out in the withdrawal letter from the community groups and NGOs in July 2001 that: "... the potential for the Social Group to reach consensus is difficult as the worker's union has conflicting interest with community organizations within the group. Thus far, the union representatives have also demonstrated inflexibility and lack of openness to indigenous peoples' concerns. Representatives of community organizations question the union's legitimacy to be within this group and thus need clarification on their position and interests" (POASM et al 2001).
- ¹⁶ Under the Sarawak Forest Ordinance Cap. 126, once a protected forest or forest reserve is gazetted over an area over which the natives claim NCR, their Native Customary Rights are extinguished.