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CHAPTER 1

Indigenous land rights and nature conservation laws in Malaysia: An evaluation of Indigenous powers of management

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Abstract: Both international and domestic research and developments suggest that Indigenous Peoples are vital partners in the sustainable management of nature conservation. While recognition of Indigenous rights to their lands and resources may be warranted in this regard, the integration of legally enforceable Indigenous rights to land and conservation strategies has remained a challenge. This paper examines the principal Indigenous land rights and nature conservation laws in Malaysia with a view to determine the extent to which local Indigenous communities are formally empowered to manage nature conservation within their traditional lands and territories. It does so by analysing the relevant laws within the jurisdictions of Peninsular Malaysia, Sarawak and Sabah, state-led initiatives toward local Indigenous management of nature conservation, and key national policies and plans concerning conservation. Despite an increased role for local Indigenous participation in nature conservation efforts, legal powers of management and control over nature conservation remains stacked in favour of the governments concerned and their agencies. Significant national strategies appear mixed, suggesting uncertainty if there is concerted governmental intent to share effective legal power with Indigenous communities for the management of nature conservation within their localities.

INTRODUCTION

Global studies have consistently observed that the management of traditional areas by its Indigenous peoples would produce equal if not better outcomes for nature conservation (Stevens 2014; Errico 2017; WWF *et al.* 2021). Concurrent developments in international fora and law have also acknowledged and conceived 'indigenous', 'traditional' or 'local' people as vital partners for biodiversity conservation and propounded a rights-based approach to conservation and the management of protected areas that meet contemporary international standards, including those relating to sustainable development, alleviation of poverty and Indigenous rights (Painemilla *et al.* 2011; Sikor and Stahl 2011; Stevens 2014; WWF *et al.* 2021). Accordingly, Indigenous peoples and local communities warrant appropriate recognition of their rights and governance authority and support to equitably and effectively participate in efforts towards the conservation of the world's remaining natural landscapes (WWF *et al.* 2021).

However, effective integration of legally enforceable Indigenous rights to land and conservation strategies has proven to be easier said than done. For example, some states are reluctant to part with ownership and authority of protected areas in favour of Indigenous communities and even where there are formal arrangements for the participation of Indigenous communities in the management of such areas, the balance of power in many cases still does not lie with the Indigenous community (Stevens 2014).

This paper examines the principal Indigenous land rights and nature conservation laws in Malaysia with a view to determine the extent to which local Indigenous communities are formally empowered to manage nature conservation within their traditional lands and

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territories. It begins by identifying 'Indigenous Peoples' within the Malaysian context before analysing the relevant laws within the jurisdictions of Peninsular Malaysia, Sarawak and Sabah. The paper then evaluates state-led initiatives toward local Indigenous management of nature conservation before concluding on the direction of the government on such matters with reference to key national policies and plans.

'INDIGENOUS PEOPLES' IN MALAYSIA

While the Malaysian Constitution does not define the term 'Indigenous Peoples', the document refers to four constitutionally privileged ethnic groups, namely, the Malays, natives of Sabah, natives of Sarawak and the peninsular Malaysia Orang Asli. Article 160(2) of the Federal Constitution states that a 'Malay' means a person who professes the religion of Islam, habitually speaks the Malay language, conforms to Malay custom and (i) was before 31 August 1957 born in Malaya or Singapore, or domiciled there on that day; or (ii) is the issue of that person. Article 160(2) of the Federal Constitution defines an Orang Asli as an 'aborigine of the Malay peninsula'. Section 3 of the Aboriginal Peoples Act 1954 (Malaysia) provides for detailed cultural and biological criteria for a person to be legally considered an Orang Asli subject to federal executive power to determine whether a person is an Orang Asli.

In Sarawak, state law defines whether citizens are 'native' (Article 161A(a) of the Federal Constitution). The Schedule to the Sarawak Interpretation Ordinance, 2005 lists 31 racial groups (and sub-groups) considered to be 'indigenous to Sarawak' and accordingly 'natives', including legal conditions for recognition as a native of Sarawak. Article 161A(b) states that the term 'native' in Sabah means a person who is a citizen, is the child or grandchild of a person of a race indigenous to Sabah and was born either in Sabah or to a father domiciled in Sabah at the time of the birth. Collectively, the natives of Sabah, natives of Sarawak and Peninsular Malaysia Orang Asli have been categorised into at least 84 heterogeneous ethnic and sub-ethnic groups (Nicholas 2023: p. 238).

For current purposes, the natives of Sabah and Sarawak and the Orang Asli are considered 'Indigenous Peoples'. While there is no international legal definition of the term 'Indigenous Peoples', these three groups have been regarded as such on the basis that local communities within these groups fulfil the characteristics contained in the widely accepted definition proposed by UN Special Rapporteur Jose Martinez Cobo (Cobo 1986, p. 29; Endicott 2003, pp. 145 – 146; SUHAKAM 2013, p. 6). These characteristics include: (i) historical continuity with pre-colonial societies that developed on their territories; (ii) self-identification as distinct from other sectors of prevailing society; (iii) a non-dominant or marginalised situation within prevailing society; and (iv) the determination to preserve and transmit to future generations, their ancestral territories and identity as peoples in accordance with their own cultural patterns, social institutions and legal system (Cobo 1986, p. 29). In addition to being early inhabitants of their respective traditional locales, these groups have developed rich, complex and diverse land and territorial connections and sustainable knowledge systems in and over these spaces through oral traditions and the domestic practice of customs and usages (SUHAKAM 2013, pp. 10, 20 – 33; Ministry of Natural Resources and Environmental Sustainability (NRES) 2022, pp. 35, 98).

In contrast, ethnic Malays have not self-identified with the above characteristics at international fora and more specifically, do not possess specific communal and cultural connections to particular tracts of land and the resolve to preserve and transmit them customarily (Endicott 2003, pp. 143 – 146; Subramaniam 2012, pp. 43 – 45; SUHAKAM 2013, pp. v, 6). The Human Rights Commission of Malaysia (SUHAKAM) has also viewed 'the mainstream, not minority' Malays as not within its inquiries into Indigenous peoples' land rights in Malaysia (SUHAKAM 2013, p. v). Accordingly, this paper will focus on rights of the Orang Asli, natives of Sarawak and natives of Sabah.

INDIGENOUS RIGHTS AND NATURE CONSERVATION LAWS BY JURISDICTION

Peninsular Malaysia, Sarawak and Sabah generally have distinct laws relating Indigenous land rights and nature conservation. Legally, this scenario is due to exclusive state jurisdiction over these matters. Items 2 and 3 of the general State List (List II of the Ninth Schedule) of the Federal Constitution confer exclusive state jurisdiction over land, and agriculture and forestry matters respectively. Item 13 of the Supplement to State List for States of Sabah and Sarawak (List IIA Ninth Sch of the Federal Constitution) provides for state government authority over native law and customs. Additional constitutional protection for Sabah and Sarawak compared to other states of the Federation emanating from the Malaysia Agreement 1963, including provisions in relation to federal land use, local government and development (Articles 88 and 95E of the Federal Constitution), have ensured that Indigenous land rights and nature conservation come under the purview of both Bornean state governments. Accordingly, the relevant laws from the three jurisdictions are examined separately.

Statutory position: Orang Asli

The legal status and land rights of the Orang Asli in Peninsular Malaysia are primarily governed by the *Aboriginal Peoples Act 1954* (*APA*). The *APA* has been criticised as 'static and outmoded' due to its paternalistic and protectionist framework (Hooker 1996), which grants the government extensive authority over the Orang Asli community and their traditional territories. Efforts are underway to amend the *APA* (Ministry of Economy, Malaysia 2025), but the Act remains in force.

The *APA* empowers the federal executive, specifically the Department of Orang Asli Development (JAKOA), with extensive control over Orang Asli and their traditional lands. This includes the power to legally define who qualifies as an Orang Asli [Section 3(3)], appoint or dismiss community headmen (Section 16), and exclude individuals from Orang Asli areas (Sections 14 and 15).

From an Orang Asli land rights perspective, a central failure of the *APA*, the *National Land Code 1965* (*NLC*) and other land-related legislation is the lack of formal statutory recognition for Orang Asli customary land tenure. Primary protection of Orang Asli traditional areas relies on State governments declaring specific parcels as 'Aboriginal reserves' (for example, *APA*, Section 7) or 'Aboriginal areas' (*APA*, Section 6) upon JAKOA's application.

However, these statutory protections offer highly insecure tenure. Written law permits these reserves and areas to be revoked by a notification in the State government gazette (see for example, *APA*, Sections 6(3) and 7(3); *NLC*, Section 64), making their existence dependent on executive fiat. Furthermore, statutory Orang Asli rights of occupancy within a reserve are restricted to that of a 'tenant at will' (*APA*, Section 8), meaning their land rights are terminable at any time by the State Authority.

The *APA*'s provisions for land loss are inadequate, offering no legal right to replacement lands and making compensation for lost land discretionary. Despite the government's mandate to protect these communities, land security outcomes are poor. As of 2018, only 25% of acknowledged Orang Asli lands had been formally reserved (Bernama 2018). Additionally, areas officially acknowledged by JAKOA represent only 17% of the actual customary lands claimed (SUHAKAM 2013, p. 133). Other resource laws, such the *National Forestry Act 1984* and the *Wildlife Conservation Act 2010*, offer limited exemptions for subsistence use but do not address customary land rights within these areas. National and state park legislation are notoriously silent on the rights of Orang Asli who have traditionally inhabited such areas. Section 23(1)(a) of the *Access to Biological Resources and Benefit*

Sharing Act 2017 (*ABSA*) provides for the free, prior and informed consent (FPIC) of the Orang Asli for local biological resources. However, the provision only applies to biological resources 'on land to which the community have 'a right as established by law', allowing potential disputations to limit the circumstances where FPIC of the Orang Asli community would be required.

Beyond the lack of security of tenure over Orang Asli traditional areas, there is also little incentive from the government for the Orang Asli communities to carry on their role as traditional custodians of their respective locales. Many Federal policies, such as the 2009 Land Titles Policy, fail to fully recognise communal customary lands and are geared towards granting Orang Asli individual interests over their traditional areas for the purpose of cash crop cultivation. Such policies are arguably inconsistent with nature conservation. Ultimately, the lack of statutory recognition of Orang Asli land rights allows communal lands to be perceived as 'empty and unused state land' facilitating 'legal' land grabs and exploitative activities such as commercial logging and mining (Subramaniam 2025).

Statutory Land Rights: Natives of Sarawak

In contrast to the Orang Asli, natives of Sarawak have historically enjoyed express statutory recognition of certain native customary rights (NCR) in and over land. The *Sarawak Land Code, 1958* (*SLC*), officially categorises Native Customary Land (NCL) and Native Area Land (NAL). NCL includes land where customary rights were created before 1 January 1958, communal reserves, and certain Interior Area Land where NCR has been established through a statutory permit.

Section 5 of the *SLC* regulates and limits the creation of NCR after 1958 (Section 5(1)). Section 5(2) recognises common methods for establishing NCR, such as clearing virgin jungle, planting fruit trees, or cultivation. However, this statutory recognition is primarily based on 'occupation' (Bulan 2012, pp. 118 – 120, 128) rather than traditional connections Indigenous communities have with their customary areas. The emphasis on occupation in Section 5(2) is more consistent with individual sedentary and agricultural use of native customary lands. From a conservation perspective, these rights fail to explicitly recognise native customs such as subsistence hunting and fishing, forest protection, subsistence forest produce collection, and ceremonial practices, that are more aligned with nature conservation.

However, the *SLC* was amended in 2019 to introduce Section 6A, allowing native communities to claim usufructuary rights up to 1,000 hectares—a limit viewed as 'short-changing' the many native communities who claim traditional areas far exceeding this limit (Nicholas 2019, p. 278). Additionally, the claims procedure for such areas is also subject to state executive determination (Section 6A(2)), raising concerns on the impartiality of the process.

Compounding these issues, formally recognised NCR lands remain legally vulnerable to State action. The government retains wide powers to extinguish NCR (see *SLC*, Section 5(3)) subject to compensation and often grants logging licenses or provisional leases for plantations over lands potentially subject to NCR without the local community's free, prior, and informed consent (FPIC). The theme of governmental control over the contours of NCR, and more broadly, over lands and natural resources in Sarawak can be seen in legislation relating to nature conservation.

Despite a measure of NCR recognition, the *Forests Ordinance 2015* (Sarawak) contains wide-ranging provisions for the executive extinguishment, regulation, and admission of native rights and privileges within areas proclaimed to be forest reserves and protected forests. In respect of national parks and nature reserves, the Controller of National Parks and Nature Reserves ('the Controller') and other state government officers have extensive powers

of control and management of such areas under Parts II and IV of the *National Parks and Nature Reserves Ordinance, 1998* (Sarawak) (*NPO*). NCR in these areas are limited to those rights and privileges recognised and admitted through a claims process determined by state government officers and are subject to regulation and extinguishment by executive order (*NPO*, Part III). The *NPO* is also restricted in terms of explicit provisions for native co-management of national parks and nature reserves. Section 8 of the *NPO* potentially allows native community representatives to assist the Controller in the management of a national park or a nature reserve provided that the Controller is so minded and wishes to constitute a Special Park Committee for the protection and management of a national park or a nature reserve, and to promote its public appreciation and enjoyment. The *Wild Life Protection Ordinance, 1998* (*WPO*) that governs the protection of wildlife and the establishment and management of wildlife sanctuaries, contains limited provisions in respect of native rights and privileges and an exemption for natives to possess wild animals for their own consumption or use (Section 37(1)). Despite the lack of express provisions recognising native co-management in Wildlife Sanctuaries, the Controller of Wildlife may, with the approval of the Minister, constitute a Special Wild Life Committee, which shall be headed by a Warden, to assist him in the supervision, control and management of a Wildlife Sanctuary and to protect the wildlife and their habitat [Section 9(1)]. Honorary Wildlife Rangers appointed under section 8 of the WPO include local natives who may also be a member of a Special Park Committee of a National Park or Nature Reserve, if constituted under Section 8 of the NPO (*NPO*, Section 8(2)).

The *Sarawak Biodiversity Regulations 2016* make FPIC as well as access and benefit sharing mandatory for projects involving biological traditional knowledge of natives utilising and managing biological resources and its environment for their community's general sustenance. While equitable benefit sharing agreements with natives are legally required, the Sarawak Biodiversity Council has broad powers to determine the terms of such arrangements in consultation with the Sarawak state government and the natives involved [Regulation 14(2)]. Essentially, it is the Sarawak Biodiversity Council, consisting of state government appointees, that has overarching control over access to biological resources and the associated traditional knowledge in Sarawak for research and commercial purposes (*Biodiversity Centre Ordinance 1997* (Sarawak), Part II).

The State government's wide-ranging legal powers enable it to mould NCR recognition and the nature conservation framework to its own priorities. Unfortunately for both natives and nature, resource exploitative activities such as forestry, mining and agriculture remain key economic sectors in Sarawak (Sarawak Government 2021). As for harnessing indigenous expertise, the legal framework places little emphasis on treating local native communities as equal partners in the sustainable management and conservation of nature.

Statutory land rights: Natives of Sabah

Like Sarawak, NCR are recognised but regulated by statute in Sabah. NCR in Sabah are primarily governed by the Sabah Land Ordinance (SLO). Section 15 defines NCR to include land under 'customary tenure', which includes areas with fruit trees, grazing land, cultivation, burial grounds, and related rights of way (Munang 2015, p. 139). 'Customary tenure' under Section 66 of the SLO means the lawful possession of land by natives either by continuous occupation or cultivation for more than three years or by native title issued under written law. Again, the primary recognition of NCR in Sabah centres around settled agriculture rather than the stewardship of broader customary territories found in many local Indigenous communities (SUHAKAM 2013, pp. 20 – 21).

Section 76 of the SLO that provides for native communal title is problematic. A legacy of British paternalism, a communal 'title' is not registered in the name of the native community, but in the name of the State Collector of Land Revenue 'as trustee for the natives',

suggesting the native community's lack of control over its 'titled' land. Furthermore, a 2009 amendment to the law allows the State to decide the plan and purpose of a communal title, often favouring joint-venture land developments over NCR-based claims (SUHAKAM 2013, p. 102). This policy approach to native communal ownership does not bode well for nature conservation.

Subject to modification or extinction by the State, natives may also possess rights or conceded privileges that survive the creation of a forest reserve according to Sections 12 and 14 of the *Forest Enactment, 1968* (Sabah) (*SFE*). Section 41 of the SFE provides limited rights to remove forest produce from State land and alienated land (with consent from the owner) for specified individual or communal subsistence purposes. Beyond these provisions, statutory control over the administration of forest reserves, protected areas and forests in the state not covered by other specific legislation lies in the hands of the Chief Conservator of Forests and other authorised officers appointed by the government (*SFE*, Section 4 and Part II). Local native communities do not possess express statutory rights of co-management over these areas under the *SFE*. However, section 3A empowers the Chief Conservator to appoint suitable persons (such as local natives) to be Honorary Forest Rangers to assist in carrying into effect the *SFE*.

Despite changes in the law to facilitate the better management of nature conservation within Parks and Nature Reserves in Sabah (Section 3A, *Parks Enactment 1984, Sabah* (*SPE*)), local native communities lack formal control and management within such areas aside from regulated rights and privileges conceded by the state government under the *SPE* (Sections 8 and 9). Express statutory power over the administration of national parks lies with the Board of Trustees of Sabah Parks (*SPE*, Parts III-VI) and the Director of Parks, who is appointed by the Board and functions as chief executive officer (*SPE*, Sections 41 and 43). However, their powers may be delegated to committees (*SPE*, Section 37) and Honorary Park Rangers or Honorary Park Wardens (Section 41A). This delegation has facilitated the controlled participation of representatives of local native communities in the management of national parks (Abu Bakar and Wall 2019).

Under the *Wildlife Conservation Enactment 1997* (WCE), the Director of Wildlife of Sabah possesses wide powers of administration and management relating to wildlife and areas declared to be Wildlife Sanctuaries, Conservation Areas or Wildlife Hunting Areas (Section 4). The WCE provides for regulated: (i) traditional or native hunting (Section 20 and 75); (ii) animal kampung hunting licenses for the benefit of a village (Section 32); or (iii) native collection of turtle eggs (Section 87). Section 5 of the WCE permits the appointment of community members as Honorary Wildlife Wardens, potentially integrating them into some conservation efforts. That said, the Enactment does not provide for the explicit recognition of native land rights or the mandatory inclusion of natives in decision-making regarding the management of areas they have traditionally inhabited.

Section 35 of the *Inland Fisheries and Aquaculture Act 2003* permits the creation of a Community Fisheries Management Zone that may include committee members from a local community provided the Director of Fisheries considers it expedient or necessary to involve members of a local community in the management and conservation of local fisheries resources.

The *Sabah Biodiversity Enactment, 2000* (SBE) states that the FPIC of the relevant native or local community shall be obtained for any access to: (a) a biological resource on land to which such native and local community have a right as established by law; and (b) associated traditional knowledge held by such native and local community (*SBE*, Section 24B). However, the phrase 'a right as established by law' subjects the enforceability of such consent to the State's legal dominance over the parameters of NCR. This limitation

potentially reduces the provision's scope and effectiveness. Furthermore, the Sabah Biodiversity Council (*SBE*, Part II), consisting of state government officers and appointees, and the Director of the Sabah Biodiversity Centre, a public servant (*SBE*, Part IIA), have legal control over access to biological resources and associated traditional knowledge for research and commercial purposes.

Despite encouraging legislative efforts to include natives in conservation efforts (Jumin 2025), the power balance for the recognition and exercise of native rights and nature conservation in Sabah remains heavily in favour of the state government, its agencies and officers. The reality is that the state's economy is still closely tied to natural resource exploitation and agriculture (Sabah State Government 2025), and the struggle to effectively balance commercial interests with environmental protection and the recognition of broader forms of NCR persists as an ongoing challenge.

Judicial Recognition of Indigenous Land Rights in Malaysia

Since the late 1980s, Malaysian Indigenous communities have successfully asserted their customary land rights by relying on common law principles and a liberal judicial approach, enabling them to operate outside the confines of codified law (Subramaniam 2025, pp. 297 – 303).

The courts began recognising these Indigenous land rights in 1996, drawing inspiration from international precedents like the Australian *Mabo* and *Canadian Calder* cases. The Federal Court later affirmed this doctrine in *Madeli bin Salleh* (2008) 2 MLJ 677, establishing that the State's ultimate ownership (radical title) is legally subject to Indigenous rights.

These customary rights are proven by Indigenous Peoples demonstrating prior and continuous occupation and/or oral histories relating to their connection with the area claimed (Subramaniam 2025, p. 299). Furthermore, the State governments are held to a fiduciary duty to protect these rights (Subramaniam 2025, p. 299). However, this protection is limited: the State retains the power to extinguish these rights through clear legislation, provided it pays just compensation under Article 13 of the *Federal Constitution* (Subramaniam 2025, p. 299). Thus, while the courts provide a vital avenue for justice, the State maintains ultimate control over the tenure security of these rights.

However, relying on the Malaysian judicial system to secure Indigenous land rights presents significant challenges. Procedurally, Indigenous communities face major hurdles due to the high costs, protracted litigation timelines (sometimes over a decade), and the adversarial court setting which conflicts with traditional dispute resolution methods (Subramaniam and Nicholas 2018, p. 72). Issues such as the burden of proof, language barriers, and limited funds for expert witnesses often put litigants at a disadvantage (Subramaniam and Nicholas 2018, pp. 72 – 73).

Substantively, more recent Federal Court decisions have restricted rights in Borneo. In *Director Of Forest, Sarawak* v *TR Sandah Tabau* [2017] 3 CLJ 1, the Federal Court ruling severely narrowed common law Native Customary Rights ('NCR') in Sarawak by excluding broader Iban communal territories (*pemakai menoa*). Other rulings such as *TH Pelita Sadong Sdn Bhd* v *TR Nyutan Jami* [2018] 1 CLJ 19 have allowed indefeasible land titles in Sarawak to override earlier acquired NCR, reducing redress to mere monetary compensation. In Sabah, the Court of Appeal in *Assistant Collector of Land Revenues* v *Alfeus Yahsu* [2016] 7 CLJ 848 essentially limited the common law NCR to statutory NCR rights available under the *Sabah Land Ordinance*. Common law Orang Asli rights in Peninsular Malaysia remain unscathed presumably because the Orang Asli do not possess statutory customary land rights (Subramaniam and Wood 2023). Consequently, these rights, while available, are subject to the vagaries of the court process and potential regression in future cases.

STATE-LED INITIATIVES TOWARD INDIGENOUS MANAGEMENT OF NATURE CONSERVATION

As observed in the previous section, the main thrust of the relevant laws governing Indigenous land rights appears to be slanted towards a settled existence and agricultural lifestyle for Indigenous Peoples and may not necessarily be compatible with nature conservation. Furthermore, legal power over the management of nature conservation is vested in the relevant governments rather than equitably shared with local Indigenous communities.

However, the recognition of traditional ecological knowledge and Indigenous connections to land as central to conservation (Abas *et al.* 2022; Mohammad Wahyu *et al.* 2022), an international shift in conservation paradigms from exclusion to inclusion (Wook 2023; Subramaniam 2025, pp. 303 – 305) and the self-motivated defence of their traditional territories (Amnesty International 2018) have led to the increased participation of Malaysian Indigenous communities in conservation efforts.

Notwithstanding community-driven conservation efforts, there are numerous state-led initiatives where Indigenous groups partner with state agencies. However, simply listing these programmes is of limited utility. For this paper, a pertinent question is whether these programmes formally empower local Indigenous communities as equal partners in the management of nature conservation. Effective empowerment of Indigenous communities from a rights-based perspective would also include the right to FPIC in matters concerning their immediate local environment, meaning their traditional lands, resources and territories. These issues are examined in turn.

Many state programmes actively involve Indigenous peoples but fall short of elevating local communities to manage nature conservation. Examples include the Biodiversity Protection and Patrolling Programme (BP 3) that provide for training of Orang Asli trackers to be part of anti-poaching patrol teams in Peninsular Malaysia and the participation of Sarawak native communities in the Forest Landscape Restoration programme that focuses on restoring environmentally degraded areas.

Indigenous management-wise, Section 36 of the Sabah Inland Fisheries and *Aquaculture Enactment 2003* allows the Director of Fisheries to appoint Indigenous community members to a committee that administers and undertakes the management and conservation of the fisheries resources within an area formally declared as a Community Fisheries Management Zone. This provision indirectly recognises the *Tagal* system, a traditional native fish resource management system (SUHAKAM 2013). However, the lack of express legal recognition of the *Tagal* as 'an Indigenous Peoples' system' has posed jurisdictional conflicts between the state and native communities (SUHAKAM 2013, p. 108).

As discussed above, the *Sabah Parks Enactment 1984* permits, at the discretion of the Sabah Parks management, native communities to participate in national park management through the Community Use Zones. However, studies such as those carried out on the Tun Sakaran Marine Park suggest that the park is administered by Sabah Parks despite clear plans for Indigenous co-management and the recognition of NCR (Abu Bakar and Wall 2019). Progressive models, such as Indigenous Peoples and Community Conserved Territories and Areas (ICCAs), that provide an opportunity for autonomous and collaborative Indigenous management of conservation areas, have generated support among local Indigenous communities (Bulan and Maran 2020). However, ICCAs are yet to see formal and consistent State-recognition despite several successful cases in Sabah and Sarawak (for example, the Sabah Bundu Tuhan Native Reserve) (Bulan and Maran 2020).

The right to FPIC and effective consultation for Indigenous communities is a crucial safeguard to ensure an equitable power balance in the Indigenous management of their traditional areas. More recently, these rights have been incorporated into laws governing biodiversity (for example, the *Access to Biological Resources and Benefit Sharing Act 2017*) and carbon credits (for example, the *Forests (Forest Carbon Activity) Rules, 2022* (Sarawak)). However, these provisions should be examined in light of the broader legal framework on Indigenous land rights and nature conservation that does not explicitly empower and entrust Indigenous communities with stronger rights over their traditional areas. As seen in the case of the *ABSA* above, the requirement for FPIC may be limited if an Indigenous community is legally deemed not to have rights over their traditional territory. This legal setting brings into focus whether there is governmental will to rigorously implement the FPIC principle in a manner that ensures Indigenous communities are active partners and primary stakeholders in any action affecting them and their traditional areas.

In summary, it is doubtful government conservation initiatives have produced effective and equitable conservation management arrangements that include local Indigenous communities while legally recognising and protecting their traditional land and resource rights.

CONCLUSION

Notwithstanding the benefits of Indigenous management of nature conservation, the legal regime governing Indigenous land rights and nature conservation does not expressly recognise Malaysian Indigenous Peoples as equal management partners. However, national policies and plans are varied in this regard. The National Policy on Biological Diversity 2022 – 2030 is the most progressive as it recognises Indigenous Peoples as stewards of nature and the importance of empowering them to help conserve biodiversity in their localities [Ministry of Natural Resources and Environmental Sustainability (NRES) 2022, p. 35]. Governmental action includes the review of all legislation, procedures and policies towards the management and conservation of biodiversity, strengthening the FPIC process in projects that affect Indigenous Peoples and local communities, enhancing capacity building and support with regards to the recognition of basic human and land tenure rights and recognising the rights of Indigenous peoples towards certain biological resources through customary laws (NRES 2022, pp. 35 – 36, 80). Comparatively, the *Malaysia Policy of Forestry 2021* seeks to encourage the participation of Indigenous communities in the protection, conservation and rehabilitation of forests undertaken by the governments of all three jurisdictions (Ministry of Energy and Natural Resources (MENR) 2021, p. 6), except perhaps for Sabah where policy objectives include strengthening the participation of local communities in the implementation of forest management activities and carrying out regular consultations and dialogues with local communities (MENR 2021, pp. 59, 73). The 2024 National Climate Change Policy 2.0 acknowledges the need to establish environmental and social safeguards to protect the rights of Indigenous communities, but does not recognise them as primary partners in local actions to combat climate change (NRES 2024, p. 32). The 13th Malaysia Plan 2026 – 2030 focuses on the socio-economic development of the Orang Asli and NCR lands rather than nature conservation [Ministry of Economy (MOE) 2025, pp. 3 – 19] and does not expressly include local Indigenous communities as partners in its strategies on climate change, environmental management and biodiversity conservation (MOE 2025, pp. 5, 22 – 23). This direction suggests that the economic system is struggling to achieve a sustainable balance between Indigenous livelihood needs and conservation goals. More generally, continued state dominance in formal conservation efforts throughout Malaysia raises the question of whether there exists domestic conservation colonialism, where exclusionary Western conservation models are utilised to override Indigenous rights. As policy signals from the government appear to be mixed, it remains uncertain whether there is concerted governmental intent to share effective legal power with Indigenous communities for the management of nature conservation within their localities.

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