

**Malaysian NGO Statement
For the European Parliament / Council of Ministers**

We (GEC, HUTAN, LEAP, BORA and SEPA) would like to express our support for many of the proposed revisions to the EU Renewable Energy Directive (RED)/Fuel Quality Directive as made by the Environment Committee of the European Parliament.

In addition we would like to respond to recent comments by the Malaysian Palm Oil Council (MPOC) as well as a statement by the Malaysian Palm Oil Board (MPOB) in response to our letter of June 2013 to the European Union on this Issue.

As such this Statement consists of three separate Sections:

1. Revisions to the Renewable Energy/Fuel Quality Directives.
2. Comments on the Malaysian Palm Oil Council's Statement.
3. Comments on the Malaysian Palm Oil Board's Statement.

The original MPOC and MPOB Statement is attached here as Annex I. Please note that Section 1 and 2 of this Statement should be read as a reply to Annex I and this Statement should not be taken out of context of our replies to Annex I.

Please refer to Annex II for our original submission to the European Parliament (EP) and Council of Ministers (COM).

Section 1: Revisions to the Renewable Energy/Fuel Quality Directives

We support the proposed revisions to the RED by the Environment Committee of the European Parliament in particular:

A cap of 5.5% placed on biofuels obtained from food, oil and energy crops grown on land.

(11e) The use of land for growing biofuel feedstocks should not result in the displacement of local and indigenous communities. Special measures to protect indigenous communities' land therefore need to be introduced.

(11f) Safeguards should therefore be introduced in order to ensure that biofuels and bioliquids made from raw material obtained from existing forests may only be taken into account for the purpose of these Directives if they are supplied from forests that are sustainably managed.

4e. Biofuels and bioliquids shall not be made from land-based raw material unless third parties' legal rights regarding use and tenure of the land are respected, inter alia by obtaining the free prior and informed consent of the third parties, with the involvement of their representative institutions.

Biofuels will not be harvested from wetlands

Avoiding negative direct or indirect impacts on biodiversity, soil or overall carbon balance

Proposal for agreements with third countries containing mandatory commitments on provisions on sustainability criteria

We encourage consideration of the following changes:

1. Re-inclusion in Annex IX of (f) Palm oil mill effluent (POME) and empty palm fruit bunches as a category of waste eligible for an incentive for use as feedstock for advanced biofuels (as proposed by the Commission). Palm oil mill effluent is a significant source of pollution and any incentive which can stimulate its use as a raw material for advanced biofuel is welcome. However, such incentive should only be applied to existing palm oil mills, as new mills should be encouraged to use appropriate technology to avoid production of POME.

2. Further measures to encourage credible oil palm certification schemes which address biofuels in an integrated manner with other uses.
3. Strengthening of provisions to minimise negative direct or indirect impact on wetlands as reservoirs of carbon storage and biodiversity especially peatlands.

In addition we feel that the following changes as proposed by the European Parliament Development Committee should also be considered:

- correct accounting of greenhouse emissions taking into account indirect land use change immediately
- free prior informed consent in sustainability criteria
- sustainability requirements for advanced biofuels

We are concerned about the proposal by the Industry committee to set a very weak limit on biofuels made from food crops: and to not take into account indirect land use change. Similarly we are very concerned that the Agriculture Committee proposes no limit on use of food crops and no consideration of indirect land use change.

Section 2: Comments on the Malaysian Palm Oil Council's Statement

MPOC Statement on Indirect Land Use Change (ILUC), Following ENVI Committee Vote in European Parliament published 18th of July 2013 on their website:

<http://theoilpalm.org/media-releases/mpoc-statement-on-iluc-following-envi-committee-vote-in-european-parliament/>

MPOC claims that “*Over 300,000 small farmers across Malaysia, who rely on oil palm for their livelihood, will be affected by the Committee's decisions.*” No justification is made for how or what impacts there may be. Thus, we are

concerned about what these possible impacts on the three million indigenous peoples in Malaysia – many of whom have already been negatively affected by loss of forests and traditional lands as well as pollution of their water supplies by the development of oil palm production.

It should be noted that according to MPOB, 86 percent of the oil palm plantations are controlled by the private sector, State and Federal Government agencies. Is MPOC concerned about smallholders or merely large companies?

We are happy to note that MPOC states *“Malaysia has also proven its commitment to environmental protection by pledging to preserve 50 per cent forest cover – a far higher percentage than any European Union country – and the palm oil industry is proud to be an important part of Malaysia’s environmental conservation efforts.”*

We would therefore expect Malaysia to support the proposed revisions of the RED to further safeguard forests and wetland resources and minimize future land conversion. With their new commitment to conservation we hope that MPOC will also withdraw their statement calling for expanded forest conversion which was published a year ago in an editorial written by the CEO of MPOC; *“If Malaysia aspires to be a developed country, it has to follow other developed countries by reducing its forest to a more sustainable ratio such as 33 per cent,”*. <http://www.nst.com.my/nation/general/go-for-just-33pc-forest-cover-1.166328#ixzz2dAiqAiQc>

Section 3: Comments on the Malaysian Palm Oil Board’s Statement

Once again, we state that we are by no means an anti-palm oil lobby but are concerned Malaysian organisations who would like to see a balanced and sustainable approach taken by the Malaysian palm oil industries. Our

submission recognises that within the industry there are responsible companies with a good track record on sustainability - but we have seen failures by others in the industry and its proponents to address issues of human rights and environment and wildlife.

1. Introduction

We earlier requested that the European Parliament and Council of Ministers:

- must adopt a credible standard of certification,
- must place a genuine and clear cap to limit use of land based biofuels,
- must introduce mandatory ILUC Factors,
- should recognise the need to enhance engagement with Civil society.

We do not believe that our request would “*compromise, jeopardise or destroy the palm oil industry*”. In fact we believe our request would lead to strengthening of the oil palm industry by enhancing standards and rule of law and establishing a common playing field among companies.

2. Environmental and Social Impacts of Oil Palm Plantations in Malaysia

With regard to the assertions that there are no significant impacts of oil palm on the native customary lands of indigenous people - we wish to highlight the recently released “*Report of the National Inquiry Into The Land Rights Of Indigenous Peoples*” which was conducted by the Human Rights Commission of Malaysia over a period of 18 months, with more than 18,000 indigenous peoples participating throughout the country.

This report is a comprehensive document with substantial detail of issues of the lack of Free, Prior and Informed Consent (FPIC), land grabbing and the fact indigenous communities are not all benefiting from the palm oil industry in Malaysia. We submit that this Report is a reliable source of information and insert the following table taken from the Report with highlights Sabah as the State with the highest number of disputes in regards to plantations.

TABLE 1: NUMBER OF STATEMENTS RECEIVED BY THE INQUIRY BASED ON CATEGORIES/ISSUES

NO	CATEGORIES/ISSUES	SABAH	SARAWAK	PENINSULAR MALAYSIA							TOTAL
				SELANGOR	PERAK	PAHANG	JOHOR	KELANTAN	NEGERI SEMBILAN	MELAKA	
1.	Administration	221	101	11	31	31	24	15	2	1	437
2.	Plantation	51	10	4	8	13	8	17	-	-	111
3.	Logging & Forest Reserve	50	11	8	8	5	3	8	-	-	93
4.	Inclusion into National or State Protected Areas	22	6	1	3	2	1	-	-	-	35
5.	Community Land Development Scheme	17	-	-	1	3	1	-	-	-	22
6.	Commercial Development Projects	16	8	18	7	12	10	1	-	-	72
7.	Compensation	6	36	4	3	3	1	2	-	-	55
8.	Others	24	26	4	9	2	-	2	-	-	67
	TOTAL	407	198	50	70	71	48	45	2	1	892

The report states that : *“A large part of the problem arises from a lack of recognition by the authorities of the concept of customary land of the indigenous peoples, or what constitutes customary land, when much of this land has not been, or is yet to be registered as customary land with the relevant government departments due to ignorance or misunderstanding on the part of the community on the processes involved. In other instances this is due to inefficiency on the part of the government agencies concerned which failed to do the needful in spite of years of “processing” these land ownership claims, much to the chagrin of the natives.”*

The report further states: *“The current aggressive pursuit of development in Malaysia has resulted in imbalances and negative impacts on indigenous rights. The numerous land development issues such as desecration of graves; destruction of agricultural land, crops, catchment areas and important cultural and sacred sites; water, air and noise pollution as well as unsustainable income that the Inquiry has elaborated have to be addressed to ensure development really benefits all peoples.”*

The inquiry concluded that: *“Prevailing development in Malaysia leans towards the development of large-scale projects (mainly plantations) by private sector investment or Government-linked companies. Studies have shown that implementing large-scale development projects has compounded land conflicts rather than improving land matters, and poverty among indigenous peoples has not been reduced significantly.”*

With regard to the Orang Asli Development Department highlighted by MPOB as a positive sign of government support for indigenous peoples the inquiry recommended: *In view of the seriousness of complaints and apparent weaknesses of the Orang Asli Development Department (JAKOA) in protecting Orang Asli land rights as provided by the Aboriginal Peoples Act 1954 to protect and ensure the well-being and advancement of the Orang Asli, the Inquiry recommends that an independent and comprehensive review of JAKOA be undertaken at an early date. The comprehensive review should, among others, clarify whether Orang Asli land matters should remain within the purview of JAKOA or go directly to Orang Asli communities themselves*”.

We also recommend that you peruse the report further for specific details of problems faced in relation to the palm oil industry. <http://www.suhakam.org.my/documents/10124/1326477/SUHAKAM+BI+FINA+L.CD.pdf>

Furthermore - the analysis given by MPOB in regards to the support of local communities for current Government policies is shallow and oversimplified with respect to the Malaysia’s General Elections (GE) which were held in May 2013. In Sabah for instance, the now former Minister of Plantation Industries and Commodities (which is in charge of palm oil) lost his seat to a first time contender. Following the logic of the analysis presented by MPOB, does this also mean that he lost his seat because Malaysians have rejected the nation’s palm oil policies which he headed in his pre GE role as Minister of Plantation Industries and Commodities?

Conservation and Development – A Balance

We are glad that a balance between these two aspects are highlighted by MPOB, we fully agree with the need for both. However, we have to refute a number of statements:

We are very concerned that MPOB is trying to deny facts by giving incorrect analysis of the figures it presents. It is correct that the increase of 1.05 million hectares of oil palm in the seven years 2005-2012 represents a 26 percent increase on the 4.05 million hectare area in 2005 and not a 20 percent increase as stated by MPOB.

With regard to the increase in oil palm on peat – MPOBs own figure show an increase from 100,000 hectares in Sarawak to 437,174 in seven years. This is an increase of 337,174 hectares or 337 percent (over seven years) or 48 percent per year. For MPOB to claim that this only represents an increase of 11 percent per year is gross misrepresentation. With these errors it is hard to believe other figures stated by MPOB.

While we recognise that Sabah has established a number of conservation areas, the biggest issue however is fragmentation and isolation of protected areas. The 26,000 hectare Kinabatangan Wildlife Sanctuary for example, is split into 12 separate land parcels some of which are totally isolated from each other. While there are four villages located in the vicinity, the main barrier to connectivity for wildlife is monoculture oil palm plantations. Secondary forest areas crucial for wildlife habitat are still being cleared today, albeit on a smaller scale. This has a profound negative effect on the protected and endangered wildlife found in this river basin and also on the rapidly growing tourism industry.

In Sarawak the State government has licensed nearly a quarter of the State's land mass (2.8 million hectares) to a dozen or so logging groups to convert natural tropical forests into plantations (up to 20 percent of which may be

developed as oil palm plantations for a single rotation). As a result of these plantation projects, Sarawak will be seeing very high rates of deforestation in the coming decade, Claims that oil palm expansion has stopped are not credible.

Development of Oil Palm on Peat Land

While it is acknowledged that good management practices can reduce the impact of development of oil palm on peat - the emissions of 40-70tCO₂/ha/yr from oil palm plantations on peat under good management (as mentioned by MPOB) mean that every tonne of palm oil produced in such plantations (assuming a yield of 4t/ha/yr) is responsible for emissions of 10-17.5tCO₂ – almost 2-4 times more CO₂ than produced by a tonne of diesel. Therefore oil palm grown on peat will never be suitable as a biofuel intended to reduce GHG emissions.

Indirect Land Use Change (ILUC)

The use of palm oil as a biofuel will necessarily increase the global demand for palm oil. Therefore the area developed for oil palm will increase to meet the increased demand. This will lead to indirect land use change. There is no indication that the yield per hectare is increasing sufficiently rapidly to offset increased demand. Conversely data shows that yield per hectare is falling with palm oil yields in Malaysia declining steadily over the past four years and in 2012 were nine percent below the record 4.7 tons per hectare level achieved in 2008 (USDA 2012).

Environmental Impacts and Life Cycle Assessment (LCA)

With regard to environmental impacts, we acknowledge that Malaysia does have a large number of regulations. However, it is also clear from many

studies both by the Government and NGOs that many of these regulations are not effectively implemented and therefore the environment is still negatively impacted by oil palm plantations and mills.

A recent study undertaken by the Sabah Environment Protection Department showed that the treatment of Palm Oil Mill Effluent (POME) at many mills in Eastern Sabah did not meet government standards and there was widespread discharge of POME into rivers important for the water supply of nearly a million people. Although this report was accepted by the State Cabinet – the recommended actions have yet to be fully implemented. A Sabah State Cabinet directive issued in 2006 to stop the planting of oil palm on riparian reserves has not been enforced either.

Social Impacts

Please refer to comments from Page 4 to 6 of this document.

3. Recommendations for Action by the European Parliament (EP) and Council of Ministers (COM)

As previously stated, we reiterate that:

1. EP/COM Must adopt a Credible Standard of Certification
2. EP/COM must place a genuine and clear cap to limit use of land based biofuels (we support the proposed revisions to the RED by the Environment Committee of the European Parliament in particular, see Page 1)
3. EP/COM must Introduce Mandatory ILUC Factors
4. The EP/COM should recognise the Need to Enhance Engagement with Civil Society

4. Conclusion

We thank the MPOB for their concern for our comments and we believe that the EP/COM is well able to understand the issues raised by Malaysian based NGOs.

2nd September 2013

Endorsed by the following Malaysian based NGOs

GEC



HUTAN



LEAP



BORA



SEPA



