

PUBLIC PARTICIPATION IN CONSERVATION OF FOREST BIODIVERSITY: A SPECIAL REFERENCE TO PENINSULAR MALAYSIA

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Abstract

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Nowadays, most of the developing countries are very tight with their schedule to boost economy perhaps to the highest level to the extent that the riches of nature especially forests seems to be neglected. The development is to support the increase demand of residential area, business facilities, luxurious accommodations and others and at the same time to gain profits and high-class of living. The decision to develop is seen to be controlled by the relevant authority without referring to public opinion and objection. This paper offers critical insight of the role and process of public participation in Peninsular Malaysia. It also tends to examine any hindrances and also legal implication of disregarding this process. Supported by several cases decided by court of justice the process of public participation is however discontented. Some parties seem to avoid this process as it may impede the progress of development. Nevertheless, to uphold sustainable development there are several laws need to be observed. In Malaysia we have the Environmental Quality Act (EQA) 1974 and the Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 1987 (EIA) which comes later as a result of section 34A of the EQA. The EIA serves as an assessment to prescribed activities which may have significant environmental impact and public participation is one of the requirements of assessment to be fulfilled by related parties to development. It is a fervent hope that this instrument will be justly administered, as public participation is a conclusive instrument to assure sustainable development.

1. Introduction - Forest in Peninsular Malaysia and its significance.

Forest is being created for purposes and functions. Its purposes serve all population and species in the world i.e. mankind, variety of animals' species and also diversity of plants. The complex ecosystem makes it special and should be taken care of as to lose it would be our great breach of promises to our future generation.

Malaysian forest is said to be among the complex ecosystem in the world (The Friends of the Earth Malaysia: 2006). A natural heritage consists of animals and plants species ranging from the tiniest to the irregular sizes need attention and management from its custodian. Even though the percentage of forest is very small as compared to other parts in the world, the role of forest as a mechanism of ecosystem balancing and many other functions could not be denied since the vanishing of forested areas contribute to global warming and other imbalance and irregular phenomenon.

Malaysia covers an area of approximately 32.85 million hectares consisting of 12 states in Peninsular Malaysia where this paper puts its focus and to the east lays Sabah, Sarawak and the Federal Territory of Labuan in the northern coastal area of Borneo Island (<http://www.jupem.gov.my>). **Table 1** below shows the distribution of land and forested area in Peninsular Malaysia (PM).

Table 1

Region	Total Land Area (mil ha)	Forested area (mil ha)	%Total Land Area	Non- fores ted (mil ha)	%Total Land Area
PM	13.16	5.92	45.0	7.24	55.0

(Source: Sahabat Alam Malaysia: 2006)

The Forestry Department of Peninsular Malaysia has categorized forest in Malaysia based on ecology, vegetation and terrain into the following categories; 1) Ericaceous Forest (*Hutan Gunung*) 2) Montane Forest (*Hutan Montane-Oak*) 3) Upper hill Dipterocarp Forest (*Hutan Dipterokarp Atas*) 4) Hill Dipterocarp Forest (*Hutan Dipterokarp Bukit*) 5) Lowland Dipterocarp Forest (*Hutan Dipterokarp Pamah*) 6) Peat Swamp Forest (*Hutan Paya Gambut*) 7) Beach (Strand) Forest (*Hutan Paya Laut*) (<http://www.forestry.gov.my>).

2. Forest Conservation in Peninsular Malaysia:

2.1. The Government

Forest in Peninsular Malaysia is governed by the Federal Department of Peninsular Malaysia (FDPM). The FDPM is under the Ministry of Natural Resources and Environment with nine other departments such as Department of Environment, Forest Research Institute of Malaysia, Department of Wildlife and National Parks of Peninsular Malaysia and etc. The FDPM has jurisdiction over forests in Peninsular Malaysia but only to the extent of providing advice and technical assistance to all 12 states in Peninsular Malaysia as the states has a dominant power and jurisdiction over its forests. This is provided under the Federal Constitution of Malaysia, List II of the Ninth Schedule.

Hence with regard to forest conservation in Peninsular Malaysia the government through a number of federal legislation and policies served to ensure the wise utilization of Malaysia's land and natural resources for instances the National Parks Act 1980, the Land Conservation Act 1960, the National Land Code 1965, the Environmental Quality Act, the National Environmental Policy and the National Agricultural Policy. The government also through the Third (1976-1980) and the Fifth Malaysian Plan (1986-1990), introduced approaches towards forest conservation for instances various multiple-use of national park with a total area of 2.22 million acres has been proposed and also the enforcement of the Environmental Impact Assessment (EIA). The National Forestry Policy 1978 has been established and followed by adopting the National Forestry Act 1984 to enhance the implementation of the policy. The Act also aims to unite the states forestry laws with regard to management, administration and conservation (The Ministry of Primary Industries: 1996)

2.2. The Non-Governmental Organisation

In Peninsular Malaysia, there are a number of the Non-Governmental Organisation (NGO) such as the Friends of the Earth Malaysia (*Sahabat Alam Malaysia*), the World Wide Fund for Nature (WWF), the Malaysian Nature Society (MNS) and others where they stand up to the safe and healthy environment of the Mother Nature. The Friends of the Earth Malaysia for example is a community NGO involved in environment and development issues. The WWF on the other hand has sponsored a programme for the development of conservation strategies for various states which include comprehensive plans for the management of natural and renewable resources. Among the aims of the WWF is to increase the coverage of forest protected areas and restore degraded areas as efforts towards forest conservation. One of the most significant protected area projects was the *Perlis* State Park Project (2000-2002) which led to the establishment of the 5,000-hectare *Perlis* State Park. Another recent project by the WWF is the upgrading of the *Belum* Forest National Park at *Pahang* to Royal *Belum* Forest (<http://www.wildlife.org>).

2.3 The Public

Three major races are dominant in Peninsular Malaysia i.e. Malays, Chinese and Indians. The indigenous people are the minority in Peninsular Malaysia even though they are the oldest inhabitants (the rights of the indigenous people to participate in forest conservation are not discussed in this paper). As an alternative to the Malaysian public to participate in forest conservation programme and activity, they may choose to enlist or to volunteer in the conservation NGOs. The Friends of the Earth Malaysia (FOE) worked closely with numerous affected communities throughout Peninsular Malaysia, such as, supported the villagers of *Bukit Merah* against the illegal production of radioactive substances in their village (<http://www.surfover.com/sam/>). Recently the case of quarry development in *Jerai*, the community requested the FOE's technical assistance to reinforce their rights to protect the reserved forest for water catchment area from being totally destructed by the irresponsible quarry contractor.

The case is in the ongoing process of trial in court. (The People's Story: 2007). In another case of protecting the water catchment area in *Ulu Muda* Dam, the FOE on behalf of the community challenged and brought the case to the court and the decision was in favour of the community and finally the development project has been obstructed by the court order (Mahshar: 2007).

However, public awareness with regard to forest conservation in Peninsular Malaysia is still at unsatisfactory level (Ansari: 2007) where the FOE opined that the children particularly must be educated and immerse with the sense of awareness to preserve the environment since at primary school as they will be the future leader and generation who will govern this natural heritage (Mahshar: 2007). It is further observed that it is common when the public would only response to the issues after the destruction of forest has been taken place or after the forest issue has been highlighted by the media. Perhaps at this stage all level of public interested to deliver their idea to the forest related issues although there is no assurance that the issues could be resolved.

3. Outlined legislation on public participation in forest conservation and its impediments:

3.1 The Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 1987 (EIA)

In ensuring the environment could not be badly deteriorated because of the adhoc development, the Department of Environment (DOE) through section 34A of the Environmental Quality Act has made mandatory for the project proponent to submit the EIA report to the DOE if their proposed project is among the listing in the 19 prescribed activities under the EIA. The prescribed activities with regard to forest conservation are listed in the chapter 2 para 2.2. Prescribed Activity 6 of the EIA Guidelines for Forestry. The submission of the EIA report must be done prior to the project approval and implementation.

There are three stages where the public could participate in the process of preparation of the EIA report; the Preliminary Assessment stage, the Detailed Assessment (DEIA) stage and the Review stage. According to the EIA Handbook, public participation in the preliminary stage is regarded as an aid to the proposed project planning but it is subjected to the initiative of the project proponent. Furthermore in this stage the public have no right to comment on the report and also to access to a copy of the EIA Report.

However, in the Detailed Assessment stage, there are more spaces for the public to participate. The DOE has announced that the terms of reference (TOR) for all DEIA Reports were required to be displayed for public comments. Additionally effective from 1st April 2007, the Executive Summary of all EIA reports processed shall be displayed in the DOE website. Nevertheless it seems to be against the aim of the EIA requirements and also is unfair to the public when it is further provided that if the project proponents believe that in the public interest the DEIA should not be made available to public they could forward the application to the project-approving authority.

In the third stage, the EIA report may be reviewed if the aggrieved party to the project made an appeal to the Appeal Board. This right has been provided under section 35(e) of the EQA as the DEIA are open for public inspection after the approval of the proposed project.

The author in the opinion that, if only the above stages have been strictly and justly implemented then there will be no cases in opposition to the principle underlined by EIA. However this is not the case in *Jerai*, *Mahang*, *Sungei Selangor* Dam and *Penang Hill* where in these cases the public have protested for the project to be stopped as their lives were at risk as a consequence of the environmental impact caused by the development project which also affected the forested area.

The role of the public as the most reliable way of predicting the impact of a project on people has been underlined in the EIA Handbook. It is further stated that a responsible, interested and participating public is important in environmental management of the EIA process. Thus who should be in this category of responsible, interested and participating public? Where is this proviso heading for? It is further observed that at the preliminary stage of EIA report the project proponent could decide what will be the form of public participation; a public opinion sampling, public meetings, workshops or regular meetings with a Citizen's Committee. Hence there are ambiguities in the handbook guidelines where it supposes to outline a detail and clear process of how public could participate in the EIA process.

Even though there are several improvements to the EIA process, in the context of to review the full report, the interested public has to go to either office of the DOE, public library or the relevant

local authority office with some form of payment if the public interested in obtaining it. Furthermore there is no element of convenience on the part of public where some form of payment to acquire the EIA report might be a burden to some interested public.

3.2 The National Forestry Act

The preamble of the National Forestry Act stated that the Act is to provide for the administration, management and conservation of forests and forestry development. However the Act silence as to public participation in forest conservation. The EIA Handbook only allows for public participation if the project is listed in the prescribed activities. Thus in the author's view, since the Act is silence to this matter it is impliedly means that some form of public participation is not needed in the non-prescribed activities.

3.3. The Federal Constitution of Malaysia (FC)

The Federal Constitution of Malaysia provides the Malaysian public privileges under its provisions. The privilege related to public participation in conserving forests is provided under Article 10(1)(a)-freedom of speech and expression. It is supposed that under this proviso public could participate freely without restriction or condition in contributing the ideas and comments to certain projects which may affect the environment and their lives.

The State List (List II) under the Ninth Schedule of the FC gives a total power to the state to administer and manage the forests. All the same this has contributed to contradiction of interpreting the legislation by the 12 states in Peninsular Malaysia where these states are free to adapt the law and policy relating to forest passed by the federal government. Another dilemma faced by the states to govern its forests, is where land, forests and water are governed by different government agencies thus subjected to various different conflicting development options which result in the environment being adversely affected.

4. Conclusion.

As a concluding remark let us have a glance on scenario of public participation in forest conservation in Peninsular Malaysia. In 1999 in the case of *Sungei Selangor Dam* where DOE received 200 letters but only 18 of the letter commented on the technical and scientific consequences while the rest were protest letters. In 1997, the DOE received nine DEIA Reports and only 16 comments were received from the public. However this is not the case in Penang Hill in 1991 where this project received 419 written comments and the DEIA report was rejected (Kanniah: 2000). This scenario in fact shows the real picture of public participation in Peninsular Malaysia. It is undeniable that there are quite a number of responsible and interested public to participate and give comment to the EIA reports likewise the number of public comments are slightly improved but still public participation in forest conservation not very much satisfactory. Public should be approached and guided on how to express their idea and comments to the proposed project which may affect them. A clear guideline should be established and a more convenient accessibility to the EIA documents at free cost should be made available especially public in rural area. The affected public to the project should be educated and represented by the experts if the proposed project may put their life in jeopardy. Public interest could not be jeopardized for the sake of fulfillment of luxurious need. Furthermore a high level of awareness and curiosity among public should be increased so they will be more aware of every proposed project within their living area which may impact the environment. The political interference should also be evaded as this would only cause more trouble and public lives would be at risk. Hence the existing guidelines must be amended in order to have a clearer procedure as to how public may participate in forest conservation as forests are belonged to public at large and this natural heritage is need to be preserved for our future generation.

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