

Memo
on the
Malaysian Timber Certification
Scheme (MTCS)

*Written by TPAC at the request of the Dutch Ministry of
Infrastructure and Environment*

26 August 2013

Index

1.	Introduction	3
1.1	Background	3
1.2	Request for expertise	3
1.3	Scope of TPACs memo	4
1.4	Readers guide	4
2.	Conversion	5
2.1	The TPAC Judgement	5
2.2	The Agreement	5
2.3	The Instruction	6
2.3.1	The audit reports	6
2.4	The New MTCS Standard	7
2.4.1	The audit reports	8
2.5	Summary and conclusion on Conversion.....	9
3.	Indigenous peoples’ rights.....	10
3.1	The TPAC Judgement	10
3.2	The Agreement	12
3.3	The Instruction	13
3.3.1	The audit reports	13
3.4	The new MTCS standard.....	14
3.4.1	The audit reports	14
3.5	Summary and Conclusion on indigenous peoples’ rights	15
4.	Maps	16
4.1	The TPAC Judgement	16
4.2	The Agreement	16
4.3	The Practice.....	16
4.4	The new MTCS standard.....	17
4.5	Summary and Conclusion on maps	17
5.	Summary and conclusions.....	18
5.1	Conversion	18
5.2	Indigenous Peoples’ rights.....	19
5.3	Maps.....	19
	Annex – Overview of the findings of the audit reports	21

1. Introduction

This memo has been written by the Timber Procurement Assessment Committee (TPAC) in response to a request for expertise from the Ministry of Infrastructure and Environment, dated 6 May 2013.

1.1 Background

On 22 October 2010, TPAC published its revised judgement on the Malaysian timber certification system MTCS. The judgement was that MTCS did not meet the Dutch Procurement Criteria because the second principle (the rights of indigenous peoples) and the fourth principle (biodiversity protection) were inadequately addressed.

With the aim to resolve the main weaknesses identified by TPAC, State Secretary Atsma made an agreement on improvements with MTCC - the organisation that manages the MTCS - and the Malaysian Ministry of Plantation Industries and Commodities.

Agreements were made on the following issues:

- conversion;
- Indigenous peoples' rights;
- public availability of maps.

The agreement was confirmed on 18 February 2011. In response to the agreement with Mr Atsma, MTCC published two instructions for forest managers and certifying bodies to provide clarity on the interpretation of the relevant criteria:

- MC&I 2/2011 - Interpretation of Criterion 6.10 [on conversion];
- MC&I 3/2011 - Interpretation of the term 'free and informed consent'.

On 13 January 2012 MTCS published its new standard MC&I(2012). This standard supersedes the instructions of February 2011 and covers natural forests only; forest plantations can be certified under a separate MTCC plantation standard. As of 1 June 2013 all MTCS natural forests have to comply with the new standard.

MTCC is endorsed by PEFC International, meaning that its timber is eligible to carry the PEFC logo and label. The current endorsement is valid until 1 May 2014 and covers the MC&I(2002) and the plantation standard.

1.2 Request for expertise

The agreement between Mr Atsma and MTCC specified a timeframe of two years for the improvements, after which an assessment of the improvements and their outcomes would take place based on audit reports. In its letter, dated 6 May 2013, the Ministry asked TPAC assess the following:

1. The extent to which MTCC has effectuated the agreement that was made between the Ministry and MTCC.
2. The extent to which the weaknesses on conversion, indigenous peoples' rights and the availability of maps that were identified by TPAC, have been resolved.

The Ministry has asked TPAC to take the following information into account:

- The agreement between the Ministry, MTCC and the Malaysian Ministry of Plantation Industries and Commodities, that was confirmed 18 February 2011.
- The instructions that MTCC wrote for forest managers and auditors effectuating the agreement.
- Available audit reports or public summaries thereof.
- The new MTCS standard of 2012 in as far as it addresses the issues conversion, indigenous peoples' rights and availability of maps.

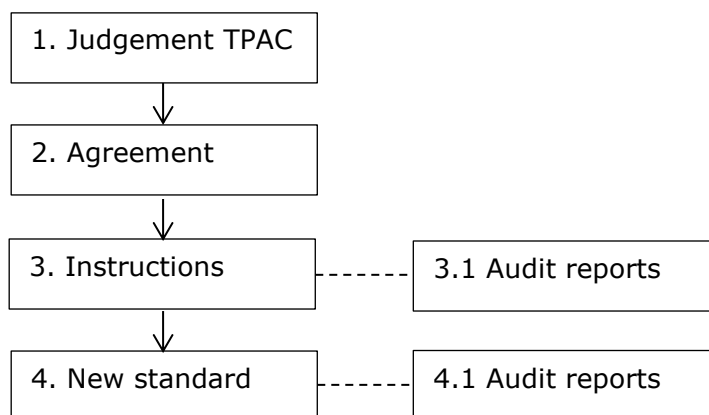
1.3 Scope of TPACs memo

This memo aims to provide an answer to the two questions formulated by the Ministry. The memo does not reflect a complete assessment of MTCS. The memo consequently does not replace or annul TPAC's judgement dated October 2010.

1.4 Readers guide

The three issues – conversion, indigenous peoples' rights and maps – will be discussed in sections 2 through 4. TPAC's judgement, dated October 2010, will form the starting point after which it is discussed how the issue was addressed in the consecutive steps: the agreement, the instructions and the new MTCS standard. The agreement between Mr Atsma and MTCC specified that the improvements were to be demonstrated through the audit reports.

The sections are structured as follows:



In section 5, TPAC will present its conclusions.

2. Conversion

2.1 The TPAC Judgement

Regarding conversion TPAC demands the following:

C4.3. Conversion of forests in the FMU to other types of land use, including timber plantations, shall not occur unless in justified exceptional circumstances.

TPAC concluded in October 2010 that this criterion was not met by MTCS. TPAC argued that there was no clear limitation on conversion: "*The MTCS Criterion 6.10 defines three exceptions [for conversion] (...) Conversion is accepted if it:*

- a. entails a very limited portion of the forest management unit; and*
- b. does not occur on high conservation value forest areas; and*
- c. will enable clear, substantial, additional, secure, long-term conservation benefits across the forest management unit.*

Exception a) is annulled through guideline MC&I 2/2002, which prescribes that FMUs shall at present not be assessed for compliance with 6.10 a). (...) the annulment of 6.10 a) not only pertains to conversion which has already taken place within the FMU at the time of the audit, but also to conversion which is being planned.(...) Exception c) is weakened through the indicators 6.10.1 and 6.10.2 which do not mention 'conservation' in relation to benefits".¹

Furthermore, TPAC concluded that forests converted to plantations were still included in the certified area, as were forests that were planned to be converted. TPAC therefore argued that MTCS was in need of a once-only "*redefinition of the boundaries of the FMUs, leaving out effectuated and planned conversion*".²

Summarised, the weaknesses identified by TPAC were:

- no clear limitation of conversion;
- no exclusion of effectuated and planned conversion from the certified area.

2.2 The Agreement

In the Agreement, MTCC committed to the following improvement: "*additional guidance (...) that additional conversion will lead to suspension or withdrawal of the certificate.*"

The Ministry specified the following result: "*a clear instruction to certifying bodies that the converted areas and areas scheduled for conversion are excluded from the certified FMU and that additional conversion will lead to suspension or withdrawal of the certificate.*" In addition MTCC committed that "*In the revision of the current standard, the issue of putting a cap on conversion will be discussed and finalized by the SRC [Standards Review Committee].*"³

¹ Response to objection, dated 22 October 2010.

² Response to objection, dated 22 October 2010.

³ Agreed Minutes, confirmed 18 February 2011.

TPAC observes that the first weakness was mentioned as being topic of the standards review process but an actual limitation was not agreed upon between the Dutch Minister and MTCS. The second weakness was effectively addressed by the Ministry and MTCC.

2.3 The Instruction

The instruction "MC&I 2/2011 - *Interpretation of Criterion 6.10*" addresses the first weakness 'no clear limitation of conversion'; it specifies that conversion can only take place if the conversion "*will enable clear, substantial, additional, secure, long-term conservation benefits across the forest management unit*". As conversion in practice will only produce conservation benefits in a limited number of circumstances, TPAC concludes that instruction leaves little room for conversion provided that the instruction takes precedence over the MTCS indicators 6.10.1 and 6.10.2.⁴

The second weakness is also addressed as the instruction states: "*The scope of certification (...) shall exclude any forest plantations and any planned conversion in the PRFs.*"

2.3.1 The audit reports

The audit reports give information on how the instruction has been put into practice. There are nine MTCS certified Forest Management Units. All have had a surveillance audit in 2011 of which an extract and/or a public summary of the audit report has been made available to TPAC. TPAC has reviewed the reports on the following aspects:

- Is the MTCC instruction on conversion mentioned as one of the normative documents for certification?
- Is effectuated and planned conversion explicitly excluded from the certified area?
- Did conversion take place in the audited period?⁵

The audit reports reveal the following (see annex for complete overview):

- Six audit reports explicitly mention the instruction on conversion; three others do not mention it as one of the normative documents. It must be noted that the six audit reports that mention the instruction do not specify that the instruction takes precedence over indicator 6.10.1 and 6.10.2 (see section 2.3).
- Four audit reports explicitly mention that all effectuated and planned conversion is excluded from the certified area. The five other reports are unclear on whether (all) effectuated and planned conversion is excluded from the certified area.
- Six audit reports explicitly mention that no conversion took place in the period subject to the audit. Two audit reports mention small scale conversion; 21 ha (for a federal road) and 109 ha (for infrastructure, a base camp and a nursery). One audit report – that of the Perak FMU - mentions that "*Conversion of PRFs to non-forest areas has been ongoing for various development projects*", the report does not specify how much conversion took place.

⁴ 6.10.1 *Conversion of forest area to plantations (...) should provide substantial, additional, secure and long term benefits across the forest management unit.*

6.10.2 *Conversion of forest area to non-forest land uses (...) should provide higher economic values as compared to its original use, in the overall context of the need for socio-economic development of the country.*

⁵ This is the period between the first surveillance audit and the second surveillance audit one year later.

TPAC observes that in several cases, both the forest manager and the auditor have put the instruction on conversion into practice. In some other cases however, it is unclear whether this has been the case. Lastly, TPAC observes that in general conversion did not take place in the MTCS certified FMUs, or only at a (very) limited scale. The Perak FMU is the exception as it states that conversion is on-going for various development projects but it does not mention how much is converted.

2.4 The New MTCS Standard

In 2012 MTCC published a new standard including the following criterion on conversion:

6.10 Forest conversion to plantations or non-forest land uses shall not occur, except in circumstances where conversion:-

- a) entails a very limited portion of the forest management unit; and*
- b) does not occur on high conservation value forest areas; and*
- c) will enable clear, substantial, additional, secure, long-term conservation, economic and social benefits across the forest management unit.*

Indicator 6.10.1 stipulates:

"A limited portion" is defined as:

- not more than 2.5% of the total area of the FMU in the first 3 years;*
- not more than 1.5% for the subsequent 2 years; and*
- not more than 1% for the next subsequent 2 years.*

This definition may be modified in the next review process of this standard.

Two aspects of the new conversion criterion are different from the old one:

1. the new criterion defines a cap on conversion of 5% in 7 years;
2. exception c) of the new criterion refers not only to conservation benefits of conversion, but also to social and economic benefits.

TPAC observes that the MTCS criterion has improved because it includes a clear definition of 'a limited portion' i.e. a cap of 5% in 7 years. However, TPAC is concerned about the possibility that the 5% cap is upheld for each subsequent 7-year period. Another concern is exception c) which allows conversion if it "*will enable clear, substantial, additional, secure, long-term conservation, economic and social benefits across the forest management unit*". TPAC notes that the additional grounds for conversion are wider than what TPAS permits in its guidance for TPAS criterion 4.3; only on the ground of 'conservation benefits'.⁶

Regarding the first weakness identified by TPAC: the 5% cap is definitely clear, but TPAC is not confident that it also constitutes sufficient limitation on conversion. The second weakness is effectively addressed by the new MC&I(2012) as the scope of the standard is confined to natural forests.

⁶ Guidance to TPAS criterion 4.3 "(...) conversion can take place if the area to be converted is insignificant, if it enables clear long term conservation benefits, or if it is based on undisputed governmental decisions."

2.4.1 The audit reports

Between June and December 2012 all nine MTCS certified FMUs had a Recertification audit to assess their compliance with the new MTCS standard MC&I (Natural Forests). Six public summary reports or extracts of the complete reports were made available to TPAC. The reports of Kelantan, Kedah and Perak are not yet available. Again TPAC reviewed the reports on the following aspects:

- Is effectuated and planned conversion explicitly excluded from the certified area?
- Did conversion take place in the audited period?

The six audit reports reveal the following (see annex for complete overview):

- Three audit reports explicitly mentioned that all effectuated and planned conversion was excluded from the certified area. In all cases this was the area that was already excluded during the surveillance audit one year earlier. Illustrating that the forest managers and auditors understood the MTCS instruction demanding a once-only redefinition of the boundaries of the FMU. Three other reports did not mention exclusion or were vague about it.
- The report on the Segaliud Lokan FMU included a worrisome statement on exclusion: *"The MC&I (Natural Forest) has specified that forest conversion from natural forest to forest plantation shall be limited to no more than 5% of the total area of the FMU. It was noted that there were 2,138 ha of plantation already established and 22,238 ha had been approved for industrial tree plantation which would include enrichment planting in degraded sites and possibly could exceed the allowable area. If this happens, the scope of certification would have to be revised to comply with the conditions for natural forest management certification."* This statement is worrisome because according to the auditor the conversion of an additional 22,238 ha (or 39% of the certified FMU) does not lead to a withdrawal of the certificate but to a revision of the scope of the certification. This conflicts with TPAS and the agreement with the Ministry which reads: *"converted areas and areas scheduled for conversion are excluded from the certified FMU and that additional conversion will lead to suspension or withdrawal of the certificate."*
- None of the six audit reports reported any conversion in the audited period.

TPAC observes that – for the six FMUs studied – no forest conversion was reported for the audited period; this is positive. However, the statement made in the Segaliud Lokan audit report worries TPAC because according to the auditor the conversion of 22,238 ha does not lead to a withdrawal of the certificate but to a revision of the scope of the certification. This conflicts with TPAS and the agreement with the Ministry.

2.5 Summary and conclusion on Conversion

The Ministry requested TPAC to assess the following:

- the extent to which MTCC has effectuated the agreement between the Ministry and MTCC; and
- the extent to which MTCC resolved the weaknesses identified by TPAC.

The agreement between the Ministry and MTCC on conversion can be summarised as follows:

- a clear instruction to certifying bodies that the converted areas and areas scheduled for conversion are excluded from the certified FMU and additional conversion will lead to suspension or withdrawal of the certificate;
- The issue of putting a cap on conversion will be discussed and finalized by the SRC [Standards Review Committee].

TPAC concludes that MTCC has effectuated both these aspects of the agreement as it issued an instruction on conversion and a cap on conversion was included in the new MC&I(Natural Forests). However, the audit reports of the surveillance audit reveal that five out of nine FMUs did not exclude (all) converted areas and areas scheduled for conversion or were vague about it. The audit reports of the re-certification audit reveal that three out of six FMUs did not exclude (all) converted areas and areas scheduled for conversion. In addition, the Segaliud Lokan audit report suggests that additional conversion will not lead to suspension or withdrawal of the certificate. Although it must be underlined that no forest area was actually converted. In conclusion; MTCC implemented this part of the agreement, but it did not lead in all cases to the desired improvements in the field.

This brings us to the second question, the extent to which MTCC has addressed the weaknesses identified by TPAC. TPAC concludes that the weaknesses - *no clear limitation of conversion* and *no exclusion of effectuated and planned conversion from the certified area* - are partially resolved.

The positive development is that no, or very little, conversion took place in 2011 and 2012. Also a clear cap on conversion was included in the new standard. TPAC is however not fully confident that this cap of 5% in 7 years will prove to be a sufficient limitation on conversion also because of the additional grounds for conversion (economic, social and conservation benefits). As the audit report of Segaliud Lokan shows, conversion to forest plantations remains an attractive alternative to natural forests. The final concern is that certified FMUs do not in all cases carry out the instructions as they have been laid down in the normative documents.

3. Indigenous peoples' rights

3.1 The TPAC Judgement

Regarding indigenous peoples' rights, TPAS demands - amongst others - the following:

C 2.1. The legal status of the management of the forest management unit and claims of the local population, including indigenous peoples, in the property/tenure or use rights regarding the forest management unit or a portion thereof have been inventoried and are respected.

C 2.3. The local population and indigenous peoples have a say in forest management on the basis of free and informed consent, and hold the right to grant or withhold permission and, if relevant, receive compensation where their property/use rights are at stake.

In its judgement, dated October 2010, TPAC concluded: "There is a fundamental difference in interpretation of customary rights (...). The Committee interprets customary rights as resulting from and/or based on traditional use. The [MTCS certified] forest managers and certification bodies limit the customary rights primarily to formal rights that have been granted to indigenous communities by the state. This difference in interpretation implies that rights resulting from and/or based on traditional use (RTUs) are not recognised in MTCS certified forests, but are rather considered a favour to indigenous communities. In the practice of MTCS certification this means that:

- i. RTUs relating to 'subsistence use' are respected;*
- ii. RTUs related to 'commercial use' are in most FMUs limited through a licensing system. (...)*
- iii. RTUs relating to 'control over forest management' are considered not applicable in MTCS certified forests as indigenous communities have not been granted the formal right to control forest management activities for protection of their traditional uses in PRF [Permanent Forest Reserve].*

TPAC argued that MTCS criteria 2.2 and 3.1⁷ give IPs the right to have a say in forest management based on free and informed consent. But as this right was made conditional on legal ownership and Orang Asli are by definition not the legal owners of MTCS certified forests, TPAC concluded that the MTCS criteria 2.2 and 3.1, as well as criteria 3.2 and 4.5⁸ were de facto invalidated.⁹

⁷ MC&I (2002) C 2.2 *Local communities with legal or customary tenure or use rights shall maintain control, to the extent necessary to protect their rights or resources, over forest operations unless they delegate control with free and informed consent to other agencies.*

MC&I (2002) C 3.1 *Indigenous peoples shall control forest management on their lands and territories unless they delegate control with free and informed consent to other agencies.*

⁸ MC&I (2002) C 3.2 *Forest management shall not threaten or diminish, either directly or indirectly, the resources or tenure rights of indigenous peoples.*

MC&I (2002) 4.5 *Appropriate mechanisms shall be employed for resolving grievances and for providing fair compensation in the case of loss or damage affecting the legal or customary rights, property, resources, or livelihoods of local peoples. Measures shall be taken to avoid such loss or damage.*

⁹ TPAC Assessment Matrix of the Revised Final Judgement of MTCS – 22 October 2010

TPAC notes that the Malaysian Aboriginal Peoples Act (1954) provides the indigenous peoples of Peninsular Malaysia - the Orang Asli - with the legal ownership of so-called Orang Asli reserves. In principle, TPAS criteria 2.1 and 2.3 could be addressed by the applicable legal framework – in this case the Aboriginal Peoples Act - instead of the MTCS criteria. For that to be the case two conditions should be met. First that the Reserves are of sufficient size (and quality) to enable Orang Asli to sustain their traditional way of living of hunting and collecting. Second, that Orang Asli do not consider any other significant certified forest area to be part of their traditional land. These two conditions are not met. Some 178,200 Orang Asli live in Peninsular Malaysia.¹⁰ Under the Aboriginal Peoples Act 20,671 ha of land is gazetted as Orang Asli Reserves on the Peninsular in 2010. This area is insufficient to enable them to sustain their traditional way of living. An indication of what area the Orang Asli consider to be part of their traditional area is given by the Human Rights Commission of Malaysia in its recent *Report of the National Inquiry into the land rights of Indigenous Peoples* (see Table 1). These figures illustrate that the area that is claimed by the Orang Asli is considerably larger than the area that is awarded to them. Approximately 4.5 million ha of forest in Peninsular Malaysia are MTCS certified.

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

Summarised, the weakness identified by TPAC is:

- Not respecting the IP right to have a say in forest management - based on free and informed consent - on areas with long term traditional use, as this right is made conditional on the legal ownership of so-called *Orang Asli Reserves* which cover a fraction of the traditional use area.

¹⁰ JAKOA (2011), Development Strategic Plan 2011-2015

¹¹ Human Rights Commission of Malaysia (2013), Report of the National Inquiry into the land rights of Indigenous Peoples

Box 1 - Free (prior) and informed consent

Free, prior and informed consent (FPIC) is an important principle in international law. A number of international agreements, conventions and declarations refer to the principle of which the U.N. Declaration on the Rights of Indigenous Peoples (the Declaration) is the most widely supported. Within the Declaration, FPIC is enshrined in six articles of which article 32 is the most relevant one in this context:

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.(...)

The Declaration was adopted by a vote of 144 in favour, 4 against and 11 abstentions in September 2007. Both the Netherlands and Malaysia voted in favour. Other international agreements referring to the principle of free (prior) and informed consent are amongst others the Convention on Biological Diversity (CBD) and the ILO Convention No. 169 on Indigenous and Tribal Peoples. In addition, both the criteria of PEFC and FSC refer to the FPIC principles.

3.2 The Agreement

In the Agreement with Mr Atsma, MTCC committed to the following improvement: *"clear guidance to the certification bodies in the interpretation of the requirement for 'free and informed consent of the IPs"*. The Ministry in turn specified the following result: *"The outcome should be that the forest manager is required to identify indigenous communities in the FMU, to confer and agree on what areas they traditionally use, including sites of significant importance to them. In doing so, the forest manager and indigenous communities have to interact and agree on how these sites are to be managed, both by the communities themselves and by the forest manager. This is expected to lead to respect for customary rights of IP's in practice, even if those rights are not formally recognized."*

TPAC observes that the weakness *"Not respecting the IP right to have a say in forest management - based on free and informed consent - on areas with long term traditional use, as this is made conditional on legal ownership"* is partially addressed by the agreement. The Ministry specifies that IP rights are not conditional on legal ownership and MTCC specifies that forest managers should interact and agree with indigenous communities on the management. However the latter only seems to apply to sites of significant importance – such as burial sites- and not to the entire forest area that IPs traditionally use, which is considerably larger.

3.3 The Instruction

The Instruction MC&I 3/2011 - Interpretation of the term 'free and informed consent' specifies that *"Since the MTCS only covers the certification of permanent forests, where the ownership claims by the indigenous peoples have been legally defined, the issue of 'free and informed consent' as specified in Criteria 2.2, 3.1 and Indicator 3.1.2 does not arise."*

TPAC observes that this phrase is a confirmation of the weakness identified by TPAC: *"Not respecting the IP right to have a say in forest management - based on free and informed consent - on areas with long term traditional use, as this is made conditional on legal ownership."* The MTCS criteria 2.2 and 3.1 remain invalidated.

Furthermore, the instruction seems to include the same ambiguity as the agreement on whether the forest manager should confer and agree with IPs on the entire traditional forest area or only on the special sites; *"the forest manager is required (...) to confer and agree on what areas they [indigenous peoples] traditionally use, including sites of significant importance to them (...). In doing so, the forest manager and indigenous peoples have to interact and agree on how these sites are to be managed"*.

3.3.1 The audit reports

The audit reports give information on how the instruction has been put into practice. There are nine MTCS certified Forest Management Units. All have had a surveillance audit in 2011. An extract and/or a public summary of the audit reports have been made available to TPAC. TPAC has reviewed the reports on two aspects:

- Is the MTCC instruction on free and informed consent mentioned as one of the normative documents for certification?
- Is the IP right to have a say in forest management – based on free and informed consent - respected?

The audit reports reveal the following (see annex for a complete overview):

- Six audit reports explicitly mention the instruction on free and informed consent; three others do not mention it as one of the normative documents.
- The IP rights relating to subsistence are generally respected: Orang Asli can roam within the FMU and are allowed to collect minor forest produce.
- In all audit reports some form of consultation or engagement of Orang Asli is mentioned. However, none of the audit reports state that IPs have the right to have a say in forest management – based on free and informed consent - because they all make this right more or less conditional on legal ownership.

TPAC observes that there is no tangible evidence that the IP right to have a say in forest management was respected or that respect for the IP rights had considerably improved in MTCS certified forests as a result of the Agreement and the subsequent instruction.

3.4 The new MTCS standard

In 2012 MTCC published a new standard including the following criteria which pertain to the rights of indigenous peoples:

C 2.2 Local communities with legal or customary tenure or use rights shall maintain control, to the extent necessary to protect their rights or resources, over forest operations unless they delegate control with free, prior and informed consent to other parties.

C 3.1 Indigenous peoples shall control forest management on their lands and territories unless they delegate control with free, prior and informed consent to other parties.

The difference between the new criteria and the old ones is that the word "prior" has been added. However, this word is without meaning if the condition of legal ownership is not abandoned. The indicators of the new standard suggest that this is not the case: indicator 2.2.2 reads for example "*Forest managers shall recognise, respect and collaborate with holders of duly recognised legal or customary tenure or use rights within relevant federal, state and local laws (...)*". Other relevant indicators such as indicator 2.2.1 and 3.3.1 include the same phrase "*within relevant federal, state and local laws*".

A tangible improvement in the new standard is that it requires forest managers to prepare maps showing a) settlements of local communities/indigenous peoples; b) Aboriginal Reserves; c) aboriginal areas and d) sites with special importance to IPs. However, TPAC observes that the weakness "*not respecting the IP right to have a say in forest management based on free and informed consent*" is not addressed in the new standard. TPAC also observes that the wording that was present in the instruction "*confer, interact and agree*" did not find its way to the indicators of the new standard.

3.4.1 The audit reports

Between June and December 2012 all nine MTCS certified FMUs had a Recertification audit to assess their compliance with the new MTCS standard MC&I (Natural Forests). Six public summary reports or extracts of the complete reports were made available to TPAC. The reports of Kelantan, Kedah and Perak are not yet available. Again TPAC reviewed the reports on the following aspect:

- Is the IP right to have a say in forest management – based on free and informed consent – respected?

The six reports of the Recertification audit reveal more or less the same as the reports of the Surveillance audits:

- The IP rights relating to subsistence are generally respected: Orang Asli are allowed to collect minor forest produce/products.
- None of the audit reports however state that IPs have the right to have a say in forest management – based on free and informed consent. In most cases it is made explicit that this right is conditional on legal ownership and thus not applicable in the certified forest area.
- In the reports on Pahang and Negeri Sembilan an improvement was noted regarding the mapping of Orang Asli special sites.

3.5 Summary and Conclusion on indigenous peoples' rights

The Ministry requested TPAC to assess the following:

- the extent to which MTCC has effectuated the agreement between the Ministry and MTCC; and
- the extent to which MTCC resolved the weaknesses identified by TPAC.

The agreement between the Ministry and MTCC on IP rights can be summarised as follows:

- clear guidance to the certification bodies in the interpretation of the requirement for 'free and informed consent' of the IPs. The outcome should be that the forest manager is required to identify indigenous communities in the FMU, to confer and agree on what areas they traditionally use, including sites of significant importance to them. In doing so, the forest manager and indigenous communities have to interact and agree on how these sites are to be managed.
- respect for customary rights of IP's in practice, even if those rights are not formally recognized.

TPAC concludes that MTCC has partially effectuated the first point of this substantive element of the agreement as it has issued an instruction to certification bodies on the interpretation of free and informed consent. This instruction included the wording "*confer, interact and agree*" when it described the interaction between the forest manager and the IPs. However, the audit reports do not testify that forest managers have been systematically *conferring, interacting and agreeing* with the indigenous communities on their traditional areas. Nor do they testify that customary rights are respected when these are not formally recognised. In the instruction as well as in practically all audit reports the right to have a say in forest management is made conditional on legal ownership. TPAC thus concludes that MTCC did not effectuate the second point of the agreement and did not address the weakness identified by TPAC "*Not respecting the IP right to have a say in forest management - based on free and informed consent - on areas with long term traditional use.*"

4. Maps

4.1 The TPAC Judgement

Regarding maps TPAS demands the following:

C 2.4. The forest management plan and accompanying maps, relevant monitoring results and information about the forest management measures to be applied are publicly available, except for strictly confidential business information.

In its judgement, dated October 2010, TPAC identified the following weakness: “forest managers do not make detailed maps available to the public”.

The TPAS criterion does not specify the level of detail that is required. Instead the criterion specifies that the maps should accompany the management plan, meaning that the map should enable the reader to understand the management plan and to link the map and plan to forest areas in the field and vice versa. A scale between 1:25,000 and 1:50,000 usually enables such understanding and linkage between the management plan and map and the forest.

4.2 The Agreement

In the Agreement with Mr Atsma, MTCC committed to the following improvement: “Maps [will] be made available on the website of the FMU manager.”

The Ministry in turn specified the following result: “availability of maps to stakeholders, showing:

- *The boundaries of MTCS-certified areas (showing in accordance with the interim-guideline, any areas of planned or realized conversion);*
- *The location of the Orang Asli communities;*
- *Areas that are traditionally used by Orang Asli (resulting from the implementation of the new instruction).”*

TPAC observes that an instruction on maps was not issued.

4.3 The Practice

TPAC has reviewed the public available maps of the nine MTCS certified FMUs and whether the level of detail and quality of the map allows the reader to link the map to the forest and vice versa (see annex for detailed overview).

TPAC observes the following;

- For three FMUs – Selangor, Johor and Perak - rather detailed maps have been made available to the public, showing forest types, national parks, rivers etc. For two other FMUs, the maps made were much less detailed and for four FMUs the map could not be read because the resolution was too low.
- None of the maps available showed the areas of planned and effectuated conversion or the areas that are traditionally used by Orang Asli as was requested by the agreement with the Ministry.

- None of the maps had a scale that allows the reader to link the map to the forest area and vice versa; the scales ranged from 1:250,000 to 1:1,000,000.

4.4 The new MTCS standard

The new MTCS standard is identical to the old one when it comes to maps.

C 7.4 While respecting the confidentiality of information, forest managers shall make publicly available a summary of the primary elements of the management plan, including those listed in Criterion 7.1.

*C 7.1 The management plan and supporting documents shall provide:- (...)
Maps describing the forest resource base including protected areas, planned management activities and land ownership. (...)*

4.5 Summary and Conclusion on maps

The Ministry requested TPAC to assess the following:

- the extent to which MTCC has effectuated the agreement between the Ministry and MTCC; and
- the extent to which MTCC resolved the weaknesses identified by TPAC.

The agreement between the Ministry and MTCC on maps was that maps would be made available to stakeholders, showing:

- The boundaries of MTCS-certified areas showing any areas of planned or realized conversion
- *The location of the Orang Asli communities;*
- Areas that are traditionally used by Orang Asli.

TPAC has reviewed the maps that have been made available to the public. Although some forest managers improved their public maps, none of the maps show the areas with planned and effectuated conversion or the areas that are traditionally used by Orang Asli. This implies that MTCC has not been successful in effectuating its agreement with the Ministry. TPAC also found that the maps do not allow the reader – because of their scale or quality – to link the map to the forest area or vice versa. This implies that the weakness identified by TPAC has not been resolved.

5. Summary and conclusions

This memo has been written by the Timber Procurement Assessment Committee (TPAC) in response to a request for expertise from the Ministry of Infrastructure and Environment, dated 6 May 2013. The Ministry asked TPAC to assess the following:

- The extent to which MTCC has effectuated the agreement that was made between the Ministry and MTCC and confirmed in 18 February 2011.
- The extent to which the weaknesses on conversion, indigenous peoples' rights and the availability of maps that were identified by TPAC, have been resolved.

This memo aims to provide an answer to the two questions. The memo does not reflect a complete assessment of MTCS and therefore does not replace TPAC's judgement dated October 2010.

As was specified in the agreement between the Ministry and MTCC in 2011, TPAC would assess the improvements after two years based on the audit reports of the nine MTCS certified FMUs. Both the reports of the second surveillance audits (2011) and the reports of the recertification audits (2012) were reviewed. TPAC concludes the following:

Based on the information available, TPAC concludes that MTCC did not fully effectuate the agreement and that the weaknesses identified by TPAC have not been resolved.

More specifically, TPAC concludes the following on the individual topics:

5.1 Conversion

The agreement between the Ministry and MTCC stated:

- a clear instruction to certifying bodies that the converted areas and areas scheduled for conversion are excluded from the certified FMU and that additional conversion will lead to suspension or withdrawal of the certificate;
- The issue of putting a cap on conversion will be discussed and finalized by the Standards Review Committee.

TPAC concludes that MTCC has implemented both these aspects of the agreement as the organisation issued an instruction on conversion and a cap on conversion was included in the new standard MC&I(Natural Forests). However, the audit reports indicated that in 50% of the cases forest managers did not – or not fully - comply with the instruction. In addition, the Segaliud Lokan audit report seems to suggest that additional conversion will not lead to suspension or withdrawal of the certificate. MTCC thus implemented this part of the agreement, but it did not lead to the desired improvements in the field.

This brings us to the second question: the extent to which MTCC has addressed the weaknesses identified by TPAC:

- no clear limitation of conversion;
- no exclusion of effectuated and planned conversion from the certified area.

The positive development is that no, or very little, conversion took place in 2011 and 2012. Also a clear cap on conversion was included in the new standard. TPAC is, however, not fully confident that this cap of 5% in 7 years will prove to be a sufficient limitation on conversion in the long run also because of the additional grounds for conversion (economic, social and conservation benefits). Regarding the exclusion of conversion, TPAC concludes that the instruction and a new standard MC&I(Natural Forests) did not lead in all cases to the desired improvements in the field. In sum: the weaknesses identified by TPAC are only partially resolved.

5.2 Indigenous Peoples' rights

The agreement between the Ministry and MTCC stated:

- clear guidance to the certification bodies in the interpretation of the requirement for 'free and informed consent' of the IPs. The outcome should be that the forest manager is required to identify indigenous communities in the FMU, to confer and agree on what areas they traditionally use, including sites of significant importance to them. In doing so, the forest manager and indigenous communities have to interact and agree on how these sites are to be managed.
- respect for customary rights of IP's in practice, even if those rights are not formally recognized.

TPAC concludes that MTCC has partially implemented the first aspect of this substantive element of the agreement as it has issued an instruction to certification bodies on the interpretation of free and informed consent. This instruction included the wording "*confer, interact and agree*" when it described the interaction between the forest manager and the IPs. However, the audit reports do not testify that forest managers have been systematically *conferring, interacting and agreeing* with the indigenous communities on their traditional areas. Nor do they testify that customary rights are respected when these are not formally recognised. The instruction, as well practically all audit reports state that the right to have a say in forest management is made conditional on legal ownership. TPAC thus concludes that MTCC did not effectuate the second aspect of the agreement and did not resolve the weakness identified by TPAC "*Not respecting the IP right to have a say in forest management - based on free and informed consent - on areas with long term traditional use.*"

5.3 Maps

The agreement between the Ministry and MTCC on maps was that maps would be made available to stakeholders, showing:

- The boundaries of MTCS-certified areas showing any areas of planned or realized conversion
- The location of the Orang Asli communities;
- Areas that are traditionally used by Orang Asli.

TPAC has reviewed the maps that have been made available to the public. Although some forest managers improved their public maps, none of the maps show the areas with planned and effectuated conversion or the areas that are traditionally used by Orang

Asli. This implies that MTCC did not effectuate its agreement with the Ministry. TPAC also found that the maps do not allow the reader – because of their scale or quality – to link the map to the forest area or vice versa. This implies that the weakness identified by TPAC has not been resolved.

A last remark TPAC wants to make is that there is good reason that conversion and indigenous peoples' rights are topic of this memo. Both issues prove to be complex within the framework of certification. The issues are therefore not completely unique for Malaysia or MTCC.

Annex – Overview of the findings of the audit reports

The table below provides an overview of the relevant findings of the two most recent audit reports of the MTCS certified FMU's:

- The reports of the second surveillance audits against MC&I(2002), taking place between June and November 2011;
- The reports of the recertification audits against MC&I(Natural Forests), taking place between June and September 2012.

For each of the reports and FMUs the following questions are addressed:

- Is the IP right to have a say in forest management respected?
- Is effectuated and planned conversion excluded from the certified area?
- Did conversion taken place in the audited period?
- Is the publically available map detailed enough to link the map to forest areas in the field and vice versa?

In addition TPAC has verified whether in the audit reports of the second surveillance audits, the MTCC instructions on 'free and informed consent' and on conversion are mentioned as normative.

Overview of the available audit reports				
FMU	Audit	IP rights	Conversion	Maps
Johor	<p>Second surveillance audit, 20 - 23 June 2011</p> <p>Complete report Auditor: SGS</p> <p>351,771 ha</p>	<ul style="list-style-type: none"> • Is the instruction mentioned as normative? Yes • Do IPs have a say in FM? The IP rights related to subsistence use seem to be respected but IPs do not have a say in forest management. The audit report states: <i>"While the FMU manager respects the usufructuary rights of the Orang Asli in accessing the PRF, the laws do not provide them with the rights to manage forests which they may consider to be part of their traditional territories. Therefore, management of land within the PRF is not applicable in</i> 	<ul style="list-style-type: none"> • Is the instruction mentioned as normative? Yes • Is conversion area excluded? 43,859 ha of forest plantations are specifically excluded. However the report is unclear whether an area of 5,831 ha that was scheduled for a timber plantation was excluded. • Did conversion taken place? 20,8 ha were converted for a federal road and another 45 ha were planned to be converted for a federal road. 	<p>The map available on the Forest Department website is fairly detailed and shows the forest reserves, forest categories, parks, rivers etc. However, the map does not show areas of planned and effectuated conversion or areas that are traditionally used by the Orang Asli as was agreed with the Ministry. The scale (1:250,000) does not permit the reader to link the map to forest areas in the field or vice versa.</p> <p>http://www.forestry.gov.my/joho</p>

		<p><i>the context of Peninsular Malaysia, hence the issue of free and informed consent with regard to management of PRF does not arise."</i></p> <p>TPAC notes that consultation of IPs is not mentioned in the audit report.</p>		r/index.php?option=com_content&view=article&id=239&Itemid=137&lang=en
	<p>Recertification audit, 19 – 22 June 2012</p> <p>Public summary report</p> <p>Auditor: SGS</p> <p>351,302 ha</p>	<ul style="list-style-type: none"> • Do IPs have a say in FM? The public summary does not provide the information to answer this question. 	<ul style="list-style-type: none"> • Is conversion area excluded? Yes, 43,859 ha of forest plantations are specifically excluded. It is however unclear what happened to the 5,831 ha that was scheduled for a timber plantation which was mentioned in the previous report. • Did conversion taken place? No additional conversion was reported 	See previous
Negeri Sembilan	<p>Second surveillance audit 13 – 15 July 2011</p> <p>Complete report</p> <p>Auditor: SIRIM QAS</p> <p>155,531 ha</p>	<ul style="list-style-type: none"> • Is the instruction mentioned as normative? Yes • Do IPs have a say in FM? The IP rights related to subsistence use seem to be respected but IPs do not have a say in forest management. The report states that: <i>"Although the customary rights of the Orang Asli within Permanent Reserved Forests had not been formally recognised, these rights were respected in forest management planning and implementation. In general, the Orang Asli communities had been allowed to use the forest produces for their subsistence needs."</i> Although the report does not specifically state that FPIC is not applicable, the phrasing of the report makes clear that the auditor accepts 'allowing Orang Asli to use 	<ul style="list-style-type: none"> • Is the instruction mentioned as normative? Yes. However, the complete audit report also directly refers to indicators 6.10.1 and 6.10.2 which contradict the instruction. • Is conversion area excluded? It is unclear whether some 2,000 ha for a cattle project in the South Gemas is excluded. • Did conversion taken place? No additional conversion was reported 	<p>The map available on the website of the Forestry Department has a low resolution and can therefore not be read.</p> <p>http://www.forestry.gov.my/negerisembilan/index.php?option=com_content&view=article&id=14&Itemid=79&lang=en</p>

		<p>forest produce' as proof of the requirement to respect their rights.</p> <p>The report does not use the word consultation in relation to IPs, it does mention that <i>"Forest managers had shown their willingness to work with Orang Asli community through discussions regarding legal and customary tenure or use rights"</i>.</p>		
<p>Recertification audit 3 – 7 Sept 2012</p> <p>Complete report Auditor: SIRIM QAS</p> <p>155,531 ha</p>	<ul style="list-style-type: none"> • Do IPs have a say in FM? The IP rights related to subsistence use seem to be respected but IPs do not have a say in forest management. The right to have a say in FM according to the report only applies in Orang Asli Reserves. It states: <i>"NSSFD [the forestry department] did not use the Orang Asli Reserve land and the resources on the land. Hence, there was no record(s) of consultation with Orang Asli and no delegation of control with free, prior and informed consent by aborigines to the NSSFD. Like the surveillance report, the recertification report states that: "In general, the Orang Asli communities had been allowed to use the forest produces for their subsistence needs."</i> <p>TPAC notes that the mapping of Orang Asli special sites such as villages, burial grounds and special sites has improved compares to the surveillance audit. This is a positive development. The report does not specify that this mapping was done in consultation with IPs.</p>	<ul style="list-style-type: none"> • Is conversion area excluded? The report does not mention exclusion of converted area. • Did conversion taken place? No additional conversion was reported 	See previous	

<p>Segaliud Lokan (Sabah)</p>	<p>Second surveillance audit, 19 - 22 July 2011</p> <p>Complete report Auditor: SIRIM QAS</p> <p>57,247 ha</p>	<ul style="list-style-type: none"> • Is the instruction mentioned as normative? Yes • Do IPs have a say in FM? It seems not to be applicable as there is no IP community located in the FMU; the nearest community is located 5 km from the boundary of the FMU. This community does not seem to consider the FMU as part of its traditional area. The community is consulted. 	<ul style="list-style-type: none"> • Is the instruction mentioned as normative? Yes • Is conversion area excluded? 2,163 ha of rubber trees are not explicitly excluded from the certified area. • Did conversion taken place? 109 ha was cleared for a base camp, infrastructure and a nursery. 	<p>The map available in the public summary report has a low resolution and can therefore not be read.</p>
	<p>Recertification audit 31 July – 4 Aug 2012</p> <p>Complete report Auditor: SIRIM QAS</p> <p>57,247 ha</p>	<ul style="list-style-type: none"> • Do IPs have a say in FM? See previous. 	<ul style="list-style-type: none"> • Is conversion area excluded? 2,138 ha of rubber trees which were already established are not excluded from the certified area. Which is remarkable as the FMU is assessed against MC&I(Natural Forests). More worrisome however is the following statement in the report: <i>"The MC&I (Natural Forest) has specified that forest conversion from natural forest to forest plantation shall be limited to no more than 5 % of the total area of the FMU. It was noted that there were 2,138 ha of plantation already established and 22,238 ha had been approved for industrial tree plantation which would include enrichment planting in degraded sites and possibly could exceed the allowable area. If this happens, the scope of certification would have to be revised to comply with the conditions for natural forest management certification.</i> <p>This statement is worrisome because according to the auditor the conversion of an additional <u>22,238 ha</u> (or 39% of the certified FMU) does not lead to a withdrawal of the</p>	<p>The map available in the public summary report has a low resolution and can therefore not be read.</p>

			<p>certificate but to a revision of the scope of the certification. This conflicts with TPAS and the agreement with the Ministry which read: <i>"converted areas and areas scheduled for conversion are excluded from the certified FMU and that additional conversion will lead to suspension or withdrawal of the certificate."</i></p> <ul style="list-style-type: none"> • Did conversion taken place? No additional conversion was reported 	
Pahang	<p>Second surveillance audit, 31 Okt – 4 Nov 2011</p> <p>Complete report Auditor: SGS</p> <p>1,524,827 ha</p>	<ul style="list-style-type: none"> • Is the instruction mentioned as normative? Yes • Do IPs have a say in FM? The IP rights related to subsistence use seem to be respected but IPs do not have a say in forest management. The reports states: <i>"The customary rights of indigenous group is enshrined in the Aboriginal Peoples Act 1954. The Orang Asli of Peninsular Malaysia can roam within the PRF and licenses are given to those who want to collect minor forest produce. Therefore, management of land within the PRF is not applicable in the context of Peninsular Malaysia. The Forest manager does engage with Orang Asli communities but IPs do not have a say in forest management."</i> 	<ul style="list-style-type: none"> • Is the instruction mentioned as normative? Yes • Is conversion area excluded? Yes, plantation of 24,043 ha and an area scheduled for timber plantation of 14,032 ha are specifically excluded from the certified area. • Did conversion taken place? No additional conversion was reported. 	<p>The map available at the website of the Forestry Department has a very limited legend and does not specify a scale. It does therefore not permit the reader to link the map to forest areas in the field or vice versa. The map does not show areas of planned and effectuated conversion or areas that are traditionally used by the Orang Asli as was agreed with the Ministry.</p> <p>http://forestry.pahang.gov.my/download/peta-hsk.png</p>
	<p>Recertification audit 15-19 & 22 October 2012</p> <p>Complete report Auditor: SGS</p>	<ul style="list-style-type: none"> • Do IPs have a say in FM? The IP rights related to subsistence use seem to be respected but IPs do not have a say in forest management. The reports states: <i>"While Malaysia does not curtail the usufructuary rights of the Orang Asli in accessing the forests and national parks, the laws do not</i> 	<ul style="list-style-type: none"> • Is conversion area excluded? Yes, plantation of 24,043 ha and an area scheduled for timber plantation of 14,032 ha are specifically excluded from the certified area. • Did conversion taken place? No additional conversion was reported. 	<p>See previous</p>

	1,524,827 ha	<p><i>provide them with the rights to manage forests which they regard as part of their traditional territories. Therefore, management of land within the PRF is not applicable in the context of Peninsular Malaysia, hence the issue of free, prior and informed consent with regard to management of PRF does not arise."</i></p> <p>TPAC notes that the mapping of Orang Asli special sites such as villages, burial grounds and special sites has improved compares to the surveillance audit. This is a positive development. The report does not specify that this mapping was done in consultation with IPs.</p>		
Kelantan	<p>Second surveillance audit, 20 - 23 June 2011</p> <p>Complete report Auditor: SIRIM QAS</p> <p>424,497 ha</p>	<ul style="list-style-type: none"> • Is the instruction mentioned as normative? No • Do IPs have a say in FM? The IP rights related to subsistence use seem to be respected but IPs do not have a say in forest management. The reports states: <i>"As there were no Orang Asli Reserves in Kelantan, the State government had been in control of all lands used by the Orang Asli. The Orang Asli has no legal say in the management of the land and the resources they have been using. In addition, as the Aboriginal Peoples Act, 1954 has not been recognized by the Kelantan State Government, the Orang Asli has no direct control over the management of such lands. However in practice, the State government had approved lands (outside PRFs) to be</i> 	<ul style="list-style-type: none"> • Is the instruction mentioned as normative? No • Is conversion area excluded? Yes, the 199,352 ha that have been zoned for forest plantation are explicitly excluded. The public summary report includes a list of the compartments excluded. • Did conversion taken place? No additional conversion was reported. 	<p>The map that is available in the public summary report has a low resolution; the legend cannot be read. The scale of 1:780.000 does also not permit the reader to link the map to the forests and vice versa.</p>

		<p><i>used by the Orang Asli."</i></p> <p>TPAC notes that the Kelantan State Government apparently does not recognise the Aboriginal Peoples Act. This underlines that the legal framework in Malaysia is not sufficient to address TPAS criteria 2.1 and 2.3.</p>		
	<p><i>Report of the Recertification audit not yet available</i></p>			
<p>Terengganu</p>	<p>Second surveillance audit, 4 – 7 Juli 2011</p> <p>Complete report Auditor: SGS</p> <p>521,582 ha</p>	<ul style="list-style-type: none"> • Is the instruction mentioned as normative? Yes • Do IPs have say in FM? The IP rights related to subsistence use seem to be respected but IPs do not have a say in forest management. The reports states: <i>"While the FMU manager respects the usufructuary rights of the Orang Asli in accessing the PRF, the laws do not provide them with the rights to manage forests which they may consider to be part of their traditional territories. Therefore, management of land within the PRF is not applicable in the context of Peninsular Malaysia, hence the issue of free and informed consent with regard to management of PRF does not arise."</i> <p>Regarding consultation the report states: <i>"Interviews (...) confirmed the presence of the forest rangers to both villages from time to time to discuss any issues pertaining the activities within the PRFs"</i>.</p>	<ul style="list-style-type: none"> • Is the instruction mentioned as normative? Yes • Is conversion area excluded? Yes, a plantations area of 3,860 ha and an area gazetted for a hydro electric dam (18,676 ha) are excluded from the certified area. • Did conversion taken place? No additional conversion reported 	<p>The map available on the website of the Forestry Department has a low resolution and can therefore not be read.</p> <p>http://trqforestry.terengganu.gov.my/index.php?option=com_content&view=article&id=79&Itemid=321&lang=my</p>

	<p>Recertification audit 9 – 13 Sept 2012</p> <p>Public summary report</p> <p>Auditor: SGS</p> <p>516,696 ha</p>	<ul style="list-style-type: none"> • Do IPs have say in FM? The public summary does not provide the information to answer this question. 	<ul style="list-style-type: none"> • Is conversion area excluded? Yes, a plantations area of 3,860 ha and an area gazetted for a hydro electric dam (18,676 ha) are excluded from the certified area. • Did conversion taken place? No additional conversion reported 	<p>See previous</p>
Kedah	<p>Second surveillance audit, 14 17 Nov 2011</p> <p>Complete report</p> <p>Auditor: SIRIM QAS</p> <p>307,046 ha</p>	<ul style="list-style-type: none"> • Is the instruction mentioned as normative? No • Do IPs have a say in FM? The IP rights related to subsistence use seem to be respected but IPs do not have a say in forest management. The reports states: <i>"The customary rights of the Orang Asli within the PRF have continued to be respected in forest management planning and implementation even though these rights had not been formally recognised. There was only one Orang Asli community (Kg. Orang Asli Lubuk Legong) located outside the Kedah State FMU. The Orang Asli had been allowed to continue using the forest produces for their subsistence needs."</i> <p>Regarding consultation the report states: <i>"Forest managers continued to demonstrate their willingness to work with the local communities through informal discussions"</i>.</p>	<ul style="list-style-type: none"> • Is the instruction mentioned as normative? No • Is conversion area excluded? An area 2,950 ha is converted to a rubber plantation and another 5,000 ha has been approved for conversion. It is mentioned that this area <i>"would be taken out from the scope of conversion"</i>, leaving the impression that it wasn't. • Did conversion taken place? No additional conversion took place. 	<p>The map that is available in the public summary report and on the website of the Forestry department has a very simple legend. The map does not show areas of planned and effectuated conversion or areas that are traditionally used by the Orang Asli as was agreed with the Ministry. The scale 1:1,000,000 does not permit the reader to link the map to the forest or vice versa.</p> <p>http://www.kedforestry.gov.my/index.php/en/maklumat-pengenalan/mc-i/kawasan-hutan-simpan-kedah.html</p>
	<p>Report of the Recertification audit not yet available</p>			

<p>Selangor</p>	<p>Second surveillance audit, 15 - 17 Nov 2011</p> <p>Complete report Auditor: SGS</p> <p>238,747 ha</p>	<ul style="list-style-type: none"> • Is the instruction mentioned as normative? Yes • Do IPs have a say in FM? The IP rights related to subsistence use seem to be respected but IPs do not have a say in forest management. The reports states: <i>"Under the law, the state government owns forest land gazetted as PRF. The indigenous communities, i.e. the Orang Asli do not own the forest but have legal rights enshrined in the Aborigines Peoples Act, 1954, where the community are free to access the forest and collect minor forest products for subsistence use only"</i> <p>Regarding consultation the report mentions: <i>"The forest manager continues to engage with the Orang Asli communities, mostly through informal contact through the forest rangers."</i></p>	<ul style="list-style-type: none"> • Is the instruction mentioned as normative? Yes • Is conversion area excluded? Yes, 11,381 ha plantation forest has been specifically excluded from the certified area. • Did conversion taken place? No additional conversion reported. 	<p>The map that is available on the website of the Forestry Department has a detailed legend showing forestry types etc. The map can be enlarged and is available in high resolution. The map does not show areas of planned and effectuated conversion or areas that are traditionally used by the Orang Asli as was agreed with the Ministry. It is questionable whether the reader can link the map to the forest and vice versa as the scale is 1:275,000.</p> <p>http://www.forestry.gov.my/selangor/images/stories/mcni/sumber%20hutan.jpg</p>
	<p>Recertification audit 26-28 & 31 Dec 2012</p> <p>Complete report Auditor: SGS</p> <p>238,747 ha</p>	<ul style="list-style-type: none"> • Do IPs have a say in FM? The IP rights related to subsistence use seem to be respected but IPs do not have a say in forest management. The reports states: <i>"While Malaysia does not curtail the usufructuary rights of the Orang Asli in accessing the forests and national parks, the laws do not provide them with the rights to manage forests which they regard as part of their traditional territories. Therefore, management of land within the PRF is not applicable in the context of Peninsular Malaysia, hence the issue of free and informed consent with regard to management of PRF"</i> 	<ul style="list-style-type: none"> • Is conversion area excluded? Yes, 11,381 ha plantation forest has been specifically excluded from the certified area. • Did conversion taken place? No additional conversion reported. 	<p>See previous</p>

		<i>does not arise."</i>		
Perak	<p>Second surveillance audit, 21 - 24 Nov 2011</p> <p>Complete report Auditor: SIRIM QAS</p> <p>991,433 ha</p>	<ul style="list-style-type: none"> • Is the instruction mentioned as normative? No • Do IPs have say in FM? The IP rights related to subsistence use seem to be respected but IPs do not have a say in forest management. 	<ul style="list-style-type: none"> • Is the instruction mentioned as normative? No • Is conversion area excluded? An area of 5000 ha for rubber is mentioned, and not explicitly excluded. • Did conversion taken place? Yes. "Conversion of PRFs to non-forest areas has been ongoing for various development projects". 	<p>The map that is available on the website of the Forestry Department has a rather detailed legend and is available in high resolution. The map does not show areas of planned and effectuated conversion or areas that are traditionally used by the Orang Asli. The scale (1:750,000) does not allow the reader to link the map to the forest and vice versa.</p> <p>http://www.perakforestry.gov.my/images/stories/peta%20pengkelasan%205.jpg</p>
	<i>Report of the Recertification audit not yet available</i>			