

## Memorandum

**Date:** 20 October 2025

**Subject:** Response to TPAC Report 'Final Judgement Detailed Research MTCS, 11 June 2025'

### 1. Introduction

For over fifteen years, our organizations have documented and communicated persistent shortcomings in the Malaysian Timber Certification Scheme (MTCS) and its endorsement by PEFC International and the Dutch Timber Procurement Assessment Committee (TPAC).

In July 2025, some of us (but not for the field visit and the complaint central Malaysian and international NGOs such as SAVE Rivers, Keruan, The Borneo Project and Bruno Manser Fonds) received TPAC's final evaluation report via a WhatsApp message from a government official. No formal letter, explanation, or dialogue followed—despite civil society organizations having submitted detailed complaints and data over many years.

The report is repeatedly ambiguous where, on the one hand, it acknowledges a potential non-compliance while on the other, it concludes compliance. As such, the evaluation does nothing to help resolve the complaints and grievances. Instead, it has largely endorsed the status quo. It also raises questions about the extent to which TPAC was able to fulfill its task as an independent advisory body and offer an impartial assessment.

### 2. Role of NGOs

TPAC states: *"It would also be worthwhile if a constructive dialogue could be initiated between PEFC and MTCC on the one hand and the NGOs on the other hand to avoid future mutual misunderstanding, incorrect accusations that in some cases even lead to lengthy and costly legal procedures."*

With this statement, the report appears to denounce the role of NGOs, which is remarkable for several reasons:

- The statement *"incorrect accusations"* is not substantiated. Communities and NGOs have consistently requested dialogue with Samling, MTCC, PEFC International and other parties, yet their concerns were ignored. It was only when NGOs, as a last resort, called upon the Dutch government that an investigation was commissioned and TPAC became involved.<sup>1</sup>

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<sup>1</sup> Since TPAC was commissioned by the Ministry of I&W to evaluate aforementioned concerns and complaints, TPAC has not once proactively contacted any of us to substantively discuss and review our submissions. As is seems, the detailed information shared by us with TPAC was hardly

- TPAC acknowledges: *"The NGOs often prefer publicity and campaigns aimed at the outside world, in the hope that through third parties (governments, media) the alleged abuses will receive attention and improvements can be made. In a sense, this field mission proves that they have partially succeeded, because without the original complaints filed with the Dutch Ministry, PEFC, MTCC, and TPAC would never have decided on this field visit, and the new insights and recommendations would not have been achieved."*
- TPAC appears to suggest here that it was the NGOs who are to blame for legal costs incurred - not Samling who initiated their SLAPP case against local NGOs. We also observe that TPAC has completely ignored the classification of the case by the UN Human Rights Commissioner as a SLAPP case. In fact, NGOs have faced costly legal processes due to PEFC/MTCS not holding Samling accountable for its intimidation via its SLAPP against local indigenous NGOs, such as SAVE Rivers.<sup>2</sup>
- The report omits the fact that these organizations have consistently acted transparently, sharing time, data, and expertise to help TPAC assess the quality of PEFC certification, its underlying processes, and the MTCS standard.

TPAC addresses a complex matter regarding NGO-community relationships, noting: *"Relations of the local population with NGOs have been critical. People or groups would be 'misused' for other goals. MTCC is used as a peg for larger goals such as recognition of land rights. Some said that they are foreign organizations without roots in the local communities, who pretend to act on their behalf."*

The "infamous" blockades - which are not specified in the report, whereas there have been many - were desperate attempts by local indigenous communities to protect their land, culture, and livelihood from devastating logging concessions sold by the Sarawak government on ancestral lands. The report does not explain the sentiment against international NGOs and ignores the context, such as the fact that Bruno Manser Fund has worked consistently with communities on community land use mapping and capacity building for over 30 years. The report also ignores the fact that many of the NGOs involved in these issues are composed of and led by Indigenous people from these areas.

When logging is legitimized under the banner of MTCS, it is not without reason that NGOs and communities have challenged MTCS for laxity in upholding at least the nationally agreed standard.

The report only briefly addresses a fundamental problem: the continuation of a divide-and-rule approach, where consent can be orchestrated with the buy-in of more powerful and vocal local individuals. As the report mentions: *"There is another additional problem with the representation of the villagers. The village head is appointed by the government."<sup>3</sup> Not everyone is always happy with this situation because they feel insufficiently represented."*

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used by the latter or even dismissed.

<sup>2</sup> Under the rules of e.g. RSPO such intimidation in itself is a reason for suspension.

<sup>3</sup> Headmen are often replaced if they do not agree to logging.

During such a short field visit, as undertaken by TPAC/PEFC, it is very difficult to unravel the complexities and contradictory opinions expressed at the field level.

TPAC further states: *"PEFC and MTCC accuse the NGOs of one-sided reporting and 'unsolicited representation' for local communities. Furthermore, NGOs expect PEFC and MTCC to make improvements in various areas such as the legal recognition of the rights of indigenous peoples, which lie far beyond the competence and sphere of influence of PEFC and MTCC. Moreover, according to PEFC and MTCC, the NGOs would in fact want to get rid of timber production altogether, certified or not ('Stop the Chop'). The campaigns primarily serve their own constituency and furthermore lack legitimacy in terms of representation from local communities."*

This is an unfounded statement. TPAC shows a lack of understanding for the legitimate role of civil society – as also endorsed by Dutch policy and UN conventions. The NGOs undersigning this memo have invested time and energy over the years in raising concerns about weaknesses in the PEFC/MTCS certification practices to improve performance, not to stop logging altogether. This constructive position is underlined by the very title of for example the report "How to Fix Critical Flaws in Malaysia's Timber Certification System." The report provides many solutions for how to address systemic issues in MTCS.

[https://bmf.ch/upload/News/2024/Report\\_How\\_to\\_Fix\\_Critical\\_Flaws\\_in\\_Malaysia\\_s\\_Timber\\_Certification\\_System.pdf](https://bmf.ch/upload/News/2024/Report_How_to_Fix_Critical_Flaws_in_Malaysia_s_Timber_Certification_System.pdf) It provides many solutions for how to address systemic issues in MTCS.

The undersigned wish to make clear that we are not opposed to timber harvesting, provided that such operations are conducted in full compliance with the law, adhere to internationally agreed norms, and operate under credible certification schemes that ensure environmental and social responsibility. We recognize the important role that sustainable forest management and responsible timber production can play in supporting economic development, employment and livelihoods.

One of the undersigned NGOs, Both ENDS, serves on the Board of Governors of the Roundtable on Sustainable Palm Oil (RSPO) and chaired its Assurance Task Force, while one of the other co-signatories is a lead expert on timber, palm oil, and nickel supply chain certification. This expertise and hands-on engagement underscores our shared commitment to credible and transparent sustainability standards across multiple sectors. We support responsible timber operations that uphold the highest standards of governance, accountability, human rights and social equity and environmental stewardship.

Furthermore, TPAC needs to be prudent not to fuel mistrust and legitimize the further curtailment of civil society. As an indigenous expert and member of the board of SAVE Rivers states: *"A recent so-called resolution requires Indigenous communities in Upper Baram to obtain official approval before engaging with NGOs. On the surface, this may look like order and protection. In reality, it risks silencing communities, empowering selective 'consultants' and eroding the democratic rights that people in Baram fought so hard to defend. Malaysia's Federal Constitution guarantees freedom of association and expression. Indigenous peoples, under both domestic law and international standards such as free, prior and informed consent, have the right to freely choose their partners in development and advocacy. By making NGO access subject to bureaucratic approval, this 'resolution' shifts power*

away from the communities themselves and into the hands of political actors. Instead of strengthening democracy, it risks weakening it." <https://m.aliran.com/civil-society-voices/barams-lesson-when-people-speak-freely-democracy-works> and <https://www.theborneopost.com/2025/09/30/upper-baram-communities-require-official-approval-for-ngo-engagement/>

Even though the lawsuit was eventually settled out of court, it was followed by intensified government-control over grassroots NGO activity in Sarawak, particularly the Upper Baram region where Samling and other forestry companies operate. The Dutch government is at risk of implicitly endorsing such Sarawak government overreach practice if it unconditionally continues to embrace PEFC-MTCS certification as a guarantee of sustainability and respect human rights.

### **3. Field Visit and Consultation**

TPAC described the purpose of its field visit as: *"...to compare actual practice with the systems on paper and to determine if MTCS complies with the specific criteria in question."*

However, the conduct of the visit fell short of this objective. The field mission to Sarawak in February was too short, with the team spending less than two days in the field—insufficient to understand the realities of remote and affected communities.

Coordination was also inadequate. Invitations to stakeholders—many of whom work directly in communities—were sent only three weeks in advance, severely limiting participation.

During the meeting in Tanjung Tepalit, many community representatives reported that their concerns were dismissed or not taken seriously. The consultation failed to consider the interconnected nature of forest ecosystems: villages adjacent to certified areas are still directly impacted by logging, including through sedimentation and flooding due to shared river systems.

Moreover, MTCC failed to disclose that the timber company Samling had recently withdrawn its MTCC certification from the Gerenai FMU, where the meeting was held. Despite this withdrawal, community concerns remain valid given years of prior damage and continuing anxiety.

The field visit was mainly organized by MTCS and the Malaysian government, and TPAC's primary engagement was through those relationships and through their lenses. Only the meeting at Tanjung Telapit had NGO involvement but not at Long Tebenyi, Long Sela'an, Ayer Karah Langgong (Perak) and with the Penan leaders in Miri. This sheds another light on the alleged accusations of villagers vis-à-vis NGOs. Moreover, TPAC did not make an effort to check and provide NGO's an opportunity to respond to said accusations.

### **4. FPIC – Rights of Indigenous Communities**

International norms such as ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) require Free, Prior, and Informed Consent (FPIC) before any forest exploitation.

TPAC notes: *"The repeated complaints of NGOs and Indigenous Peoples (IPs) regarding disrespect and violation of FPIC rights, limited availability of maps with relevant information, as well as the use of juridical procedures against NGOs that lodged complaints, give at least the impression that in practice the MTCS system does not comply with the basics of FPIC and the relevant TPAS criteria."*

Despite this observation, TPAC fails to draw a substantive conclusion.

While TPAC acknowledges that FPIC remains problematic in Malaysia, it wrongly attributes this to slow national procedures. FPIC is a binding international norm that supersedes domestic law. Sustainability claims issued without demonstrable FPIC compliance lack legitimacy. Inadequacies in obtaining FPIC and solutions to strengthen FPIC depend in large part on training and skillsets that are within the purview of MTCS system.

Additionally, also SIRIM recognized that Indigenous Peoples (i.e. in the case of Ravenscourt FMU, Sarawak, which was not visited during this field visit and remains MTCS certified) do have rights when the certification was temporarily withdrawn due to NCRs (Native Customary Lands) regarding consent and consultation with these communities. Resolving the problem by declaring that these communities do not have rights is not only illogical and a violation of international norms and Indigenous rights (UNDRIP), it is also a violation of PEFC protocol and it fails to uphold criterion Criterion 3.1 of the MTCS's MC&I SFM Normative Document, under which UNDRIP is a guiding principle.

Moreover, MTCS Criterion 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." Samling, however, has not properly or openly consulted communities within their FMUs about MTCS. Most of the people in the communities within Ravenscourt FMU as well as the Gerenai FMU are not even aware that they are within an MTCS certified area, let alone aware of the implications.

In its Public Summary Stage 2 Audit for the Gerenai FMU, SIRIM concluded: "Consultation with 10 longhouses at Long Moh, Long Anap, Long Apu, Lio Mato, Long Selatong Dikan, Long Selatong Tanjung Tepalit, Long Palai, Long Jekitan, Long Mekaba and Long Selaan indicated that consultation was not sufficient. Majority of the communities were not aware of the objective and function of Community Relation Committee (CRC) which is yet to be established"<sup>4</sup>. This echoes our findings based on discussions with affected communities.

It is disconcerting that TPAC ignores these worrisome symptoms of system failure.

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<sup>4</sup> SIRIM QAS International (2020): "Public Summary Stage 2 Audit on Gerenai Forest Management Unit for Forest Management Certification", page 8/28: "[https://www.sirim-qas.com.my/wp-content/uploads/2020/09/Public-Summary-FMC-of-Gerenai-Forest-Management-Unit-Main-Assessment\\_v1.0.pdf](https://www.sirim-qas.com.my/wp-content/uploads/2020/09/Public-Summary-FMC-of-Gerenai-Forest-Management-Unit-Main-Assessment_v1.0.pdf)", accessed 15/10/2020.

## 5. Certification Integrity, Mapping Deficiencies, and Forest Conversion

TPAC criteria require public access to maps of certified forest areas. In practice, such maps are often undated, incomplete, or inconsistent, making it impossible to objectively determine FMU boundaries or verify the 5% conversion threshold.

As TPAC itself notes: *"Conversion of parts of MTCS-certified forests occurs and, incidentally, on a considerable scale — far beyond 5% of the originally certified area. Specified data on conversion within certified forests are not available for TPAC."*

Nonetheless, TPAC failed to identify this as a case of fundamental non-compliance, despite it being central to credible certification.

The TPAC standard allows up to 5% of an FMU to be converted in exceptional circumstances. However, in Malaysia, state authorities frequently alter FMU boundaries to exclude converted areas from calculation. TPAC has accepted this practice and even suggested that the criterion be adjusted to "fit reality."

TPAC has completely overlooked the evident fact that MTCC has failed to develop a practical and credible guidance document to verify complaints with its own 5% 'allowable deforestation' rule and TPAC failed to acknowledge that the main auditor of natural forest FMUs in Malaysia - SIRIM QAS Intl. - has no credible procedure of its own. Interventions, i.e. suspensions such as in Kelantan, are therefore declared only after vast areas of forest have already been cleared. Certifications are reissued later without credible explanation as to what corrective measures were taken. TPAC's report completely overlooks these serious flaws in the MTCS that PEFC Int. and TPAC endorsed.

Examples include:

- Johor: Certification was withdrawn and later reissued despite a 28% forest loss in the interim.
- Kedah: Certification was withdrawn and reissued without addressing underlying structural problems.

These examples highlight a lack of credible enforcement and a weakening of core sustainability norms. It is also significant FSC found clear evidence of HCV destruction and illegal logging in a national forest that occurred on a MTCS certified concession. A fact which MTCS has as yet not acknowledged.

## 6. Complaints and Accountability

A credible certification system requires an independent and effective complaints mechanism.

In practice, complaints from NGOs and communities are often delayed, blocked, dismissed or ignored. TPAC itself acknowledges: *"NGOs continue their complaints about seemingly unnecessary long and non-transparent procedures for dealing with complaints. This raises reasonable doubts within TPAC about MTCS's compliance with the relevant TPAS criteria."* Similarly, stakeholder inputs for SIRIM audits and surveillances typically triggers the lead auditors to enter in defense mode, with the clear goal to dismiss comments and complaints.

The SLAPP lawsuit filed by Samling against the indigenous organization SAVE Rivers, seeking MYR 5 million (≈ EUR 1.000.000), has had a chilling effect on civil participation. TPAC's limited response—merely noting the existence of complaint forms—fails to address the system's ineffectiveness.

TPAC further concedes: *"In the past—and in fact up to now—there has been too much laxity in monitoring complaints, and in the case of PEFC there has been no functioning mechanism to adequately receive, monitor, or act on complaints in a timely manner."*

Grievance procedures therefore fail to ensure justice, revealing a deep accountability gap within both PEFC and MTCS systems. Under comparable certification schemes such as RSPO and FSC, such intimidation by a certified company would constitute a serious breach and likely result in suspension.

## 7. Systemic Dependence and Conflicts of Interest

PEFC International is responsible for supervising national systems such as MTCS. Yet until 2025, no meaningful field audits were conducted, and complaints were only addressed after direct NGO intervention. TPAC acknowledges these failings but downplays them as a *"learning process,"* while Malaysian timber continues to be imported under a *"sustainable"* label.

TPAC, PEFC, and the Dutch government operate within a closed recognition system:

- PEFC endorses MTCS.
- TPAC recognizes PEFC.
- The Dutch government recognizes TPAC.

None of these actors verify on-the-ground realities. Audit reports by SIRIM are accepted without scrutiny, and systemic weaknesses remain unresolved. Audit reports often display open partiality in favor of the certified forest concession manager, whilst *repeating the exact same data* (e.g. on forest cover) *year after year* which clearly shows that the baseline for certification is not verified and updated.

Furthermore, SIRIM is a government-owned company, overseen by Standards Malaysia, a government agency, it mostly certifies natural forests under government control, forests which are often logged by companies linked to government-owned companies and individuals with political connections. This results, in effect, in certification based on what the government considers legal compliance with Beyond Compliance performance being optional

The Dutch government's housing targets—requiring substantial timber volumes, including Malaysian meranti—create a conflict of interest: the government is both client and regulator. An added concern now is that TPAC instead of offering an independent and credible assessment functions merely as a conduit to legitimize existing policy.

## 8. Socio-Environmental Context – Deforestation and Land Tenure in Sarawak

Despite continued denial of over-logging, the data are clear. Between 2002 and 2024, Sarawak lost 1.74 million hectares of humid primary forest, representing 53%

of total tree cover loss during that period. The total humid primary forest area decreased by 23%.

(Source: Global Forest Watch – Sarawak Dashboard)

This extensive loss reflects decades of unsustainable exploitation and the erosion of indigenous land rights. Malaysia voted in favor of adopting UNDRIP in 2007; however, the Universal Periodic Review (UPR) of the UN Human Rights Council (2024) highlighted continued violations of indigenous rights, particularly due to logging and plantation expansion.

Government policy in Sarawak remains at odds with UNDRIP and other international conventions. Companies, certification systems, and other actors operating in such contexts cannot disclaim responsibility by appealing to local legal frameworks. Certification must ensure compliance with higher international norms, including NCR rights, FPIC, and High Conservation Value (HCV) protection.

## 9. Conclusion

TPAC acknowledges in its own report that: *"The field visit has made clear that there is a need for active monitoring of national systems like MTCC, especially in case of complaints."* Yet TPAC and PEFC continue to disregard the fact that such deficiencies have been consistently highlighted for over 15 years—during which MTCS remained endorsed. It is therefore surprising that, after such a brief field visit, TPAC concludes that: *"There is willingness to professionally and openly discuss critical issues and readiness to make adjustments that will make MTCS and PEFC more solid."* This appears more aspirational than evidence-based.

Our concerns are shared by other respected parties, including the Forest Stewardship Council (FSC), Biofuel Watch and Comité Schone Lucht, who have also raised issues regarding operations certified under the Malaysian Timber Certification Scheme (MTCS).<sup>5</sup>

TPAC's recommendations—to continue accepting MTCS, support PEFC's integrity policy, and assign TPAC itself a monitoring role—are inadequate. They fail to provide a reliable basis for government policy, downstream buyers, or consumers. The Netherlands faces an ambitious housing target of 900,000 new homes in the coming years, requiring massive timber imports—much of which may come from Malaysia. Without credible certification oversight, the government risks endorsing unsustainable practices and undermining its own sustainability objectives.

The organisations involved in drafting this memo call into question the Dutch government's decision to prematurely and hastily uphold recognition of the Malaysian Timber Certification Scheme (MTCS) on the basis of the TPAC review. The signatories requested additional time to allow their local counterparts to provide feedback.<sup>6</sup> This memo presents key facts and findings that reveal only the tip of the iceberg of irregularities and socio-environmental impacts. These findings raise serious concerns about the quality and validity of TPAC's process, methodology, and the conclusions and recommendations of its report.

Looking at the nearby future, it is important that Dutch timber procurement policies are fully aligned with the requirements of the EU Deforestation Regulation (EU-DR),

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<sup>5</sup> <https://www.biofuelwatch.org.uk/2025/rwe-nea-complaint/>

<sup>6</sup> Communication between Both ENDS and representative ministry of I&W on 14<sup>th</sup> October 2025.



the EU Corporate Sustainability Due Diligence Directive (EU-CSDDD) and international conventions such as ILO-169. We urge the Dutch authorities to address the concerns outlined in this memo and to ensure that a rigorous monitoring framework is developed and implemented. Such a framework is essential to prevent further violations of fundamental environmental and human rights principles and safeguard policies.



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