



# **ENVIRONMENTAL LAW AND POLICY IN SABAH: FROM RIDGE TO REEF**

**VOLUME 5: PARKS AND NATURE RESERVES**

# DRAFT FOR PEER REVIEW

## Disclaimer, Acknowledgements and Call for Inputs

**Disclaimer:** This legal brief is intended as a means to engage with the relevant law and policy, and should not replace a thorough reading of the official documents themselves, which can be found online.

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**Call for inputs:** We welcome further comments on content, format, and the brief's potential development and uses. Please email Holly Jonas ([holly@foreversabah.org](mailto:holly@foreversabah.org)) and Harry Jonas ([harry@foreversabah.org](mailto:harry@foreversabah.org)).

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**Cover photo:** Harry Jonas





## 1. LEGAL FRAMEWORK

There are six pieces of legislation that together provide the overarching regulatory framework for Sabah's Parks and Nature Reserves. These include:

- Parks Enactment (1984),
- Land Ordinance (1930),
- Land Acquisition Ordinance (1950),
- Local Government Ordinance (1961).
- Forest Enactment (1968), and
- Wildlife Conservation Enactment (1997).

The next sections provide an overview of each law, details of the institutional arrangements, and sets out the relevant case law. With the exception of the Parks Enactment, all laws referenced in this brief are set out in chronological order and do not reflect their relative importance.

## 2. PARKS ENACTMENT

### Purpose

The Parks Enactment (1984) provides the cornerstone of Sabah's legislation on Parks and Nature Reserves, and establishes rules relating to the preservation of geographical geological, biological and historical areas for the people of Sabah.<sup>1</sup>

### Parks and Nature Reserves

Parks and Nature Reserves are protected areas that can be established for the preservation of geographical, geological, biological and historical areas to be used for education, enjoyment or any benefit in the future.<sup>2</sup> A *Park* is defined as being any area of land constituted as a Park under the Enactment. In contrast, a *Nature Reserve* is defined as being an area of at least 2,500 acres but that "but does not qualify for one or more characteristics to be a Park under the international definition."<sup>3</sup> It is assumed that this refers to the international definition of a National Park whose stated management objectives must be: "To protect natural biodiversity along with its underlying ecological structure and supporting environmental processes, and to promote education and recreation."<sup>4</sup>

The International Union for Conservation of Nature (IUCN) considers Parks to be a large natural or near natural area set aside to protect large-scale ecological processes, along with the complement of species and ecosystems characteristic of the area, which also provide a foundation for environmentally and culturally

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<sup>1</sup> Management Plan for the Semporna Islands Park, Part 10. Legal Aspects and Regulations, 2010.

<sup>2</sup> Management Plan for the Semporna Islands Park, Part 10. Legal Aspects and Regulations, 2010.

<sup>3</sup> Parks Enactment, 1984, section (2), Interpretation of "nature reserve".

<sup>4</sup> International Union for Conservation of Nature (IUCN) – Protected Area Categories, [http://www.iucn.org/about/work/programmes/gpap\\_home/gpap\\_quality/gpap\\_pacategories/](http://www.iucn.org/about/work/programmes/gpap_home/gpap_quality/gpap_pacategories/), January 2014.

compatible spiritual, scientific, educational, recreational and visitor opportunities.<sup>5</sup> Distinguishing factors of a Park include the following:

- Representative examples of major natural regions, and biological and environmental features or scenery, where native plant and animal species, habitats and geodiversity sites are of special spiritual, scientific, educational, recreational or tourist significance,
- Sufficient size and ecological quality so as to maintain ecological functions and processes that will allow the native species and communities to persist for the long term with minimal management intervention, and
- Composition, structure and function of biodiversity that is to a great degree in a “natural” state or have the potential to be restored to such a state, with relatively low risk of successful invasions by non-native species.<sup>6</sup>

According to the IUCN, Parks will generally not be as strictly conserved as Nature Reserves and may include tourist infrastructure and visitation. It is likely that Parks will have core zones where visitor numbers are strictly controlled, similar to Nature Reserves.<sup>7</sup>

### Established Parks

There are seven Parks established in Sabah under the Parks Enactment.<sup>8</sup> The Enactment has the authority to protect both Terrestrial and Marine areas.<sup>9</sup> The established Parks in the Enactment are set out in the box below.<sup>10</sup>

<b>Taman Kinabalu -Terrestrial</b>	<b>(75, 370 ha.)</b> Plan No. 99197385
<b>Taman Tunku Abdul Rahman - Marine</b>	<b>(4,929 ha.)</b> Plan No. 99197164 / 99197302
<b>Taman Pulau Penyu<sup>11</sup> - Marine</b>	<b>(1,740 ha.)</b> Plan No. 99197210

<sup>5</sup> International Union for Conservation of Nature (IUCN), Protected Areas Category II, [http://www.iucn.org/about/work/programmes/gpap\\_home/gpap\\_quality/gpap\\_pacategories/gpap\\_pacategory2/](http://www.iucn.org/about/work/programmes/gpap_home/gpap_quality/gpap_pacategories/gpap_pacategory2/), January 2014.

<sup>6</sup> International Union for Conservation of Nature (IUCN), Protected Areas Category II - Distinguishing Features, [http://www.iucn.org/about/work/programmes/gpap\\_home/gpap\\_quality/gpap\\_pacategories/gpap\\_pacategory2/](http://www.iucn.org/about/work/programmes/gpap_home/gpap_quality/gpap_pacategories/gpap_pacategory2/), January 2014.

<sup>7</sup> International Union for Conservation of Nature (IUCN), Protected Areas Category II – What makes category II unique?, [http://www.iucn.org/about/work/programmes/gpap\\_home/gpap\\_quality/gpap\\_pacategories/gpap\\_pacategory2/](http://www.iucn.org/about/work/programmes/gpap_home/gpap_quality/gpap_pacategories/gpap_pacategory2/), January 2014.

<sup>8</sup> Parks Enactment 1984, section 17 (1), (a)-(g).

<sup>9</sup> Protected Areas of Sabah, Official Website Sabah Parks, [http://www.sabahparks.org.my/eng/public/Protected\\_Area\\_of\\_Sabah.asp](http://www.sabahparks.org.my/eng/public/Protected_Area_of_Sabah.asp), July 2014.

<sup>10</sup> Parks Enactment 1984, section 17 (1), (a)-(g).

<sup>11</sup> Taman Pulau Panyu is a trans-boundary protected area, jointly managed by Malaysia and the Philippines.

<b>Taman Pulau Tiga - Marine</b>	<b>(15, 864 ha.)</b> Plan No. 99197215
<b>Taman Bukit Tawau - Terrestrial</b>	<b>(27, 972 ha.)</b> Plan No. 99197280
<b>Taman Banjaran Crocker - Terrestrial</b>	<b>(139, 919 ha.)</b> Plan No. 99194663
<b>Taman Marin Tun Sakaran - Marine</b>	<b>(35,000 ha.)</b> Plan No. 99197697

### Process to establish a Park or Nature Reserve

A Park or Nature Reserve may be formally established by the Yang di-Pertua Negeri<sup>12</sup> with the advice of the Minister responsible for matters relating to Parks (the Minister). The process includes the following steps and regulations:<sup>13</sup>

#### a. Proposal for a Park or Nature Reserve

In order to establish a Park or Nature Reserve a proposal for that land must be published in the *Gazette* as notice.<sup>14</sup>

#### b. Notice of proposed land

The District Officer or Collector of Land Revenue (the Collector) is responsible for publishing notice for the land proposed as a Park or Nature Reserve. The notice is required to be in English and Malay. Notice should be posted in convenient areas and placed surrounding the proposed land. Notice should include the following details:

- Location of the land,
- Description of the inquiry/ investigation process for all objections raised,
- Restrictions and consequences (potential prosecution) for land, and
- Dates for objections and requests for rights/ privileges to be submitted to District Officer or Collector.<sup>15</sup>

#### c. Restrictions on proposed land

Once a notice is issued in the *Gazette*, the land proposed to become a Park or Nature Reserve is subject to the following restrictions.<sup>16</sup>

<sup>12</sup> The Supreme Head of Sabah.

<sup>13</sup> Parks Enactment, 1984, section 3.

<sup>14</sup> Parks Enactment, 1984, section 3, (a)-(b).

<sup>15</sup> Parks Enactment, 1984, section 6, (a)-(d).

<sup>16</sup> The restrictions are in effect from the day the notice is published or the date listed on the notice, depending on what occurs first, and the proposed approval date for the Park or Nature Reserve. Extension to the date is allowed with the approval of the Yang de-Pertua Negeri. Parks Enactment, 1984, section 4, 5.

- No new land can be alienated,
- No new building or plantation should be erected/ formed,
- No clearing for cultivation, and
- No hunting can take place.

*d. Objections and requests to proposed land*

Anyone who wants to raise a concern with regard to the proposed land should submit a written objection or request for rights with the District Officer or Collector. All proposals have a fixed period for objections that should be listed on the notice. Objection periods should not be less than three months.<sup>17</sup>

*e. Review of objections to proposed land*

At the end of the fixed period for objections, the District Officer or Collector should look into all the objections made.<sup>18</sup> The District Officer is responsible for looking into the objections raised and the appropriateness of conceding any rights or privilege over the area.<sup>19</sup> The District Officer or Collector should forward all applications, objections and comments to the Yang di-Pertua Negeri. The Yang di-Pertua Negeri will have the final decision over all objections and requests for rights and privileges.<sup>20</sup>

*f. Abandonment of proposed Park or Nature Reserve*

A proposal for a Park or Nature Reserve can be abandoned at any time before the approval. Abandonment should be posted in the same manner as the proposal notice.<sup>21</sup>

*e. Approval of proposed Park or Nature Reserve*

The Yang di-Pertua is authorized to approve the proposed land for a Park or Nature Reserve. The Yang di-Pertua is not obligated to include all of the proposed land in the Park or Reserve and may decide to only approve a portion of it.<sup>22</sup> Once the proposed land is approved, notice must be posted for the public. Proper notice should include the following details:<sup>23</sup>

- Location of the land,
- Description of the inquiry/ investigation process for all objections raised,
- Restrictions and consequences (potential prosecution) for land, and
- Dates for objections and requests for rights/ privileges to be submitted to District Officer or Collector.

<sup>17</sup> Parks Enactment, 1984, section 6, (d).

<sup>18</sup> Parks Enactment, 1984, section 6, (d).

<sup>19</sup> Parks Enactment, 1984, section 7, (c), "propriety of conceding in and over the area concerned any right or privilege which to his knowledge is being".

<sup>20</sup> Parks Enactment 1984, section 8.

<sup>21</sup> Parks Enactment, 1984, section 11.

<sup>22</sup> Parks Enactment, 1984, section 13.

<sup>23</sup> Parks Enactment, 1984, section 20.

After the date of the notice period has expired and additional objections have been investigated and considered,<sup>24</sup> the approved area will be considered a Park or Nature Reserve. The land will become the property of the State and is no longer under the control of the local government.<sup>25</sup>

*e. Degazettement of a Park or Nature Reserve*

The Yang di-Pertua Negeri has the power to revoke the designation of a Park or Nature Reserve, and this process is known as degazettement. The Yang di-Pertua Negeri should be advised by the Minister of Tourism, Culture and Environment (the Minister) about his decision and should conduct an investigation to justify the revocation. Notice should be given to the public about the areas of land that will no longer be designated as a Park or Nature Reserve.<sup>26</sup>

**Acquiring land for a Park or Nature Reserve**

*a. Including alienated land*

The Yang di-Pertua has the power to include alienated land in a Park or Nature Reserve. He can acquire the land under the Land Acquisition Ordinance, which is explained below.<sup>27</sup> Notice to include alienated land must be given to the public in the same manner required for the *notice of proposed land*, set out above.

*b. Including a Forest Reserve, Game Sanctuary or Bird Sanctuary*

The Yang di-Pertua Negeri has the power to convert any Forest Reserve, Game Sanctuary, Bird Sanctuary or any other Reserve and use it for a Park or Nature Reserve. Notice should be given to the public including the land or portions of land that will be converted into the Park or Reserve.<sup>28</sup> When land is converted into a Park or Nature Reserve it is no longer considered a Forest Reserve, Game Sanctuary or Bird Reserve.<sup>29</sup>

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<sup>24</sup> Process identical to 'review of objections to proposed land' described above, Parks Enactment, 1984, section 21, 22.

<sup>25</sup> Cross referenced in Local Government Ordinance, 1961; Parks Enactment, 1984, section 13 (2)-(3).

<sup>26</sup> Parks Enactment, 1984, section 18.

<sup>27</sup> Cross referenced in Land Acquisition Ordinance; Parks Enactment, 1984, section 10.

<sup>28</sup> Parks Enactment, 1984, section 12.

<sup>29</sup> Parks Enactment, 1984, section 13 (4).

## FREQUENTLY ASKED QUESTIONS

### Why would a Park or Nature Reserve be established instead of a Forest Reserve or Wildlife Sanctuary?

Parks or Nature Reserves are protected areas that can be established for the preservation of geographical, geological, biological and historical areas to be used for education, enjoyment or any benefit in the future.<sup>30</sup> Forest Reserves are created for the protection of soil, wildlife, ecological or Water Conservation Areas.<sup>31</sup> Wildlife Sanctuaries are created for the protection of nature, maintenance of wildlife habitats and natural processes, biodiversity values, and the protection of significant species of animals, plants, biotic communities or genetic resources.<sup>32</sup> Wildlife Conservation Areas are established for the protection of wildlife, wildlife habitats and should provide security for the habitats surrounding Sanctuaries.<sup>33</sup>

When considering the type of protection to propose for an area of land, the overriding concern should be the overarching purpose of the protected area. The following questions may help with the decision making process:

- Is the area being protected for educational or historical knowledge? If so, then the area is likely to be classified as a Park or Nature Reserve.
- Is the proposed area considered a Forest? If so, then the area may receive protection as one of the seven Classes of Forest Reserves.
- Is the area needing protection an area where wildlife is prevalent? If so, then the area is likely to be classified as a Wildlife Sanctuary or Conservation Area.

### Rights and privileges in a Park or Nature Reserve

There are no inherent rights attached to Parks and Nature Reserves. Rights and privileges can only be created for specific Parks and Nature Reserves through the *objections and requests to proposed land* period, set out above. The process to obtain rights and privileges includes the following steps and regulations.<sup>34</sup>

#### a. Establishing rights and privileges

Rights and privileges are listed in the original proposal for the Parks and Nature Reserves and are established when the proposal is approved.<sup>35</sup> Rights, privileges and any special conditions for the Parks or Nature Reserves are under the control of the Board of Trustees (the Board).<sup>36</sup> Any objections to the Board's decision may be appealed to the Minister. The Minister's decision will be the final decision.<sup>37</sup>

#### b. Modification of rights and privileges

<sup>30</sup> Management Plan for the Semporna Islands Park, Part 10. Legal Aspects and Regulations, 2010.

<sup>31</sup> Forest Enactment, 1968, section 5A.

<sup>32</sup> Wildlife Conservation Enactment 1997, section 9 (1), (a)-(c).

<sup>33</sup> Wildlife Conservation Enactment 1997, section 21 (1).

<sup>34</sup> Parks Enactment, 1984, section 16.

<sup>35</sup> Parks Enactment, 1984, section 16.

<sup>36</sup> Parks Enactment, 1984, section 9 (1), 16.

<sup>37</sup> Parks Enactment, 1984, section 9 (2).



The Yang di-Pertua can admit, rescind, modify or add special conditions to the rights and privileges of a Park or Nature Reserve after its establishment.<sup>38</sup>

*c. Transfer of rights and privileges*

A right or privilege cannot be given to another person or group without the written consent of the Director of Land and Surveys.<sup>39</sup> The Director of Land and Survey has the authority to sell property designated as a Park or Nature Reserve when necessary.<sup>40</sup>

## FREQUENTLY ASKED QUESTIONS

### What is a Community Use Zone?

Community Use Zones (CUZ) are areas where existing cultivation and forest resource collection are found to occur inside the Parks and where traditional human activities will be allowed to continue under the supervision of the Parks Authority.<sup>41</sup> The Parks Enactment states that there are no human activities allowed inside the Park, except for management purpose, scientific research and limited recreation activities. CUZs are designed as management options to address issues concerning indigenous communities living and utilizing resources in Protected Areas.<sup>42</sup> CUZs strive to accomplish the following objectives:

- To balance the existing communities' needs and conservation,
- Encourage participation and collaboration of local communities in Park management, and
- Preserve the cultures and traditional knowledge of the local communities.<sup>43</sup>

The Bornean Biodiversity and Ecosystems Conservation Programme, supported by the government of Japan, is working within the State of Sabah to create CUZs.<sup>44</sup> The first pilot CUZ was established as an option in a Management Plan for Crocker Range Park.<sup>45</sup> From the recommendations of the pilot project the Parks Board of Trustees established a CUZ Management Committee that was being reviewed for finalization at the end of 2013.<sup>46</sup> Recommendations from Crocker Range also helped established the 403 ha. mutually agreed upon size for the CUZ.<sup>47</sup>

<sup>38</sup> Parks Enactment, 1984, section 14.

<sup>39</sup> Parks Enactment, 1984, section 15.

<sup>40</sup> Parks Enactment, 1984, section 15.

<sup>41</sup> Apin, Ludi & Miki, Yassin, Community Use Zone of Crocker Range Park - Definition, Sabah, Malaysia.

<sup>42</sup> Community Use Zone of Crocker Range Park, Sabah, Malaysia

<sup>43</sup> Community Use Zone of Crocker Range Park - Objectives, Sabah, Malaysia.

<sup>44</sup> Community Use Zone of Crocker Range Park - Introduction, Sabah, Malaysia.

<sup>45</sup> Community Use Zone of Crocker Range Park – BBEC Phase I, Sabah, Malaysia.

<sup>46</sup> Community Use Zone of Crocker Range Park – Establishment of CUZ Management Committee, Sabah, Malaysia.

<sup>47</sup> Community Use Zone of Crocker Range Park – Establishment of CUZ Management Committee, Sabah, Malaysia.

## Plants and animals in a Park or Nature Reserve

### a. Protected plants

There are eight protected plants species identified in Sabah from the Parks Enactment, which are set out in the box below:<sup>48</sup>

1.	All species of <i>Rafflesia</i> spp.
2.	<i>Nepenthes rajah</i>
3.	<i>Nepenthes villosa</i>
4.	<i>Nepenthes burbidgeae</i>
5.	<i>Nepenthes edwardsiana</i>
6.	<i>Nepenthes lowii</i>
7.	All species of <i>Paphiopedilum</i> spp.
8.	<i>Acquilaria</i> spp. (Gaharu)

### b. Unlawfully obtaining plants

If a person obtains trophies<sup>49</sup> or vegetation from a Park or Reserve they should report the items to a Park Officer as soon as possible. If a person does not report the items to an officer the officer they will be in the unlawful possession of park property. Unlawful possession is an offence.<sup>50</sup>

### c. Protection of animals

The Director has the authority to kill capture or authorize the killing of an animal in a Park or Reserve in order to protect the public's interest. Park Officers are only allowed to kill animals with the approval of the Director. Rhinoceros and orang utan may not be killed for any reason, except in defense of human life.<sup>51</sup>

## Restrictions to Parks and Nature Reserves

### a. Prohibited Acts

The following acts are prohibited from all Parks and Reserves:

- Cut, injure or set fire to any tree, plant or coral,

<sup>48</sup> Parks Enactment 1984, section 2 'protected plants', Schedule (Section 2).

<sup>49</sup> '[T]rophy' any animal alive or dead, and any bone, claw, shell, carapace, plastron, feather, hair, hoof, horn, ivory, beak, skin, tooth, tusk, egg or other durable portion whatsoever of any animal, whether processed or not which is readily recognized as a durable portion of any animal, Parks Enactment, 1984, section 2.

<sup>50</sup> Parks Enactment, 1984, section 50.

<sup>51</sup> Parks, Enactment, 1984, section 49.

- Possess a weapon, trap, vehicle to move logs or tools to collect specimen of plants or animals,
- Hunt, kill, injure, capture or disturb any animal, egg or nest other than coral,
- Unlawfully possess or remove any animal, animal product or plant,
- Knowingly introduce or allow a domestic animal to stray,
- Willfully damage any structure,
- Construct or occupy any structure or building, or
- Commit any other offence in the Enactment.<sup>52</sup>

Any person who commits any of the acts listed above will be guilty of an offence. Penalties will be subject to the severity of the offence and could include a fine, imprisonment or both.

*b. Endangering a Park or Nature Reserve with fire*

Anyone who endangers a Park or Nature Reserve with fire will be guilty of an offence. Unattended fires set around a Reserve will be considered endangerment.<sup>53</sup>

**Additional powers given to authority**

*a. Power to obtain trophies and vegetation*

All trophies and vegetation found in a Park or Nature Reserve are considered property of the Board.<sup>54</sup>

*b. Rights of entry and access*

The Director and Park Officers are allowed to enter or pass through private land in order to carry out the Parks Enactment. The Director and Park Officers are given this privilege and can use it to accompany workmen and equipment.<sup>55</sup>

*c. Power to Search*

The Director, Trustees or any Park Officer have the authority to require a person to produce an item for inspection or enter and search a person where they believe that person has committed an offence. The authority mentioned above also has the power to enter or search any land, building, tent, vehicle or boat or possession of a person, including baggage. Authority figures are still required to obtain a warrant in order to enter into a house. This requirement is created in order to protect right to privacy a person expects in their own home.<sup>56</sup>

*d. Power to amend schedule*

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<sup>52</sup> Abbreviation of list, full list located in Annex. Parks Enactment, 1984, section 48, (a)-(q).

<sup>53</sup> Parks Enactment, 1984, section 58C.

<sup>54</sup> Parks Enactment, 1984, section 50.

<sup>55</sup> Parks Enactment, 1984, section 58B.

<sup>56</sup> Parks Enactment, 1984, section 51.

The Minister has the power to amend the schedule at anytime, with notice in the *Gazette*.<sup>57</sup>

*e. Power to arrest*

The Director or any Park Officer has the power to arrest a person that is reasonably suspected of committing an offence. The Director or Park Officer is not required to obtain a warrant and can detain someone until they are brought to a police officer. The Director and Park Officers do not have the authority to detain someone without a warrant except when the person is likely to not be found after their release.<sup>58</sup>

### 3. LAND ORDINANCE

Please note that there is a dedicated brief on the Land Ordinance and related legislation. This section only sets out information from the Land Ordinance that is relevant to areas of land that can be included in Park and Nature Reserves.

#### Purpose

The Land Ordinance (1930) establishes Sabah's laws relating to the regulation and control of State land.

#### Alienated land

The Land Ordinance describes alienated land as land that is leased or disposed State land on behalf of the Government. Alienated land may require payment such as rent or another type of premium.<sup>59</sup> During the time of proposals for a Wildlife Sanctuary, Conservation Area or Hunting Area, no land shall be alienated from the proposed area.<sup>60</sup>

#### Native customary rights

The Land Ordinance establishes native customary rights, as set out below.

- Land possessed by customary tenure,
- Land planted with fruit trees, when the number of fruit trees amounts to fifty and upwards to each hectare,
- Isolated fruit trees, and sago, rotan, or other plants of economic value, that the claimant can prove to the satisfaction of the Collector were planted or upkept and regularly enjoyed by him as his personal property,
- Grazing land that the claimant agrees to keep stocked with a sufficient number of cattle or horses to keep down the undergrowth,
- Land that has been cultivated or built on within three years,
- Burial grounds or shrines, and

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<sup>57</sup> Parks Enactment, 1984, section 60.

<sup>58</sup> Parks Enactment, 1984, section 52.

<sup>59</sup> Land Ordinance, 1930, section 4, "alienate".

<sup>60</sup> Wildlife Conservation Enactment, 1997, section 11, 66.



- Usual rights of way for men or animals from rivers, roads, or houses to any or all of the above.<sup>61</sup>

## 4. LAND ACQUISITION ORDINANCE

### Purpose

The Land Acquisition Ordinance (1950) establishes Sabah's laws for the acquisition of land by the Yang di-Pertua Negeri for the public.

### Including alienated land in a Park or Nature Reserve

The Yang di-Pertua Negeri has the power to acquire alienated land and use it for a public purpose.<sup>62</sup> Parks and Nature Reserves are considered land used for a public purpose.<sup>63</sup>

### Temporary occupation

The Yang di-Pertua Negeri has the power to determine if the State should temporarily occupy a piece of unoccupied land and use it for a public purpose.<sup>64</sup> If the Yang di-Pertua Negeri believes a piece of land is suitable for a public purpose he may give permission to complete an anticipated project. Temporary occupation of the land should not be longer than three years.<sup>65</sup>

## 5. LOCAL GOVERNMENT ORDINANCE

### Purpose

The Local Government Ordinance (1961) establishes Sabah's laws for the control and regulation for local government.

### Authority of District Council, Town Board and Municipal Council

The District Council, Town Board or Municipal Council have the authority to perform the functions of the Local Government Ordinance over public amenities.<sup>66</sup> Public amenities include recreation grounds, open spaces and parks.<sup>67</sup> However once a piece of land that would normally have local control is declared to be a Park or Nature Reserve, the Local Government Ordinance no longer applies.<sup>68</sup>

## 6. FOREST ENACTMENT

<sup>61</sup> Land Ordinance, 1930, section 15, (a)-(g).

<sup>62</sup> Land Acquisition Ordinance, 1950, section 3 (1).

<sup>63</sup> "[P]ublic purpose", land used in connection with the conservation, improvement or exploitation of natural resources. Land Acquisition Ordinance, section 2 (h), Parks Enactment, 1984, section 10.

<sup>64</sup> Land Acquisition Ordinance, 1950, section 11 (1).

<sup>65</sup> Land Acquisition Ordinance, 1950, section 11 (2).

<sup>66</sup> Local Government Ordinance, 1961, section 2, interpretation of 'Authority'.

<sup>67</sup> Local Government Ordinance, 1961, section 49 (53).

<sup>68</sup> Parks Enactment, 1984, section 13 (3).

Please note that there is a dedicated brief on the Forest Enactment and related legislation. This section only sets out information from the Parks Enactment that is relevant to Parks and Nature Reserves. As stated above, when Reserves are converted into a Park or Nature Reserve they are no longer considered a Forest Reserve, Game Sanctuary or Bird Reserve, and this eliminates any jurisdictional issues that may have arisen if there were two Enactments regulating the land.<sup>69</sup> Where a previous Forest Reserve is converted to a Park or Nature Reserve, it will be under the enforcement of the Parks Enactment.

### **Purpose**

The Forest Enactment (1968) provides the cornerstone for Sabah's forest-related legislation, and establishes rules relating to the preservation of forests, regulation and control of forest produce.

### **Amendments to Forest Enactment**

The Amendment to forest Enactment (1968) eliminates the entire section titled "Forest Reserve not to cease or to be excised".<sup>70</sup> The elimination of this section allows authorities to remove or modify portions of a Forest Reserve at their discretion. Prior to this amendment, authorities could remove land in a Reserve if it was to be used as a Park, Game Sanctuary or Bird Sanctuary.<sup>71</sup> Areas of Forest Reserves can be removed for Park or Nature Reserves.

## **7. WILDLIFE CONSERVATION ENACTMENT**

Please note that there is a dedicated brief on the Wildlife Conservation Enactment and related legislation. This section only sets out information from the Wildlife Enactment that is relevant to Parks and Nature Reserves.

### **Purpose**

The Wildlife Conservation Enactment (1997) provides the cornerstone of Sabah's wildlife-related legislation, and establishes rules relating to the conservation and management of wildlife and its habitat.

### **Hunting in a Forest Reserve or Park**

Hunting licences do not allow a person to hunt on alienated land, Forest Reserves<sup>72</sup>, Parks,<sup>73</sup> reserved land, or State Land that requires the owners or authorities approval for entry.<sup>74</sup>

### **Collecting plants in a Forest Reserve or Park**

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<sup>69</sup> Parks Enactment, 1984, section 13 (4).

<sup>70</sup> Forest Enactment, 1968, section 22.

<sup>71</sup> Forest (Constitution of Forest Reserves and Amendment) Enactment 1984, section 3.

<sup>72</sup> '[F]orest reserve' defined in Forest Enactment 1968.

<sup>73</sup> '[P]ark' defined in Parks Enactment 1984.

<sup>74</sup> Wildlife Conservation Enactment 1997, section 28 (9).

Plant collection licences do not allow a person to hunt on alienated land, Forest Reserves, Parks, reserved land or State Land that requires the owners or authorities approval for entry.<sup>75</sup>

### **Conversion of Reserve or Sanctuary into a Park**

The Yan di-Pertua Negeri has the power to convert any Forest Reserve, Game Sanctuary<sup>76</sup>, Bird Sanctuary<sup>77</sup> or any other reserve or sanctuary (including a Wildlife Sanctuary) into a Park or Nature Reserve. The conversion can be for the entire or a portion of the reserve or sanctuary. Notice of intention must be published in the *Gazette*.<sup>78</sup>

## **8. INSTITUTIONAL ARRANGEMENT**

### **Board of Trustees**

The Board of Trustees of Sabah Parks will be considered a Corporation.<sup>79</sup> The Board will include a Chairman, Deputy Chairman, three other executive office positions, four members and the Director. The Director is the only member without voting power.<sup>80</sup> The Board is responsible for initiating, coordinating and controlling all activities for Sabah's Parks and Nature Reserves.<sup>81</sup> The Board has the power to make any addition regulations to carry out the enactment but cannot make any additions to their established posts.<sup>82</sup>

### **Minister**

The Minister of Tourism, Culture and Environment (the Minister) has the power to give directions and advise to the Board on areas of implementation.<sup>83</sup> The Board is required to give the Minister information about the Parks and Nature Reserves upon request.<sup>84</sup>

### **Director of Parks**

The Director of Parks (the Director) is appointed by the State Public Service Commission. The Director is responsible for administering the Parks Enactment and overseeing the enforcement of the Enactment.<sup>85</sup> The Director is responsible for recommending policies and regulations to the Minister, promoting and coordinating

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<sup>75</sup> Wildlife Conservation Enactment 1997, section 56 (6).

<sup>76</sup> All existing Game Sanctuaries declared in previous Birds Nest Ordinance, section 7, will be considered a Wildlife Sanctuary, Wildlife Conservation Enactment, 1997, section 13.

<sup>77</sup> All existing Bird Sanctuaries declared in pervious Birds Nest Ordinance, section 7, will be considered a Wildlife Sanctuary, Wildlife Conservation Enactment, 1997, section 13.

<sup>78</sup> Parks Enactment 1984, section 12.

<sup>79</sup> Parks Enactment, 1984, section 24 (1), Corporation can be sued.

<sup>80</sup> Parks Enactment, 1984, section 24 (1).

<sup>81</sup> Parks Enactment, 1984, section 45.

<sup>82</sup> Parks Enactment, 1984, section 59 (1), 42.

<sup>83</sup> Parks Enactment, 1984, section 60 (1).

<sup>84</sup> Parks Enactment, 1984, section 60 (2).

<sup>85</sup> Parks Enactment, 1984, section 41 (1).

research, publishing an annual report of activities for the Parks and investigating situation to ensure proper implementation of the Enactment.<sup>86</sup> The Director is also responsible for appointing new officers, ranger and wardens, with the approval of the Board.<sup>87</sup>

### Honorary Park Rangers and Wardens

The Director has the power to appoint Honorary Park Rangers and Honorary Park Wardens. Honorary Park Rangers and Wardens are responsible for carrying out the Parks Enactment.<sup>88</sup> The Director is responsible for establishing the specific duties for each honorary member and can include pay for a member with the approval of the Board.<sup>89</sup> Appointment of Rangers and Wardens should be for three years with the option of renewal. All appointment should be published in the *Gazette*.<sup>90</sup>

### Director of Land and Surveys

The Director of Land and Surveys is appointed by the Chief Minister. The Chief Minister is responsible for the oversight of the Director of Land and Surveys.<sup>91</sup> The Director of Land and Surveys is responsible for the enforcement and regulation of the Land Ordinance.<sup>92</sup> The Director of Land and Surveys is also given the authority to approve when a right or privilege can be given to another person.<sup>93</sup> The Director of Land and Surveys has the authority to sell property designated as a Park or Nature Reserve when necessary.<sup>94</sup>

### Parks Fund

The Parks Fund should include gifts, contributions, money raised or received by the Board while acting on behalf of the Enactment. Money to the fund includes fees and fines for offences.<sup>95</sup> Board members are lawfully allowed to receive gifts that are not in the form of money unless it is stated otherwise.<sup>96</sup>

## 9. CASE LAW

### Turtle Eggs

The Wildlife Conservation Enactment (1997) classified the Green Turtle and the Hawksbill Turtle as *Totally Protected Animals*. Animals listed in Schedule 1<sup>97</sup> cannot

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<sup>86</sup> Parks Enactment, 1984, section 41 (1), (a) (i-x).

<sup>87</sup> Parks Enactment, 1984, section 41 (1), (a) (xi).

<sup>88</sup> Parks Enactment, 1984, section 41A (1).

<sup>89</sup> Parks Enactment, 1984, section 41A (3)(4).

<sup>90</sup> Parks Enactment, 1984, section 41A (2), (a-b).

<sup>91</sup> Chief Minister Department of Sabah, <http://www.sabah.gov.my/jkm/brdefault.asp>.

<sup>92</sup> Land Ordinance, 1930, section 47 (1).

<sup>93</sup> Parks Enactment, 1984, section 15. Referenced in Environmental Law in Malaysia (Borneo edition), 2007, James Lam Chee Seng.

<sup>94</sup> Parks Enactment, 1984, section 15.

<sup>95</sup> Parks Enactment, 1984, section 46 (1).

<sup>96</sup> Parks Enactment, 1984, section 46 (2).

<sup>97</sup> Schedule 1 lists total protected plants and animals, Part I lists animals, Part II lists plants.



be hunted and are totally protected.<sup>98</sup> Any person found guilty of hunting these animals will be subject to a term of imprisonment between six months to five years.<sup>99</sup> The protection of these turtles extends to the consumption and sale of Turtle Eggs.

Although, the consumption and sale of turtle eggs is prohibited, the Director of Wildlife does have the power to declare an area of land a Turtle Egg Traditional Collection Area. Traditional Collection Areas do not require a permit to collect Turtle Eggs, but must follow specific rules for the collection areas in order to protect the Native Customary Rights of those that live near the area. Collection areas allow people to collect turtle eggs but do not give them the right to sell the eggs.<sup>100</sup> A person who sells or attempts to sell turtle eggs from a Traditional Collection Area will be guilty of an offence subject to a fine of fifty thousand ringgit or imprisonment for five years, or both.<sup>101</sup>

### Two Relevant Cases

In 2006, the High Court in Sabah and Sarawak decided two separate cases involving native rights claims against the State of Sabah, the Board of Trustees of Sabah Parks and the Assistant Collector of Land Revenue. Both cases were ruled in favor of individual Plaintiffs, Ab Rauf (Rauf) and Haji Abdillah (Abdillah).

In the case brought by Plaintiff, Rauf, against the State of Sabah and the Board of Trustees of the Sabah Parks of Land Revenue, Rauf represented himself and seventy family members claiming to have inherited the right to collect turtle eggs on Sipadan Island.<sup>102</sup> Rauf claimed that Sabah's prohibition on collecting turtle eggs, enforced in 1997, caused him and his family to experience significant loss and damages including the loss of two contracts with tourism companies worth MYR70,000. Rauf claimed that his living was dependent on the collection of turtle eggs. The Court recognized the Plaintiff's right to collect turtle eggs.

Rauf also claimed that the right to collect turtle eggs extended the Native Customary Rights to the entire island of Sipadan. The Court rejected the Plaintiff's claim to Native Customary Rights to the land, as the right to access the island to collect turtle eggs occurred for a short duration throughout the years.

In the case brought by Plaintiff, Abdillah, against the Assistant Collector of Land Revenue for Sipadan Island and the State of Sabah, Abdillah sued on behalf of the descendants of Panglima Aby Sari bin Goneh.<sup>103</sup> Abdillah's suit concerns the ownership of 2.5 acres of land on Sipadan Island, which includes a house and coconut orchard. Abdillah's great grandfather under Native Customary Rights

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<sup>98</sup> Wildlife Conservation Enactment 1997, section 25 (1).

<sup>99</sup> Wildlife Conservation Enactment 1997, section 25 (3) (a).

<sup>100</sup> Wildlife Conservation Enactment 1997, section 87 (2).

<sup>101</sup> Wildlife Conservation Enactment 1997, section 87 (4).

<sup>102</sup> Ab Rauf Bin Mahajud v. the State Government of Sabah and the Board of Trustees of the Sabah Parks

<sup>103</sup> Haji Abdillah bin Haji Abdul Hamid v. ACLR of Semporna and the State Government

inherited the 2.5 acre land which included the right to collect turtle eggs.<sup>104</sup> In 2005, the Collector of Land Revenue caused the plaintiff and other individuals to vacate the island restricting their collection of turtle eggs.<sup>105</sup>

The High Court of Sabah ruled that native communities were allowed to collect turtle eggs on the limited and confined area of ownership of 2.5 acres. Since the Native Customary Rights to the land were inherited from a previous generation the right was to remain undisturbed.<sup>106</sup>

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<sup>104</sup> Native customary rights includes and planted with fruit trees, when the number of fruit trees amounts to fifty and upwards to each hectare, Land Ordinance, 1930, section 15 (b)

<sup>105</sup> Haji Abdillah bin Haji Abdul Hamid v. ACLR of Semporna and the State Government.

<sup>106</sup> Haji Abdillah bin Haji Abdul Hamid v. ACLR of Semporna and the State Government.

## ANNEX

### Restrictions to Parks and Nature Reserves

#### *a. Prohibited Acts*

The following acts are prohibited from all Parks and Reserves:<sup>107</sup>

- (a) cut, fell, damage, remove, injure, destroy or set fire to any tree or protected plant in a Park or Nature Reserve; or
- (b) cut, damage, remove, injure, destroy or bomb any coral (whether living or dead) in a Park or Nature Reserve ; or
- (c) convey into a Park or Nature Reserve or, being within the confines thereof, be in possession of any weapon, explosive, trap, poison or noxious substance, boat, tractor, logging truck, heavy machineries or vehicles for moving logs or earth, chain saw, apparatus or tools for collecting specimen of plant or animal; or
- (d) within a Park or Nature Reserve, hunt, kill, injure, capture or disturb any animal other than coral (whether living or dead) or take or destroy any egg or nest; or
- (e) cut, damage, injure or destroy or set fire to any vegetation (other than trees and protected plants) or any object of geological, prehistorical, archaeological, historical or other scientific interest in a Park or Nature Reserve; or
- (f) introduce any animal, or permit or cause any domestic animal to enter or stray into a Park or Nature Reserve or introduce any vegetation into a Park or Nature Reserve; or
- (g) remove from a Park or Nature Reserve any animal or vegetation whether alive or dead; or
- (h) remove from a Park or Nature Reserve any mineral or object of geological, prehistorical, archaeological, historical or other scientific interest; or
- (i) destroy or deface any object, whether animate or inanimate, in a Park or Nature Reserve; or
- (j) erect or attempt to erect any building in a Park or Nature Reserve; or
- (k) clear or break up any land in a Park or Nature Reserve; or
- (l) damage, set fire or destroy any vegetation in a Park area or Nature Reserve as a result of any activity carried out from outside the Park area or Nature Reserve; or
- (m) spreads, discharge or causes the discharge of oil, chemical, poison, or other toxic or waste matters including solid waste capable of harming vegetation and/or animals in or adjacent to rivers, lakes and water in or flowing into a Park or Nature Reserve; or
- (n) obstructs or diverts any rivers, pools or other bodies of water in or flowing into a Park or Nature Reserve; or
- (o) recording or take any film or video recording or take still photographs for commercial purposes within the Park or Nature Reserve; or

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<sup>107</sup> Parks Enactment, 1984, section 48 (1), (a)-(q).

- (p) enter any area of the Park or Nature Reserve except areas developed for public usage by the Park; or
- (q) carry out any research and/or collecting scientific or social and cultural data, with or without the collection of specimen of any sort.