1. Please provide examples of ways in which declining biodiversity and degraded ecosystems are already having adverse impacts on human rights. Adversely affected rights could include, among others, the rights to life, health, water, food, culture, non-discrimination, a safe, clean, healthy and sustainable environment, and Indigenous rights.

* **Public health and economic impacts due to transboundary haze:** 1997 was one of the most intense haze periods in Malaysia due to burning in Sumatra and Kalimantan. There were “100% increases with the majority of the cases due to asthma or acute respiratory infection” in Kuching and KL ([Aghamohammadi & Isahak, 2018, p.248](https://link-springer-com.ezproxy.library.ubc.ca/content/pdf/10.1007%2F978-3-319-61346-8.pdf)). A majority of health impacts include asthma, bronchitis, eczema, allergic rhinitis. The incremental cost of illness totalled to MYR 21 mil in 1997, and increased to MYR 410 mil in 2013 ([Ab Manan et al., 2018](https://www.mjphm.org.my/mjphm/journals/2018%20-%20Volume%2018%20(1)/THE%20MALAYSIA%20HAZE%20AND%20ITS%20HEALTH%20ECONOMY%20IMPACT%20A%20LITERATURE%20REVIEW.pdf)). Haze has significantly impacted the health economy, including the increased costs for medical treatment and hospitalisation, haze/medical-related leave, loss of productivity/reduced activities (e.g. school and work closures) and foregone income opportunities, from the patient’s and provider’s perspective.

3. Please provide specific examples of constitutional provisions, legislation, regulations, policies, programs or other measures that employ a rights-based approach to prevent, reduce, or eliminate harm to biodiversity and ecosystems or to restore and rehabilitate biodiversity and ecosystems.

In Malaysia, human rights to a healthy and clean environment is only implied through the Federal Constitution, as provided in Article 5 to 8 on fundamental liberties. The current position in the law to interlink human rights to environmental biodiversity and ecosystems is said to be an appreciated notion by the judges, yet not explicitly keen to expand the ambit to the rights of life in Article 5 to include the rights to environmental protection. As affirmed by the case of **Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan & Anor** in 1996. Gopal Sri Ram, in his judgment had stated that “the expression ‘life’ in art 5 does not refer to mere existence. … it includes the right to live in a reasonably healthy and pollution free environment”. Whilst this is a major boost for environmental law development in Malaysia, it should be noted that this case had no specifics about the environment.

Another case worth mentioning would be **Adong bin Kuwau and Ors. v Kerajaan Negeri Johor & Anor**. in 1997, which had more direct implication of the environment than the aforementioned case with judgment made based on Article 13 of the Federal Constitution - the right to property. The plaintiff in the case, the aborigines of Linggau Valley in the State of Johor are said to be deprived of their rights of the produce of the forest, their future living with their immediate family, and future living for their descendants apart from the proprietary rights to the land. However, the judge made no remark that the stipulated deprivation was also tantamount to denial to a healthy and clean environment to live in for the plaintiffs.

It should also be worth mentioning that Malaysia does not have a “green-bench” as had been formed in India in 1996, a special division of the Supreme Court specifically set to hear environmental-related petitions.

5. Please provide specific examples of good practices in preventing, reducing, or eliminating harm to biodiversity and ecosystems, or restoring and rehabilitating biodiversity and ecosystems. These examples may occur at the international, national, sub-national, or local level. Where possible, please provide evidence related to the implementation, enforcement, and effectiveness of the good practices (e.g. measurable outcomes such as increases in terrestrial and marine protected areas, increases in Indigenous and Community Conserved Areas, declining rates of deforestation and poaching, or progress in the recovery of species that were previously threatened or endangered).

* Local empowerment and incorporation of local social governance systems. For example, the Tagal system, which originated from a local forest stewardship system, is employed by riverine communities in Sabah to prevent the depletion of riverine products (Wong, 2005; Wong et al., 2009). The main concept of the Tagal system is to have concerned communities to stop harvesting certain fish species for a pre-agreed period, especially during fish breeding seasons, in an effort to avoid the fish populations from crashing or going extirpated (Wong et al., 2009). With more than 240 riverine communities adopting the system, several mahseer sanctuaries were established and a successful mahseer harvest was recorded (Wong et al., 2009), suggesting that the system is a viable community-based fisheries management system.
* Provide alternatives, instead of strict law enforcement (e.g. outright ban). For example, fiberglass can be used to replace hornbill bills for the indigenous communities who hunt hornbills for cultural purposes (Loma, 2007). Wildlife farming is another possible solution. Acknowledging the economic and cultural needs (or constraints) of local communities, Bennett et al. (2005) suggested that wildlife farming, with strict regulations in place, can be considered in rural areas if domestic animal farming is not feasible, but also added that wildlife farming will unlikely reduce hunting.
* Revise and update the existing laws and regulations according to conservation priorities and cultural or subsistence needs of local indigenous communities. For example, in Peninsular Malaysia, indigenous people are allowed to hunt certain wildlife such as Wild Pig, Sambar Deer, Pig-tailed Macaque and Malayan Porcupine for consumption (see Wildlife Conservation Act, 2010). Occurrence of Sambar Deer in the Endau-Rompin landscape, however, has been disturbingly low (WCS unpublished data, 2019). Allowing the hunting of Sambar Deer will likely risk the species’ survival. It is therefore imperative for the legislation to be updated to reflect conservation priorities and preserve biodiversity.

6. Please identify specific gaps, challenges and barriers that your government, business, or organization has faced in attempting to employ a rights-based approach to preventing, reducing, or eliminating harm to biodiversity and ecosystems.

* FPIC not practiced in Malaysia despite UNDRIP signatory
  + Despite being a UNDRIP signatory, Malaysia has repeatedly violated the non-legally binding regulations of consulting Free, Prior, Informed Consent from Orang Asli on land tenant rights issues. Forest development for dams, extractive industries, logging, and agribusiness that forcibly cross native occupied lands continue to be licensed. Consultation of the Orang Asli inhabitants are bypassed as there exists no explicit obligation to compensate the Orang Asli for their loss of livelihood.
* Outdated legislations ambiguous and give room for abuse
  + Inconsistencies and ambiguities within laws that govern natural resource and land use restricts access for the Orang Asli and encourages abuse for exploitation and wildlife trade. The Aboriginal Peoples Act 1954 enables state authorities to grant and revoke land tenant rights of Orang Asli at will. The law has poor understanding for the Orang Asli livelihood and customary law, thereby granting authorities to relocate them into settlements far from their ancestral land, under the impression that Orang Asli do not live a nomadic lifestyle and require huge forest areas for sustenance and income.
  + The Wildlife Conservation Act 2010 grants Orang Asli exemptions from hunting licenses but limits them to hunt only certain species for sustenance purposes only. Schedule VI of the act explicitly mentions the animal species allowed for hunting, half of the species which are listed on the IUCN Red List. Moreover, research finds that the list failed to acknowledge and include a large portion of the species that the Orang Asli hunt for sustenance. IUCN listed species which are listed in Schedule VI might facilitate wildlife trade loopholes for non-indigenous people to hire Orang Asli for illegal hunting.
* Rights-based Action policies and strategies non-existent in Malaysia
  + National Policy on Biological Diversity 2016-2025 aims to empower indigenous people to carry out biodiversity conservation via policy development, programme engagement, and consultation. There was no implication of a rights-based approach whereby Orang Asli are compensated or incentivised with livelihood benefits for their participation in conservation. Adoption of rights-based approaches for biodiversity and ecosystem conservation is non-significant in Malaysia. UNDP is currently tasked with formulating Malaysia’s first National Policy for the Development of Orang Asli 2021-2030.

7. Please specify ways in which additional protection is provided (or should be provided) for populations who may be particularly vulnerable to declining biodiversity and degraded ecosystems (e.g. women, children, persons living in poverty, members of Indigenous peoples and local communities, older persons, persons with disabilities, ethnic, racial or other minorities and displaced persons). How can these populations be empowered to protect and restore declining biodiversity and degraded ecosystems?

* **Providing information and awareness to all segments of society. Educating vulnerable communities on its impacts on their life. Stressing this awareness on all media platform and making it a campaign the people and community can be a part of.**
* **Nurture participation amongst children and youth so that our future generation will be more protective of the vulnerable communities**
* **Engage with legislature and judiciary**
  + Members of the legislative and judiciary arms have crucial roles to play. Biodiversity protection and management must be implemented within appropriate and properly enforced legal frameworks.
  + We need to:
    - establish the Parliamentary Environmental Caucus to enable members of the Parliament to participate actively in biodiversity related decision making.
    - support members of the Federal and State legislatures and the judiciary with information and scientific evidence based on the values and state of biodiversity in Malaysia.
    - provide adequate resources to the Environmental Courts to enable them to handle the multitude of environmental cases effectively.
* **Recognise, support and empower indigenous peoples and local communities**
  + build capacity, provide incentives, enable access to information and create awareness amongst indigenous peoples and local communities to carry out biodiversity conservation
  + develop policy and legal instruments that empower indigenous peoples and local communities to be effective custodians of biodiversity
  + develop and implement community engagement programmes that enable indigenous peoples and local communities living in marine and terrestrial protected areas and within buffer areas to be involved in biodiversity conservation.
  + identify and nurture local champions as catalysts for conservation action.
  + strengthen and support community-based biodiversity monitoring and patrolling such as the Honorary Wildlife Wardens and the Honorary Rangers programmes.
  + establish national and subnational awards that recognise indigenous peoples and local communities who have made important contributions to biodiversity conservation.
  + establish a working group on community based natural resources management to encourage, facilitate and plan conservation efforts by indigenous people and local communities.
  + Example: The Tagal System in Sabah where indigenous communities in Sabah practice a form of traditional management for river resources and watersheds.Tagal provides a good example of collaborative biodiversity management led by indigenous communities and supported by the government which results in the protection of freshwater biodiversity
* **Develop sustained collaborations with the private sector**
  + strengthen corporate social responsibility, investment and accountability initiatives by focusing efforts on priority areas in biodiversity conservation and resource us.
  + identify and provide incentives to the private sector to conserve and sustainably use of biodiversity. This includes promoting and rewarding alliances between the private sector, civil society and the indigenous peoples and local communities.

<http://www.kats.gov.my/ms-my/PustakaMedia/Penerbitan/National%20Policy%20on%20Biological%20Diversity%202016-2025.pdf>

8. How do you safeguard the rights of individuals and communities working on biodiversity issues (potentially identified as environmental human rights defenders or land defenders)? What efforts has your Government made to create a safe environment for them to freely exercise their rights without fear of violence, intimidation, or reprisal?

**Background:** Biodiversity has been estimated to be worth approximately $33 trillion to the global economy (Costanza et al. 2019) yet there are still countless examples of harassment and danger for environmental activists seeking to protect biodiversity in Malaysia (Hashim 2020). The most common threats to individuals seeking to protect the environment in Malaysia, come from people who are seeking to use the land for short term profit (Hashim 2020). There have been regular examples of environmentalists being assaulted physically and verbally these threats, ultimately resulting in the murder of Bill Kayong in 2017 (Fred Pearce 2017). However, the Malaysian government does not have the best record for supporting environmentalists filing a civil law suit against the leaders of an environmental rally in 2012 after which three UN rapporteurs requested the suit to be withdrawn (Gooch 2012). Malaysia is also reported to have often arrested and mistreated environmental protestors in jail (Hashim 2020).

* Consider having **federal control**, rather than state control, when managing biodiversity hotpots, such as marine reserves and forests because these regions are often run for profit, which means they can be exploited and there are limited protections for environmentalists (Malaymail 2019).
* Amnesty International has urged the government to **increase official patrols around these protected regions to help preserve the personal safety of environmental protectors** (Amnesty International 2018). [Michel Forst](https://www.freemalaysiatoday.com/category/world/2020/05/15/land-conflicts-flare-across-asia-during-lockdowns/), UN Special Rapporteur for human rights defenders, recommends **swift access to justice** and **government monitoring of lands and forests**, with **remote sensing technology** and recently launched tool that uses geospatial data to map at-risk communities and areas.
* There also needs to be **strong orang asli or indigenous rights and land protection** in Malaysia, as they often are most affected by environmentally-damaged logging or development projects. Malaysia is on the right path:
  + In January 2019, the government filed a civil suit against the State Government of Kelantan for its failure to protect the rights of [Temiar orang asli in Pos Simpor](https://www.thestar.com.my/news/nation/2019/01/19/federal-govt-sues-kelantan-legal-action-sought-to-protect-orang-asli-land-rights/). However, the legal case is ongoing as the [Kelantan government appeals to have the case struck out](https://www.freemalaysiatoday.com/category/nation/2019/09/13/kelantan-govt-appeals-to-stop-high-court-from-hearing-dispute-over-orang-asli-land/) and will likely determine an important precedent for future cases.
  + [Suspension](https://www.nst.com.my/news/nation/2019/01/453779/telom-hydroelectric-dam-project-cancelled-oct-3-says-energy-minister) of the Telom Hydroelectric Dam project in Pos Lanai in Kuala Lipis, Pahang - which would have impacted 2,000 orang asli and destroyed approximately 7,600 hectares of ancestral land. However, it is not clear whether the government has responded and complied with calls from the Action Committee on Orang Asli Customary Land and Territories to review the project.
  + Under the Shared Prosperity Vision 2030 (WKB2030) launched in October 2019, the government [promised](https://www.theborneopost.com/2019/10/06/development-in-sabah-and-sarawak-will-not-affect-ncr-land/) to ensure any development taking place in Sabah and Sarawak will not violate native customary rights (NCR) land there.
  + There needs to be transparency and follow up on previous moves to [clarify land ownership rights](https://www.nst.com.my/news/nation/2018/08/399459/sabah-replace-communal-land-title-individual-ownership-soon-shafie) among orang asli in Sabah in 2018, regarding communal and individual ownership grants.

**References**

* Amnesty International “THE FOREST IS OUR HEARTBEAT” THE STRUGGLE TO DEFEND INDIGENOUS LAND IN MALAYSIA *Amnesty International*
* Costanza, R., d'Arge, R., de Groot, R. *et al.* The value of the world's ecosystem services and natural capital. *Nature* **387,** 253–260 (1997). <https://doi.org/10.1038/387253a0>
* [Gooch L](https://www.questia.com/searchglobal#!/?contributor=Gooch%2c%20Liz) (2012) Malaysia Urged to Protect Activists ; Fair Election Advocates Have Been Threatened, U.N. Rapporteurs Say, [*International Herald Tribune*](https://www.questia.com/library/p3811/international-herald-tribune)
* Hashim F (2020) Malaysia's women eco-activists fight on in the face of threats and prison *The Star*
* Malaymail (2019) Malaysian activists to stage protest march tomorrow in move to urge lawmakers to get tough on forests losses *Malay mail*
* Pearce F (2017) Murder in Malaysia: how protecting native forests cost an activist his life *Yale Environment 360*

9. There is substantial evidence that consumption in high-income States is adversely affecting biodiversity and ecosystems in low and middle-income States. What are ways in which high-income States should assist low-income States in responding to biodiversity loss and ecosystem degradation, while simultaneously contributing to sustainable development in those low-income States?

* Establishing an Independent National Commission on Indigenous Peoples’ Land Rights that will identify and provide titles to native customary lands.
  + On 29 November 2019, [Amnesty International](https://www.amnesty.my/2020/01/07/malaysia-protect-indigenous-land-rights-advocates/) published a report on the precarious situation of Indigenous peoples in Malaysia and supporters of their land rights. Titled “The Forest is Our Heartbeat”: The struggle to defend Indigenous land in Malaysia, the report demonstrated the grave human rights violations that Indigenous communities and their advocates face when asserting their land rights.
* Strict Actions by Federal Government
  + On January 18 2019, [The Malaysian Government](https://www.reuters.com/article/us-malaysia-politics-landrights/in-a-first-malaysia-sues-state-over-indigenous-peoples-rights-idUSKCN1PC1EX) has sued the State Government of Kelantan for its alleged failure to protect Orang Asli rights to their lands in violation of the Constitution.
* Intercountry Collaborations
  + [Team Europe](https://www.malaymail.com/news/malaysia/2020/05/04/covid-19-malaysias-vulnerable-communities-benefited-from-team-europe-packag/1862920) supports the delivery of food, water, or basic healthcare to vulnerable and marginalized communities here including the urban poor, migrant workers, indigenous communities, refugees, stateless people, people in detention, and women, children, and people with a disability.

How can these populations be empowered to protect and restore declining biodiversity and degraded ecosystems?

* Acknowledgment of indigenous stewardship. (INDIGENOUS GROUPS)
* Initiating [Self-Help Groups](https://www.researchgate.net/publication/5171649_Women_empowerment_for_biodiversity_conservation_through_self_help_groups_A_case_from_Periyar_Tiger_Reserve_Kerala_India) (WOMEN)

[According to a 2013 UN Environment publication, biodiversity for the well-being of women, “women provide almost 80 per cent of the total wild vegetable food collected in 135 different subsistence-based societies. Up to 80 per cent of the population in many developing countries relies on traditional medicine. Women often have a more specialized knowledge of various local and neglected species.”](https://www.unenvironment.org/news-and-stories/story/rural-women-help-preserve-biodiversity)

10. For businesses, what policies or practices are in place to ensure that your activities, products, and services across the entire supply chain (extraction/sourcing, manufacturing, distribution, sale, and end-of life management) minimize biodiversity loss and ecosystem degradation and meet human rights standards, especially those articulated in the Guiding Principles on Business and Human Rights?

* **Reduce demand through public awareness and behavioural change**
  + Public awareness on the impact of poaching and illegal wildlife trade is crucial to garner widespread support. At the same time, behavioural change amongst consumers and other users of these illegal products is necessary to stop demand.
  + We need to:
    - a. embark on long-term public awareness campaigns to sensitise the public to the impacts of poaching on wild animals and plants
    - b. enlist public participation in reporting illegal wildlife trade, including providing rewards for information leading to the interception of these activities.
    - c. encourage the use of technologies to allow users to report suspected illegal wildlife trade easily.
    - d. collaborate with a range of businesses including retailers, pet shops and traditional medicine practitioners to stop trading illegal wildlife products.

[http://www.kats.gov.my/ms-my/PustakaMedia/Penerbitan/National%20Policy%20on%20Biological%20Diversity%202016-2025.pd](http://www.kats.gov.my/ms-my/PustakaMedia/Penerbitan/National%20Policy%20on%20Biological%20Diversity%202016-2025.pdf)