

CHAPTER 6

BIODIVERSITY CONSERVATION AND LAW IN MALAYSIA

INTRODUCTION

The birth of the Federation of Malaya, as encapsulated in the Federation of Malaya Agreement 1957¹, which establishes the Federation of Malaya comprising the Malay States of Johore, Pahang, Negeri Sembilan, Selangor, Kedah, Perlis, Kelantan, Trengganu, Perak as well as the Settlements of Penang and Malacca. Already here it is spelt out that Malaysia is a Federation of States guided by a Federal Constitution, thus States bound by this agreement will enjoy spelt out sovereignty over legislative matters spelt out in the Federal Constitution and the Federal Government shall exercise its legislative jurisdiction guided by matters enunciated in the same document, unless the jurisdiction is made concurrent, which at the time of the Agreement was subject to the approval by a Federal Ordinance and Enactment of each Malay State². In the subsequent Proclamation of Independence 1957³, it is clearly stated that the Constitution of the Persekutuan Tanah Melayu shall be established as the supreme law of the land, and it shall make provisions to safeguard the rights and prerogatives of Their Highnesses the Rulers (then) and the fundamental rights and liberties of the people and provide peaceful and orderly advancement of the Federation as a constitutional monarchy based on Parliamentary democracy. The subsequent Malaysia Agreement 1963, further amplifies the supremacy of the Federal Constitution (“Constitution”) and emphasis of State sovereignty⁴. For the purposes of this Chapter, the Federal Constitution (the “Constitution”) shall mean and

¹ The version referred to is the one contained in the book produced by Institut Terjemahan Negara Malaysia Berhad, entitled *Perjanjian & Dokumen Lama Malaysia (Old Treaties and Documents of Malaysia) 1791-1965*. Institut Terjemahan Negara Malaysia Berhad, 2008. *Perjanjian & Dokumen Lama Malaysia (Old Treaties and Documents of Malaysia) 1791-1965*. ITNM, Malaysia. 239 pages. See pages 206-213.

² *Ibid.* Article 6, at page 209.

³ *Ibid fn 1* at pages 216 and 217. From here on, references to Merdeka shall mean Independence and vice versa.

⁴ *Ibid fn 1* at pages 220-223, see Article 1.

refer to Constitution of the Federation of Malaya (as gazetted on 31st August 1957), and the Constitution of Malaysia as it was known upon the execution of the Malaysia Agreement 1963. Thus it follows, the Constitution as the root from which all statutes stem from shall be discussed first, focusing on the position of the Constitution and biodiversity then followed by a profile of the existing statutory regime that relates to biodiversity conservation. The terms and phrases that will shape the discussion and profile follows from that identified in earlier Chapters are summarised and illustrated diagrammatically below in Diagram 6.1., to aid identification of key terms that can link law to biodiversity conservation.

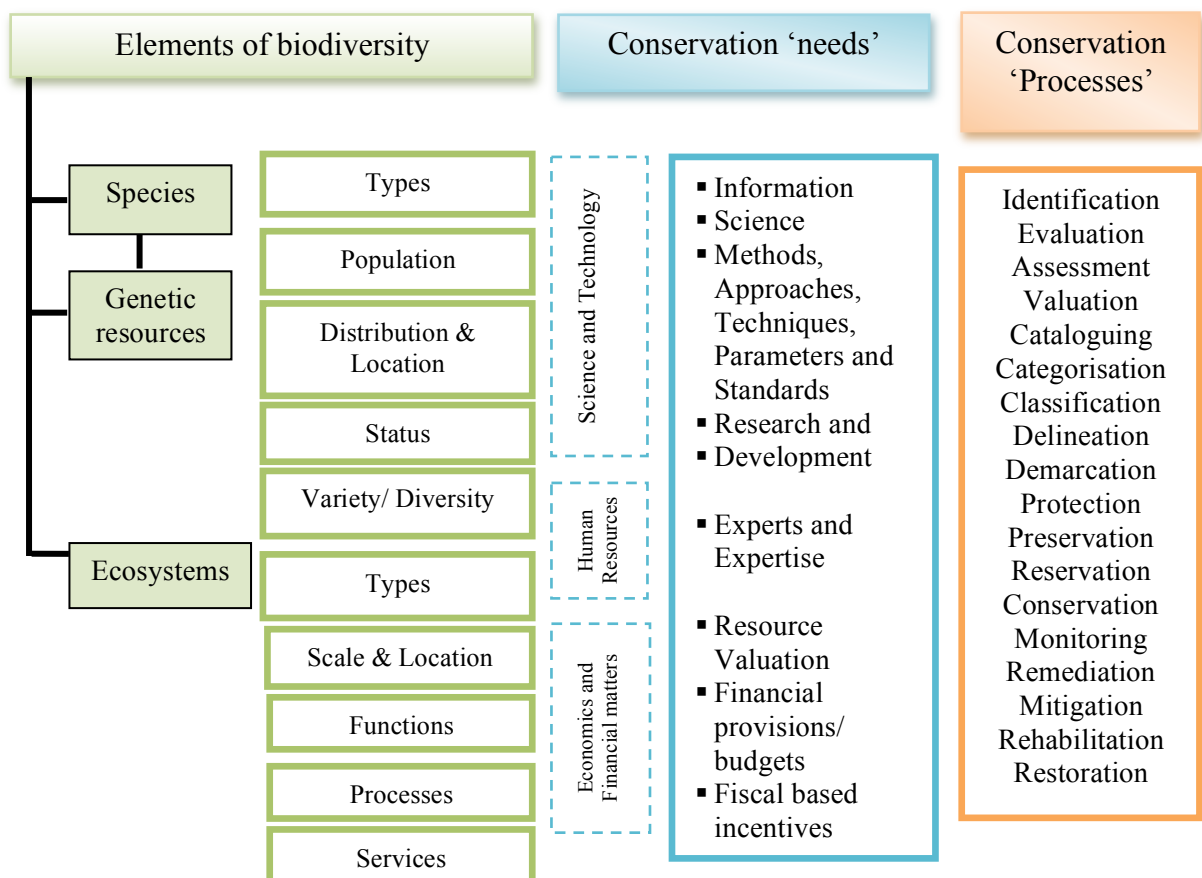


Diagram 6.1. Key aspects, phrases and terms related to biodiversity and biodiversity conservation

6.1. THE FEDERAL CONSTITUTION AND BIODIVERSITY CONSERVATION

Article 4 of the Constitution establishes the supremacy of this instrument of law, stating that:

“... (it) is the supreme law of the Federation and any law passed after the Merdeka Day⁵ which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void”.

The unique part of this Article 4 is that it supports the doctrine of severability, which allows the removal or severance of parts of the law that is inconsistent, but parts of the law which are not inconsistent will remain intact and in full effect⁶, thus ensuring that lawmakers have room to amend the law so as to achieve consistency, and enforcers to continue or ‘resume’ enforcement of provisions of parts that are not inconsistent. It also necessitates that the interpretation of legal, moral and social norms by the courts and administrators are conducted in light of the provisions of the Constitution⁷.

As Article 4(1) addresses the supremacy of the Constitution over post-Merdeka laws, Article 162(6) further confirms the supremacy by providing that any court or tribunal applying the provisions of pre-Merdeka law may apply it with such modification as may be necessary as to bring it to accord with provisions of the Constitution⁸. The Constitution is structured to fit aspects related to the executive, legislature and judiciary, and to an extent provides measures to ensure that separation of power is maintained. Powers of

⁵ See *fn* 3 above, in relation to Independence Day being referred to Merdeka Day, and the term Merdeka shall refer to Independence.

⁶ This was noted in Abdul Aziz Bari, 2003. *Malaysian Constitution: A critical Introduction*. The Other Press. 305 pages. At pages 39-40.

⁷ Noted in Shad Saleem Faruqi, 2008. *Document of Destiny: The Constitution of the Federation of Malaysia*. 782 pages. See page 63.

⁸ *Ibid* at pages 64-65.

federal and state governments have been spelt out and to an extent defined, predominantly in Parts IV of the Constitution, the contents are as shown below in Table 6.1.

The bulk of the discussion on determining the relationship between biodiversity conservation and the Constitution will focus on Part VI of the Constitution. This is essentially due to the fact the terms as illustrated in Diagram 6.1., are not clearly discernible from the Schedules that spells out the matters that fall within the purview of Federal or State legislative lists. Some of the terms can be discerned from the actual Articles of the Constitution, and will be discussed in detail hereafter.

Table 6.1. Outline of Part VI of the Constitution pertaining to Federal-State relationship

Article	Subject matter
PART VI: Relations between the Federation and the States	
Chapter 1: Distribution of legislative powers	
73	Extent of federal and State laws.
74	Subject Matter of Federal and State laws
75	Inconsistencies between Federal and State laws
76	Power of Parliament to legislate for State in certain cases
76A	Power of Parliament to extend legislative powers of States
77	Residual power of legislation
78	Legislation restricting the use of rivers
79	Exercise of concurrent legislative powers
Chapter 2: Distribution of Executive Powers	
80	Distribution of executive powers
81	Obligations of States towards the Federation
Chapter 3: Distribution of Financial Matters	
82	Financing of expenditures relating to matters on Concurrent List
Chapter 4: Land	
83	Acquisition of land for Federal purposes
84	(Repealed)
85	Grant to Federation of land reserved for federal purposes
86	Disposition of land vested in the Federation
87	Determination of disputes as to land values
88	Application of Article 83 to 87 to States not having a Ruler
89	Malay reservation
90	Special provisions relating to customary land in Negeri Sembilan and Malacca, and Malay Holdings in Terengganu
Chapter 5: National Development	
91	National Land Council
92	National Development Plans
Chapter 6: Federal Surveys, advise to States and inspection of State activities.	
93	Inquiries, surveys and statistics
94	Federal powers in respect of State subjects
95	Inspection of States facilities
Chapter 7 - National Council for Local Government	
95A	National Council for Local Government
Chapter 8: Application to States of Sabah and Sarawak	
95B	Modifications for States of Sabah and Sarawak of distribution of legislative powers
95C	Power by order to extend legislative or executive powers of States
95D	Exclusions for States of Sabah and Sarawak or Parliaments' power to pass uniform law about land and local government
95E	Exclusion of State of Sabah and Sarawak from national plans for land utilisation, local government development etc

6.1.1 Biodiversity, Conservation and Biodiversity Conservation in the Constitution

The actual term biodiversity, or biological diversity does not appear in the Constitution, which is not a surprise, as literature reviewed earlier indicated that, the term biological diversity or biodiversity took shape post the 1970s. The term conservation does appear in the Constitution, in Article 92, which reads:

Article 92. National Development Plan.

- (1) If, after a recommendation from an expert committee and after consultation with the National Finance Council, the National Land Council and the Government of any State concerned, the Yang di-Pertuan Agong is satisfied that it is conducive to the national interest that a development plan be put into operation in any area or areas in one or more of the States, the Yang di-Pertuan Agong may, after publishing the plan, proclaim the area or areas as a development area; and thereupon Parliament shall have power to give effect to the development plan or any part thereof, notwithstanding that any of the matters to which the plan relates are matters with respect to which, apart from this Article, only States would have power to make laws.
- (2) Any Act passed in pursuance of this Article shall recite that it has been so passed and that the provisions of Clause (1) have been complied with; and Article 79 shall not apply to any Bill for such an Act or any amendment to such a Bill.
- (3) In this Article, "development plan" means a plan for the development, improvement, or conservation of the natural resources of a development area, the exploitation of such resources, or the increase of means of employment in the area.

The term conservation is used in the context of conservation of natural resources of a development area but nothing more is offered from that. The Report of the Federation of Malaya Constitutional Commission 1957⁹ (the “Report”) does provide insights on the promulgation of the said provision. The Commission was tasked amongst others, to make recommendations for the promulgation of a federal constitution that will safeguard the position of the Rulers, options for a Westminster style of parliamentary democracy and provide for a bicameral legislature, to aid independence of the Federated States of Malaya¹⁰.

The original draft Constitution renders Article 92 as Article 84, and in the report, national development here includes conservation of natural resources. It is important to note here that the terms ‘conservation’ or ‘natural resources’ were not defined or contextualised in the Report. Paragraph 108 of the Report notes that “States will need the technical assistance from Federation Departments on a wide variety of subjects”, and at the point of the report preparation, the said departments had advisory not executive powers in particular over agriculture, forestry, mining and natural resources.

The Report states that the powers then held by these departments should be strengthened so that they may “conduct research of all kinds, provide information demonstrations or other assistance for those concerned in various industries, to make surveys and to collect

⁹ Report of the Federation of Malaya Constitutional Commission, 1957. London: Colonial No. 330, HMSO. 212 pages. See pages 46-48, paragraphs 108-112.

¹⁰ See *fn* 7, at page 6.

all information and statistics they may require”¹¹, so as to render assistance to States to enable them to “undertake much useful developments from their own resources¹²”.

The Report however points out that there is a need to address the problem of national development, where schemes would go beyond the resources of a single States, crossing boundaries, or even pegged to national interest, beyond the interest of a particular State, and such a development should be the direct responsibility of the Federation, though balance must be achieved to ensure that the autonomy of States are not undermined¹³. The Report flagged several examples, such as agriculture, development of the rubber industry, cultivation of cocoa, mining, forestry, industrial development and the conservation of natural resources including soil conservation and prevention of erosion¹⁴.

The Report recommended two limitations to federal power legislating with regard to land and other State subjects, i.e. before initiation of any development or conservation schemes that interferes with State rights, the schemes should be examined by an expert body and followed with a consultation between Federation and States in the National Finance Council¹⁵. Secondly, the Report recommends that schemes be confined to specified area or areas. Subject to these proposed limitation, the Report goes on to recommend that the Federal Parliament should have the power to pass any legislation required to “carry into effect any development or conservation schemes which is declared in such legislation to be in the national interest”¹⁶.

¹¹ See *fn 9*, reference is made to paragraph 108, page 46. This was enshrined in Article 144 and 145 of the Draft Constitution, in present Constitution, this can be found in Articles 93-95 (see Table 6.1).

¹² *Ibid*, paragraph 108.

¹³ *Ibid*, paragraph 109 page 46.

¹⁴ *Ibid*, paragraph 109, pages 46 to 47.

¹⁵ *Ibid*, paragraph 110, page 47.

¹⁶ *Ibid*, paragraph 110, page 47, specifically lines 11-14.

The Report then goes on to recommend that any diminution of State revenue from the area declared shall be made good to the State by additional annual grant¹⁷. This point will be discussed further in the context of payment for ecosystems services, as propounded by the CBD. Based on the recommendation of the Report, it would seem that Article 92, when read with proposed Article 84 of the Draft, serves as a means for Parliament to extend its executive powers to aid States to gain useful development from their resources, whilst giving special attention to conservation. It can be read here that the National Development Plan, envisioned in Article 92 can be tailored to a specific area or areas, and can be structured to fit matters that will enable federal departments to render better advise and assistance.

Based on the Report, the intent is not to assume control absolutely over a State matter, but to ensure that whatever plans are put in place it serves national interest without undermining State autonomy and causing friction between Federal and State. It can be interpreted also that the initial emphasis on factors that aid rather than control, such as references research, assistance, survey and statistics, could be read to mean that the federal department would be given a mandate to ensure that there is a structured method as to how a particular matter is understood and ‘taken care of’ rather than taken charge off, given that in this instance land is the predominant factor of concern, and the power over land vests with the State.

If it is read this way, it can be postulated that it is possible to promulgate a statute, albeit upon the scrutiny of an expert body and approval by both levels of government at the

¹⁷ *Ibid*, paragraph 111, page 47.

National Finance Council, that will encapsulate matters related to survey, research, assistance and statistics for example, focusing on the how and what to (conservation), rather than the what (biodiversity).

Despite the potential reach of Article 92, Article 95E(3) limits it, in so far as no area in the State of Sabah or Sarawak shall be proclaimed a development area for the purposes of a development plan without the concurrence of the Yang di-Pertua Negeri, which would mean, Sabah and Sarawak could excuse itself from the provisions of Article 92, unless the area concerned lies beyond its State jurisdiction. This may be useful for marine biodiversity beyond the State jurisdictional line. The one advantage of Article 92, since it is pegged on Federal assistance to states, one option would be to explore the feasibility of introducing uniformed measures, such as the determination of methods to set out the formula for payment for ecosystems services, in lieu of development of a particular resources. What is needed is the justification that action is required as biodiversity is of national importance and interest, not just a question of custodianship or control of what can be done over the resources, but an emphasis on the ‘how to’ and ‘know how’.

6.1.2 Federal-State Legislative and Executive Coverage over Biodiversity and Biodiversity Conservation

As stated earlier, the bulk of the discussion rests with the ambits of Part VI of the Constitution, with special emphasis of the Articles laid out in Table 6.1. The Articles in question here are Articles 73 to 79 contained in Chapter 1, which addresses Federal-State legislative relationship. The Report, in stating out the rationale, commentaries and recommendations in relation to division of legislative and executive powers contained in

the Draft Constitution stated exclusive responsibility that rests with the Federal or State governments, as the case may be, is not intended to hamper or discourage cooperation between States and the Federation¹⁸. Noted here is the potential exercise of “power to interpret all written law and to declare the law upon a particular subject that is raised as a dispute requiring curial determination [which] has been entrusted by the framers of the Federal Constitution to the courts”¹⁹.

6.1.2.1. Legislative Remit

Article 73 sets the legislative remit, in that in exercising the legislative powers conferred by the Constitution, Parliament may make laws for the whole or any part of the Federation and laws having effect outside as well as within the Federation; and the Legislature of a State may make laws for the whole or any part of that State. The remit for the State is confined to the jurisdictional boundary of that State, in the case of Parliament; the remit can extend to enacting laws that may have effect outside of the Federation²⁰.

The subject matter for legislation is contained in Article 74, which introduces the Ninth Schedule that enumerates matters which respective legislatures may have purview over.

Article 74 reads:

Article 74. Subject matter of federal and State laws.

(1) Without prejudice to any power to make laws conferred on it by any other

Article, Parliament may make laws with respect to any of the matters

¹⁸ See *fn* 9. Reference is made to paragraphs 82 and 83, at pages 34 and 35.

¹⁹ Justice Gopal Sri Ram JCA, in *Ketua Pengarah Jabatan Alam Sekitar & Anor v Kajing Tubek & Ors and Other Appeals* [1997] 3 MLJ 23, at page 34.

²⁰ See K.C. Vohrah, Phillip T.N. Koh and Peter S.W. Ling, 2004. *Sheridan and Groves: The Constitution of Malaysia* (5th Edition). Malayan Law Journal Sdn Bhd. 899 pages. Reference is made to page 328, which provides an example where Parliament may deprive a non-resident his citizenship.

enumerated in the Federal List or the Concurrent List (that is to say, the First or Third List set out in the Ninth Schedule).

- (2) Without prejudice to any power to make laws conferred on it by any other Article, the Legislature of a State may make laws with respect to any of the matters enumerated in the State List (that is to say, the Second List set out in the Ninth Schedule) or the Concurrent List.
- (3) The power to make laws conferred by this Article is exercisable subject to any conditions or restrictions imposed with respect to any particular matter by this Constitution.
- (4) Where general as well as specific expressions are used in describing any of the matter enumerated in the Lists set out in the Ninth Schedule the generality of the former shall not be taken to be limited by the latter.

Article 74 is read together with Article 4(3) of the Constitution, which provides for the validity of what has been legislated, i.e.:

Article 4(3) The validity of any law made by Parliament or the Legislature of any State shall not be questioned on the ground that it makes provision with respect to any matter with respect to which Parliament or, as the case may be, the Legislature of the State has no power to make laws, except in proceedings for a declaration that the law is invalid on that ground or—

- (a) if the law was made by Parliament, in proceedings between the Federation and one or more States;
- (b) if the law was made by the Legislature of a State, in proceedings between the Federation and that State.

In *Mamat bin Daud v Government of Malaysia* [1988] 1 MLJ 119, Justice Abdoolcader SCJ in his dissenting judgment²¹ raised a pertinent point on what exactly the terms ‘with respect to any matter’ that appears in Articles 74 and 4(3) means:

“...No consideration has apparently been given by either side to what I consider to be a vital aspect of the matter in the presentation of their respective arguments, scilicet, the enabling powers of legislation specified in Article 74 of the Constitution which stipulates that Parliament or the Legislature of a State may severally as specified therein make laws *with respect to* the diverse matters enumerated in the three Lists set out in the Ninth Schedule thereto. The Constitution commits to Parliament and the Legislature of a State, as the case may be, the power to make laws "with respect to," that is to say, "on the subject of" the itemised powers (*Huddart Parker & Co Proprietary Limited v Moorehead* (1908) 8 CLR 330 (at p. 409))...The words "with respect to" ought never to be neglected in considering the extent of a legislative power conferred by Article 74 of the Constitution for what they require is a relevance to or connection with the subject assigned to the appropriate legislature (*Grannall v Marrickville Margarine Proprietary Limited* (1955) 93 CLR 55 (at p. 77)). "A power to make laws 'with respect to' a specific subject is as wide a legislative power as can be created... A catenation of cases show that the term "with respect to" manifests a degree of flexibility in legislation on the subject heads of power and does not project legislative powers as lean powers simply to regulate the very subject head itself, and this phrase has been used to extend the subject power into peripheral areas without, however, transgressing the

²¹ At page 130

parameters of the double aspect doctrine and trenching upon a forbidden field of legislative power.”

This can be read to mean that what has been enumerated should be looked at beyond the strict meaning of the word and can be stretched to matters “peripheral in so far as it doesn’t transgress the limitation set”²². Furthermore, Article 74(4) confirms this, as the generality of the former shall not be limited by the specific expressions describing it. This pliability allows for room to incorporate the peripheral aspects of biodiversity and biodiversity conservation, as will be discussed further on at the concluding remarks to this Chapter.

The Ninth Schedule is divided into three parts, the Federal Lists, State Lists, which includes special supplementary list for the Sabah and Sarawak, and a Concurrent List, that also contains a supplementary concurrent list for Sabah and Sarawak. Using the terms identified in Diagram 6.1., the following items in the respected lists have be identified as potential links, that link mandates to elements and components of biodiversity and biodiversity conservation as shown in Table 6.2. It is important to note here, that the selection of the relevant matters were guided by what was enunciated in the Mamat bin Daud case as well as in Article 74(4). The items have been divided into two parts, as per Diagram 6.1, reflecting the biological diversity component itself (species, genetic resources and ecosystems as well as habitats) and the conservation process. Peripheral but relevant matters have been considered as stated in the accompanying explanatory footnotes.

²² *Ibid.*

Table 6.2. Matters that can be linked to the different components, elements and aspects pertaining to biodiversity and biodiversity conservation.

NINTH SCHEDULE		
FEDERAL LIST	STATE LIST	CONCURRENT LIST
<p>1. External affairs²³, including— (a) Treaties, agreements and conventions with other countries and all matters which bring the Federation into relations with any other country; (b) Implementation of treaties, agreements and conventions with other countries; (g) Foreign and extra-territorial jurisdiction. 3. Internal security, including— (a) Police; criminal investigation; registration of criminals; public order²⁴. 4. Civil and criminal law and procedure and the administration of justice²⁵. 6. The machinery of government, subject to the State List²⁶.</p>	<p>2. Except with respect to the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, land²⁷ including— (a) Land tenure, relation of landlord and tenant; registration of titles and deeds relating to land; colonization, land improvement and soil conservation; rent restriction; (b) Malay reservations or, in the States of Sabah and Sarawak, native reservations; (c) Permits and licences for prospecting for mines; mining leases and certificates; (d) Compulsory acquisition of land; (e) Transfer of land, mortgages, leases and charges in respect of land; easements; and (f) Escheat; treasure trove excluding antiquities.</p>	<p>3. Protection of wild animals and wild birds; National Parks. 4. Animal husbandry; prevention of cruelty to animals; veterinary services; animal quarantine. 5. Town and country planning²⁸, except in the federal capital. 7. Public health, sanitation (excluding sanitation in the federal capital) and the prevention of diseases. 8. Drainage and irrigation. 9. Rehabilitation of mining land and land, which has suffered soil erosion. 9A. Fire safety measures and fire precautions in the construction and maintenance of buildings²⁹. 9B. Culture.</p>

²³ This would include implementation of obligations and commitments arising from MEAs to which Malaysia is party to, in this case, the CBD, CITES, RAMSAR and WHC.

²⁴ The relevance here lies with aspects relating to theft, destruction of property and smuggling, all of which are provided for under the Penal Code and Criminal Procedure Code.

²⁵ This would include judicial intervention, particularly in statutory interpretation, and extension of common law through case laws as well as judicial precedents.

²⁶ This is in reference to government functions and institutional arrangements.

²⁷ Land is intrinsically linked to Malaysia's terrestrial biodiversity and ecosystems, and given that in Malaysia land include water bodies, aquatic biodiversity and ecosystems.

²⁸ Special planning provisions in relation to environmentally sensitive areas have been incorporated in town and country planning practices in Malaysia.

²⁹ This is in reference to peat swamp fire control.

Table 6.2. Continued.

NINTH SCHEDULE		
FEDERAL LIST	STATE LIST	CONCURRENT LIST
<p>7. Finance³⁰, including—</p> <p>(f) Financial and accounting procedure, including procedure for the collection, custody and payment of the public moneys of the Federation and of the States, and the purchase, custody and disposal of public property other than land of the Federation and of the States;</p> <p>(g) Audit and accounts of the Federation and the States and other public authorities;</p> <p>(h) Taxes; rates in the federal capital;</p> <p>(i) Fees in respect of any of the matters in the Federal List or dealt with federal law.</p> <p>8. Trade, commerce and industry³¹.</p> <p>9. Shipping, navigation and fisheries, including—</p> <p>(a) Shipping and navigation on the high seas and in tidal and inland waters;</p>	<p>3. Except with respect to the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, agriculture and forestry, including—</p> <p>(a) Agriculture and agricultural loans; and</p> <p>(b) Forests.</p> <p>4. Local government³² outside the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, including—</p> <p>(a) Local administration; municipal corporations; local, town and rural board and other local authorities; local government services;</p> <p>(b) Obnoxious trades and public nuisances in local authority areas</p> <p>6. State works and water, that is to say:</p> <p>(a) Public works for State purposes;</p> <p>(b) Roads, bridges and ferries other than those in the Federal List.; and</p> <p>(c) Subject to the Federal List, water (including rivers and canals but excluding water supplies and services); control of silt; riparian rights.</p>	<p>9D. Subject to the Federal List, water supplies and services³³.</p> <p>9E. Preservation of heritage.</p> <p><i>List IIIA—Supplement to Concurrent List for States of Sabah and Sarawak</i></p> <p>[Article 95B (1)(b)]</p> <p>12. Shipping under fifteen registered tons, including the carriage of passengers and goods by such shipping; maritime and estuarine fishing and fisheries.</p> <p>13. The production, distribution and supply of water power and of electricity generated by water power.</p>

³⁰ This is linked to financial allocation, as discussed earlier, to allow States to effect conservation or for the payment of ecosystems services or for the setting of fees and tariffs in relation to natural resources, including options for development and adoption of natural resources accounting methods and practices.

³¹ This has bearing on provisions of CITES and trade in endangered species and wildlife (flora and fauna) in general including matters related to import and export, patents and intellectual property rights as well as control, development and regulation of biological technology in industrial uses and biotechnological industries.

³² Local governments play a big role in land use planning and development, which has bearing on impacts to biodiversity and ecosystems, particularly pollution and development control.

³³ This ties in with water supply allocation, which have bearing on the draw down of water from water bodies to the allocation between water users, both human and nature.

Table 6.2. Continued.

NINTH SCHEDULE		
FEDERAL LIST	STATE LIST	CONCURRENT LIST
(b) Ports and harbours; foreshores; (d) Maritime and estuarine fishing and fisheries, excluding turtles; (f) Wrecks and salvage. 10. Communications and transport ³⁴ , including— (d) Regulation of traffic by land, water and air other than on rivers outside harbour areas wholly within one State; (e) Carriage of passengers and goods by land, water and air; (f) Mechanically propelled vehicles. 11. Federal works and power ³⁵ , including— (a) Public works for federal purposes; (b) Water supplies, rivers and canals, except those wholly within one State or regulated by an agreement between all the States concerned; production, distribution and supply of water power. 12. Surveys, inquiries and research ³⁶ , including—	10. Inquiries for State purposes, including commissions of inquiry and collection of statistics with respect to any of the matters included in the State List or dealt with by State law. 12. Turtles and riverine fishing. 12A. Libraries, museums, ancient and historical monuments and records and archaeological sites and remains, other than those declared to be federal by or under federal law. <i>List IIA—Supplement to State List for States of Sabah and Sarawak</i> [Article 95B(1)(a)] 13. Native law and custom 15. Ports and harbours, other than those declared to be federal by or under federal law; regulation of traffic by water in ports and harbours or on rivers wholly within the State, except traffic in federal ports or harbours; foreshores. 16. Cadastral land surveys.	14. Agricultural and forestry research, control of agricultural pests, and protection against such pests; prevention of plant diseases. 15. Charities and charitable trusts.

³⁴ This has bearing on impact to biodiversity.

³⁵ This has bearing on impact to biodiversity and ecosystems.

³⁶ This has bearing on 'intelligence' on biodiversity, including information; the development and application of sciences that takes into account methods, approaches, instrumentations, techniques and technology.

Table 6.2. Continued.

NINTH SCHEDULE		
FEDERAL LIST	STATE LIST	CONCURRENT LIST
<p>(b) Survey of the Federation; social, economic and scientific surveys; meteorological organizations;</p> <p>(c) Scientific and technical research; and</p> <p>(d) Commissions of inquiry</p> <p>13. Education³⁷</p> <p>14. Medicine and health including sanitation³⁸ in the federal capital, and</p> <p>(c) Poisons and dangerous drugs.</p> <p>15. Labour and social security including—</p> <p>(c) Charities and charitable institutions; charitable trusts and trustees excluding Wakafs³⁹;</p> <p>16. Welfare of the aborigines.</p> <p>17. Professional occupations other than those specifically enumerated⁴⁰.</p> <p>20. Control of agricultural pests; protection against such pests; prevention of plant diseases.</p> <p>21. Newspapers; publications; publishers; printing and printing presses.</p> <p>25A. Tourism.</p> <p>26. Subject to item 9A of the Concurrent List, prevention and extinguishment of fire, including fire services and fire brigades⁴¹.</p> <p>27. All matters relating to the Federal Territories, including the matters enumerated in items 2, 3, 4 and 5 of the State List and in the case of Federal Territory of Labuan, the matters enumerated in items 15, 16 and 17 of the Supplement to State List for States of Sabah and Sarawak.</p>	<p>20. Subject to the Federal List, water supplies and services.</p>	

³⁷ This has bearing on capacity building, as proposed under the CBD, where not only awareness is enhanced, but skills and expertise, as well as documentation (through museums and libraries) are taken into account.

³⁸ This has bearing on development and practice in relation to traditional, indigenous and local medicine, in addition to controlling the impacts to ecosystems and humans, through sanitation.

³⁹ This provides for endowments and gifts to benefit biodiversity conservation.

⁴⁰ This has similar bearing to skills and expertise development and training, including accreditation of experts to ensure better conservation of biodiversity.

⁴¹ See corresponding footnote in relation to forest and peat swamp fires for example.

Based on Table 6.2 above the provisions in all three lists can be linked to biodiversity and biodiversity conservation, despite the fact that the term biodiversity or environment or ecosystem does not exist with the Constitution. Noted also, though mentioned in Article 92, the terms conservation and natural resources are also not defined or contextualised. It is thus open to interpretation as to what constitutes biodiversity, natural resources, environment, ecosystems and conservation.

Article 77 states that the Legislature of a State shall have power to make laws with respect to any matter not enumerated in any of the Lists set out in the Ninth Schedule, not being a matter in respect of which Parliament has power to make laws. In this instance, all matters relating to the term biological diversity, species, ecosystems and genetic resources would automatically fall within the residual powers of the State. This is the lacuna that the NBP was referring to.

The drafters of the Constitution had considered, as evident in the Report which boldly stated then that “it is unlikely that the residual power will ever come into operation because the Legislative Lists appear to us to cover every foreseeable matter on which there might be legislation”⁴². It goes on to state that the “only real effect...is that if some unforeseen matter arises which is so peculiar that it cannot be brought within any items... in the Legislative Lists, then the matter is within State powers”⁴³. This would mean unless steps are taken to contextualise the prerequisites for biodiversity conservation and frame in within the Federal or Concurrent list (the listing of wildlife is helpful, but it does not

⁴² See *fn* 9. Reference is made to paragraph 121 at page 51.

⁴³ *Ibid.*

necessarily include flora or genetic resources or microorganisms), so as to ensure that the spirit of uniformity of legislation as proposed by the NBP is realised.

The peculiarity did rear its head in the case of *Kajing Tubek & Ors v Ekran Bhd & Ors* [1996] 2 MLJ 388 and *Ketua Pengarah Jabatan Alam Sekitar & Anor v Kajing Tubek & Ors and Other Appeals* [1997] 3 MLJ 23⁴⁴. The issue discussed here rests on the term 'environment' which is not provided for in the Ninth Schedule.

In the Court of Appeal decision Justice Sri Ram states:

“The enumerated powers doctrine, one of the fundamental features of a Federal system of Government, which is housed in art 74 of the Federal Constitution, read with the Ninth Schedule wherein appear the respective Legislative Lists, places land as a legislative subject in the State List. Nowhere in the three Lists – the Federal, the State and the Concurrent – is 'environment' specified as a separate legislative subject. This is because the expression 'environment' is a multi-dimensional concept that is incapable of having any independent existence. It is a concept that must attach or relate itself to some physical geographic feature, such as land, water or air, or to a combination of one or more of these, or to all of them. Any impact upon the 'environment' must, in the present context, relate to or be in respect of some activity that is connected with and having an adverse effect upon either land, or water, or the atmosphere or a combination of them. Since the project is an activity that is in respect of land and a river that are wholly within the State of Sarawak, it is the Ordinance and not the EQA that governs the legal

⁴⁴ *Ketua Pengarah Jabatan Alam Sekitar & Anor v Kajing Tubek & Ors and Other Appeals* [1997] 3 MLJ 23. The reference is at page 32.

position. Parliament must be presumed not to have intended to encroach upon the legislative powers of the State of Sarawak when it enacted the EQA. Neither did the Executive intend any such encroachment when the 1987 Order was made. Indeed, it was to make matters absolutely clear that the Amendment Order was made and published.”

It is argued here that since the term ‘environment’ makes no appearance in the Constitution, therefore, it falls under residual matters of the State. It could have been argued that the issue at hand was not merely environment but the impact and assessment of impact, which could have been read in a wider context⁴⁵, as it was at the High Court. Justice James Foong⁴⁶ rightfully followed the prayer of the claim, stating:

“...Basically, from the arguments and a scrutiny of the plaintiffs’ application, the nucleus of the plaintiffs’ challenge is on the validity of PU (A) 117, in relation to the procedural aspects of its enactment. This does not involve the determination of the jurisdictional aspect between state legislation and the Federal Parliament concerning who has the legislative power on various matters, either listed or not listed in the Ninth Schedule of the Federal Constitution. In any event, if there is such a challenge, this court is not the proper forum for under art 128(1) and (2) of the Federal Constitution, only the Federal Court to the exclusion of any other court can decide any question whether a law made by Parliament or by the legislature of

⁴⁵ Gurdial Singh Nijar, 1997. *The Bakun Dam Case: A Critique* [1997] 3 MLJ ccxxix at ccxl, who argued “...in this case, the issue related to the *impact* of the project. Environmental impacts do not stop at territorial boundaries. To say therefore that the ‘environment’ *belongs* to a State is to misunderstand the basic and fundamental construct on which environment laws are based and environmental impacts assessed. A forest fire in one State can, as is the Malaysian experience now, create a prolonged haze in a metropolis hundreds of miles away. Polluted waters from rivers of one State cross over land, sea and tributaries and can and do damage to the ecology of the nation as a whole. Just because a dam is located on Sarawak land does not limit its environmental impact within defined territorial limits”.

⁴⁶ *Kajing Tubek & Ors v Ekran Bhd & Ors* [1996] 2 MLJ 388.

the state is valid. There certainly is no application of such nature before this court.”

As pointed out by Nijar, 1997, the term environment cannot be constrained⁴⁷ to what constitutes as elements that make it up, as segment in an orange when put together makes it a whole, but the ‘peripheral’ aspects as pointed out by Justice Abdoolcader⁴⁸, and must be looked at as a whole. The intent of the statute must also be looked at, and the Environmental Quality Act 1974, serves to unify the determination and control of quality, not the environment. It was unfortunate that the term environment, as Justice Sri Ram contextualizes it, should be read something that is to “attach or relate itself to some physical geographic feature, such as land, water or air, or to a combination of one or more of these, or to all of them”, when quality or condition or state can be assessed independently from the ‘attachment’ it has presented itself on. Justice Mokhtar Sidin, in his judgment, at page 53⁴⁹, takes a mechanistic approach, worth considering, in which he states:

“As can be seen from the above, both the Parliament and the State Legislature are competent to make laws on environmental impact. On the face of it, there appears to be a conflict but in my view, that is not so. One has to look into the activity to which the environmental impact is aimed at. In my view, if the activity complained of is in the State List, then the Ordinance shall apply and if the activity complained of is in the Federal List, then the EQA shall apply. It appears to me that in the present appeal, the activities complained of are related to matters in the State List, thus the Ordinance shall apply.”

⁴⁷ See *fn* 45 above.

⁴⁸ See *fn* 21 above.

⁴⁹ See *fn* 44 above, at page 53.

The idea is here there has to be a distinction between the ‘subject matter’ i.e. segments or elements that make up the environment; and the state or condition which would tie in to the processes required to assess and determine quality, health, vulnerability or resiliency even. Thus environment can be both which constitutes part of what makes up land, but it becomes greyer when we look at its as constituents or elements or components of the ocean or air or chemical composition.

By detailing the peripherals, this would have helped resolve the ‘non-mention’ aspect of the environment, because the determination of state or condition could have been imputed from the other terms that appear on the Ninth Schedule. It is at this juncture that the leverage for biodiversity, a clear lacuna here, and seemingly a subject matter that falls within State legislative purview (as long as it doesn’t sit within Federal territories), but when the subject matter transcends boundaries, be it its migratory nature, or dispersion, or the transmission of impacts or even threats or risks, the terms biodiversity in this instance can just be lassoed to the land in sits on or under or even the seas and oceans that cradle it. For purposes of clarity, the distinction must be made, as stated in Chapters Three to Four, and as exhibited in Diagram 6.1. as statutory measures drawn up accordingly.

Article 75 states that “if any State law is inconsistent with a federal law, the federal law shall prevail and the State law shall, to the extent of the inconsistency be void”. Inconsistencies here can only be decided by the Federal Court, as pointed out by Justice Foong in the Kajing Tubek case⁵⁰, only the Federal Court can determine the matter. This can even extend over matters which the State Legislature has competency over, as in the

⁵⁰ See *fn* 46 above.

case of *City Council of George Town v Government of the State of Penang* [1967] 1 MLJ 169, where the courts ruled that though the State had purview over, as per Justice Ong, who stated⁵¹:

“Article 128(1) (a) gives the Federal Court exclusive jurisdiction to determine "any question whether a law made by Parliament or the Legislature of a State is invalid on the ground that it makes provision with respect to a matter with respect to which Parliament or, as the case may be, the Legislature of a State has no power to make laws." Since a State law is invalidated to the extent of any inconsistency therein with a Federal law, by article 75, notwithstanding even that the State law may be within the competency of the State Legislature”

The Parliament can in certain instances legislate for and on matters that are enumerated in the State List. Article 76 provides:

Article 76. Power of Parliament to legislate for States in certain cases.

- 1) Power of Parliament to legislate for States in certain cases Parliament may make laws with respect to any matter enumerated in the State List, but only as follows, that is to say:
 - (a) for the purpose of implementing any treaty, agreement or convention between the Federation and any other country, or any decision of an international organization of which the Federation is a member; or
 - (b) for the purpose of promoting uniformity of the laws of two or more States; or
 - (c) if so requested by the Legislative Assembly of any State.

⁵¹ See page 170 of *City Council of George Town v Government of the State of Penang* [1967] 1 MLJ 169

- 2) No law shall be made in pursuance of paragraph (a) of Clause (1) with respect to any matters of Islamic law or the custom of the Malays or to any matters of native law or custom in the States of Sabah and Sarawak and no Bill for a law under that paragraph shall be introduced into either House of Parliament until the Government of any State concerned has been consulted.
- 3) Subject to Clause (4), a law made in pursuance of paragraph (b) or paragraph (c) of Clause (1) shall not come into operation in any State until it has been adopted by a law made by the Legislature of that State, and shall then be deemed to be a State law and not a federal law, and may accordingly be amended or repealed by a law made by that Legislature.
- 4) Parliament may, for the purpose only of ensuring uniformity of law and policy, make laws with respect to land tenure, the relations of landlord and tenant, registration of titles and deeds relating to land, transfer of land, mortgages, leases and charges in respect of land, easements and other rights and interests in land, compulsory acquisition of land, rating and valuation of land, and local government; and Clauses (1)(b) and (3) shall not apply to any law relating to any such matter.

An example of this would be the National Forestry Act 1984, though it is confined to states in Peninsular Malaysia, legislates over forestry matter that falls within the State List. The other would be the National Land Code, again confined to Peninsular Malaysia, but introduces uniformity in the administration of matters pertaining to land. The other would be the International Trade of Endangered Species Act 2010, which is enacted pursuant to Article 76 (1) (a) which, unlike laws enacted under sub paragraph (b) or (c) does not require for it to be adopted by a law made by the Legislature of that State, and deemed to

be a State law and not a federal law, and may accordingly be amended or repealed by a law made by that Legislature. In this instance, it is an option to perhaps use the different MEAs that Malaysia is party to as a means to consolidate all biodiversity matters under one statutory roof.

Article 76A provides powers to Parliament to extend the legislative power of States, subject to conditions and restrictions it may impose, and in relation to powers under Articles 79, 80 and 82, the law shall be treated as if it were on the Concurrent list. Vohrah *et. al.*, 2004⁵² highlights examples such as the Wood Based Industries (State Legislatures Competency) Act 1984, which confers authority on States to pass laws with respect to industries in any State that has adopted the National Forestry Act 1984. They also note that these powers can even include powers to repeal or amend preceding federal legislations.

The Ninth Schedule also makes provision for matters in a Concurrent List, which in Article 79, it is provided that, the exercise of concurrent legislative powers is subject to the following:

Article 79. Exercise of concurrent legislative powers

- 1) Where it appears to the presiding officer of either House of Parliament or of the Legislative Assembly of any State that a Bill or an amendment to a Bill proposes a change in the law relating to any of the matters enumerated in the Concurrent List, or to any of the matters enumerated in the State List with respect to which the Federation

⁵² See *fn* 20 at page 341

is exercising functions in accordance with Article 94, he shall certify the Bill or amendment for the purposes of this Article.

2) A Bill or amendment certified under this Article shall not be proceeded with until four weeks have elapsed since its publication, unless the presiding officer, being satisfied that the State Governments, or as the case may be, the Federal Government, have been consulted, allows it to be proceeded with on the ground of urgency.

The Constitution does make a distinction in respect of the use of rivers, where under Article 78, any law made by Parliament or any regulation made in pursuance of such a law restricts the rights of a State or its residents to the use for navigation or irrigation of any river wholly within that State it shall not have effect in that State unless it has been approved by a resolution of the Legislative Assembly of that State supported by a majority of the total number of its members. This would mean that States have exclusive rights over rivers in so far as it covers navigational or irrigation matters, but not necessarily matters related to construction or the life in the river, other than that legislated by States.

It would seem from the legislative stand point, biodiversity would fall within the residual powers of the state (Article 77) unless it is properly contextualized, as the term conservation appears within the provisions which gives Parliament purview over (Article 92). The Parliament can also take the opportunity to unify all things biodiversity related under Article 76(1)(a) where obligations under related MEAs are manifested in one encompassing instrument.

If biodiversity were to be read in the widest context possible, and seen as a life support to human existence, then powers to legislate in the event of threat or risk or exposure to vulnerabilities can be drawn from Article 150, which empowers the Yang DiPertuan Agong the power to proclaim a state of emergency, whereby “the security, or the economic life, or public order in the Federation or any part thereof is threatened, and it can be issued before the actual occurrence of the event, on different grounds or in different circumstance. In order for this to take effect the ‘value’ of biodiversity must be intrinsically linked to human life, health and security first.

6.1.2.2. Executive Remit

The Federal government does actually have extensive executive reach within the provisions of the Constitution. Article 81 is referred to first as it sets the tone for which States in respect of the executive remit of the Federal government will have to abide by the legislative remit they have over the State. Article 81 reads:

Article 81. Obligation of States towards Federation

The executive authority of every State shall be so exercised—

- (a) as to ensure compliance with any federal law applying to that State; and
- (b) as not to impede or prejudice the exercise of the executive authority of the Federation.

Coming back to the Federal government executive reach, conservative reading of Article 80 seems to suggest that executive powers mirror legislative powers, but the sub paragraph to the same article actually stretches that reach. Article 80 reads:

Article 80. Distribution of Executive Powers

(1) Subject to the following provisions of this Article the executive authority of the Federation extends to all matters with respect to which Parliament may make laws, and the executive authority of a State to all matters with respect to which the Legislature of that State may make laws.

(2) The executive authority of the Federation does not extend to any matter enumerated in the State List, except in so far as is provided in Articles 93 to 95, nor to any matter enumerated in the Concurrent List, except in so far as may be provided by federal or State law; and so far as federal or State law confers executive authority on the Federation with respect to any matter enumerated in the Concurrent List it may do so to the exclusion of the executive authority of the State.

(3) So far as a law made under Clause (4) of Article 76 makes provisions for conferring executive authority on the Federation it shall not operate in any State unless approved by resolution of the Legislative Assembly of that State.

(4) Federal law may provide that the executive authority of a State shall extend to the administration of any specified provisions of federal law and may for that purpose confer powers and impose duties on any authority of the State.

(5) Subject to any provisions of federal or State law, arrangements may be made between the Federation and a State for the performance of any functions by the authorities of the one on behalf of the authorities of the other and such arrangements may provide for the making of payments in respect of any costs incurred under the arrangements.

(6) Where, in pursuance of Clause (4), any functions are conferred by federal law on any authority of a State the Federation shall make such payments to the State as may

be agreed between the Federation and the State or as may in default of agreement be determined by a tribunal appointed by the Chief Justice of the Federal Court.

Here specific references are made to Article 93 to 95, which stretch the reach. These Article reproduced below, are the Articles that bridges science and know how with State 'subject matter'. Article 93 can perhaps be linked to aspects related to biodiversity intelligence, as through survey and inquiries a mandate can be carved to establish procedures for intelligence gathering.

Article 93. Inquiries, surveys and statistics

(1) The Federal Government may conduct such inquiries (whether by Commission or otherwise), authorize such surveys and collect and publish such statistics as it thinks fit, notwithstanding that such inquiries, surveys and collection and publication of statistic relate to a matter with regard to which the Legislature of a State may make laws.

(2) It shall be the duty of the Government of a State, and of all officers and authorities thereof, to assist the Federal Government in the execution of its powers under this Article; and for this purpose the Federal Government may give such directions as it may deem necessary.

Article 94 provides the means for the Federal government to act as advisors to State, even on matters pertaining to state matters in the legislative list, this is linked to the biodiversity conservation 'know how', as the powers herein extend to technical assistance, which can be read as a key component for conservation. Article 94 reads:

Article 94. Federal powers in respect of State subjects

- (1) The executive authority of the Federation extends to the conduct of research, the provision and maintenance of experimental and demonstration stations, the giving of advice and technical assistance to the Government of any State, and the provision of education, publicity, and demonstration for the inhabitants of any State, in respect of any of the matters with respect to which the Legislature of a State may make laws; and the agricultural and forestry officers of any State shall accept any professional advice given to the Government of that state under this Clause.
- (2) Notwithstanding anything in this Constitution, the existing Departments of Agriculture, Commissioner of Lands, Forestry and Social Welfare may continue to exercise the functions exercised by them immediately before Merdeka Day.
- (3) Nothing in this Constitution shall prevent the Federal Government from establishing Ministries or Departments of Government to exercise the functions of the Federal Government under Article 93 and this Article in relation to matters within the legislative authority of a State, and such matters may include soil conservation, local government and town and country planning.

Article 95 address matters relating to how work is done, here the Federal government has the power to inspect what goes on in the State, through there are modifications in respect of reach for Sabah and Sarawak, particularly over land and local government which if biodiversity is read strictly to be that so hinged on land, would make it extremely difficult

for the Federal government to move towards some form of integration and uniformity for conservation. Article 95 is reproduced here for easy reference:

Article 95. Inspection of State activities

- 1) Subject to Clause (3), in exercising the executive authority of the Federation any officer authorized by the Federal Government may inspect any department or work of a State Government with a view to making a report thereon to the Federal Government.
- 2) A report made under this Article shall, if the Federal Government so direct, be communicated to the State Government and laid before the Legislative Assembly of the State.
- 3) This Article does not authorize the inspection of any department or work dealing only with or carried on only with respect to matters with the exclusive legislative authority of a State.

Here Article 95 provides the Federal government with the means to construct mechanisms to effect inspection, which could come in the form of reporting, or accounting procedure or audit procedure, which can bring about uniformity, particularly how information is managed and gathered. It can also be a means to introduce methods and approaches that could also provide integration as to how things are done on a national scale. The ‘peripheral’ matters that make up all matters related to biodiversity is extensive where the Federal list is concerned, as shown in Table 6.2. The aspect of human and biodiversity health, or structuring methods for payments for ecosystems services could provide a useful point of entry towards uniformity and integrated action.

Article 95B. Modifications for states of Sabah and Sarawak of distribution of legislative powers

- 1) In the case of the States of Sabah and Sarawak—
 - (a) the supplement to List II set out in the Ninth Schedule shall be deemed to form part of the State List, and the matters enumerated therein shall be deemed not to be included in the Federal List or Concurrent List; and
 - (b) the supplement to List III set out in the Ninth Schedule shall, subject to the State List, be deemed to form part of the Concurrent List, and the matters enumerated therein shall be deemed not to be included in the Federal List (but not so as to affect the construction of the State List, where it refers to the Federal List).
- 2) Where by virtue of Clause (1) an item is included in the Concurrent List for a State for a period only, the expiration or termination of that period shall not affect the continued operation of any State law passed by virtue of the item, save as provided by federal or State law.
- 3) The Legislature of the State of Sabah or Sarawak may also make laws for imposing sales taxes, and any sales tax imposed by State law in the State of Sabah or Sarawak shall be deemed to be among the matters enumerated in the State List and not in the Federal List; but—
 - (a) there shall not in the charging or administration of a State sales tax be any discrimination between goods of the same description according to the place in which they originate; and
 - (b) the charge for any federal sales tax shall be met out of sums collected from a person liable for that tax before the charge for a State sales tax.

Article 95B when read seems to throw the spanner in the works in as far as acting as a collective is concerned, but, here aspects that are technical and scientific in nature are not actually excluded, and can serve as a means to overcome the limitations set on the Federal executive.

Article 95C rests on the proviso that limitations bind the Federal government or the scope for executive remit is limited, in so far as the matter at hand involve matters that could not have been made by an act of Parliament. Already the options in the Federal List is extensive, and what is perhaps required is a rethink of how to use the ‘peripheral’ matters to serve as the point of integration and uniformity.

Article 95C. Power by order to extend executive legislative power of States

(1) Subject to the provisions of any Act of Parliament passed after Malaysia Day, the Yang di-Pertuan Agong may by order make as respects any State any such provision as may be made by Act of Parliament—

(a) for authorizing the Legislature of the State to make laws as mentioned in Article 76A; or

(b) for extending the executive authority of the State, and the powers or duties of any authority of the State, as mentioned in Clause (4) of Article 80.

(2) An order made by virtue of paragraph (a) of Clause (1) shall not authorize the Legislature of a State to amend or repeal an Act of Parliament passed after Malaysia Day, unless the Act so provides.

(3) Clause (3) of Article 76A and Clause (6) of Article 80 shall apply in relation to an order under paragraph (a) and paragraph (b) respectively of Clause (1) of this Article as they apply in relation to an Act of Parliament.

(4) Where an order under this Article is revoked by a later order, the later order may include provision for continuing in force (generally or to such extent or for such purposes as the order may specify) any State law passed by virtue of the earlier order or any subsidiary legislation made or thing done under any such State law, and from the coming into operation of the later order any State law thereby continued in force shall have effect as federal law:

Provided that no provision shall be continued in force by virtue of this Clause if or in so far as it could not have been made by Act of Parliament.

(5) Any order of the Yang di-Pertuan Agong under this Article shall be laid before each House of Parliament.

Article 95D Exclusion for States of Sabah and Sarawak for Parliament's power to pass uniform laws about land or local government

In relation to the State of Sabah or Sarawak, Clause (4) of Article 76 shall not apply, nor shall paragraph (b) of Clause (1) of that Article enable Parliament to make laws with respect to any of the matters mentioned in Clause (4) of that Article.

The critical aspects in as far as Article 95 is concerned, is the limitation of State power over matters within both their legislative and executive remit. The point to be fleshed out here is how the Federal government can use the matters in its legislative and executive

remit to render assistance to States, rather than take custodianship and rights over specific matters such as land and water.

6.1.2.3 Constitutional overview

Based on the above excerpts what is clear is that the Federal government can legislate over matters that pertain to the administration of the country as a whole on matters within its jurisdiction as provided in the Ninth Schedule. A special position exists in respect of Sabah and Sarawak particularly when it comes to land matters and local government, where procedural matters as applied for Peninsular Malaysia are not applicable to Sabah and Sarawak. This is fundamental as the basis on which biodiversity exists is 'land' itself (as defined by the National Land Code, see discussions in section 6.3). Key factors that affect conservation processes include land and land use planning.

Noted also is that in the event of a subject matter not being specifically provided for, it then falls within the jurisdiction of the State (Article 77). The issue at hand is that if we were to focus on biodiversity as a subject matter, then a majority of its elements would fall within the State's purview to legislate. The Federal government can by virtue of Article 76 legislate on the States' behalf, but it is still subject to adoption by the State Legislature, in which case it may be amended (defeating purposes of uniformity) and repealed. In order to put matters into legislative perspective as to what ties in with aspects of biodiversity and biodiversity conservation, guided by findings in Chapters 2, 4 and 5, Table 6.2. sets out the key aspects.

However, it is worth noting the provisions in articles 80, 93, 94 and 95, which provides the executive reach for the Federal Government over State legislative matters. Article 80 in particular provides a means for which Federal government to provide ‘assistance’ over State legislative matters, i.e. over matters provided for in articles 93 to 95. Article 80 (5) also provides the point which cooperative federalism can exist, in that the Federal government can make provisions for the arrangement of performance of functions at State levels.

This follows closely from the Australian example, whereby the Commonwealth government cooperates with the Territories in the exercise of it’s executive functions. Articles 93 to 95 provides the platform by which Federal government can assist State governments to conserve biodiversity, albeit through the advisory and supporting mechanisms. The aspects highlighted, as excerpted from articles 80, 93 and 94 indicate processes that can be instituted to strengthen an existing ‘power base’ within the States, and does not seek to control the resource direct, but the actions related to the resources forms the focus areas. Terms such as:

- inquiries, surveys and collection and publication of statistic over State legislative matters;
- research, the provision and maintenance of experimental and demonstration stations, the giving of advice and technical assistance to the Government of any State, and the provision of education, publicity, and demonstration for the inhabitants of any State over State legislative matters;
- establishment of Ministries or Departments of Government to exercise the functions of the Federal Government under Article 93 and 94 over matters within

the legislative authority of a State, including soil conservation, local government and town and country planning; and

- arrangements may be made between the Federation and a State for the performance of any functions by the authorities of the one on behalf of the authorities of the other.

It is also important to note here, matters over which the assistance, support or advice can be given is not exhaustive, and indications are in place that it can extend to conservation per se, with the inclusion of matters related to soil conservation. Table 6.2 below, establishes the link between biodiversity conservation and the legislative matters, but it is important to bear in mind here that there is a possibility whereby a statute can be put into place to facilitate the provision of technical support and advice, in addition to controlling matters in relation to ‘intelligence’ over biodiversity resources and processes. Thus there are options both in legislative aspects and executive reach.

It can be summarised that the Constitution does provide the mandate for the Federal government to promulgate a uniformed Federal level law, by virtue of Article 76, however such statute would still be subject to adoption, which could be in whole or amended or even repealed. The danger here lies when the legislation is framed to ‘control’ the subject matter, which is biodiversity, which by virtue of Article 77 falls within the purview of the State Legislature. Overcoming this would require a relook at the provisions within the Federal list, which indicates that there is a strong lean within Federal jurisdiction towards enabling conservation processes. Here the tie in with the key elements in the Ninth

Schedule (see Table 6.3 below) would focus on establishing measures rather than setting provisions to determine control of biodiversity per se.

The Federal statutory framework could draw upon the ‘services’ aspect of the Federal lists, and the structure of such framework could focus on providing a uniformed context and sets of procedures that will aid biodiversity conservation rather than control ‘biodiversity’. The other option would be to suit the proposed Statute within the executive reach of the Federal government, structuring the statute to provide mandates for assistance, support and cooperation and leaving the matters related to jurisdiction, control and custodianship to the State whereby the biodiversity resources are wholly within such State.

Table 6.3 Biodiversity and Biodiversity Conservation tie in with Federal List

Aspects in the Ninth Schedule Federal List	Biodiversity and biodiversity conservation tie in
1. External affairs	International affairs/ Transboundary matters including shared resources and impacts
3. Internal security 4. Civil and criminal law and procedure and the administration of justice 12. Surveys, inquiries and research	Resource 'intelligence' Criminal and civil offence Control and development of information as well as information base
6. The machinery of government (subject to the State List)	Administration and management measures
7. Finance	Financial aspects to aid conservation
8. Trade, commerce and industry 9. Shipping, navigation and fisheries 10. Communications and transport 11. Federal works and power 14. Medicine and health including sanitation in the federal capital 20. Control of agricultural pests; protection against such pests; prevention of plant diseases 25A. Tourism 27. All matters relating to the Federal Territories	Measures to control development planning, investments, practices and activities through the setting of standards, parameters and techniques that would reduce impact or help improve the condition of biodiversity
12. Surveys, inquiries and research 13. Education 21. Newspapers; publications; publishers; printing and printing presses. 17. Professional occupations other than those specifically enumerated	Capacity building Knowledge base and intelligence Expertise Science and technology Awareness and sensitisation
15. Labour and social security	Charitable or Societies and their contribution to biodiversity conservation
16. Welfare of the aborigines	Traditional knowledge and practice
26. Subject to item 9A of the Concurrent List, prevention and extinguishment of fire, including fire services and fire brigades	Hazards and impacts

6.2. PRESENT STATUTORY REGIME: LINKING LAW TO BIODIVERSITY AND BIODIVERSITY CONSERVATION

The Constitutional position where biodiversity is concerned is that the elements that make up biodiversity falls within State legislative purview, its condition and state however is unclear, as there are existing statutory instruments and provisions both at State and Federal level that actually provide for the measurement, determination and ‘control’ of the state or condition either directly or indirectly. There were five key points that were considered before the present statutory regime is profiled, i.e.:

- i. There is a need to ‘break’ biodiversity down into sections for the profiling, adopting the approach illustrated in Diagram 1, this would be to look at biodiversity as an element; prerequisites for biodiversity conservation; and the processes of biodiversity conservation;
- ii. Key words identified as illustrated in Diagram 2.1 of Chapter 2; Diagram 4.1 of Chapter 4; and Tables 5.2, 5.3, 5.4, 5.5 and 5.6 of Chapter 5 would be the basis for which to determine search relevance;
- iii. The same key words were also used to help fit the purpose of the statutes with the profiling exercise;
- iv. The profile developed does not detail each provision of the statute but provides a summary of the position with notes as to the gaps;
- v. Emphasis in this profiling exercise was pegged to determining coverage as opposed to effectiveness of the statutory provision.

Below is a brief profile the various statutes in effect today that have bearing on aspects of biodiversity, marked as Table 6.4. The aim of this profile is aim to provide a brief insight as to coverage (based on the scope and provisions of the statutes) to aspects of biodiversity and biodiversity conservation. Based on the purposive approach each statute was reviewed, and key words gleaned, matched to the purpose and prerequisites of biodiversity conservation, and gaps, mismatches as well as options were identified. This also included the proposed integrative statutory framework that will help bridge the gaps identified; consolidation of measures; in addition to outlining core measures to address critical biodiversity conservation needs.

This listing of laws below in relation to the aspects identified is intended to provide an overview of the different statutes and its link to biodiversity, both directly and indirectly. A total of 83 Federal and state laws, were identified to have a link to aspects of biodiversity as summarised in Table 6.4 below.

Table 6.4. List of statutes and brief scope related to aspects of biodiversity and biodiversity conservation

Statute		Level	Scope and relevance
1.	Animals Act 1953 (Revised 2006)	Federal	Prevention and control of disease; cruelty; welfare and conservation of animals (defined as four-footed beasts)
2.	Baseline of Maritime Zones Act 2006		Relevant to setting baselines for jurisdiction determination
3.	Biosafety Act 2007		Regulate the release, importation, exportation and contained use of living modified organisms, and the release of products of such organisms, with the objectives of protecting human, plant and animal health, the environment and biological diversity, and where there are threats of irreversible damage, lack of full scientific evidence may not be used as a reason not to take action to prevent such damage
4.	Census Act 1960		Purpose to allow for census be taken throughout Malaysia or any specified area of Malaysia of the population, agriculture (including animal husbandry), trade, labour, industry, commerce, disease or affliction, or such other matters as he may consider necessary or desirable in order to ascertain the social, civil or economic condition or state of health of the inhabitants of Malaysia
5.	Chemical Weapons Convention Act 2005		Facilitates the implementation the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (relevance biochemical warfare)
6.	Copyright Act 1987		Law relating to copyright, relevant to aspects related to intellectual property rights particularly knowledge, practice and traditions
7.	Corrosive And Explosive Substances And Offensive Weapons Act 1958 (Revised - 1988)		Penalties relating to the unlawful possession of corrosive and explosive substances and the carrying of offensive weapons (impact to biodiversity – e.g. fish bombing)

Table 6.4 continued

	Statute	Level	Scope and relevance
8.	Customs Act 1967 (Revised - 1980)		All matters relating to import and export of goods, including classification, importation and exportation, clearance, warehousing, declaration of goods, inspection, investigation, search, seizure and arrest.
9.	Destruction Of Disease-Bearing Insects Act 1975		Destruction and control of disease-bearing insects and for the medical examination and treatment of persons suffering from insect-borne diseases
10.	Drainage Works Act 1954		Relating to the construction and maintenance of drains and water courses, embankments, culverts, sluices, water gates, access paths in drainage reserves
11.	Environmental Quality act 1974		The prevention, abatement, control of pollution and enhancement of the environment
12.	Exclusive Economic Zone act 1984		Determination of exclusive economic zone and certain aspects of the continental shelf of Malaysia and to regulation of activities in the zone and on the continental shelf
13.	Farmers' Organization Act 1973		Matters related to agricultural biodiversity and biosafety, i.e. services and training facilities to farmers so as to equip them with technology essential for the advancement of agriculture, horticulture, animal husbandry, home-economics, agri-business and other commercial enterprises
14.	Federal Territory (Planning) Act 1982		Pertaining to physical and land development, i.e. control and regulating of proper planning in the Federal Territory
15.	Feed Act 2009		Relevance to biosafety in particular, i.e. regulate feed quality by controlling the importation, manufacture, sale and use of feed and feed additive, to ensure that feed satisfies nutritional requirement of animals, is not harmful to animals and is not contaminated so that animals and animal products are safe for human consumption and other usage
16.	Fees (Marine Parks Malaysia) (Validation) Act 2004		Collection of fees in respect of any entrance to any Marine Park Malaysia

Table 6.4 continued

Statute		Level	Scope and relevance
17.	Fire Services Act 1988		Protection of persons and property from fire risks
18.	Geographical Indications Act 2000		Relevant to the protection of geographical indications
19.	Geological Survey Act 1974		Relevant for boundary determination including ecological boundaries based on geological and hydrogeological boundaries, through the regulation and control of geological surveys, in addition to establishment of geological archives (relevant to paleontology)
20.	Hydrogen Cyanide (Fumigation) Act 1953 (Revised-1981)		Relevant to impacts, threats and risks to biodiversity, i.e. fumigation of premises and articles with hydrogen cyanide
21.	Insurance Act 1996		Relevant to insurance aspects in relation to hazards and disasters to and from biodiversity.
22.	International Trade In Endangered Species Act 2008		Relevant to the implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora
23.	Interpretation Acts 1948 And 1967		Relevant to the application, construction, interpretation and operation of written laws
24.	Irrigation Areas Act 1953 (Revised - 1989)		Relevant to maintenance of ecosystems services
25.	Land Conservation Act 1960 (Revised 1989)		Relevant to the conservation of hill land and the protection of soil from erosion and the inroad of silt
26.	Land Development Act 1956 (Revised - 1991)		The establishment of a Federal development authority and local development boards to promote and carry out projects for land development and settlement
27.	Land Public Transport Act 2010		Regulation of public land transport relevant to impacts to biodiversity
28.	Lembaga Kemajuan Ikan Malaysia Act 1971		Relevant in respect of identified use of terms as well as activities related to fisheries
29.	Local Government Act 1976		Relevant in respect of physical development as well as nuisance and pollution to streams, waste disposal etc. which ties in with impacts

Table 6.4 continued.

Statute		Level	Scope and relevance
30.	Malaysia Tourism Promotion Board Act 1992		Ecotourism promotions
31.	Malaysian Agricultural Research and Development Institute 1969		Agricultural research
32.	Malaysian Timber Industry Board (Incorporation) Act 1973		Timber industry
33.	Merchant Shipping (Oil Pollution) act 1994		Marine pollution
34.	Mineral Development Act 1994		Land development, rehabilitation and sterilisation.
35.	Ministerial Functions Act 1969		Relevant to the provisions for the declaration of functions
36.	National Archives Act 2003		Relevant to the creation, acquisition, custody, preservation, use and management of public archives and public records
37.	National Forestry Act 1984		Administration, management and conservation of forests and forestry development in Peninsular Malaysia
38.	National Land Code 1965		All matters pertaining to land and to an extent water and airspace.
39.	National Measurement System Act 2007		Uniform units of measurement based on the International System of Units, the establishment of measurement standards and measurement traceability and the co-ordination of Malaysia's national measurement system
40.	Official Secrets Act 1972 (revised 1988)		Relevant to bio-intelligence
41.	Patents Act 1983		Relevant to patents – i.e. genetic resources
42.	Penal Code 1976 (revised 1997)		Relevant to criminal offences (theft etc.)

Table 6.4 continued

Statute		Level	Scope and relevance
43.	Plant Quarantine Act 1976		Control, prevention and eradication of agricultural pests, noxious plants and plant diseases and to extend co-operation in the control of the movement of pests in international trade (e.g. invasive alien species)
44.	Pesticides Act 1974		Control of pesticides use
45.	Poisons Act 1952 (Revised - 1989)		Relevant to the protection of biodiversity i.e. importation, possession, manufacture, compounding, storage, transport, sale and use of poisons
46.	Prevention and Control of Infectious Diseases Act 1988		The control of infectious vectors and pathogen which can be linked to microorganisms and microbes.
47.	Protected areas and Protected Places Act 1959		Relevant to establishing protected areas under the control of the Police.
48.	Protection of Wildlife Act 1972 ⁵³		Related to all matters pertaining to protection of wild life, in particular those listed in the Schedule.
49.	Road Transport Act 1987		Matters relating to pollution
50.	Standards of Malaysia Act 1996		Uniformity and setting of standards
51.	Statistics Act 1965 (revised 1989)		Matters relating to statistics and statistical processes
52.	Street, Drainage and Building Act 1974		Relating to pollution and impact.
53.	Tourism Industry Act 1992		Control of tourism industry
54.	Town and Country Planning Act 1976		Physical and land use development, i.e. environmentally sensitive areas provision
55.	Tropical Fish Culture Research Institute Act 1961		Tropical Fish research

⁵³ This Act has since been repealed by the Wildlife Conservation Act 2012, which is only applicable to Peninsular Malaysia and does not include marine species, fishes and domesticated animals.

Table 6.4 continued

Statute		Level	Scope and relevance
56.	Veterinary Surgeons act 1974		Regulation of profession and practice
57.	Waters Act 192- (Revised 1989)		Ecosystems
58.	Weights and Measures Act 1972		Establishment of standard units of measurement
59.	Sabah Biodiversity Enactment 2000	Sabah	Establishment of a Sabah Biodiversity Council that regulates the access to biodiversity and removal of biological resources
60.	Sabah Animals Ordinance 1962		Regulation and control of animals
61.	Sabah Wildlife Conservation Enactment 1997		Regulation of matters related to wildlife conservation – noted also the use of terms provided
62.	Sabah Environment Protection Enactment 2002		Relevant to the protection of biodiversity from impacts, risks and threats as well as protection based on risks
63.	Sabah Cruelty to Animals (Prevention) Ordinance Cap. 31 Vol. I		Prevention of cruelty top animals
64.	Sabah Forest (Constitution of Forest Reserves and Amendment) Enactment 1984		Matters related to forestry
65.	Sabah Forest Enactment 1968		
66.	Sabah Land Ordinance Cap. 68		Land matters including that which is related to water resources
67.	Sabah Parks Enactment 6/1984		Protection and conservation of park and nature reserves areas

Table 6.4 continued

Statute		Level	Scope and relevance
68.	Sabah Pearl Oyster Shell Fishery Ordinance Cap.95		Control of industry
69.	Sarawak Rivers Ordinance, 1993	Sarawak	Aquatic resources and Ecosystems
70.	Sarawak State Fisheries Ordinance 2003 (Cap. 54)		Fisheries
71.	Sarawak Water Ordinance, 1994		Water and its relationship with Biodiversity and ecosystems
72.	Sarawak Forestry Corporation Ordinance, 1995		Forestry matters
73.	Sarawak Local Authorities Ordinance, 1996		Development and Land use
74.	Sarawak Native Customs (Declaration) Ordinance, 1996		Native customary rights, including access to and use of resources
75.	Sarawak Biodiversity Centre Ordinance, 1997		Matters pertaining to collection, research, propagation, ethnobiology, inventory and depository.
76.	Sarawak Wild Life Protection Ordinance, 1998		Protection of wild life
77.	Sarawak National Parks and Nature Reserves Ordinance, 1998		National parks, reserve and protected areas
78.	Sarawak State Fisheries Ordinance, 2003		Fisheries

Table 6.4 continued

	Statute	Level	Scope and relevance
79.	Selangor Water Management Authority 1999	Selangor	Catchments and ecosystems
80.	King George V National Park (Kelantan) Enactment 1938	Kelantan	National parks
81.	King George V National Park (Terengganu) Enactment 1939	Terengganu	
82.	King George V National Park (Pahang) Enactment 1939	Pahang	
83.	National Parks (Johor) Corporation Enactment 1989	Johor	

Based on the above profile, ten key gaps, as summarised were noted:

- i. Biodiversity- use of terms, identification, classification, etc* There was neither clear mandate nor singular authority to monitor and ensure standardisation of classification, categorisation and characterisation of the species, sub-species, microorganisms and genetic resource. Measure or provisions to declare the status of biodiversity in a comprehensive manner was also lacking. Crucially, what is meant and the constituents of biodiversity is not as comprehensive, though in some statutes generic references are made, but should dispute arise, the fact that is termed differently may lead to further confusion, thus clarity as to what is meant by and clarification as to what constitutes

biodiversity would help lead to effective resolution.

ii. *Jurisdiction*

Matters pertaining to jurisdiction over the various elements of biodiversity are unclear, particularly those relating to transboundary, shared or migratory aspects. This includes issues of responsibility and accountability, and the fact that there exists different provisions in respect to access and licensing could lead to dispute, particularly with regard to sharing of benefits⁵⁴. This is a factor to be considered in outlining provisions for uniformity.

**iii. *Information/
Intelligence***

Aspects related to information comprehensiveness, and the means to secure, collect, provision, gather and monitoring of information related is lacking, in addition to control particularly access, usage types and responsibilities with regard to use.

**iv. *State of
biodiversity***

There were no clear provisions advocating measures to determine or establish baseline for reference with regard to the state, status and condition of biodiversity, nor is there one overarching entity mandated to conduct such exercise. Pertinent to note here there are no uniformed parameters relevant to setting thresholds and aiding amongst others, recovery, rehabilitation, regeneration and adaptation to impacts, risks and threats, which would be of use in ensuring that conservation programmes that are carried out

⁵⁴ It is noted that at the point of this doctoral research, a draft bill on access and benefit sharing of genetic resources is presently awaiting tabling and approval at Parliament.

- are based on accepted methods and practice.
- v. ***Transboundary measures*** Aspects related to transboundary matters were not fully covered, in as much as provisions for shared interstate and international resources as well as impacts.
 - vi. ***Approvals, Assessments and Reviews*** Overall measures related to the approval of use and development of biodiversity as a whole is lacking. Instead there a sectoral approval and assessment processes as well as reviews for certain aspects or elements of biodiversity or related development activities that impact on biodiversity or affect the conservation of the same.
 - vii. ***Practice, methods, standards, parameters etc.*** An overall system that sets the standard of practice for biodiversity conservation was not easy to determine from the outset. Fundamental to this was the fact that there was no one authority that was monitoring or setting the means and measures to adopted and practiced. This gap must be addressed in order to ensure that there is uniformity in goals, targets and measures (where appropriate given the different categories that make up biodiversity and different conservation needs).
 - viii. ***Hazards and impacts*** Clear cut measures or mandates to set out provisions to allow for measures to be instituted addressing impacts and hazards could not be ascertained from the outset.
 - ix. ***Access, utilisation, development, etc*** Measures that outline the means by which biodiversity as a whole and the different constituents were to be developed;

including all processes related to planning, use, recovery etc are not clearly apparent. Crucial again there is no one entity tasked to facilitate uniformity in approaches and methods to be adopted when developing the resource, including matters pertaining to distribution of benefits from use of genetic resources.

x. *Expertise*

Measures with regard to accreditation of experts were also lacking, which could be detrimental particularly in assessing state, vulnerability and viability of resources for the different purposes it serves, particular as components and drivers of economic development.

The ten key gaps above indicate five factors that should be considered when ‘constructing’ an overarching statutory framework:

- i. There is a need to come to an agreement in as far as use of terms, contexts and interpretation of what is meant by biodiversity in addition to putting into context aspects related to conservation for each element or constituent of biodiversity;
- ii. There is a need to match mandates, jurisdiction and scopes to the different aspects of biodiversity and its conservation, taking into account the fact that if biodiversity conservation is treated as a national imperative then unification and uniformity would be linked to setting mandates for either one entity or a consortium of key government stakeholders to help translate national objectives for biodiversity conservation;

- iii. The key factor that integrates the process of conservation can be pegged to three, i.e. information; methods and approaches; and practice
- iv. Based on iii above there is a need to establish a repository for information and method to determine the state and condition of biodiversity based on agreed methods and approaches, which will allow for better regulation of conservation measures and implementation activities to help meet determined targets;
- v. Measures to regulate the use and development of biodiversity and its components should be tailored to iv above.

6.3 CONCLUDING POINTS

It is clear that approach to take in developing a uniformed statute or integrative framework it will have to be based on conservation processes rather setting out ownership or control over biodiversity, taking into account scientific growth and social concerns. It should bridge science through the introduction of mechanism for scientific inputs, in addition to making provisions for inclusivity of all stakeholders, either through outright processes of participation, or involvement of key groups on specific matters.

The proposed statute should set out mandates for both federal and State governments to exercise the acts of conservation, emphasizing that the ownership or custodianship will rest with the State (as the term biodiversity is not entrenched in the Ninth schedule, thus the residual power rests with the States, provided the resource, habitat or ecosystems sits wholly within that State, if not the Federal jurisdiction comes through). The sentence structure should be 'performance' based to facilitate measurement of effectiveness, and clusters must be identified so as to enable integration and in the future absorption of

existing legislative provisions. It should flag national concerns and priorities, but action is based on collective effort, i.e. cooperative federalism. The proposed statute therefore should reflect the following:

- Mandates for both federal and State authorities, demarcating clearly the jurisdictional authority one may have over the other;
- Aspects of key importance, which will provide the purpose for which the statute will seek to regulate, i.e. human ‘behaviour’ in relation to biodiversity and the act of conservation;
- Measures that will also the act of complementing other existing Statutes, such as the Geological Survey Act 1974, Town and Country Planning Act 1976 and the Environmental Quality act 1974. The Geological Survey Act 1974 sits within the ambits of Articles 80, 93, 94 and 95 of the Constitution, thus is an example that may be of use when structuring the overall statutory framework;
- Address gaps, such as measures towards establishing uniformed and standardized conservation methods and practices; and
- Structure provisions that will allow for scientific uncertainty through promulgation of provisions that empowers the designated authority to prescribe the actions to be taken.

As the emphasis would be to provide measures to effect conservation, i.e. making provisions for processes rather than clear-cut ownership or control of biodiversity, recognition of jurisdiction and rights must be established on the outset. The Federal focus would then be administration, international matters and the ‘science’ of conservation

(survey, census and research), whilst States (and in some cases Federal territories) can continue to legislate and control rights related to biodiversity.

Taking into account the list of statutes reviewed, the point of integration here would be the provisions to enable scientific and technical processes in biodiversity conservation, working on the assumption that the authority tasked in conservation can use the statute to complement their existing statutory mandates (this for Sabah and Sarawak) focusing on strengthening assessment and evaluation procedures, or where there is lack of prior statutory mandate (as in the case of most States in Peninsular Malaysia) enable the establishment of detailed conservation measures through plans and programmes to aid authorities with mandates on matters related to biodiversity and its conservation, particularly land and water.