

NATIVE CUSTOMARY RIGHTS

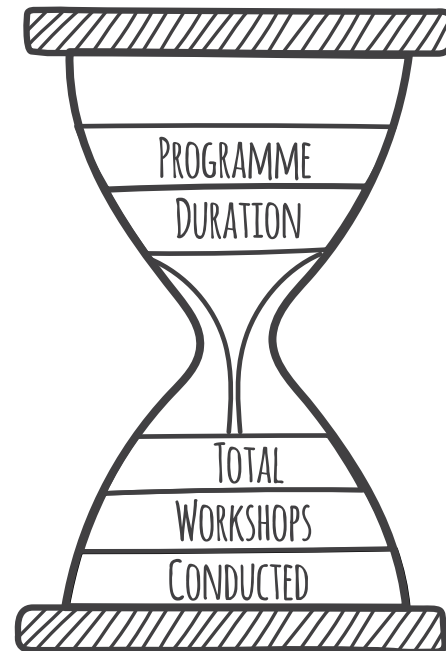
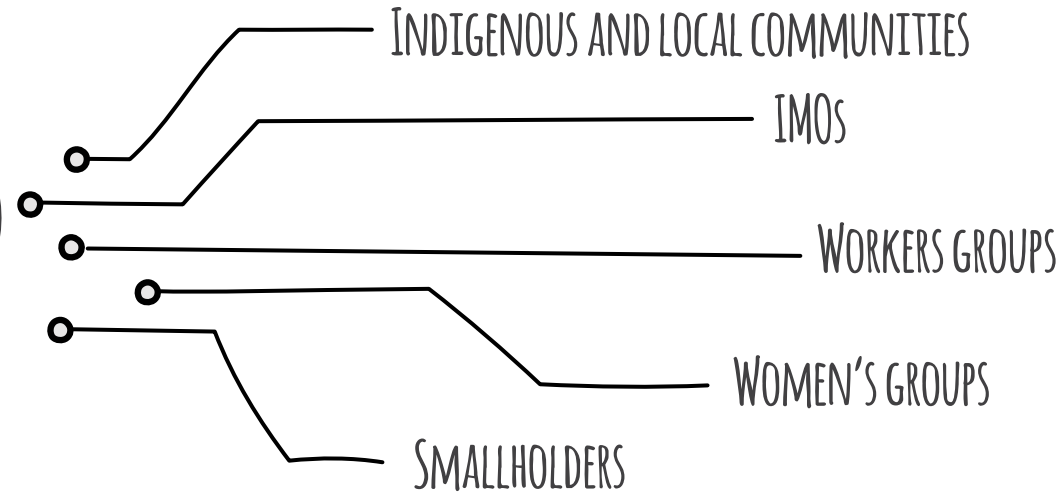
The Malaysian Context



EXPLANATION OF OUTREACH PROGRAMME

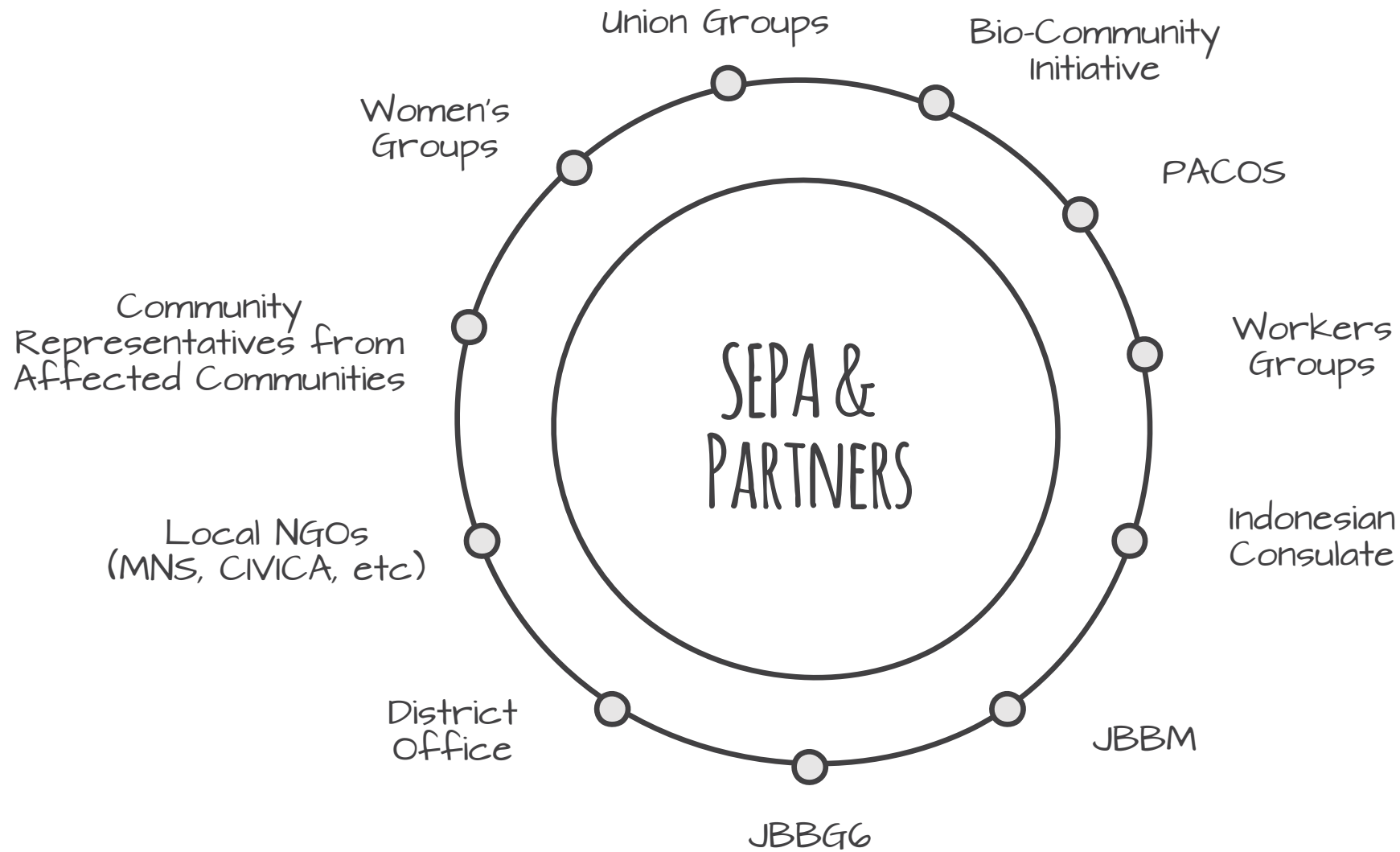


- To capacity build IMOs in Malaysia on RSPO Certification System.
- To increase understanding of RSPO and its Standards amongst the target audience.
- To provide access for intended target audiences for feedback and engagement.



Supposed to be for 18 months - extended due to COVID 19 and also demands from the ground. There was request from Local Growers - and a discussion was held with RSPO who have now extended this programme to the Growers as well (5 Workshops)

To date SEPA has conducted more than 50 workshops in the 3 regions



WHY IS NCR IMPORTANT?

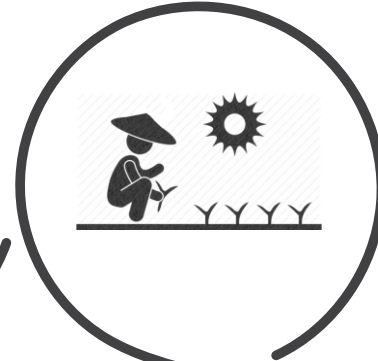
AFFECTED

They are affected by what you do



LAND DEPENDENCE

They depend on the land for their livelihood and their identity



NEIGHBOURS

They are your neighbours



TRAPPED

They are trapped between plantations and protected areas,



POPULATION

Populations are on the rise they have no space to go because their lands were appropriated

WHO ARE THE NATIVES?



FEDERAL CONSTITUTION:

ARTICLE 153 STATES THAT THE AGONG IS TO SAFEGUARD THE SPECIAL POSITION OF MALAYS AND NATIVE OF SABAH AND SARAWAK IN 1963

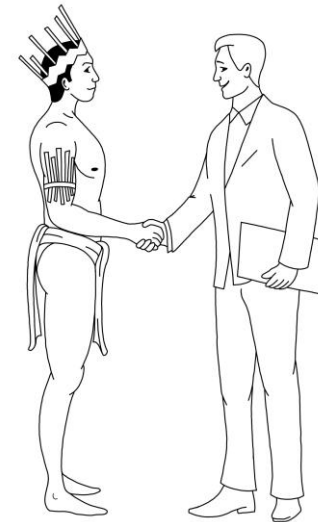
ARTICLE 161A EXTENDS TO THE ORANG ASAL IN SABAH AND SARAWAK HAVING THE SAME PRIVILEGES AS MALAYS. IT INCLUDES:

RESERVATION OF POSITION IN PUBLIC SERVICES



SCHOLARSHIP AND OTHER EDUCATIONAL AND TRAINING PRIVILEGES

LICENSES FOR BUSINESSES REQUIRED BY FEDERAL LAW



ITEM 16 OF THE 9TH
SCHEDULE OF LIST 1,
SPECIFICALLY
EMPOWERS THE FEDERAL
GOVERNMENT TO
LEGISLATE FOR THE
WELFARE OF ORANG
ASLI



ARTICLE 160(2)
DEFINES THE
ABORIGINES OF THE
MALAY PENINSULAR
WHICH FALLS UNDER
THE ABORIGINAL
PEOPLE ACT 1954

WHAT IS NATIVE CUSTOMARY RIGHTS?



A SYSTEM OF JUSTICE AND
FAIRNESS UNDERPINNED BY
CULTURAL OR CUSTOMARY OR
RELIGIOUS BELIEFS AND IDEAS

More accessible,
dispute settlement
that is accepted by
the community



Customary laws



Established through
long usage and
common consent

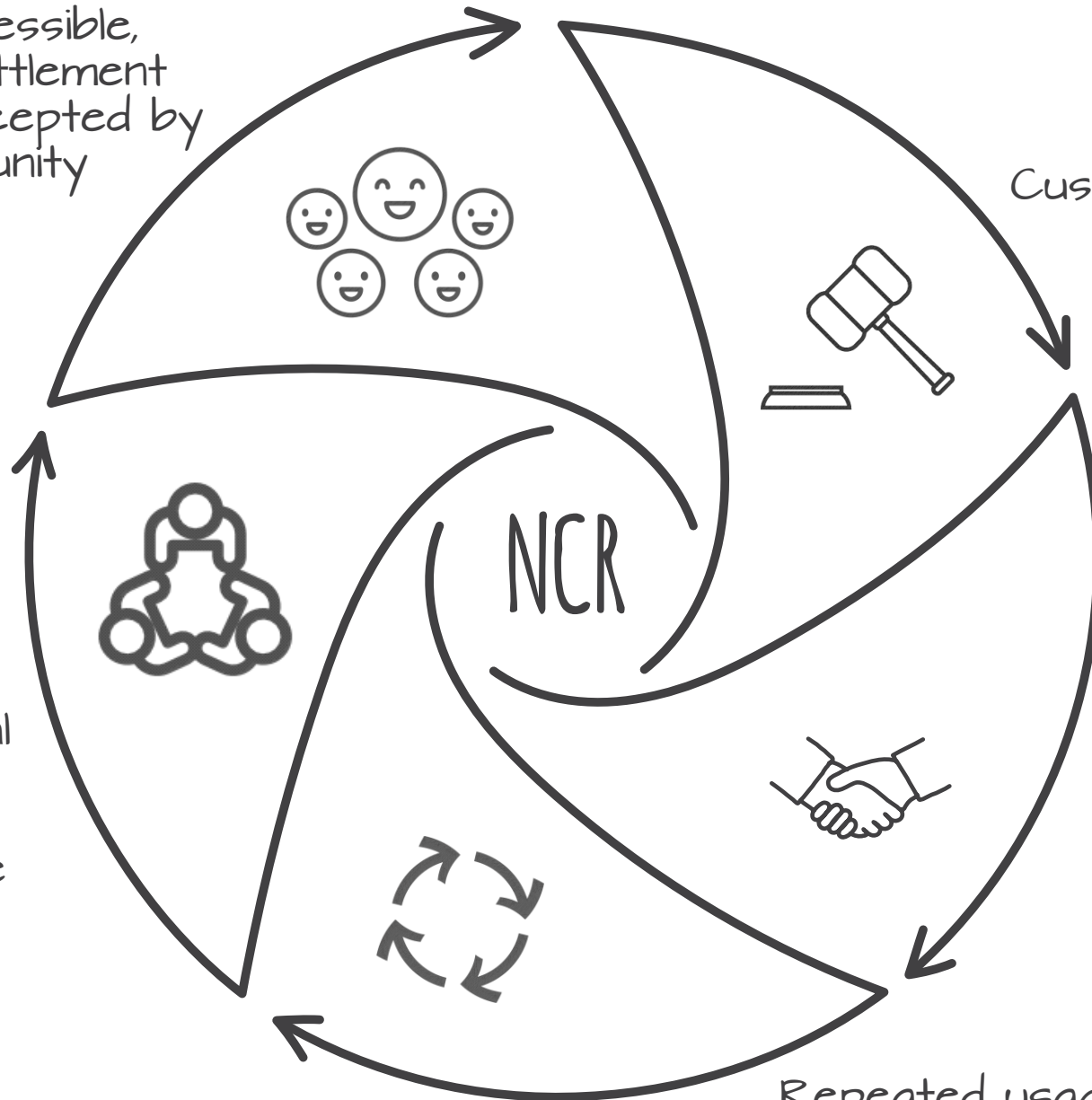


Repeated usage and
common practice

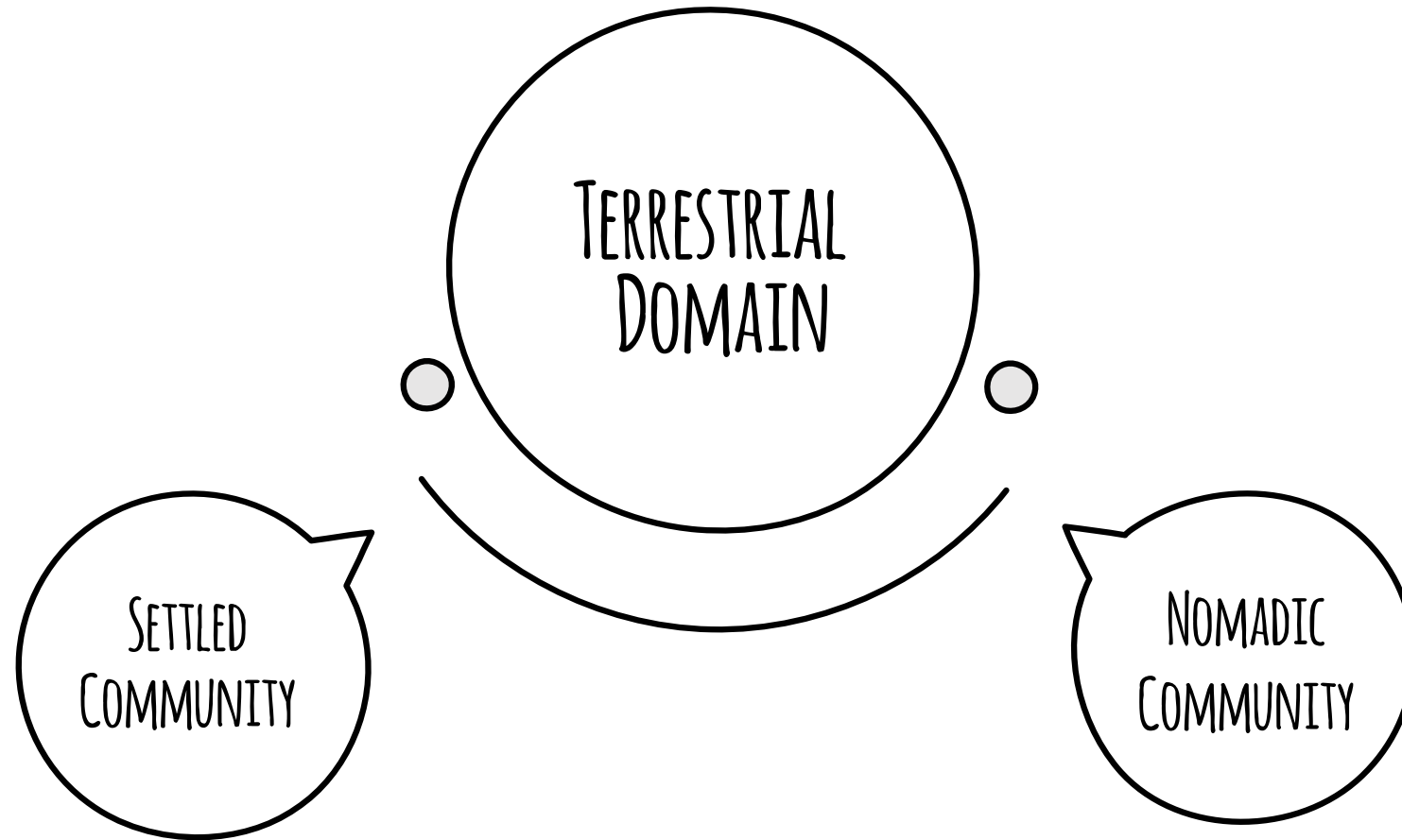


NCR

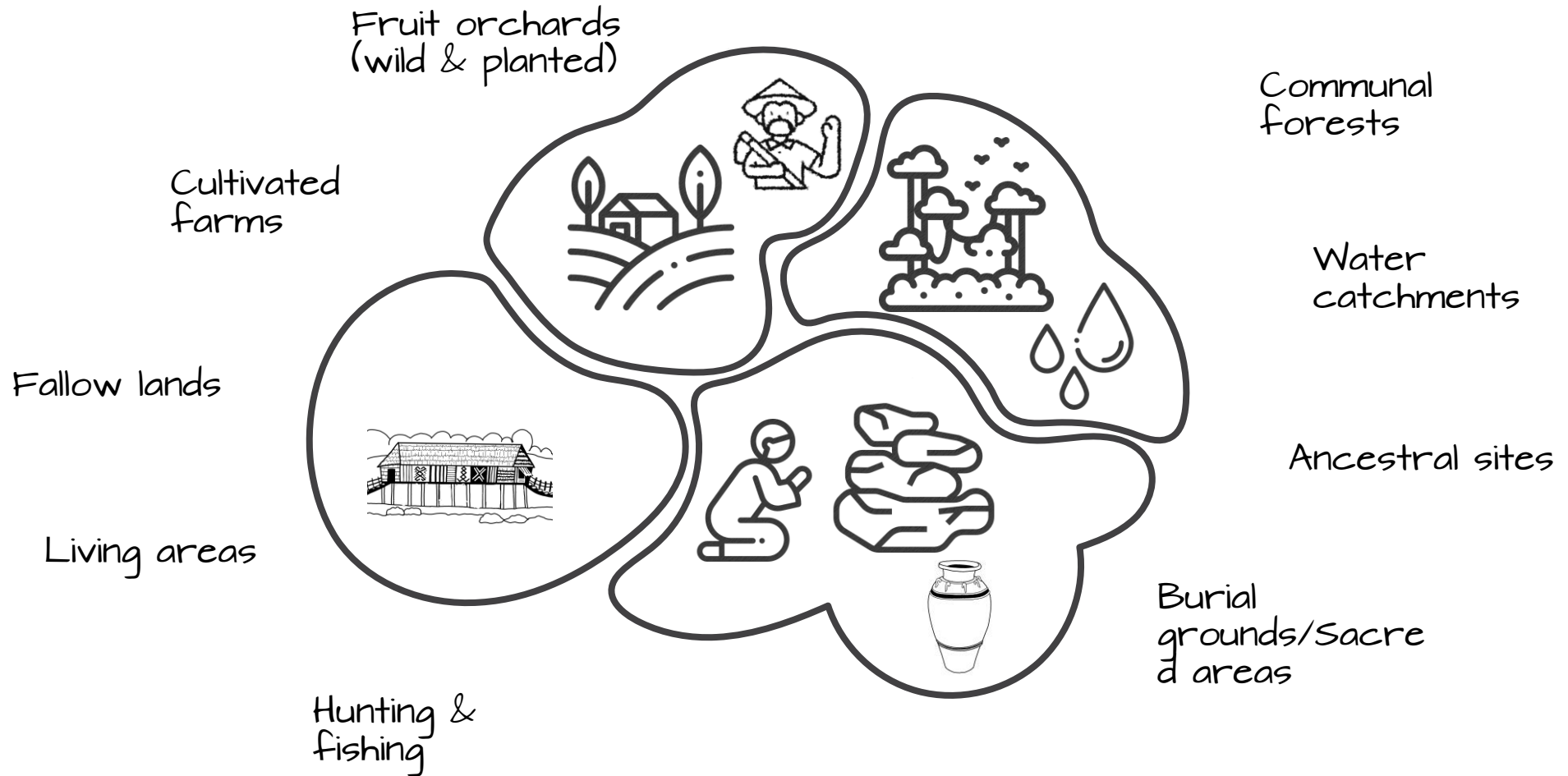
Developed into a
customary justice
system through making
and reiterating of social
order as an active
process not as
something which is once
advanced is fixed



WHAT ENCOMPASSES NATIVE CUSTOMARY RIGHTS?



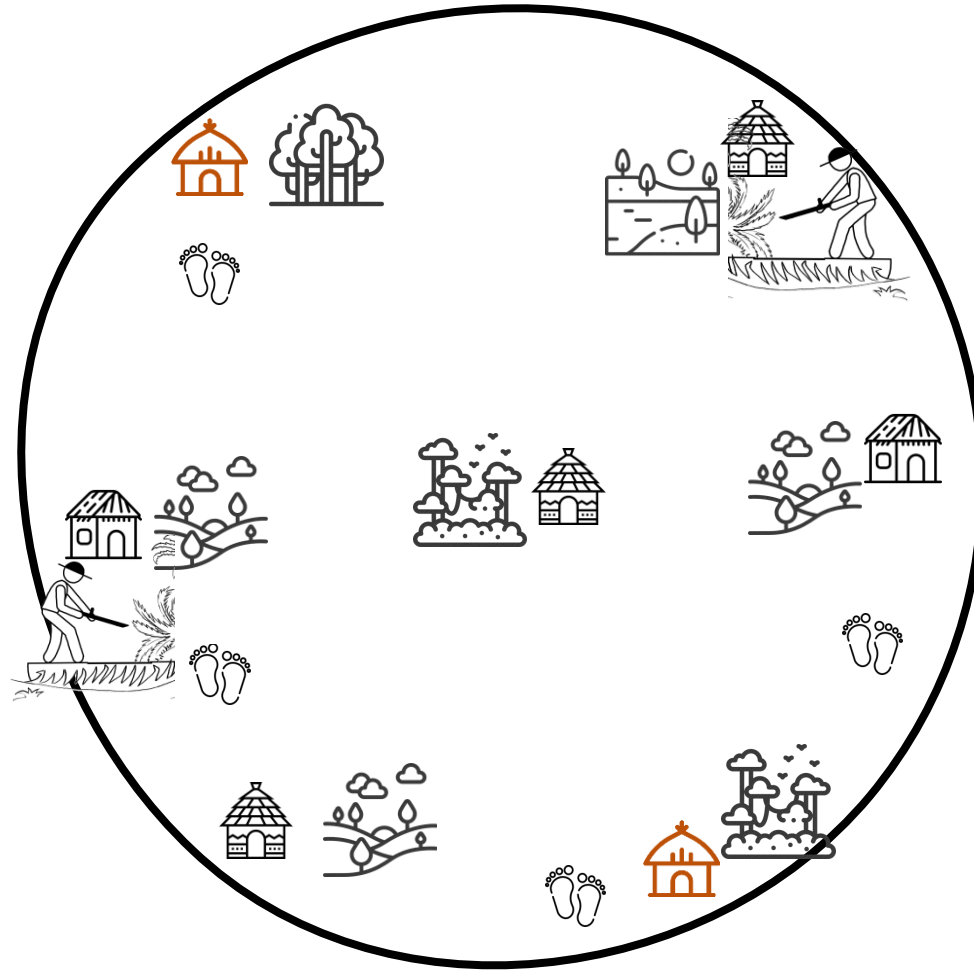
SETTLED ORANG ASAL/ASLI COMMUNITIES



NOMADIC COMMUNITY (HUNTER GATHERERS)

INFODATA

Orang Asli or Orang Asal of Sabah and Sarawak do not cut forest to establish NCR, instead they established rights to resources within the territory they occupy.



EXAMPLE: PENAN COMMUNITY



Lamin = Hut



La'a = Former hut



Uban = marks or footprints



Tana' pengurip/pemakai menoa
= area surrounding the lamin
or la'a

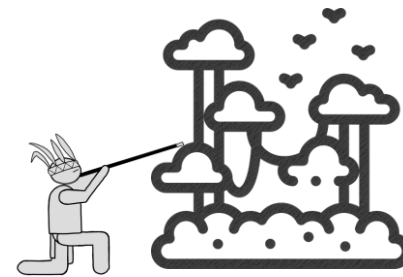


Tana' pohoo = land forest
utilised by their ancestors

CLAIMING RESOURCES BY NOMADIC COMMUNITY



MOLONG
Lay claim to a resource and foster it for future



ENABLING LAWS FROM THE MALAYSIA CONTEXT

Article 160 of the Federal Constitution defines law to include written law, common law & usage having the force of law

Native Customary Rights falls under Common Law



Codified by Case Precedence set by National Courts through the development of Common Law on pre-existing native customary rights under their customary law

Codified in G.C Wooley and Sabah Rules 1995



Customary laws have been codified through the work of the Council for Customs & Traditions

SABAH

ADMINISTRATIVE CODE

- G.C Wooley - Native Affairs Bulletin (1 to 7)
- Cases on native customary law in Sabah (1953-1972)
- Native Courts Rules (Native Customary Laws) (1995)

NATIVE CUSTOMARY LAW

STATUTES

- Sabah Land Ordinance (Caps 68) (1920)
- Sabah Wills Ordinance (Caps. 158) (1953)
- Sabah Native courts Enactment (1992)
- Interpretation (Definition of Native) Ordinance (1952)

JUDICIAL DECISIONS

Mainly deals with:

- Family law & property
- Jurisdiction & choice of law
- Other miscellaneous matters

SARAWAK

ADMINISTRATIVE CODE

- Compilation of adat by A.J.N. Richards - replaced by the codified Adat Iban 1993 and the Adat Bidayuh 1995
- Native Courts Ordinance (1992)

NATIVE CUSTOMARY LAW

STATUTES

- Sarawak Land Code (1958)
- The Guardianship of Infants Ordinance (Cap.93)(1958)
- Sarawak Interpretation Ordinance (2005)

JUDICIAL DECISIONS

Mainly deals with:

- Family law & property
- Jurisdiction & choice of law
- Other miscellaneous matters

PENINSULAR MALAYSIA

ADMINISTRATIVE CODE

- Aboriginal Peoples Act (1954)

NATIVE
CUSTOMARY LAW

STATUTES

- Aboriginal Peoples Act (1954)

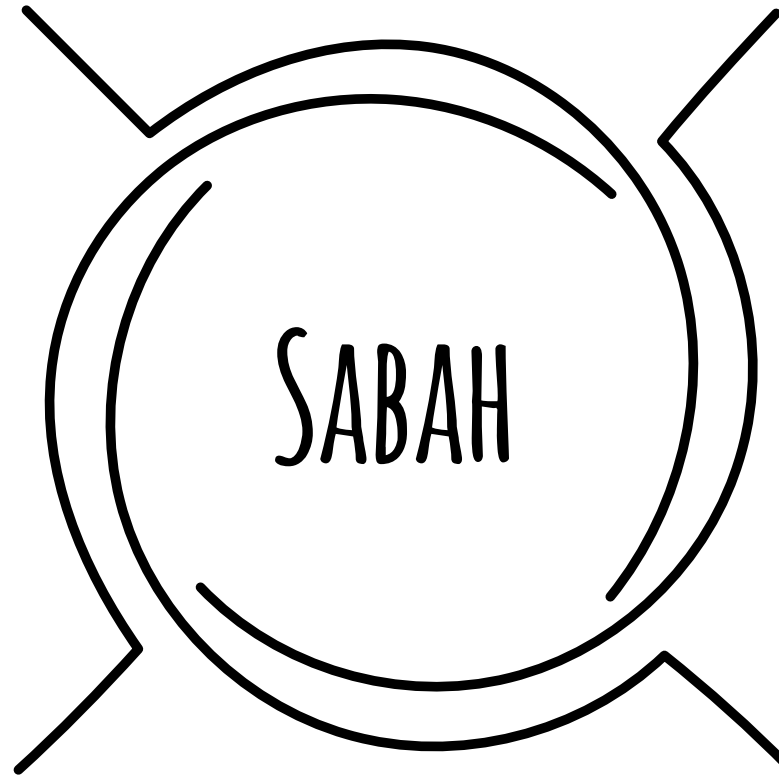
JUDICIAL DECISIONS

- Court Precedence:
- Pre-existing rights
- NCR

DISCRIMINATION AGAINST NCR

State Agencies have failed to acknowledge and build on progressive interpretations of customary land in previous court decisions, instead strictly following much narrower definition of customary land as provided under Section 15 of the Sabah Land Ordinance (1930)

The definition of customary land does not include fallow land and areas needed for protein food source



Notices to develop land posted in offices in provincial capitals are not practical for the remote communities to hear about and challenge

FPIC processes that are built into the State legislations have been ignored

DISCRIMINATION AGAINST NCR

The definition of customary land does not include roaming land

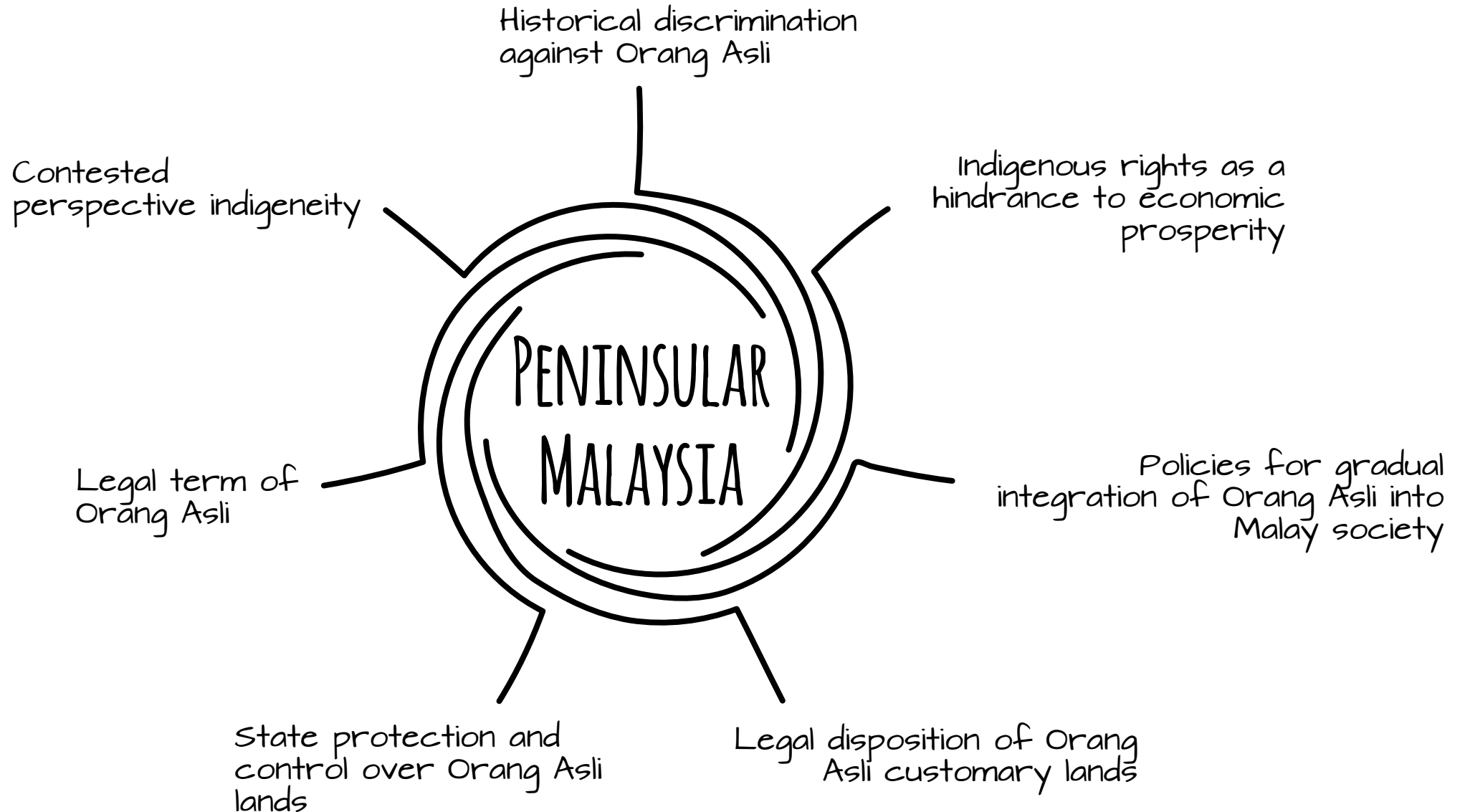
Courts have failed to acknowledge and build on progressive interpretations of customary land in previous court decisions, instead strictly following much narrower definition of customary land as provided under Section 5(2) of the Sarawak Land Code



Provisional leases by Government authorities have been given to third parties or forest reserves have been gazetted, over-ruling land that was the subject of native applications

Notices to develop land posted in offices in provincial capitals are not practical for the remote communities to hear about and challenge

DISCRIMINATION AGAINST NCR





RSPO plays an important
role in preserving NCR
Rights



RSPO & NATIVE CUSTOMARY RIGHTS - PNC

1

PRINCIPLE ONE

Behave ethically
and
transparently

2

PRINCIPLE TWO

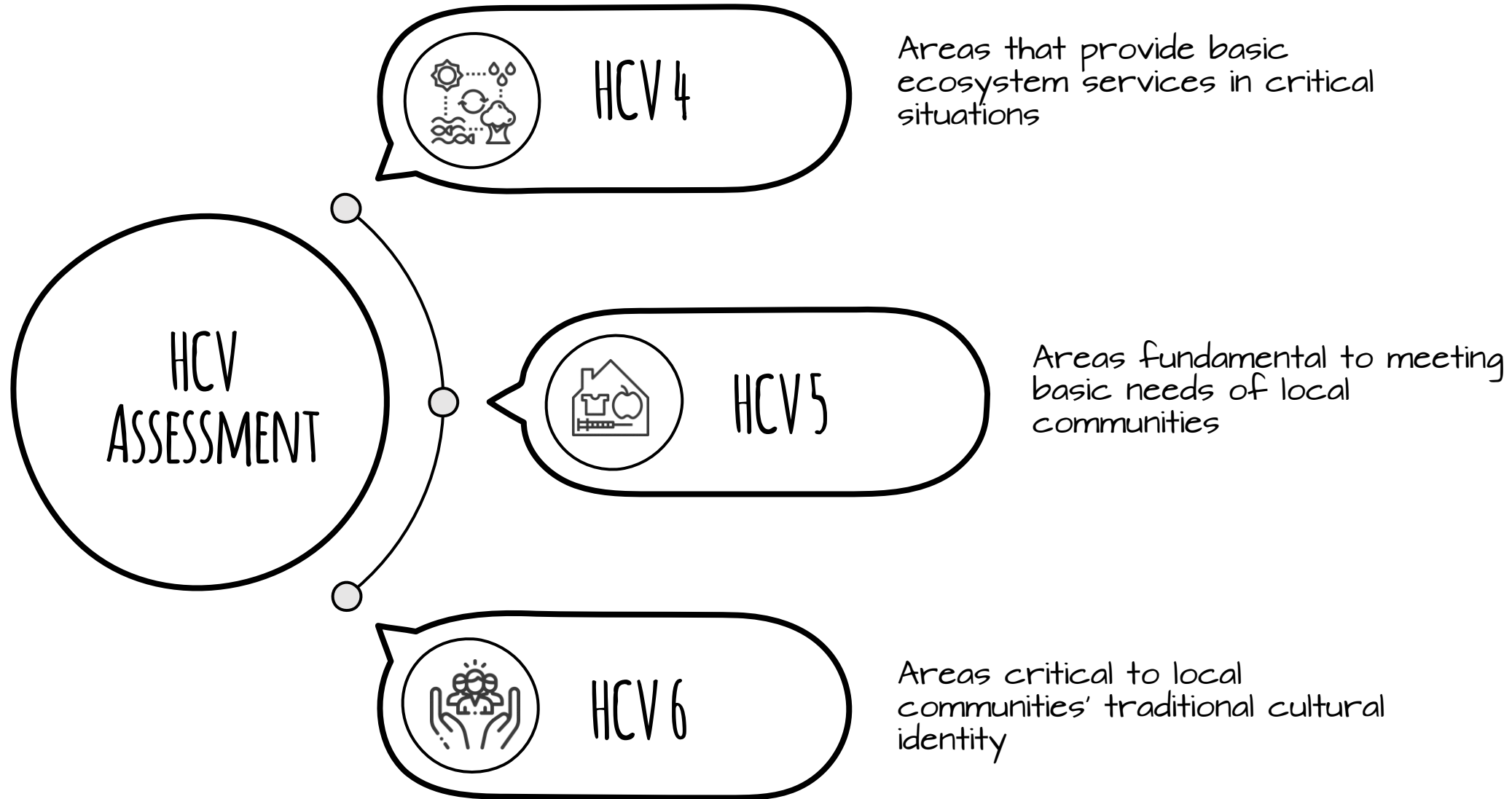
Operate legally
and respect
rights

4

PRINCIPLE FOUR

Respect
community and
human rights and
deliver benefits

RSPO & NATIVE CUSTOMARY RIGHTS – HCV ASSESSMENT



RSPO & NATIVE CUSTOMARY RIGHTS – LUCA

Social Liability has to
be declared

Thank you for your attention!

Artist: Marcin Bul

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Any questions?

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