

Penan Benalih

BLOCKADE ISSUE

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Human Rights Commission of Malaysia (SUHAKAM)



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SUHAKAM'S REPORT ON PENAN BENALIH BLOCKADE ISSUE



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EXECUTIVE SUMMARY

INTRODUCTION

Indigenous groups including the Penan, Kayan and Kelabit Communities in the interior of Sarawak have periodically set up blockades since the 1980s. This has generated national and international concern over the Communities' rights to ancestral land, which has come under increasing threat from logging and plantation activities.

Among these groups, it is the issue of land rights of the Penan Community that surfaces more frequently. The current framework of the Sarawak Land Code makes it virtually impossible for this Community to obtain legal recognition of their 'customary rights' claims over ancestral and contemporary foraging areas. This is because the Community has traditionally led a nomadic lifestyle.

In spite of the provisions of the legislation, the Penan Community maintains that its claims to the land are valid. Those living in Long Benalih village, located in the Baram District, share this stance. They contend that their native customary rights (NCR) to land were violated when the Government issued a logging licence, covering parts of their ancestral land, to a private company. Since then, they have tried to defend their land through measures ranging from subtle approaches such as dialogues and appeals to the Government, to more extreme steps such as erecting a series of blockades on the logging track in Long Benalih. They have seen no results to date.

The State Government has emphasised that the area involved was gazetted as the Sela'an Suling Permanent Forest Estate in accordance with provisions of relevant laws, including the Sarawak Land Code 1958, as well as administrative procedures. This area was leased to Samling Plywood (BARAMAS) Sdn Bhd in 1998. The Company subsequently applied for Forest Management Certification status from the Malaysian Timber Certification Council (MTCC).

Representatives of the Government have maintained that the logging track, where the Penan Benalih Blockade ('the Blockade') has been erected, also facilitates delivery of Government-related services and assistance to other Penan and Kelabit villages within and near the area. This concern was brought to SUHAKAM's attention by the Resident and District Office, Miri Division.

Without discounting the Penan claims to NCR land, SUHAKAM responded to the concerns by carrying out an investigation via dialogues with the groups involved and visits to the site of the Blockade and relevant village. Reference was made to available literature on the historical migration and settlement of the Penan Community within the disputed area. The investigation provided SUHAKAM with the opportunity to ascertain the issues confronted by both the villagers and Government agencies.

Representatives of Government agencies were also concerned about the possible influence of local and international non-governmental organisations (NGOs) on the Community's decision to erect the Blockade. They said they had conducted numerous consultations with the Penan Community and that only those residing in Long Benalih objected to the construction of the logging track. The Government representatives

said they believe that the main motive for the Blockade is to profit from a 'levy' that the Long Benalih Community has illegally imposed on transportation of diesel to the interior.

The Penan of Long Benalih, meanwhile, expressed fears that allowing the construction of the logging track would lead to further diminution and destruction of their ancestral land. They maintained that they have rights to the land and are of the opinion that their historical and contemporary customs should be legally recognised by the law. They also insisted that they were not adequately consulted over the logging track and related activities. As their numerous appeals to the Government have been ignored, they resorted to building the Blockade as a manifestation of their desire to engage the authorities in discussion over attempts to defend what they believe to be their NCR land.

The Community contended that the Blockade had nothing to do with profiteering from fuel transportation. It further highlighted other issues that were subsequently confirmed via SUHAKAM's field observations – that the villagers have limited access to adequate housing, healthcare services, education and basic amenities like electricity supply as well as clean and safe drinking water.

SUHAKAM'S RECOMMENDATIONS

Based on the deliberations and dialogue sessions with parties concerned, as well as on the findings of a field visit to the site of the Blockade, SUHAKAM makes the following recommendations:

1. As a long-term approach, SUHAKAM calls on the State Government to address the issue of Penan claims to NCR land within the licensed area. There should be political will to review the situation and make the necessary amendments to the State Land Code so that the legitimate rights of the Penan Community are incorporated. Such a review should take cognizance of the Penan concept of land and forest stewardship, as well as their past nomadic pattern of life.
2. Steps should be taken immediately to address the Blockade Issue. Efforts should be continued to get the parties to continue negotiations to resolve the impasse and to examine the Community's underlying concerns. Ways should be sought to strengthen the on-going mediation process between the logging Company, Government agencies and the Communities concerned. External, influential and acceptable mediators should be sought out to facilitate this effort.
3. As an intermediate approach, it is recommended that sufficient land be allocated to affected Penan families, taking into consideration their dependency on forest produce for food, medicine and other basic necessities.
4. SUHAKAM is of the opinion that logging activities carried out in compliance with the MC&I guidelines of the MTCC would have minimal impact on the environment. Thus, there is no reason why extraction of logs by the licensee cannot co-exist with the interests of local Communities. NGOs and the Government agencies must work together to protect the rights of the Penan.



5. In terms of the economic and social development of the Penan Community, it is recommended that the existing affirmative action policy be reviewed and improved upon. Additionally, there is need for reactivation of the State Cabinet Committee for Penan Affairs. Furthermore, the Government has to ensure that poverty eradication programmes as outlined in the Ninth Malaysia Plan reach this marginalised group. The provision of much-needed infrastructure like roads and supply of water and electricity should be prioritised, alongside access to healthcare and education facilities. There is a need for training programmes to be tailored to the Community's needs, so that its members can cope with change. The programmes should build economic capacity based on their traditional knowledge, and overcome their current lack of expertise. To ensure all economic and social development programmes are effective, sufficient funds must be made available, while Federal and State agencies should co-ordinate their efforts.

CONCLUSION

The series of blockades erected by the Penan has triggered national and international concern that the Community is being dispossessed of native customary land. The Blockade, reflects the Community's dire need to be heard. Despite efforts by numerous organisations and continuous recommendations to the Government, the Community seems nowhere near to achieving its perceived rights to ancestral land, or to economic and social development. Urgent steps have to be taken to ensure that State laws do not deprive the Penan of inherent rights without adequate compensation and alternative resettlement areas.

While emphasis is given to the need to respect and protect the rights of the Penan, SUHAKAM acknowledges the concurrent need for social and mindset change within the Community. This is to ensure that its members enjoy socio-economic parity to mainstream society. The Penan Community in the Sela'an Linau FMU must also respect that the State has the right to sustainable utilisation of forest resources and development within the area. Still, it is the State's duty to ensure that such activities do not further compromise an already marginalised Community.

There is, thus, a need for the Government to balance the country's economic development and exploitation of resources with the promotion and protection of basic human rights of its citizens, especially, those as vulnerable as the Penan.



PART 1

SUHAKAM'S REPORT

1. THE PENAN BENALIH BLOCKADE ISSUE

I. INTRODUCTION

On 13 February 2007, the Human Rights Commission of Malaysia (SUHAKAM) received a letter¹ from the District and Resident Office, Miri Division ('Resident Office') in Sarawak. It sought SUHAKAM's advice on addressing the issue of the Penan Blockade ('the Blockade') in Long Benalih, Baram.

According to the Resident Office, the Blockade was set up by a group of Penan from Long Benalih (also known as the Penan Ba' Benalih or Penan Benalih) to prevent the construction of a logging road into the area. However, this has also affected easier delivery of Government assistance and services to 287 local families residing in Hulu Sungai Akah, Baram.

Preliminary research by SUHAKAM found that such blockades have long been highlighted by the local and international media. The Penan have reportedly resorted to such action to prevent logging activities which, they feel, would lead to encroachment into ancestral land, destruction of the forest which is their main source of food, and pollution of the environment.

II. SUHAKAM'S FACT-FINDING ACTIVITY

SUHAKAM found it necessary to conduct a fact-finding activity through meetings with the relevant Government agencies, Communities affected, the logging Company (Samling Plywood (BARAMAS) Sdn Bhd) and other parties familiar with the Penan Benalih Blockade Issue. This was to obtain clarification.

Initial discussions with these parties necessitated a visit to the affected area. Hence, SUHAKAM organised a field visit to Long Benalih during which it took the opportunity to observe the socio-economic conditions of the Penan Community and others affected by logging activities and the Blockade.²

¹ The Letter from the District and Resident Office, Miri Division dated 12 February 2007 is attached as Annexure 1 in Part 3 of SUHAKAM's Report on the Penan Benalih Blockade Issue.

² Report on SUHAKAM's meetings and field visit are in Part 2 of SUHAKAM's Report on the Penan Benalih Blockade Issue.



Summary of the Meetings

Date	Time	Activity	Location
14 March 2007	9.30am-1.00pm	Meeting with Government agencies	Miri, Sarawak
	2.30pm-5.00pm	Meeting with affected Penan and NGO Representatives	Miri, Sarawak
26 March 2007	2.30pm-5.00pm	Meeting with Malaysian Timber Certification Council (MTCC)	Kuala Lumpur
4 May 2007	7.00am-11.00pm	Field visit to the Blockade in Long Benalih; Dialogue with Penan Community in Kampung Ba Data Bila	Baram, Sarawak



During the meeting with affected Penan and NGO representatives on 14 March 2007, the Penan representatives from Long Benalih handed their submission to SUHAKAM.

Objectives

The objectives of SUHAKAM's fact-finding activity were to:

- Respond to the letter from the Resident Office, Miri Division;
- Ascertain the Government's concerns as a result of the Blockade;
- Ascertain the concerns of the Penan over the plan to construct the logging road;
- Ascertain the effects of the Penan Blockade and logging activities on Communities residing in the affected area; and
- Make recommendations to the Government to address the issues faced by both its agencies and local Communities.

Methodology

Parallel to the objectives, the following methodologies were used:

- Meetings with affected members of the Penan Community and representatives of Government agencies, the logging Company and NGOs;
- Field visit to the Blockade area at Long Benalih and a dialogue session with the Penan Community at the Kampung Ba Data Bila longhouse in Baram; and
- Literature review on written materials and secondary data.

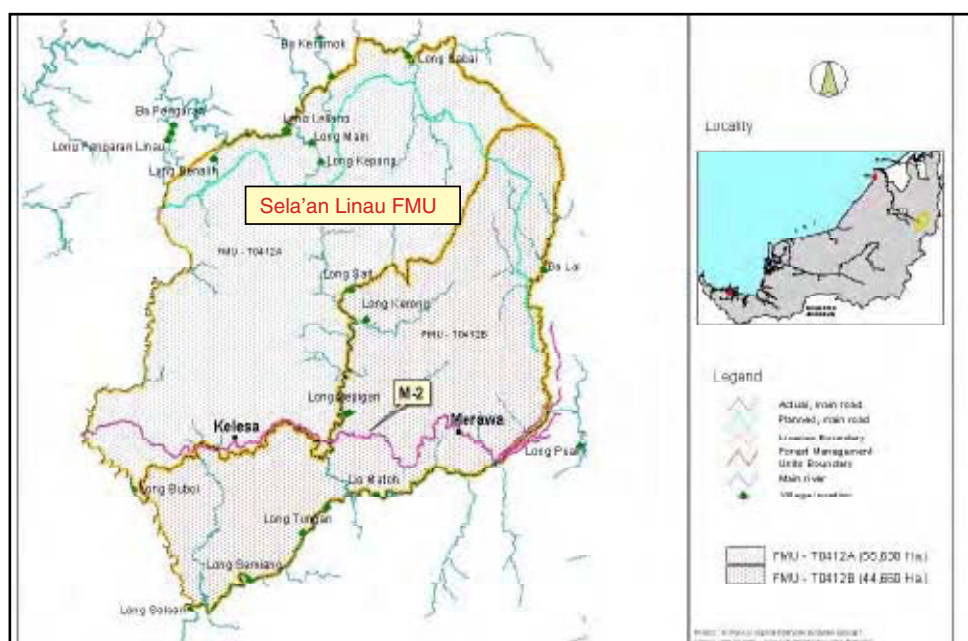
III. DESCRIPTION OF THE LOCATION

The Sela'an Suling PFE and Sela'an Linau FMU

The State Government issued a licence in 1998 to the logging Company. The licensed area is known as the Sela'an Suling Permanent Forest Estate (PFE), which the State Government gazetted on 1 December 2000.³ The licence covers 100,650ha. There are 11 Penan villages, including the Penan Benalih village, and 2 Kelabit villages within this area.

The Sela'an Suling PFE is divided into two timber licences identified as T0412A and T0412B. The area licensed under T0412A covers 55,949ha, was awarded certification on 18 October 2004 by the Malaysian Timber Certification Council (MTCC) to be managed under the Sustainable Forest Management (SFM) concept.⁴ This area is identified as the Sela'an Linau Forest Management Unit (FMU). Map 1 shows the location of the Sela'an Suling PFE and the Sela'an Linau FMU

LOCATION AND DIVISION OF T0412A AND T0412B



MAP 1

³ The letter from the Forest Department of Sarawak, Malaysia is attached as annexure 2.

⁴ Under the SFM criteria, not all trees are cleared. To maintain sustainability, the criteria specify the types and size of trees that can be felled.



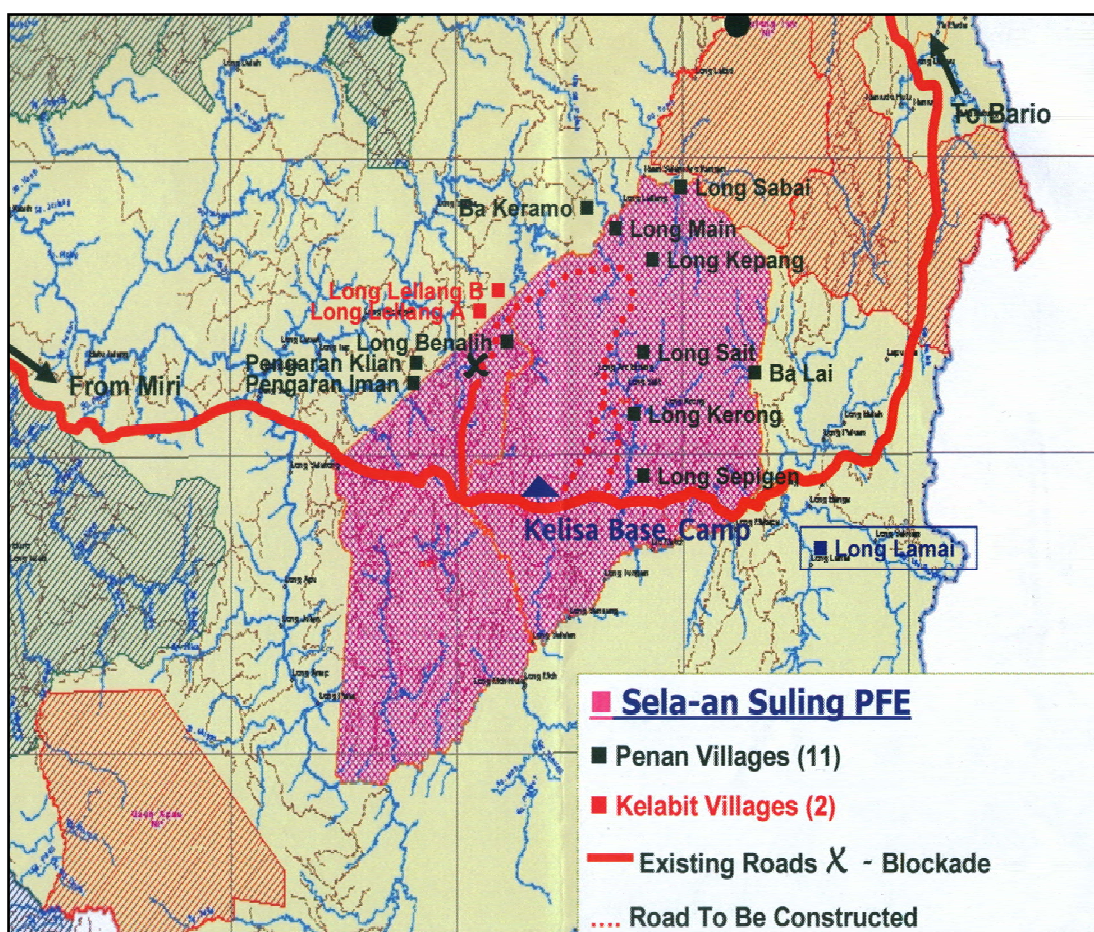
The Penan Benalih Blockade

The Resident Office proposed the construction of a ring road around Mount Murud. This road would be within the Sela'an Linau FMU and its construction would provide access to 13 villages in the interior of Sungai Akah. The construction of the road would be carried out by the logging company.

However, the point where the proposed logging road would start in Long Benalih was then blocked by a structure built by the Penan Community living there. The Blockade was set up to prevent the construction of the road and the start of logging activities – the Community claimed that such activities had encroached into their ancestral land in the past and would now result in further encroachment. Map 2 shows the location of the proposed access road and the Blockade.

According to the Resident Office, the first of the blockades was erected in 2004 by the Penan Benalih. Following this, the Resident Office organised a series of dialogues with the Community. The outcome led to the dismantling of the Blockade on 2 November 2006.

LOCATION OF THE PROPOSED ACCESS ROAD AND BLOCKADE



MAP 2

However, the Penan Benalih rebuilt the structure on 6 November 2006. The Resident Office said it was strengthened on 10 November 2006.

Although the authorities took action by dismantling the Blockade on 28 December 2006, the Penan put up a new one on 2 January 2007.

According to the Penan, the structure was again dismantled on 7 February 2007. They re-erected it on 13 March 2007, but unknown persons torched it on 4 April 2007.



The picture shows a group of Penan from Long Benalih re-erecting the Blockade, which reconstruction started on 13 March 2007.

IV. THE PENAN AND THEIR RESISTANCE TO LOGGING ACTIVITIES

There are more than 40⁵ ethnic groups^{5A} in Sarawak including the Penan, who are known for their nomadic way of life. However, a majority of them have given up this lifestyle and have adopted a settled way of life since the late 1950s and early 1960s.⁶ They now live in small settlements, usually comprising longhouses.

The Penan can be portrayed as simple, gentle, shy and warm-hearted people. They live in harmony with nature, with the forest being a significant place for them as it provides food, shelter and medicine, among other basic necessities.⁷

In the early 1960s, large-scale logging activities began in Sarawak.⁸ The Penan viewed this as a threat since they rely heavily on forest resources. In addition, they feared that logging activities would result in encroachment into their ancestral land.

⁵ See Sarawak Government official portal at <http://www.sarawak.gov.my>

^{5A} According to the schedule under Section 3 of the Interpretation Ordinance (Cap. 1 1958 Ed.), ethnic groups, and the admixture of them with one another, are considered to be indigenous groups in Sarawak; they include Bukitan, Bisayah, Dusun, Dayak (Laut/Darat), Kadayan, Kelabit, Kayan, Kenyah (including Sabup and Sipeng), Kajang (including Sekapan, Kejaman, Lahanan, Punan, Tanjong, Kanowit), Lugat, Lisum, Melayu, Melanau, Murut, **Penan**, Sian, Tagal, Tabun, dan Ukit.

⁶ Source: Sarawak State Planning Unit (refer to Penan in Ulu Belaga Report)

⁷ <http://www.american.edu/TED/penan.htm>

⁸ By the end of 1986, 2.8 million ha of forest had been cleared in Malaysia, much of it on Penan land (for further information, refer to <http://borneoproject.org/>)



After the Government ignored their numerous appeals⁹ in 1987, the Penan resorted to setting up blockades as a sign of protest against the logging activities. A number of them were arrested for this.

In October 1987, the Penan, Kayan and Kelabit Communities constructed their first barriers, shutting down roads at over 20 sites in the Baram and Limbang River districts. About 2,500 Penan took part in the eight-month long protests.

On 25 November 1987, the Forest Ordinance (Cap. 126) was amended to make it an offence under Section 90B for any person to erect blockades across any logging road or to obstruct any Police or Forestry official seeking to dismantle such structures. Upon conviction, the offence carries a mandatory jail sentence of two years and fine of RM6,000.¹⁰

In the 1990s, the Penan of Long Sayan erected blockades on a logging road constructed by Rimbunan Hijau Sdn Bhd.

Twenty Penan groups joined forces in 2000 to construct three new blockades on logging roads constructed near several of their settlements, including those in Long Kevok, Long Nen in Layun, Tutoh and Long Lunyim in Pelutan.

Those living in the upper Linau River area, in Belaga District, built a Blockade to protest logging activities carried out by Shin Yang Sdn Bhd.

The Penan in Long Benalih, in particular, then began blocking logging tracks near their villages from 1993.¹¹

V. ISSUES

Based on SUHAKAM's meetings and field visit, the issues confronting the Penan and the Government became apparent.

Claims of Native Customary Rights (NCR) land

The Penan maintained their right to ancestral land which was acquired through the Community's traditional stewardship and ownership of land.

However, since this method of land ownership is not recognised by the Sarawak Land Code 1958, the Penan have no legal right to make any claims.

They have lodged several appeals to the Government to gazette their ancestral land as a Penan reserve, but have had no success.

⁹ Refer to *Canberra Times*, 10 March 2007 as Annexure 6.

¹⁰ Since the imposition of this legislation, many tribal people have been arrested and imprisoned.

¹¹ However, the Resident Office informed SUHAKAM in a letter (attached as Annexure 1) that the first blockade was erected by the Penan in 2004 to prevent the construction of logging roads.

Alleged motive for, and impact of, the Blockade

The most recent Blockade erected by the Penan Benalih was as a result of numerous ignored appeals to the Government to protect their right to land, as an indigenous¹² community of Malaysia. Their fear of losing ancestral land to logging companies and of the destruction of forests as their primary food source has often been discounted.

Expressing their resistance to logging activities via blockades, however, has also impeded Government efforts to enhance provision of services and assistance to local Communities in the interior of Sungai Akah. This not only includes 11 Penan villages, but also 2 Kelabit villages.

Development projects for the Penan

Although representatives of Government agencies said they have made efforts to bring development to the Penan, the Community claimed that it had only limited access – if at all – to adequate housing, health care, education and basic amenities like supply of electricity and clean and safe drinking water.

Other Issues

Consultation

While the Government and the MTCC have made efforts to consult the Penan in order to resolve land claims and the Blockade Issue, the Community emphasised that there has been no action on the part of the Government to protect their rights to land despite their status as an indigenous people.

Alleged profiteering from diesel transportation

The Community was accused of taking advantage of diesel transportation to the interior of Sungai Akah. It was alleged that the main motivation for the Blockade was to gain profit from diesel transportation. Vehicles carrying fuel are allegedly stopped at the Blockade area by the Penan and are not permitted to pass until a 'levy' is paid.

However, the Penan denied that this was their main motivation and stressed that the Blockade was erected to protect their ancestral land.

Alleged NGO influence on erection of the Blockade

There were claims that the decision to erect the Blockade had been influenced and supported by NGOs. The Penan refuted this, saying that they had made the decision to build the Blockade in order to protect their rights.

¹² According to the schedule under Section 3 of the Interpretation Ordinance (Cap. 1 1958 Ed.), ethnic groups, and the admixture of them with one another, are considered to be Indigenous groups in Sarawak include Bukitan, Bisayah, Dusun, Dayak (Laut/Darat), Kadayan, Kelabit, Kayan, Kenyah (including Sabup and Sipeng), Kajang (including Sekapan, Kejaman, Lahanan, Punan, Tanjong, Kanowit), Lugat, Lisum, Melayu, Melanau, Murut, **Penan**, Sian, Tagal, Tabun, dan Ukit.



Objection to construction of logging road

There were contradicting claims between the Penan and the Government agencies over objections to construction of the logging road.

While the agencies said only the Penan residing in Long Benalih objected to the plan, the Penan claimed that only the 2 Kelabit villages had agreed while everyone from the 11 Penan villages objected.

2. SUHAKAM'S OBSERVATIONS AND RECOMMENDATIONS

SUHAKAM'S OBSERVATIONS

SUHAKAM's observations are the result of dialogues and meetings with the elected State Legislative member for Ba' Kelalan, leaders of the affected Penan villages, representatives of the logging Company, the Resident Office, related Government agencies including the Sarawak Forestry Department, Sarawak Forestry Corporation, the Police force, MTCC, Conflict Mediation Project and concerned NGOs. Direct observations were made during visits to the Blockade site and the nearby Penan settlement in Kampung Ba Data Bila. Background materials were obtained from available literature relating to the Penan population in the area.



SUHAKAM's dialogue with the affected Penan communities at the Kampung Ba Data Bila on 4 May 2007.

Native Customary Rights Land

The main concern of the Penan relate to their 'unrecognised' claims over ancestral land. The claims are based on the fact that their forefathers had foraged for centuries within the area. Within its nomadic pattern of life, the Community had developed a unique system of claims of stewardship or custody to specific forest products as well as foraging areas for their specific nomadic groups. To the Penan, the ancestral foraging forests belong to them. It is only after the late 1960s that groups of Penan have adopted a semi-settled or settled way of life.



The Penan within the Sela'an Linau area, including those in Long Benalih, still rely heavily on the forest for food and other daily necessities. This almost complete dependence on the forests has led to an intense attachment to the natural habitat. This has also meant that, unlike other indigenous groups in Sarawak, they have not developed any form of settled agriculture or even shifting cultivation. Hence, the establishment of customary land rights within the ambit of the Sarawak Land Code has had a tremendous impact on their land claims.

Despite being acknowledged as having roamed as nomads and subsequently semi-settled, then settled for the last 40-50 years in villages or longhouses, they have legal difficulties in establishing native customary rights (NCR) to land. Section 2, Part II, of the Sarawak Land Code 1958 states:

The methods by which native customary rights may be acquired are:

- (a) the felling of virgin jungle and the occupation of the land thereby cleared;
- (b) the planting of land with fruit trees;
- (c) the occupation or cultivation of land;
- (d) the use of land for a burial ground or shrine;
- (e) the use of land of any class for rights of way.

This Section was in the Land Code (Amendment) Bill 2000, passed by the State Assembly on 9 May 2000.¹³ Before the amendment, the Section had an additional provision [Section 5(2)(f)] which included 'any other lawful method' as a way to establish claim to land. This provision was previously used constantly to argue for the Penan claim to land.¹⁴ The deletion of Section 5(2)(f) has nullified their *adat* system. It tacitly denies the indigenous groups rights to exercise their culture which includes traditional claims over territorial domain (*pemakai menua*) and communal forest (*pulau galau*, in Iban), or *tana' pengurip* (Penan) that denotes forest areas for hunting and gathering, or *jelajah asal* (Kayan-Kenyah).

This action can be considered a step backwards. Many former British colonies, such as Canada, Australia, New Zealand and Africa have made significant progress in restoring customary rights of the indigenous peoples to their ancestral land.¹⁵

More significantly, NCR have been given due recognition in Malaysia, as in the case of **Adong bin Kuwau & Ors v The Government of Johore (1997)**; **Nor Ak Nyawai 7 Ors v Borneo Pulp Plantation Sdn Bhd & Ors (2001)**; and **The Selangor State Government & Ors v Sagong Tasi & Ors (2005)**.

In the case of **Nor Ak Nyawai 7 Ors v Borneo Pulp Plantation Sdn Bhd & Ors**, the High Court made a landmark decision. It ruled that the NCR claimed by the indigenous Communities in Sarawak do not owe their existence to any Orders or legislation, but were in existence long before and have survived all Land Orders and legislation.¹⁶

¹³ *Southeast Asian Studies*, Vol. 43, No. 1, June 2005

¹⁴ To the indigenous peoples, Section 5(2)(f) is crucial to their customary rights because it incorporated and codified their cultural practices in the Sarawak Land Code, and therefore these practices are legal in their opinion. Customary law is an integral part of their institutions of inheritance, and therefore, it is lawful to practise such a culture.

¹⁵ Research on the Rights of Indigenous Peoples in Malaysia: Land Rights of the Orang Asli in Peninsular Malaysia

¹⁶ However, SUHAKAM notes that the case has been brought to the Court of Appeal in 2005 as the case Superintendent of Lands & Surveys, Bintulu v. Nor Anak Nyawai & Ors and another Appeal. The case is pending appeal.

The Penan Benalih Blockade

It should be noted that the Penan Benalih Blockade is not an isolated issue. For many years, the Penan have been taking their grievances to the authorities. There have been several other blockades set up by other local Communities in Sarawak, including the Iban, in their attempt to protect ancestral land from logging activities.¹⁷

Similarly, the series of blockades erected by the Penan of Long Benalih represents a cry for attention to the State authorities and parties therein to look into their predicament. To them it is a call for further negotiations and is aimed purely at protecting their 'ancestral' land from logging activities.



SUHAKAM's field visit to the Blockade area in Long Benalih on 4 May 2007.

While SUHAKAM recognises that there is legal restriction to blockades, the State has the responsibility to provide avenues for the Penan to highlight their grievances especially on issues pertaining to their ancestral land.¹⁸

Due to the Sarawak Land Code 1958, the Penan have been left without legal rights to their traditional territories, despite the fact that they have practised their *tanah pengurip* custom long before the Land Code came into existence. Timber licences

¹⁷ On 20/4/2007, *Berita Harian* reported that the Penan from interior of Baram built five blockades to prevent the logging activities. These blockades were set up at Long Sayan and Long Kevok near Sungai Apoh, Long Lutin (Sungai Patah), Long Kevok (Sungai Sayun), Tutoh and Ba'Bevan (Sungai Si'ang). On 30 April 2007, *Malaysiakini* reported that a blockade was being built in Sri Aman by a group of Iban from Kampung Abok and Kampung Aping. All these blockades were erected to protect ancestral land against encroachment by logging companies.

¹⁸ After the series of blockades in the 1980s, the Forest Ordinance (Cap. 126) was amended to make it an offence under Section 90B for any person to erect blockades across any logging road or in obstructing any Police or Forestry official seeking to dismantle the blockade. Upon conviction, the offence carries a mandatory jail sentence of two years and a fine of RM6,000.



issued by the State Government seldom, if ever, take into account the Penan claims to NCR land. The issuance of those licences has created additional obstacles to the Community's claims.

After numerous unsuccessful appeals to the State Government to recognise their customary land rights as an indigenous community, as well as to ensure that their traditional environment is protected against destruction, the Penan of Long Benalih erected a series of blockades despite Section 90B of the Forest Ordinance. The site at Kampung Ba Data Bila was chosen to stop the construction of a logging track by the timber concessionaire and to prevent its access to the concession area.

SUHAKAM was informed by MTCC that the logging track would be built taking into consideration the needs of the local Communities, as well as to facilitate the Government in delivering assistance and services to the area. SUHAKAM was also made to understand that the logging activities would only commence after obtaining consent from local Communities.¹⁹ However, some of the Penan still have reservations about the construction of the road as they feel that it would further jeopardise their access to land rights, as well as have a negative impact on the environment as has happened in the past.

Community engagement prior to issuance of logging licence

The State Government gazetted the Sela'an Suling area on 1 December 2000 as a protected PFE in accordance with the relevant administrative procedures. The remote location and difficult terrain coupled with the nomadic lifestyle of the Penan Community would have made the consultation exercise difficult. There are concerns about the inclusiveness and accuracy of background data on Penan habitation within the area being gazetted.

As part of the State drive to exploit the forest resources, the area was leased out to the logging Company in 1998. In an effort to penetrate the European market, the concessionaire applied for Forest Management Certification from MTCC. The process of certification included consultations with all relevant parties including the Penan groups involved in the Blockade.

This certification was duly accorded in 2001 subject to the logging Company complying with several Corrective Action Requests (CAR) that were identified. One of these was in relation to the social impact on local Communities. There were indeed consultations with leaders and members of the Penan Community including those leaders who met with SUHAKAM during its investigation.

The Penan insisted that they were not adequately consulted and that the Blockade was a peaceful means for them to get the State authorities and their agents to sit down and engage them further. SUHAKAM's dialogues with the State agencies as well as with the MTCC indicated that there had indeed been efforts to engage the local Community prior to certification of the FMU.

¹⁹ See slide 41 of MTCC Presentation to SUHAKAM in Annexure 4.

Issues on development for local Communities

- *Delivery of Government-related assistance and services*

SUHAKAM was made to understand that the Government had approached the logging Company to construct roads that would provide better access to the villages. The roads could facilitate transport into the area and could subsequently be upgraded by the Government, once logging activities have ceased.

The main concern of the Resident Office, therefore, was that the Blockade erected by the Penan of Long Benalih would impede efforts to improve the delivery of Government-related services and assistance to the 11 Penan and 2 Kelabit villages in the interior of Sungai Akah. Currently, Government officials have to use jungle tracks and river transportation to carry out such delivery.

The Penan Community, however, felt that the Government – not the logging Company – should bear the burden of constructing the access road to these villages. Its argument is that a logging road would only facilitate further encroachment into their perceived customary land areas, degradation of the environment and dwindling of game and forest products. This would affect their traditional food sources.

The site visit to Kampung Ba Data Bila revealed that there was no active logging within the vicinity of the Blockade site as yet. The river is relatively unpolluted. SUHAKAM was informed during a briefing by the MTCC that logging activities carried out within the FMU under MC&I guidelines would have minimal impact on the environment.

SUHAKAM is of the opinion that, if there is monitoring and compliance with stringent standards, there is no reason why extraction of logs by the licensee cannot co-exist with the interests of the Penan Community. It must be pointed out that traditional logging and clearing of primary forests for timber and/or oil palm estates – as has been observed in other areas in Upper Belaga – do indeed impact negatively on the environment and the livelihood of the local Communities if no alternative land is allotted to them.

- *Issue of poverty and the need for infrastructure and basic facilities*

To date, the Penan in the affected area remain among the most highly-marginalised groups in Malaysia. Their socio-economic status has not changed much from previous years. Limited access to education, health care and other basic amenities have increased their vulnerability to human rights violations.

During SUHAKAM's visit to the Penan village in Kampung Ba Data Bila, it was both observed and gathered through dialogues with Community leaders, that the Penan villagers live in abject poverty. Access to the area is via a logging track. Other infrastructure and basic facilities are conspicuous by their absence; the villagers do not have access to clean piped water, toilet facilities, electricity supply, or to a school. The majority do not possess official documents.

There is no visible form of any meaningful agricultural activity by the Community. It was even more worrying to hear a young member of the Penan delegation commenting about difficulty in planting vegetables or keeping livestock at home, let alone



SUHAKAM's visit to the Penan longhouse in Kampung Ba Data Bila found that the communities live in abject poverty.

being involved in basic agricultural and livestock-rearing activities. Clearly, both the Community and relevant State agencies need to put a tremendous amount of work into improving the situation.

SUHAKAM's previous visits the Penan villages located in Long Singu and Long Jaik, in Ulu Belaga, Sarawak, also determined that the villagers had limited or no access to basic amenities and facilities.²⁰

Whenever the plight of the Penan has been highlighted by concerned groups and individuals, the authorities have had a tendency to label the Community and the concerned groups as being against development.²¹ The Penan, when asked, have responded that they are in need of services and assistance for development and would welcome any help from the Government. There is obviously a dire need for better and more positive engagement of the parties concerned.

SUHAKAM'S RECOMMENDATIONS

Based on the dialogue sessions, briefings and findings from the visit to the Blockade site and the Penan longhouse in Kampung Ba Data Bila, SUHAKAM makes the following recommendations.

Amendment to the Sarawak Land Code 1958

Land ownership is an empowering tool for any rural community. It is even more pertinent to the Penan because of their intricate and close relationship with the land.

²⁰ SUHAKAM organised a visit to Long Singu and Long Jaik, Ulu Belaga on 18 September 2006. This was following complaints to SUHAKAM by the Headmen of two Penan Longhouses pertaining to the encroachment into their ancestral land by a logging company. The outcomes of the dialogues and visits in Ulu Belaga are found in SUHAKAM's Report on the Penan in Ulu Belaga: Right to Land and Socio-Economic Development. The Report was published in June 2007.

²¹ The Penan are emphatic that they are not against development, as they are no longer nomads and have settled based on the Government's wishes. Their children even go to school in Long Lelang.

Hence, to address the issue of the Penan claims to NCR within the licensed area, there should be political will to review the situation and make relevant amendments to the State Land Code in order to legally recognise the customary rights of the Community.²²

Additionally, Ordinances governing land, forest and environment protection must ensure the continuing protection and promotion of the rights of the Penan Community.

SUHAKAM further recommends that the State Government should initiate an in-depth study into areas of human rights in the context of the Sarawak Land Code and related Ordinances and administrative directives. Such reviews should take cognizance of the Penan concept of land and forest stewardship as well as their past nomadic pattern of life.

Given the complexity of land issues in Sarawak, this recommendation can become an approach to a long-term solution. In the intervening period, steps should be taken to address the Blockade Issue. The Government has to ascertain the reasons that have prompted the Penan to erect the barricade. At the same time, steps have to be taken by the Government to ensure that the Penan are not dispossessed of their native land. In this light, the following recommendations are pertinent.

- *Allocation of land for the Penan*

The Government should take steps to allocate adequate titled land for each of the current families residing in the area. The Penan Community should ensure that such land is utilised for agriculture and other economic activities. In addition, Penan access to surrounding forest areas and products should be maintained. This is to provide the Community with a bridging source for food, medicinal products as well as timber for personal use. Guidelines governing such access should be developed to prevent exploitation by unscrupulous parties. Communal forest areas for all the surrounding villages or each longhouse or village should be gazetted.²³

- *Construction of access road*

SUHAKAM recommends that the construction of the access road should continue in an effort to improve transportation and delivery of services. This would enable the provision of services that meet basic needs and which are fundamental to the Community's human rights. The road should be upgraded and maintained from time to time to facilitate use by the Community. This would encourage trust among the Penan in the Government's efforts.²⁴

22 The same recommendation was made by SUHAKAM in its Report on the Penan in Ulu Belaga: Right to Land and Socio-Economic Development.

23 SUHAKAM made the same recommendation in its Report, *Hak Masyarakat Asli Sarawak* (June 2002). The recommendation was based on the High Court and Appeal Court decisions in the case of *Adong bin Kuwau & Ors v Kerajaan Negeri Johor & Anor* (1997) 1 MLJ 118, which stated that:
... the aboriginal people's rights over land include the right to move freely about their land, without any form of disturbance or interference and also to live from the produce of the land itself....

24 During SUHAKAM's meeting with the Penan representatives on 14 March 2007, they expressed the need for a road to enhance accessibility. But they want this to be taken up by Government agencies, such as the Department of Public Works rather than the logging Company. During the field visit to Long Benalih, the Penan insisted that they are against construction of the road, but that this must be done by the Government.



- *Continued and intensified consultations and negotiations*

Efforts should be continued and intensified to get involved parties to carry on negotiations to resolve the Blockade Issue and to look into the Community's underlying concerns that have led to the current situation.

Ways should be sought to strengthen the on-going mediation process between the logging company, Government agencies and Communities concerned. External, influential and acceptable mediators should be sought out to facilitate this effort.

The mediators need to have access to the State policy makers. If needs be, independent international organisations like the United Nations Human Rights Council, through its Indigenous Peoples Working Group, could be roped in.

- *Fully implement SFM based on the MC&I 2002 criteria*

Exploitation of the forest resources must be done in accordance with the guidelines of the Malaysian Criteria and Indicators (MC&I) 2002 for Forest Management Certification. The MC&I 2002 contains numerous principles and standards that also cover the legal and customary rights of local Communities and address situations where there could be possible disputes over land. There must be compliance with both minor and major CARs to ensure sustainability of forest products, which are integral to the socio-cultural identity of the local Communities. The welfare of the Penan Community residing within the area must be made a top priority. Monitoring activities by the relevant parties must be in place to allay apprehension among the Penan. This would help minimise the social and environmental impact of logging and plantation activities.

- *NGO role and responsibilities*

NGOs and Government agencies should complement each other's work for the benefit of the Penan, as this would bring about positive outcomes. At the same time, the State should take the initiative to correct misconceptions among NGOs, both foreign and local, that exploitation of permanent forest resources is environmentally bad or necessarily infringes on the rights of the indigenous Communities like the Penan of Long Benalih. Such a drive should include concrete tangible measures to address current issues. State-backed NGOs like AZAM and SDI could take the lead in this move.²⁵

Economic and social development for the Penan

Existing affirmative action plans for the Penan Community and their implementation by the State Planning Unit (SPU) should be strengthened. The State Cabinet Committee for Penan Affairs needs to be reactivated.²⁶ Additionally, adequate funds must be allocated or channelled to the relevant State agencies.

²⁵ Angkatan Zaman Mansang (AZAM) and Sarawak Development Institute (SDI), two non-governmental organisations whose focus is on communication for development, community development and development issues in the State.

²⁶ The State Cabinet Committee for Penan Affairs was started on August 1987. The Committee was chaired by YB Dato Sri Abang Zohari Bin Tun Abg Haji Openg. SUHAKAM notes that the State Planning Unit, Sarawak in its letter to SUHAKAM dated 24 September 2007 (letter in annexure 5) stated that the State Cabinet Committee for Penan Affairs is still active. They said State Cabinet Committee is responsible to develop and implement policies and development programmes for the Penans as well as to assist settled penan to adapt to a settled way of life and to cope and achieve development as those enjoyed by the mainstream society. However based on SUHAKAM's observation during its visit to some Penan villages in Long Benalih, Miri in 2007 as well as Long Singu and Long Jaik in Belaga, Kapit in 2006, there is no evidence of development in the areas. The villagers had inadequate access to basic needs such as nutritious food, healthcare, education, housing, clean and safe drinking water.

Federal agencies should be actively involved in areas under their jurisdiction like education, rural development, health care and issuance of personal documents. The relevant Ministries should ensure that funds are allocated for implementation of affirmative action programmes. The provision of much-needed infrastructure like roads and water and electricity supply should be prioritised.

Special funding at both State and Federal levels should be available to facilitate development. There should also be smart partnerships with the private sector. Special corporate incentives should be considered to encourage wider participation.

Specially-tailored training programmes should be fast-tracked to help the Community to cope with the challenge of change, both at the mindset and physical levels. Mindset change must take place among certain groups within the Community. There must be genuine effort towards self improvement, and taking small yet important steps like acquiring basic farming skills or job skills in the plantation and logging industry.

Extension projects by Government agencies like the Agricultural Department must be strengthened. Poverty eradication programmes covered by the Ninth Malaysia Plan must reach this marginalised group. Genuine efforts must be made to provide opportunities for the Community to participate in areas where their knowledge is useful and applicable. Training should be provided in areas where they lack expertise.

Service centres should be set up in villages, complete with a school, medical and health care facilities and an administrative unit to cater for matters like national registration and implementation of various Governmental extension programmes. Emphasis must be given to educational facilities among these small, scattered groups. Adult education must go hand-in-hand with this. State-backed NGO should take more interests in these groups.



3. CONCLUSION

The issue of the Penan and their NCR to land has generated concern both at national and international levels. Various Government agencies and NGOs continue to urge the Government to take immediate steps to empower this vulnerable group and to specifically address their right to ancestral land.

The Penan Community in the Sela'an Linau FMU area has a close socio-cultural identification and unique attachment to land and the surrounding forests. Development and exploitation of forest resources by the State or their agents have imposed constraints on the Penan lifestyle. The Community has faced difficulty in adapting to the changing environment.

SUHAKAM has, in the past, conducted field studies, dialogues and workshops in the field of human rights promotion and protection among the Penan Community. The relevant recommendations have been made and published as mandated under the SUHAKAM Act 1999.

Despite all these efforts, the Community seems nowhere nearer to achieving their perceived rights to their ancestral land. Continuing access to forest resources which are integral part of their identity and their livelihood are compromised. The Community has difficulty in changing from a hunter-gatherer lifestyle to a settled agro-based one. Their history, topography of their settlements, difficult and inaccessible terrain, laws governing land ownership and access to previous foraging grounds have collectively contributed to their current predicament and disempowerment. The marginalisation of groups that reside within a forest concession area being harvested based on FMU guidelines is indeed paradoxical.

SUHAKAM's dialogues with the Community, relevant State parties and their agents and concerned NGOs have unfortunately confirmed the marginalisation of the Penan. There is a lack of basic infrastructure like roads, safe water supply, basic sanitation facilities, and access to medical and health care. Educational facilities are difficult to reach. The Penan lack access to meaningful and gainful economic activities. Agriculture extension projects do not appear to have reached them. The majority of the population is without official documentation. Urgent steps are needed to address the outstanding issues involving the lack of basic infrastructure, amenities and services. An effective plan of affirmative action and implementation by the relevant agencies is an immediate necessity.

The construction of the proposed access road by the logging Company is viewed as an additional threat to their ancestral land, the environment and means of livelihood. The majority of the Penan have refused to see the proposed road as a means to bringing in much-needed development, facilities and services. However, any protests must stay within the framework of existing laws until such a time as amendments are put into place.

There exists a perception-gap of what the Community interprets as their traditional land and what is codified in the existing State Land Code. This makes it difficult to conduct meaningful dialogues and engagement. The construction of the blockades

within the area, SUHAKAM understands, is the action of a desperate Community that is trying to gain attention to their problem. Illegal as the Blockade may be, it must also be seen as a channel of communication. Because of the apparent distrust of the affected Communities in well-meaning State agencies, there is a need for third-party mediation. There must be genuine willingness among all parties concerned to negotiate and find common ground.

There is a need for an independent review of the Land Code in terms of protecting the human rights of the Penan Community. Their past unique nomadic lifestyle and late point of settling down must be taken into account. Other Ordinances which impact negatively on the Community's access to forest products and game also need to be reviewed.

While emphasis is given to the need to respect and protect the rights of the Penan, SUHAKAM acknowledges the concurrent need for social and mindset change among them. This is to ensure that they enjoy socio-economic parity to mainstream society. The Penan Community in the Sela'an Linau FMU area must also accept that the State has the right to sustainable utilisation of forest resources and development within the area. However, it is also the State's duty to ensure that such activities do not further jeopardise an already marginalised Community. There is thus a need for the Government to balance the country's economic development and exploitation of resources with the promotion and protection of basic human rights of its citizens, especially, those as vulnerable as the Penan.



PART 2

REPORT ON SUHAKAM'S MEETINGS AND FIELD VISIT

4. MEETING BETWEEN SUHAKAM AND RELEVANT GOVERNMENT AGENCIES AND THE LOGGING COMPANY

I. INTRODUCTION

SUHAKAM organised the Meeting with representatives of relevant Government agencies and the logging Company on 14 March 2007. Also present were two representatives of the Penan Community.

Objectives

The objectives of the Meeting were to:

- a) Respond to a letter from the District and Resident Office, Miri Division;
- b) Obtain clarification, views and concerns from relevant Government agencies and the Company in relation to the Penan Benalih Blockade Issue ('the Blockade').

The information obtained from the meeting will provide input to SUHAKAM to identify its next course of action.

II. PROCEEDINGS OF MEETING

The Meeting began with an introduction by the Chairperson, Datuk Dr Denison Jayasooria, who also presented an overview of the objectives and SUHAKAM's role in the meeting. Mr Nelson Balang, the Ba' Kelalan Assemblyman, then gave an overview of issues relating to erection of the Blockade in Long Benalih, Baram, Sarawak. An open dialogue session followed.

Discussion Session

The open session allowed participants to explain the need for access roads to interior of Sungai Akah in Baram, and to express their views on the Blockade. A summary of the discussion follows.

Road facilitates development efforts

The representative of the Resident Office, Miri Division, explained that Sungai Akah, which includes 11 Penan and 2 Kelabit villages, falls under the jurisdiction of the Office. Hence, it is responsible for ensuring that development reaches those Communities.

The interior of Baram is only accessible by air and river. With the construction of logging roads, access to villages in the area is enhanced.

The Resident Office was of the opinion that access roads would also facilitate the Government in delivering assistance and development to the 287 families residing in the interior of Sungai Akah. For instance, the roads would improve access to schools and health clinics.



The use of logging roads in the interior of Sarawak for delivery of Government assistance and services has proven to be effective. For instance, the construction of a logging road in Long Keluan, Baram, has benefited the Communities residing in the area, both in economic and social terms.

Claims to Native Customary Land (NCR)

With regard to NCR claims within the area licensed for timber extraction, a representative of the logging Company, Samling Sdn Bhd, clarified that its operation is in accordance with the timber licence awarded by the Government and Sarawak Land Code 1958. Confirmation could be obtained from the Sarawak Forestry Department. To the Company's knowledge, there is no NCR title within the area. Hence, the Penan Community is in no position to make a claim to NCR Land.

A representative of the Sarawak Forestry Department confirmed this and added that no NCR Land was identified in the area before the issuance of the timber licence. Although there were farms cultivated by the Penan, these were only established after 1958 and hence, were considered as non-NCR Land.

Additionally, the representative said that – based on a survey the Department had carried out – no clear boundary or perimeter was found on the ground that might verify that the land belongs to the local Communities.

A representative of Samling emphasised that so long as the Company is operating under a valid licence issued by the Government and there is no provision stipulating the Company's obligation on NCR matters, the Government would have to be the main entity in dealing with any such issues.

Assistance to Communities in Sungai Akah

The representative of the Resident Office said the Government has formulated and implemented various programmes to promote progress among the Communities residing in the interior of Baram, including those in Sungai Akah.

He acknowledged the challenges faced by the local Communities when dealing with rapid change. Nevertheless, he said the Government tries to ensure that the Communities, especially the Penan, are not left behind in terms of development.

Given the socio-economic background of the Penan, the Government has established Penan Service Centres to ensure that the Community can easily access education, healthcare and agricultural facilities and services. However, it has been found that the Penan do not fully utilise the service centres.

A representative of Samling added that the Company has provided further forms of assistance to the local Communities in the interior of Baram, which already benefit from the access road. For instance, the Company has helped build a Penan longhouse in Long Bubo, and built a mini hydro-dam in Long Main and a school in Long Jekitan.

Communities negatively affected by blockade

The discussion turned to the adverse impact of the Blockade, in that it has affected effective and efficient delivery of Government assistance and services.

The representative of the Resident Office said the Blockade set up by the Penan from Long Benalih has not only affected delivery of services to those protesting the road construction, but also those who have not, including members of other ethnic Communities residing in the area.¹

Participants further emphasised that, of the 287 families residing in the interior of Sungai Akah, only a fraction of the Penan Community was against the logging road. The rest have not opposed it as they are aware that the road could be useful in the delivery of services. In this regard, the objection of some of the Penan has held back the development of other Communities.

The representative of the Conflict Mediation Project (CMP) pointed out that most members of the Long Main and Long Lellang (Kelabit Community) understand the approach and benefits of Sustainable Forestry Management (SFM) and therefore have no objection to it. He said that his understanding of the situation is that the objection raised by the Penan in Long Benalih was at leadership level and that the members of that Community do not share their leader's stance.

The representative of the Resident Office concurred. In saying that the Community in Long Benalih has an understanding of SFM, he also clarified that it only agrees to construction of the access road, not to logging activities.

Logging procedure

According to the Sarawak Forestry Corporation (SFC), logging activities would not clear all trees in the concession area. The SFC has specified the minimum diameter limit for each species before trees can be felled. For instance, the minimum acceptable size is 60cm for the *Meranti* and *Cengal* species and 45cm for *Nyatoh*.

'Levy' on transportation of fuel

The representative of the Resident Office claimed that the Penan members responsible for erecting the Blockade are taking advantage of this in relation to transportation of fuel and other goods to the interior of Sungai Akah. For instance, they charge RM10 for every gallon of diesel transported from the Blockade in Long Benalih to Long Lellang. As a result, the price of diesel – at RM35-40 per gallon – is more than seven times that charged in Miri (RM5.60 per gallon).

The representative said he believes that the main motivation behind the Blockade is the profit gained from diesel transportation charges.

¹ The participant said that in Sungai Akah, the Penan are neighbours of the Kenyah and Kelabit Communities; in Apo Tutoh, they live side by side with the Berawan, Kayan, Kelabit and Kenyah Communities; in Tinjar, they live adjacent to the Kenyah, Berawan and Iban Communities.



Penan Blockade supported by NGOs

The representative of the Resident Office said that, through dialogues with the Penan Community, it has been found that the Penan responsible for the Blockade have obtained support from several NGOs. Further investigation by the Resident Office revealed that the NGOs include Sahabat Alam Malaysia, Borneo Research Institute Malaysia, Sarawak, Greenpeace, Global Witness (UK), Bruno Manser Fund (Switzerland), Friends of The Earth (Netherlands), International Work Group for Indigenous Affairs (Denmark), Environmental Investigation Agency (UK), Robin Wood (Germany) and Rainforest Foundation (Germany).

The need for mediation

The representative of the CMP emphasised the need for an effective mediation approach to take heed of the concerns of the Community in the area, as well as the Government's aspiration to ensure development for all. This should be done expeditiously since the Penan Benalih Blockade Issue has gone on for too long.

He added that CMP is attempting to mediate the Blockade Issue. However, this process is still at an early stage.

III. CONCLUSION

The Meeting concluded with the Chairperson informing participants that information gained from this session and another meeting with Penan representatives would be examined and placed before the Commission to determine the next course of action.

LIST OF PARTICIPANTS

SUHAKAM Commissioners

- Datuk Dr Denison Jayasooria (Chairperson)
- Dr Mohammad Hirman Ritom Abdullah
- Datuk Hj Khalid bin Hj Ibrahim

SUHAKAM Officers

- Rafidah Yahya
- Nurul Hasanah bt Ahamed Hassain Malim
- Sophian bin Osman
- Syahrir Rizwan Yahua

Participants

- YB Nelson Balang, Ba'Kelalan Assemblyman
- Tuan Ose Murang, Resident of Miri Division
- John Anak Ngayop, Forestry Department
- Abdullah bin Ahmad, Forestry Department
- Sandum Anak Hitam, Regional Manager, Sarawak Forestry Corporation
- Rudolph Urang Mudit, Area Manager, Sarawak Forestry Corporation
- Thaina S Raja, Samling Sdn Bhd
- KC Leng, Samling Sdn Bhd
- NS Yong, Samling Sdn Bhd
- Henry Chan, Conflict Mediation Project of Samling and Long Benalih
- Lance Corporal Arbee Bang, Sub-Branch Detective of Miri, PDRM
- Lance Corporal Anderson Rantai, Sub-Branch Detective of Miri, PDRM

*Note: The Resident of Miri Division invited Rocky Bujang, a Penan Representative of Long Benalih who had agreed to the construction of the logging road, to attend the Meeting.



5. MEETING BETWEEN SUHAKAM AND REPRESENTATIVES OF THE PENAN COMMUNITY AND RELEVANT NGOs

I. INTRODUCTION

The Meeting between SUHAKAM, Penan Representatives and the Borneo Research Institute of Malaysia, Sarawak (BRIMAS) was held on 14 March 2007, as a follow-up to SUHAKAM's Meeting with representatives of relevant Government agencies and the logging Company.

Objectives

The objectives were to:

- a) Obtain clarification from Penan representatives as to their concerns that led to the erection of the Blockade;
- b) Obtain clarification from Penan representatives on claims made by representatives of Government agencies.

Similar to the Meeting with representatives of the Government agencies and the Company, information obtained from this Meeting would enable SUHAKAM to determine its next course of action.

II. PROCEEDINGS OF MEETING

The Chairperson for the session, Dr Mohammad Hirman Ritom Abdullah, welcomed participants and briefed them on the objectives as well as SUHAKAM's role in the meeting.

Before the open discussion began, a Penan representative gave a presentation based on their earlier submission² to SUHAKAM. A summary of the submission follows.

Native Customary Rights (NCR)

The Penan Community draws from its cultural traditions in determining land ownership, which covers forest areas and even rivers.

Once the land, forest or river is occupied or continually used by a particular group or *panyen*, it automatically establishes a claim on the area. The boundaries are identified based on nearby rivers, hills, valleys and even big rocks. Each group is only permitted to utilise or forage in areas within the established boundaries.

Permanent settlements established by *panyen* have existed since the time of Rajah Brooke and British Administration in Sarawak. The Community has also cultivated padi fields and vegetable farms, which the representative said, is evidence of their right to land and NCR titles.

² The Penan submission to SUHAKAM is attached as Annexure 3 in Part 3 of SUHAKAM's Report on the Penan Benalih Blockade Issue.

No Government records on Penan boundaries

Although the boundaries established by other indigenous communities in the area were recorded during the British Rule, boundaries established by the Penan were not registered. In light of this, the Community has urged the Government to document the boundaries to ensure the Penan's rights to land.

With assistance from other parties, the Community has carried out its own survey to document the location of boundaries, in the hope that this will be taken into consideration and officially confirmed by the Government.

Impact of logging and 'planted forest' licences

Logging and tree planting activities have destroyed Penan land and forest areas, and at the same time polluted rivers. This has adversely affected the Community's quality of life.

Permanent Forest Estate (PFE)

The Sela'an Suling PFE gazetted within Penan boundaries has dissolved the Community's rights to the land.

Action by the Penan Community

The Community has reported its dilemma to the Government. It has raised its problems during meetings and dialogues with Government representatives and even through letters to the Government, but has received no response.

The logging Company has not shown the Community any relevant documents from the Government that indicate permission to log in the area. As such, the Penan resorted to erecting the Blockade to impede further encroachment into their ancestral land.

Community's appeal to the Government/Company

The Penan appealed that the Government/Company considers the following:

- That the rights of Penan to ancestral land are respected;
- That the Government conducts a survey and officially records Penan ancestral land;
- That the Government halts logging activities in Penan ancestral land;
- That the Sela'an Suling PFE within Penan ancestral land is cancelled;
- That the Government ensures the Penans are informed and consulted before any form of development is implemented in their area – the Company should also make such efforts before it commences logging activities;
- That the Government respects the decisions of the Penan Community;
- That the natural condition of the forest is maintained in the affected areas;
- That the Government considers the use of rivers as the main transportation route to deliver services and assistance to the Community.



Discussion Session

The following issues were discussed.

Blockade set up to protect Penan land

The representative of Long Benalih clarified that the Blockade was set up to protect Penan ancestral land. He explained that the Blockade was originally set up in Long Benalih and Long Pengaran in 1993³ when Samling Sdn Bhd began logging activities.

Before the Blockade was erected, the villagers had discussed the plan and informed the Company about the Penan boundaries. Following the discussion, the Company representative agreed not to log within these boundaries.

Despite the agreement, logging continued in the Penan ancestral land. The Penan then demanded RM14,000 in compensation, but the Company refused to pay.

The Penan representative also claimed that the Police had advised the Company to halt logging activities in the area.

Impact of SUHAKAM's visit in 2001

A representative of Long Sait said that SUHAKAM's visit to the area in 2001 had created a positive outcome. Following the visit, Samling had restricted its operations to areas outside the Penan boundaries.

However, in 2007, the Company attempted to enter the Penan ancestral land. Following this, the Penan constructed a Blockade which was later dismantled by the Company.

Government's claim on 'levy' for transportation of fuel

All Penan representatives at the Meeting maintained that the reason for the Blockade was to protect their ancestral land, and not to earn profit from the transportation of diesel as claimed by the Government.

Government's claim on NGO support for the Blockade

All Penan representatives at the Meeting denied that their decision to set up the Blockade was supported or influenced by NGOs.

Views on development and construction of the access road

The representative of Long Kerong clarified that the Penan from Long Benalih are not against development. Rather, they do not agree with logging activities in the area.

In addition, the representative of Sungai Tutoh pointed out that the Penan are a unique Community and said any plans for development should take into consideration their culture and way of life. They have refused to accept such land development schemes as FELDA as these are incompatible with their way of life.

³ However, SUHAKAM was informed by the Sarawak Forestry Department that Samling had begun its operations in the area in 1998.

He added that the Penan Community recognises the importance of an access road. However, it wants a Government agency, such as the Public Works Department, to undertake construction, not logging companies.

Nonetheless, the Penan representatives informed the Meeting that the Community in Long Main is agreeable to construction of the logging road.

Problems arising from construction of the logging road

The representative of Sungai Tutoh opined that the local Community would face various problems if Samling proceeds with the construction of the logging road.

He cited the experience of his village in 1979 when it allowed Samling to construct a logging road, after being persuaded to do so by the Government and other indigenous communities in the area. Among the problems faced were:

- The logging company was not sensitive to the sanctity of Penan burial sites.
- The Community lost their water catchment area and crops.
- The Community was blamed and some of its members even arrested if they tried to protect ancestral land in the logging area.

Provision of basic amenities

The Penan representatives highlighted that basic amenities are insufficient, even non-existent, in their villages. They appealed to the Government to ensure that amenities such as electricity supply and clean water supply are made available.

LIST OF PARTICIPANTS

SUHAKAM Commissioners

- Dr Mohammad Hirman Ritom Abdullah (Chairperson)
- Datuk Dr Denison Jayasooria
- Datuk Hj Khalid bin Hj Ibrahim

SUHAKAM Officers

- Rafidah Yahya
- Nurul Hasanah bt Ahamed Hassain Malim
- Sophian bin Osman
- Syahrir Rizwan Yahua

Participants

- Martin Bujang, Penan Representative of Long Krong
- Sound Bujang, Penan Representative of Long Benalih
- Ali Toi, Penan Representative of Long Pengaran Klian
- Bilong Oyau, Penan Representative of Long Sait
- Hennison Bujang, Penan Representative of Long Benalih
- Maister Lolee, Penan Representative of Sungai Tutoh
- Hon Talip, Penan Representative of Long Krong
- Hellan Empaing, BRIMAS
- Ryan Ngau, BRIMAS



6. MEETING BETWEEN SUHAKAM AND THE MALAYSIAN TIMBER CERTIFICATION COUNCIL (MTCC)

I. INTRODUCTION

On 26 March 2007, SUHAKAM's Economic, Social and Cultural Rights Working Group (ECOSOC) organised a Meeting with the Malaysian Timber Certification Council (MTCC).

This was after SUHAKAM's preliminary research found that the Penan Blockade was erected within the Sela'an Linau Forest Management Unit (FMU), which was certified by the MTCC.

SUHAKAM, therefore, found it necessary to ascertain the background and criteria of MTCC certification with particular focus on the activities of Samling Plywood (BARAMAS) Sdn Bhd.

II. INTRODUCTION TO THE SELA'AN LINAU FMU

The Sela'an Linau FMU, located in Upper Ulu Baram in Miri District, Sarawak, forms part of the Sela'an Suling Permanent Forest Estate (PFE). The licence for the PFE was awarded to Samling Plywood (BARAMAS) Sdn Bhd ('the Company') by the Government in 1998. The licence is identified as T0412.

The Sela'an Suling PFE, which covers 100,650ha, can be divided into two parts based on the timber licences awarded – identified as T0412A and T0412B. The MTCC certified T0412A for Sustainable Forest Management (SFM) on 18 October 2004. This area is known as the Sela'an Linau FMU.

The Sela'an Linau FMU covers 55,949ha, comprising 72% of Mixed Hill *Dipterocarp* forest and 28% of *Kerangas* and *Montane* Forest.

Under the SFM criteria, the Sela'an Linau FMU is to be developed in compliance with the standards set by the MTCC.

III. PROCEEDINGS OF MEETING

ECOSOC Chairperson Datuk Dr Denison Jayasooria welcomed participants. This was followed by an introductory note by the Chairman of MTCC, Dato' Dr Freezailah Che Yeom. The meeting proceeded with a presentation⁴ by the Chief Executive Officer of MTCC, Mr Chew Lye Teng, which outlined the establishment of the MTCC, and procedures for timber certification, standard setting process, operation of the MTCC Scheme, new institutional arrangement, and certification of the Sela'an Linau FMU. An open dialogue session followed.

⁴ The presentation by MTCC is attached as Annexure 4 in Part 3 of SUHAKAM's Report on the Penan Benalih Blockade Issue.

Dialogue Session

The Meeting discussed the following issues.

Certification standard

A participant from MTCC explained that the Council's standard was drawn up after considering laws policies and regulations set out by the Federal and State Government.

With regard to the Sela'an Linau FMU, the participant said that it forms part of the Sela'an Suling PFE, which has been gazetted by the State Government. Hence, the Company had taken into consideration the Government's findings before the gazette, in determining the basis of certification of the FMU. Therefore, if the Government found that there was no NCR claim within the Sela'an Suling PFE before the gazette, the same information was used by MTCC to make its decision.

The participant stressed that MTCC has no authority to question the State Government's decision to gazette the PFE. He clarified that so long as the applicant for MTCC certification, in this case Samling Plywood, meets the stipulated criteria, MTCC is authorised to decide on the application.

MTCC certification not a threat to the Penan

The participants at the Meeting felt that the Penan Benalih Blockade Issue has arisen because of the logging operation, which the Community perceives as a threat to their survival, well being and livelihood.

Nonetheless, the participants believe that the Penan do not see operations under the MTCC certification as a threat, since its process of activities is transparent. A participant highlighted that MTCC welcomes any inquiry of its process by anyone.

For instance, Chief Bilong Oyau of Long Sait had requested a briefing by MTCC on matters relating to SFM certification and its impact on the Penan Community. MTCC then invited representatives from seven villages – Long Kepang, Long Main, Long Lellang, Long Benalih, Long Sepigen, Long Sait and Long Kerong – through radio announcements, posters and brochures.

Despite these efforts to inform and encourage representatives to attend the briefing, only a handful showed up. Upon looking into this, the MTCC found out that several factors were involved – some did not have a radio or batteries for their radio, while there is illiteracy among the Penan.

Improvement of MTCC standard

A participant said that MTCC is concerned about issues linked to the survival, well being and livelihood of the Penan. These issues have been taken into consideration by MTCC since the beginning of its operation in the Sela'an Linau FMU.

Recognising the consequences of logging activities on human life, MTCC had made improvements to the Malaysian Criteria and Indicators for Forest Management



Certification 2002 [MC&I (2002)] to take into account the social impact of logging activities. The aspect of Community relations and workers' rights has been included in the MC&I (2002) – its requirements stipulate, among others, that:

- Forest managers should evaluate through consultations, the social impact of forest operations directly affecting Communities; and
- The people and groups directly affected by the forest operations should have access to information on the results of the social impact evaluations.

Forest managers are also required to prepare records of meetings with the Communities as well as a social baseline study report, similar to an aspect assessed in the Environmental Impact Assessment Report.

A participant pointed out that the Sela'an Linau FMU operates under the MC&I (2001) criteria. However, MTCC said it would make sure that the environmental and social aspects – for instance the livelihood of the Penan – are protected. For instance, MTCC will monitor the logging Company to ensure that areas of interest to the Penan, such as preservation of water catchment areas, are excluded from development. In addition, trees unsuitable for logging such as the *Tualang* species would be marked and therefore not felled. Hence, the impact on the Community can be minimised.

A participant said the activities under MTCC certification have enhanced the breeding of wild animals, namely the wild boar. He explained that since logging is carried out with a phased approach, it creates suitable areas for wild boars to breed. This, in turn, has increased access to game (a food source) for the Penans.

Corrective Action Request (CAR)

A participant explained that before Certification was done, an independent assessor – in the case of Sela'an Linau FMU, the Sirim Quality Assurance System – was required to assess whether management of the proposed FMU by the Company complied with the MC&I (2001).

With regard to the Sela'an Linau FMU, seven areas of non-compliance were found, five of which were minor elements. The independent assessor then informed the Company that the areas needed corrective action. Certification was awarded only after the two major sources of non-compliance were resolved.

One of the minor CARs was related to the Penan Benalih Blockade Issue. Nonetheless, certification was given since this was only a minor factor.

Surveillance visits

After certification, the independent assessor followed up with surveillance visits to ascertain progress on minor CARs.

During the visits, consultations were held with the local Communities within and on the periphery of the FMU to hear their concerns in relation to the logging activities.

With regard to the Sela'an Linau FMU, a surveillance visit on 14 December 2005 found that three minor CARs had been met. The Penan Benalih Blockade Issue remained one of the two minor unresolved elements.

While these minor CARs did not preclude certification, a requirement was imposed to take appropriate action before the next surveillance visit.

Establishment of the SFM Liaison Committee

Recognising the continuance of the Penan Benalih Blockade Issue, the Sarawak Forestry Corporation (SFC) established the SFM Liaison Committee ('the Committee') with MTCC as an observer.

A participant from MTCC said this opportunity was used to highlight related issues including the Blockade, observations and recommendations of the independent assessor and outcomes of the surveillance visits, at a meeting of the Committee.

The participant added that after the issues were highlighted, the Committee expanded its membership to include representatives of the affected Community, not only those living within the FMU but also those on the periphery, as they were stakeholders too.

Encouraging compliance with MC&I (2002)

Although Samling Plywood operates the Sela'an Linau FMU under the MC&I (2001) criteria, MTCC has strongly encouraged the Company to comply with the upgraded MC&I (2002) standard.

A participant clarified that this is being encouraged because MTCC feels that the MC&I (2002) – a reviewed version of the MC&I (2001) – has a more holistic approach as it includes additional social aspects, namely the effects of logging on Communities.

Divisional Forestry Committee

A participant said the Divisional Forestry Committee was established to serve as a forum to deliberate matters related to development plans and availability of funds for the Penan Community living in and around the FMU. Among the issues that have been discussed are piped water, construction of longhouses, clinics as previously promised by the Government, and a new church.

LIST OF PARTICIPANTS

SUHAKAM Commissioners

- Datuk Dr Denison Jayasooria (Chairperson)
- Dr Mohammad Hirman Ritom Abdullah

SUHAKAM Officers

- Rafidah Yahya
- Syahrir Rizwan Yahua

MTCC Representatives

- Dato' Freezailah Che Yom, Chairman
- Chew Lai Teng, Chief Executive Officer
- Harnarinder Singh, Senior Manager
- Yong Teng Koon, Manager of Forest Management
- Sabrina Wu Chor San, Public Relations/Marketing Executive



7. SUHAKAM'S FIELD VISIT AND DIALOGUE WITH THE PENAN COMMUNITY

I. INTRODUCTION

On 4 May 2007, SUHAKAM conducted a field visit to the Blockade area and held a dialogue session with the affected Penan Community at the Kampung Ba Data Bila longhouse in Sg Sela'an. The dialogue was attended by the residents of Penan Benalih as well as representatives of other Penan Communities facing similar problems.

Objectives

Among the objectives of the visit and dialogue were to:

- a) Obtain a physical perspective of the Blockade and the surrounding areas;
- b) Obtain further clarification and views directly from the affected Penan Community on the motives of mounting the Blockade, and their opinion of the Government's role in addressing the issue.

II. DIALOGUE AT KAMPUNG BA DATA BILA

The dialogue began with a welcome by Mr Maister⁵ who served as the translator. The Chairperson, Dr Mohammad Hirman Ritom Abdullah, introduced SUHAKAM's delegation. This was followed by an introduction by a briefing by Tan Sri Datuk Seri Panglima Simon Sipaun on the objective of SUHAKAM's visit to Long Benalih. An open dialogue session followed, during which the Penan raised several issues linked to the Blockade.

Loss of claim over ancestral land

The Penan felt that both the Government and the logging Company have failed to respect their rights to land that have been established through their traditional stewardship and ownership practices. Chief Pada Jutang from Long Pakan said the Sarawak provincial Government did not recognise Penan rights to native customary land on the basis that the Penan – who had been forced into settlements in the 1960s – had previously roamed the forests and therefore did not “use” the land. Chief Wan Supeh from Long Latih corroborated this.

Penan representatives, however, claimed that they had inhabited the forest land around them before other native peoples had arrived. For them, the land provides the means to survival.

Cultivation activities

Mr Maister informed SUHAKAM that the Penan are not accustomed to farming. This is because; the Community does not survive or depend on farming activities. According to him, farming involves a long process to produce yields, which would require the Penan to wait for a certain period to get food. Furthermore, most of the Penan do not know how to farm or how to maintain a farm. Therefore, it is difficult for them to practise farming.

⁵ Mr Maister is a Penan from Long Lelang.

Impact of logging activities on the environment and livelihood

Concerns were raised at the dialogue regarding these issues. Since the Penan Community relies heavily on forest produce for their food supply, the logging activities could adversely impact their means of survival and livelihood. It was claimed that the logging activities have turned rivers into muddy streams and destroyed the forest, hence polluting the environment and reducing food sources.

Motive behind the Blockade

According to Mr Henneson Bujang, a representative of Long Benalih, the Penan built their first Blockade in the 1980s, when the authorities and the logging Company ignored their problems. Each time a Blockade has since been built, the Government has only been interested, it was alleged, in seeing it dismantled in order to allow the logging Company to continue with its activities.

The claim was corroborated by Chief Saun Bujang of Long Benalih. He said the Blockade is the Community's way of demanding the Company's attention to their problems, as these are otherwise ignored.

SUHAKAM was further informed that the Penan built a Blockade on 2 January 2007, but that the authorities dismantled it. Another Blockade was put up, as well as a house as a meeting place, as neither the authorities nor the logging Company have listened to their concerns. On 4 April 2007, the authorities dismantled the Blockade again. The Penan claimed it was done without their knowledge and consent, and that they were very disappointed with this.⁶

The Penan pointed out that the Blockade represents a peaceful way for them to protest and is the last resort in trying to protect their traditional territories. Erecting a Blockade does not mean that they oppose the Government or development. They refuted allegations that NGOs were behind their actions or had instigated them to set up the Blockade.

According to the Penan, the Blockade is necessary and they are merely exercising their rights to their land. They claimed that the majority of their Community supports the action and opposes logging activities in their area. They said the Community will continue with the Blockade until their problems are resolved and they receive assurances from higher authorities.

No prior consultation

The Penan expressed dissatisfaction that the Company had not carried out prior consultation with the heads of their village. They claimed that the access road was built to facilitate logging activities, thus destroying the forest and affecting the livelihood of the Penan. They also claimed that Samling has shown no respect for Penan cultural practices and beliefs.

⁶ One source (a driver) thinks that it was done by the Land and Survey Department.



Police interference

SUHAKAM was also informed about the present of policemen⁷ at the camp near the Blockade area. This has created unease among the Penan who claimed that they have no intention of causing harm.

SUHAKAM was also informed by the Penan that Samling and the authorities had used the Police to issue threats. They claimed that the Police warned the Penan to accept Samling's offers or compensation or they would be arrested.

A representative of Long Benalih claimed that arrests of the Penan have been common since the logging activities began on their land. He claimed that he had been arrested and detained for 15 days.

Penan boundaries

During the dialogue, SUHAKAM was informed that the Penan of Long Benalih were aware of the boundaries of their land. When the Penan took the issue to Samling, the Company demanded approval from the Government. However, the Government has not recognised the boundaries, although the Penan had sent a letter on this matter in 1988.

Source of income

SUHAKAM was told that there are factories near the Penan village. According to the Penan, the majority of the factory workers are Indonesians. Only a few Penan work in the factories. This is because the Community depends on jungle produce for their survival, rather than income from factory jobs.

National development

The Penan clarified that they have never opposed development of the country. They stated their willingness to learn the process of farming and other activities such as animal husbandry. They expressed hope that the Government would guide them and provide related training.

III. CONCLUSION

The field visit and the dialogue have provided SUHAKAM with better understanding of the Penan Benalih Blockade Issue. SUHAKAM will come up with recommendations to address the issue.

⁷ During the field visit to the Blockade area, SUHAKAM found that a Police camp had been set up near the area.

LIST OF PARTICIPANTS

SUHAKAM Commissioners

- Tan Sri Datuk Seri Panglima Simon Sipaun
- Dr Mohammad Hirman Ritom Abdullah (Chairperson)
- Datuk Hj Khalid bin Hj Ibrahim

SUHAKAM Officers

- Sophian bin Osman
- Ameer Izyanif bin Hamzah
- Paremeswari Subramaniam

Participants

- Representatives of 11 Penan villages from Long Benalih
- Representatives of Long Pakan
- Representatives of Long Long Latih
- Representatives of Long Lelang
- Representatives of Sungai Tutoh
- Residents of kampung Ba Data Bila longhouse



PART 3

ANNEXURES

ANNEXURE 1

**Letter from the Resident and District
Office of Miri Division, Sarawak**



URGENT

**Bil.Kita:PRM/V/8/9(56)
Tarikh :12/2/2007**



**PEJABAT RESIDEN,
BAHAGIAN MIRI
98000 MIRI
Tel: 433203
Fax: 432876**

**Setiausaha
Suruhanjaya Hak Asasi Manusia Malaysia
Cawangan Sarawak
Lot 456&457, 3rd Floor,
Al-Idrus Commercial Centre,
Jalan Satok,
93400 Kuching.**

Tuan

**LAPORAN MAKLUMAT LATARBELAKANG DAN KEJADIAN BLOCKADE DI
KAWASAN PENAN LONG BENALIH BARAM**

Surat tuan bil. SHM (SWK) 004/4/46 Jld 4 (98) yang bertarikh 8 Februari 2007 tentang perkara diatas dirujuk.

2. (i) Untuk makluman pihak tuan, perhubungan melalui jaringan jalan adalah menjadi satu faktor penting dalam kejayaan pembangunan masyarakat lebih-lebih lagi di kawasan luar bandar di Sarawak. Oleh itu pejabat kami mencadangkan supaya perhubungan jaringan jalan dibina ke kawasan yang belum dihubungi jalan seperti di Hulu Sungai Akah dan Sungai Selungo. Kawasan ini mempunyai 13 buah kampung (2 buah kampung Kelabit dan 11 buah kampung Penan termasuk Long Benalih).

(ii) Dengan siapnya pembinaan jalan itu kelak, sesungguhnya dapat memudahkan kerajaan menyalurkan sebarang bantuan untuk kemajuan kepada 287 buah keluarga yang mengandungi seramai 1,516 orang penduduk. Selain daripada membawa kemudahan kepada mereka dalam kehidupan seharian, ianya juga dapat meningkatkan penggunaan kemudahan persekolahan di dua (2) buah sekolah dan perkhidmatan kesihatan di dua (2) buah klinik desa di kawasan tersebut.

(iii) Pembinaan jaringan jalan ini digemblengkan oleh pejabat kami bersama sama dengan pihak Sarawak Forestry Corporation, Syarikat Samling serta agensi-agensi kerajaan di Bahagian Miri dan masyarakat tempatan di kawasan tersebut.

3. Malangnya, pembinaan jalan ini terpaksa dihentikan untuk beberapa kali oleh kerana blockade yang didirikan oleh sekumpulan kecil penduduk Penan dari Long Benalih. Untuk menentukan kedudukan dan kegiatan mereka ini maka adalah penting untuk kita memahami latarbelakang mereka.

(i) Kebanyakan keluarga yang menetap di Long Benalih adalah keturunan allahryaham Encik Bujang Tupo, bapa kepada Encik Sound Bujang, Ketua Kampung bagi Long Benalih. Mereka berasal dari kawasan di sempadan Kalimantan Sarawak berdekatan dengan sebuah kampung Penan di Long Lamai, Ulu Baram. (*Sila lihat peta di Lampiran 'A' & 'B'*).

(ii) Dalam tahun 1969 semasa berada di tempat tersebut Gurubesar di SRK Long Lamai iaitu Cikgu George Phusu Lugun telah mendaftarkan anak-anak Encik Bujang Tupo untuk bersekolah dan beliau cuba untuk menetap di sana. Walau bagaimanapun penduduk tempatan tidak bersetuju.

(iii) Pada tahun 1970an beliau dan keluarga berpindah ke arah barat daya di kawasan Hulu Sungai Selungo iaitu di kampung Penan di Long Kepang. Mereka berpindah semula ke sebelah barat berdekatan dengan Long Lellang dimana terdapat kemudahan klinik kesihatan dan sekolah.

(iv) Mereka kemudiannya berpindah semula menuju ke arah barat iaitu ke kawasan berdekatan dengan Long Lellang yang didiami oleh komuniti Kelabit. Sekali lagi beliau bertemu dengan Cikgu George Phusu Lugun dalam tahun 1974 yang ketika itu bertugas sebagai Gurubesar di SRK Long Lellang. Atas dasar simpati dan kemanusiaan maka masyarakat Kelabit di Long Lellang memujuk mereka supaya tidak lagi hidup secara berpindah randah. Oleh kerana persahabatan yang akrab diantara Cikgu George Phusu Lugun dan keluarga Encik Bujang Tupo iaitu bapa kepada Encik Sound Bujang maka seorang anak beliau telah diberikan nama sebagai Phusu Bujang (sekarang dikenali sebagai Henison Phusu Bujang) mengikut nama Cikgu George Phusu Lugun.

(v) Justeru itu Encik Maran Lugun iaitu bapa kepada Cikgu George Phusu Lugun telah menawarkan tanah temuda keluarga beliau di Long Benalih dan mereka telah mendirikan rumah di situ pada tahun 1981 hingga sekarang. Terdapat 13 buah keluarga yang menetap di sini.



(vi) Encik Sound Bujang dilantik sebagai Ketua Kaum Long Benalih pada 1hb Disember 1994 sehingga sekarang. Beliau dan rakan-rakan terlibat secara aktif dalam aktiviti-aktiviti anti pembalakan mulai dari tahun 1980an bersama dengan Bruno Manser dan sehingga kini masih berkerjasama secara aktif dengan badan-badan bukan kerajaan dari dalam dan luar negeri.

(vii) Bersama dalam perjuangan Encik Sound Bujang ialah adik beradiknya Encik Henison Phusu Bujang, Encik Dennis Bujang dan adik iparnya Encik Allen Lai. Dalam pengetahuan kami ketua kumpulan ini adalah Encik Allen Lai dan Encik Dennis Bujang.

4. Mereka mendirikan "Blockade" di kawasan jalan pembalakan yang menuju ke kampung-kampung di Hulu Sungai Akah Baram sejak tiga tahun yang lepas. Melalui beberapa sesi dialog dan perbincangan diantara pejabat kami dan penduduk Penan tersebut maka blockade ini dibuka pada 2.11.2006 dengan tiada halangan dan sebarang insiden. Malangnya, blockade ini didirikan semula pada 6.11.2006 dan diperkukuhkan lagi pada 10.11.2006. Pada 28.12.2006 blockade ini dibuka untuk kali kedua tetapi didirikan semula pada 2.1.2007.

5. Oleh kerana kekurangan jaringan jalan ke kawasan tersebut maka pengangkutan barang kegunaan seharian adalah sangat sukar. Sebagai contoh, pihak Penan di Long Benalih meminta RM10 untuk memikul se gelen minyak dari tempat blockade ke Long Benalih dan selepas itu melalui perjalanan perahu ke kampung Long Lellang. Oleh demikian, harga minyak meningkat 7 kali lebih mahal (RM35-40/gelen) daripada harga di Miri (RM5.60/segelen). Mereka juga mendirikan blockade ini semata-mata dengan tujuan untuk mengenakan bayaran pengangkutan minyak kepada pihak penduduk dari Long Lellang.

6. Pejabat kami kerap kali berbincang dengan masyarakat Penan di kawasan Sg. Akah dan Selungo. Dalam pandangan kami, pihak yang mendirikan blockade ini lebih memihak kepada pihak NGOs. Dari siasatan pihak kami, mereka berkerjasama dengan NGO seperti *Sahabat Alam Malaysia*, *Borneo Research Institute Malaysia Sarawak (BRIMAS)*, *Greenpeace*, *Global Witness (UK)*, *Bruno Manser Fund (Switzerland)*, *Friends Of The Earth (Netherlands)*, *IWGIA (Denmark)*, *Environmental Investigation Agency (UK)*, *Robin Wood (Germany)* and *Rainforest Foundation (Germany)*. Laman-laman web yang diguna oleh mereka adalah www.rengah.c2c.com, www.malaysiakini.com, www.keruan.com dan www.foe-malaysia.org.my

8. Dengan adanya makluman seperti diatas, maka Pejabat kami memohon supaya mendapat pandangan dari pihak SUHAKAM tentang perkara ini.

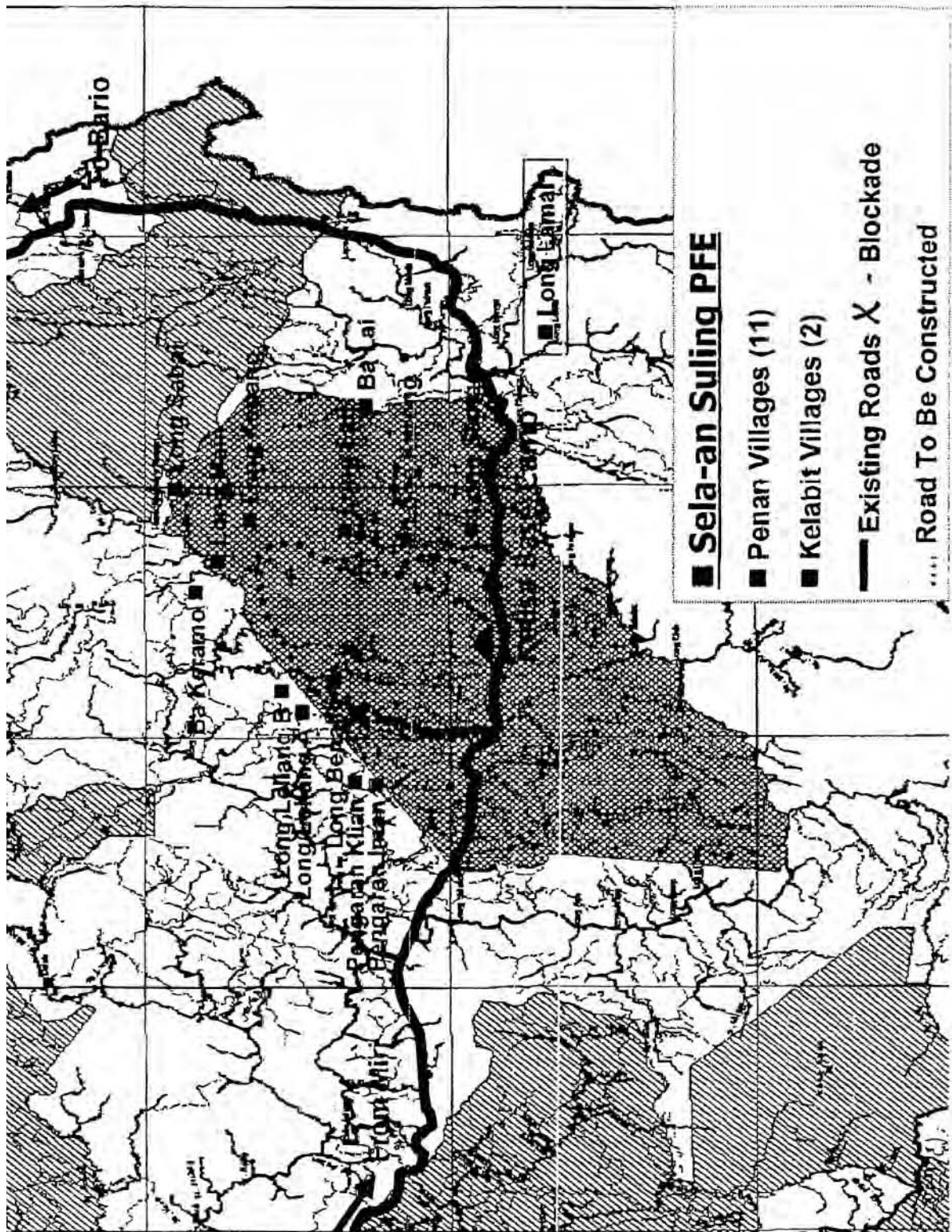
Sekian, terima kasih.

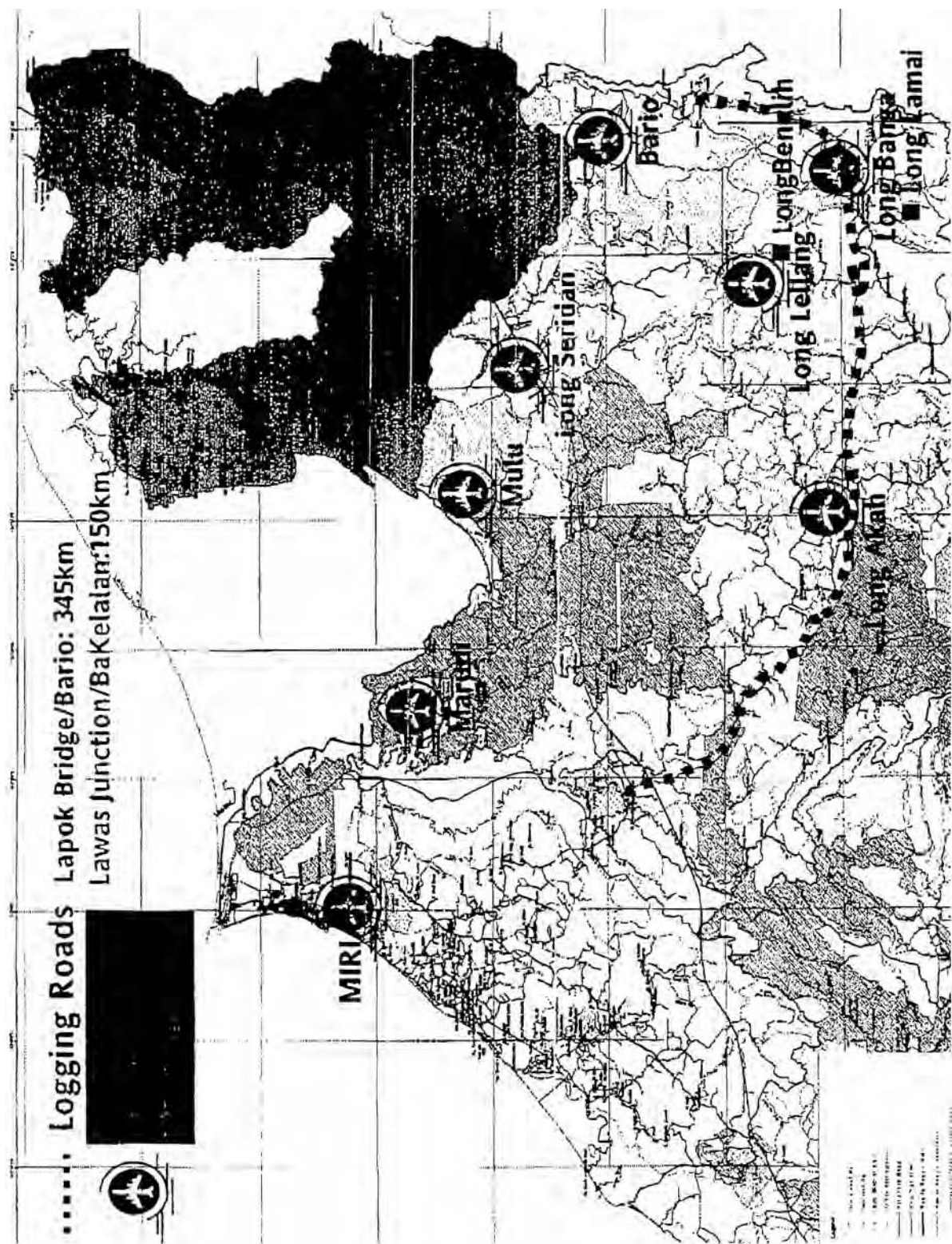
‘BERSATU BERUSAHA BERBAKTI’



(OSE MURANG)
Residen
Bahagian Miri

s.k. PRM/M/39/1







ANNEXURE 2

**Letter from the
Forest Department of Sarawak, Malaysia**



**IBU PEJABAT JABATAN PERHUTANAN,
WISMA SUMBER ALAM,
JALAN STADIUM,
PETRA JAYA,
93660 KUCHING,
SARAWAK**

Kawar : Perhutanan, Kuching
Telefon Am : 082-319102
Telefeks : 082-445640
Teleks :

Ruj. Tuan :

Ruj. Kami : PF.69 - 12

Tarikh: 17 September 2007

Setiausaha
SURUHANJAYA HAK ASASI MANUSIA MALAYSIA
194, Lot 456, 3rd Floor, AlHdus Commercial Centre
Jalan Satok
93400 Kuching
SARAWAK

Tuan,

TARIKH SELA'AN SULING PROTECTED FOREST DIWARTAKAN

Adalah saya dengan hormatnya merujuk kepada surat tuan bil. SHM(SWK) 004/4/46 Jld 6 (7) bertarikh 10 September 2007.

Sukacita dimaklumkan bahawa tarikh kuasa penubuhan Suling-Selaan Protected Forest adalah **1 Disember 2000** seperti yang dinyatakan dalam Warta Kerajaan No. 2299 bertarikh 18 Julai 2002.

Sekian dan harap maklum.

BERSATU BERUSAHA BERBAKIT

Yang benar,


(HAJI ALI YUSOP)
b.p. Pengarah Hutan,
SARAWAK





ANNEXURE 3

Penan's Submission to SUHAKAM

Kenyataan Kaum Penan Kepada SUHAKAM

Selamat petang kami ucapkan kepada wakil-wakil daripada Suruhanjaya Hak Asasi Manusia Malaysia (SUHAKAM) yang sudi datang untuk berjumpa dengan kami ke sesi dialog ini. Kami amat menghargai dan berterima kasih kepada pihak SUHAKAM kerana memberi peluang berjumpa dengan kami kaum Penan.

Terlebih dahulu saya ingin perkenalkan semua yang hadir di sini. *(sebut nama dan dari kampung mana untuk semua yang hadir)*

Di sini kami ingin menyampaikan masalah yang dihadapi oleh kaum Penan.

(i) Masih ramai orang yang kurang atau salah faham mengenai kaum Penan, seperti:-

ada yang mengatakan kaum Penan tidak ada hak ke atas tanah yang diduduki oleh kami, contohnya, kenyataan oleh Dr. Mohamad Hirman Ritom Abdullah dari SUHAKAM dalam surat khabar Borneo Post bertarikh 10.8.2006 yang mengatakan bahawa oleh kerana kaum Penan tidak membuat ladang atau kebun maka mereka tidak mempunyai hak NCR seperti kaum Orang Ulu, Iban dan Bidayuh. Kenyataan tersebut jelas tidak betul.

Seperti kaum-kaum Orang Asal yang lain di negeri Sarawak, kami Penan mempunyai adat kami sendiri. Menurut adat Penan, kalau sesuatu kawasan tanah atau hutan atau sungai telah diduduki atau didiami oleh satu kumpulan atau "panyen" dari nenek-moyang kami, maka kumpulan atau "panyen" itulah yang berhak ke atas kawasan tanah atau hutan atau sungai tersebut.

Menurut adat kami, sesuatu kumpulan atau "panyen" mengenal pasti sempadan kawasan tanah mereka dengan kumpulan atau



"panyen" yang lain dengan menggunakan bukit, sungai, lembah atau batu besar sebagai tanda.

Tiap-tiap kumpulan atau "panyen" hanya berpindah-randah untuk memburu, memancing atau mengambil hasil hutan dalam kawasan atau sempadan mereka masing-masing.

Pada zaman pemerintahan Raja-Raja Brooke dan British, pemerintah menasihati kami Penan supaya kami keluar dari hutan dan tinggal di rumah atau tempat yang tetap supaya wakil atau pegawai pemerintah senang melawat dan berjumpa dengan kami. Pemerintah juga telah menggalakan kami untuk membuat ladang atau kebun seperti kaum-kaum Orang Asal yang lain di negeri Sarawak.

Kami telah mengikut dan menuruti nasihat-nasihat tersebut dan telah cuba untuk membuat rumah yang tetap mengikut kemampuan satu-satu kumpulan atau "panyen". Kami juga telah cuba membuat ladang padi dan kebun-kebun di tempat kami sendiri sehingga sekarang.

Oleh kerana kami Penan telah menduduki atau mendiami kawasan tanah kami sejak dari datuk-nenek moyang kami dahulu sehingga sekarang dan adat kami juga membenarkan kami mendapatkan hak ke atas tanah yang telah diduduki dan didiami kami, maka sudah tentu kami ada hak ke atas tanah dan hutan di dalam sempadan yang telah atau sedang kami duduki.

(ii) Sempadan tanah Penan belum direkod oleh kerajaan.

Walaupun pemerintahan Raja-Raja Brooke dan British telah merekodkan sempadan tanah kaum-kaum Orang Asal yang lain di negeri Sarawak, akan tetapi sempadan tanah kaum Penan belum lagi direkodkan oleh kerajaan.

Adalah menjadi tanggungjawab kerajaan untuk merekodkan sempadan tanah kami Penan. Tindakan untuk merekodkan sempadan tanah kami amat perlu dan harus disegerakan supaya kerajaan sendiri mempunyai rekod untuk rujukan. Rekod sempadan kami juga akan menyelesaikan masalah perebutan tanah di antara kaum Penan sendiri atau antara kaum Penan dengan kaum yang lain.

Dalam beberap tahun yang lepas kami Penan telah melaksanakan survei sempadan tanah kami dengan bantuan beberapa pihak. Kami harap pihak kerajaan akan menerima peta-peta sempadan tanah kami sebagai rekod rasmi dan rujukan kerajaan sendiri.

(iii) Lesen pembalakan dan lesen penanaman kayu

Kerajaan Negeri Sarawak telah mengeluarkan lesen-lesen untuk pembalakan dan penanaman kayu kepada beberap syarikat swasta yang meliputi tanah, hutan dan sungai dalam sempadan tanah kami Penan.

Kegiatan-kegiatan pembalakan dan penanaman kayu dalam sempadan tanah kami telah memusnahkan tanah dan juga hasil-hasil hutan kami. Sungai-sungai kami juga turut tercemar. Oleh itu, kehidupan kami semakin lama semakin susah.

(iv) Hutan Kawalan (PFE) diwartakan dalam kawasan sempadan tanah orang Penan

Kerajaan juga telah mewartakan hutan kawalan (PFE) di dalam kawasan atau tanah Penan. Tindakan tersebut mengakibatkan penghapusan hak orang Penan ke atas tanah. Tindakan tersebut juga berat sebelah kerana kawasan yang sama selepas itu ditukar



status dan dilesenkan kepada syarikat swasta untuk pembalakan atau penanaman kayu.

Setakat ini kaum Penan telah mengambil beberapa tindakan seperti berikut:-

- (i) Kami telah melaporkan masalah-masalah kami seperti yang disebut di atas kepada pihak/wakil/pegawai kerajaan melalui surat dan semasa mesyuarat-mesyuarat ayau dialog-dialog diadakan
- (ii) Oleh kerana tanah atau hutan dalam sempadan kami masih terus diceroboh oleh syarikat-syarikat pembalakan dan pihak berkuasa tidak membantu kami menghentikan pencerobohan/kemusnahan tanah kami, maka kami tidak ada pilihan lain dan mengambil keputusan untuk menutup jalan-jalan pembalakan yang melalui tanah dalam sempadan kami. Semua benteng-benteng yang telah kami bina adalah di atas tanah dalam sempadan kami sendiri.

Sehingga sekarang, syarikat-syarikat pembalakan yang membalak di dalam kawasan kami tidak pernah memberi atau menunjukkan apa-apa perintah dari mahkamah yang mengesahkan mereka berhak untuk membalak dalam kawasan sempadan kami.

Kerajaan Negeri Sarawak sejak dari pemerintahan Raja-Raja Brooke dan British tidak pernah memberi notis kepada kami yang mengatakan tanah dalam sempadan kami adalah tanah milik kerajaan dan kami adalah orang-orang setinggan. Begitu juga, sehingga sekarang, tidak ada seorang pun di antara kami Penan yang telah ditangkap dan didakwa oleh pihak berkuasa dan didapati bersalah oleh mahkamah kerana menduduki tanah yang diduduki oleh kami.

Di sini kami ingin merayu kepada kerajaan dan SUHAKAM untuk:

- (i) Menghormati dan mengakui hak kaum Penan ke atas tanah dan hutan mereka;
- (ii) Melakukan survei dan rekodkan sempadan tanah orang Penan di seluruh Sarawak;
- (iii) Hentikan kegiatan pembalakan dan penanaman kayu dalam kawasan sempadan tanah kaum Penan;
- (iv) Hutan kawalan (PFE) yang telah diwartakan dalam kawasan tanah kaum Penan ditarik-balik atau dibatalkan;
- (v) Segala bentuk pembangunan yang ingin dilaksanakan di dalam kawasan tanah kaum Penan haruslah dilakukan dengan cara rundingan yang telus dan mendapat persetujuan dari semua lapisan masyarakat kami;
- (vi) Segala keputusan yang dibuat oleh kaum Penan haruslah dihormati oleh semua pihak; dan
- (vii) Mengumum dan menyebarkan warta-warta kerajaan mengenai apa jenis bentuk pembangunan yang melibatkan tanah dan hutan kaum Penan kepada setiap kampung atau kumpulan yang terlibat.

Maka dengan ini, kami akan menyokong inisiatif kerajaan untuk mencari jalan penyelesaian terhadap masalah-masalah dan isu-isu yang sedang dihadapi oleh kaum Penan.

Sekian, terima kasih.

Kenyataan ini dikeluarkan oleh:



TK Sound Bujang

Ketua Kampung Ba' Benali



Hennison Bujang
Wakil Kampung Ba' Benali



TK Ali Toi
Ketua Kampung Ba' Pengaran Kelian



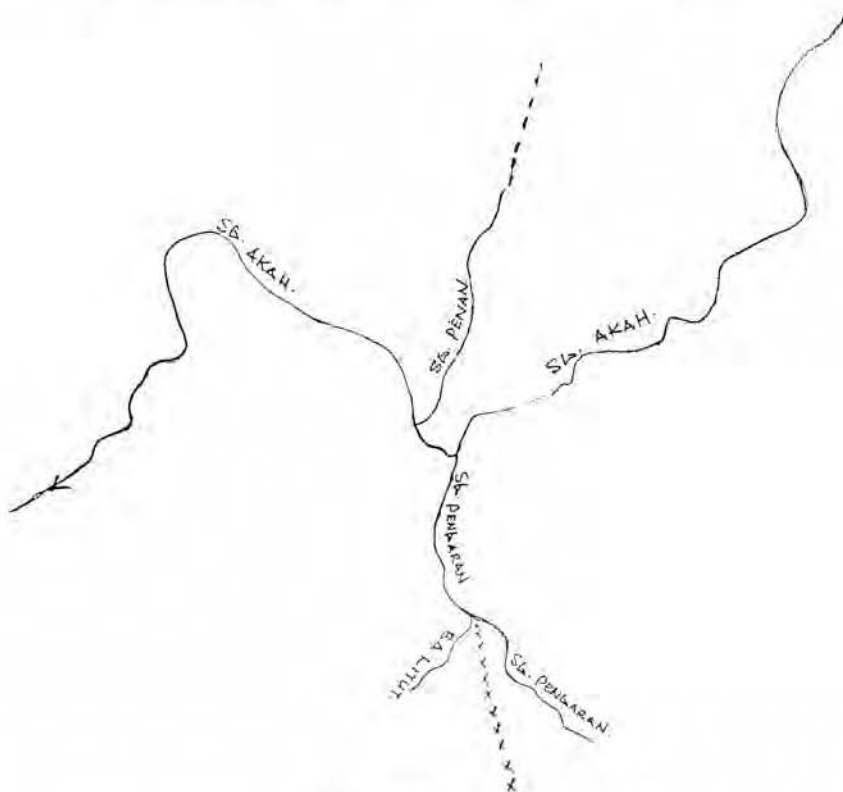
TK Bilong Oyau
Ketua Kampung Long Sait



Martin Bujang
Wakil Kampung Long Kerong

(96)

BOUNDARY BETWEEN PENANG, KELABIT OF LONG LELLANG REGION AND
KAYAN OF LONG SENIAI (SG. PENANG ON THE RIGHT SIDE GOING
UP RIVER AKAH AND SG. PENANG ON THE LEFT SIDE GOING UP
RIVER AKAH) SEE SKETCH MAP OPPOSITE PAGE.

LONG LELLANG REGION

RTP
K. NUBONG RAJA @ KILIN NUB.
K 194737

RTP
K. NUBONG RAJA @ ROL RASA
K 194773

K. SAKUN PARONG
K 194843

K. DARU 0400

RTP

KAWAI ADUN @
MARAN LUBUN
K 194703

RTP
MAYUBALA @
LIAN IDO
K 194742

LONG SENIAI

RTP

T.K. EAT WAN
K 427753

RTP
T.K. NGAU JUMAN
K 622141

LIHAN ANGI
K

L.T.P.
LIYONG ATAN @ AJANG
JUMAN
K 427685

WITNESSED BY:

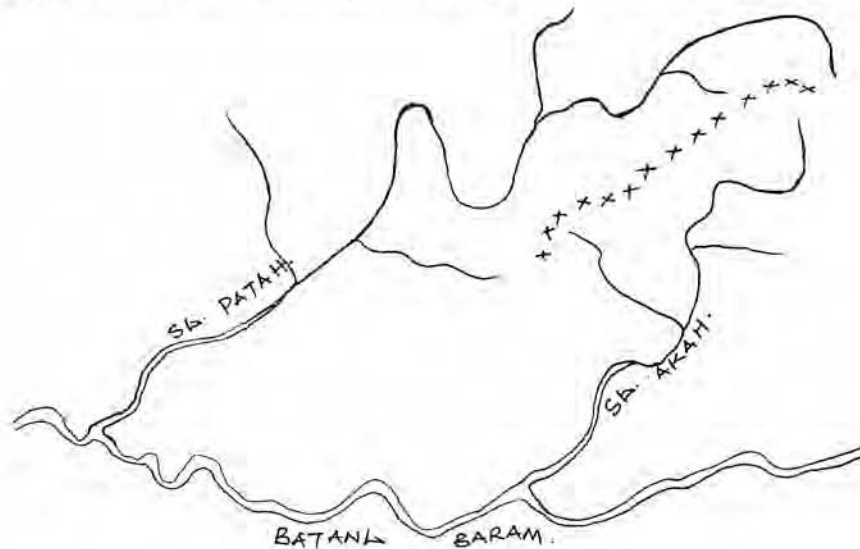
PEGAWAI DAERAH
BARAN
13/3/89

DAUD KAL
PEGAWAI TASEL
SARAWAK



97

BOUNDARY BETWEEN PENAN, KELABIT, KAYAN OF SB. AKAH
AND PENAN, KAYAN OF SB. DATAH (MOUNTAIN SEPARATE
SB. AKAH AND SB. DATAH AS ON SKETCH MAP OPPOSITE PAGE)



KELABIT/KAYAN OF AKAH.

RTP
SUNG RAJA @
NUB. K194737

RTP
SUNG RAJA @
A K194773

RTP
WAN
S3

RTP
JUMAN
41

UN PARDON
43

410 0400

PENAN/KAYAN OF DATAH.

RTP
T.K. ANI WAN ANI
K 437088

T.K. OYAU LAIN

T.K. ANI SIAT

T.K. WAN JUTAN

T.K. SATU KAWAI
RTP
NANAN JOK
K 431013

RTP
NANAN WAN ANI
K 554518

RTP
WAN ANI
K 554518

WITNESSED BY



PEGAWAI DAERAH

BARAM.

13/2/89

DAVID KALU
PELAWAI TADBIR
SARAWAK



ANNEXURE 4

**Presentation by
Malaysia Timber Certification Council (MTCC)**



Briefing to Human Rights Commission of Malaysia (SUHAKAM)

MTCC Timber Certification Scheme



26 March 2007

Outline of Presentation

1. Timber Certification
2. Malaysian Timber Certification Council (MTCC)
3. Present Institutional Arrangement
4. Standard Setting Process
5. Operation of MTCC Scheme
6. Recognition of MTCC Scheme
7. New Institutional Arrangement
8. Certification of Sela'an Linau FNU



Timber Certification

A process that results in a certificate being produced by an independent third party attesting to the origin of the wood raw material and management status of the forest in which the timber originated

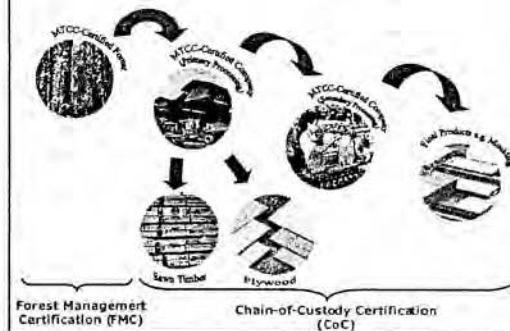
Components of Timber Certification
Forest Management Certification

Independent evaluation of forest management according to a pre-determined standard which covers economic, environmental and social aspects

Chain-of-Custody Certification

Tracking of forest produce throughout the entire production process, from the forest, through milling and manufacturing processes, and finally distribution of the end products to consumers

Timber Certification



Malaysian Timber Certification Council (MTCC)

- An independent organisation that started operations in January 1999
- Created to develop and operate a voluntary and independent national timber certification scheme in Malaysia
- Governed by a Board of Trustees (BOT) - representatives from timber industry, academic & research institutions, non-governmental organisations (NGOs) and government agencies



Present Institutional Arrangement for MTCC Scheme



Standard Setting Process

- ◆ Development of standards used in MTCC scheme is through multi-stakeholder consultations
- ◆ Stakeholder groups in Malaysia = economic, environment, social and relevant government agencies
- ◆ MTCC acts as facilitator in standard-setting process



Operation of MTCC Scheme

MTCC scheme started operation in October 2001 using a phased approach – due to greater challenges encountered in managing the complex tropical forests

Certification Standards Used under MTCC Scheme

Forest Management Certification

- Standard currently used is *Malaysian Criteria, Indicators, Activities and Standards of Performance for Forest Management Certification [MC&I(2001)]* which is based on 1998 ITTO *Criteria and Indicators for Sustainable Management of Natural Tropical Forests*
- Next phase of its scheme – in 2006, MTCC has started to use a new standard [MC&I (2002)] developed using *Principles & Criteria of Forest Stewardship Council (FSC)* as template

Operation of MTCC Scheme

Chain-of-Custody (CoC) Certification

- Standard known as *Requirements for Chain-of-Custody Certification (RCOC)* is used for CoC certification of timber product manufacturers or exporters



MTCC Certificates

Two types of Certificates are issued by MTCC:

- *Certificate for Forest Management* for Forest Management Units (FMUs)
So far, a total of 9 Certificates issued [covering 4.73 million ha or 33% of total Permanent Reserved Forests in Malaysia]
- 8 FMUs in Peninsular Malaysia [Johor, Kedah, Kelantan, Negeri Sembilan, Pahang, Perak, Selangor & Terengganu FMUs covering 4.67 million ha]
- One FMU in Sarawak [Sela'an Linau FMU located in Utu Baram region covering 55,949 ha]
- *Certificate for Forest Management* – provides assurance that permanent forest in FMU is sustainably managed to requirements of MC&I(2001), and that timber is harvested legally



MTCC-Certified FMUs



Certificate for Chain-of-Custody

- *Certificate for Chain-of-Custody* for timber product manufacturers or exporters (101 Certificates issued so far)
- *Certificate for Chain-of-Custody* provides assurance to buyers that MTCC-certified timber products supplied by these companies originate from certified FMUs





EXPORT OF MTCC-CERTIFIED TIMBER PRODUCTS

First shipment - in July 2002
By February 2007,
140,960 m³ exported to The Netherlands,
United Kingdom, Belgium, France,
Germany, Australia, Greece, Denmark,
Poland, Italy, Norway and Indonesia



Products exported

- ◆ sawn timber
- ◆ mouldings
- ◆ laminated finger-jointed timber
- ◆ plywood
- ◆ furniture



Recognition of MTCC Scheme

- ◆ Many timber import countries have public procurement policies which stipulate that local authorities/governments purchase and use only certified timber products
- ◆ As a result of promotional and publicity programmes carried out, interest has been shown by a number of authorities and organisations to accept MTCC-certified products



Recognition of MTCC Scheme

- ◆ Government of Denmark – *Purchasing Tropical Timber - Environmental Guidelines*
- ◆ UK Department for Environment, Food and Rural Affairs (DEFRA) – UK Government Sustainable Timber Procurement Policy - recognised as providing assurance of legally harvested timber
- ◆ Royal Horticultural Society (RHS) of UK – *Conservation and Environment Guidelines*
- ◆ Keurhout Protocol for Legal Origin in The Netherlands – accepted seven certified FMUs and 28 holders of MTCC Certificate for Chain-of-Custody



Recognition of MTCC Scheme

- ◆ Ministry of Agricultural and Forestry, New Zealand – *New Zealand Timber and Timber Products Procurement Policy Guidelines*
- ◆ French Ministry of Environment and Sustainable Development & Ministry of Agriculture, Food and Rural Affairs – *French National Timber Procurement Policy*
- ◆ Forestry Agency, Ministry of Agriculture, Forestry and Fisheries, Japan – *Guideline for Verification on Legality and Sustainability of Wood and Wood Products*
- ◆ Hamburg City Authority - Conditional recognition of MTCC scheme for a two-year period beginning June 2006

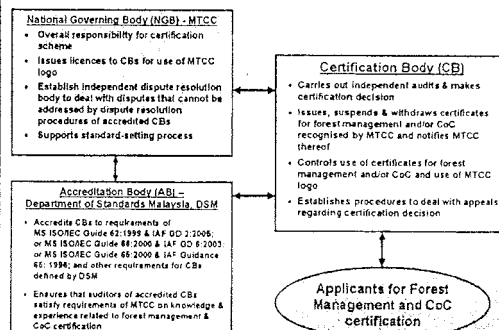


New Institutional Arrangement For MTCC Scheme

- MTCC has taken steps towards a new institutional arrangement for its scheme in order to meet international requirements
- Meet requirements of timber procurement policies of countries such as the UK, Germany and The Netherlands



New Institutional Arrangement

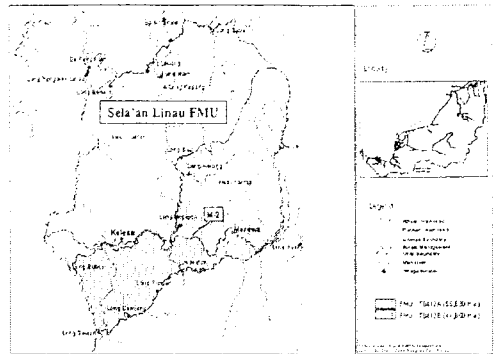


Certification of Sela'an Linau FMU

- Location : Upper Ulu Baram, Sarawak
- Managed by : Samling Plywood (Baramas) Sdn. Bhd.
- Forest Area : 55,949 ha (Timber Licence No. T0412A)
 - : 72% - Mixed Hill Dipterocarp
 - 28% - Kerangas & Montane Forest
- Status: Legally gazetted with approved Forest Management Plan (FMP)



Location of FMU



Chronology of Certification of Sela'an-Linau FMU

1. Independent assessor: SIRIM QAS
2. Pre-assessment (8 - 12 September 2003) - To determine whether FMU ready for main assessment against MC&I (2001)
3. Main assessment (16 - 22 March 2004) - two major Corrective Action Requests (CARs)
4. Verification to close out two Major CARs (2-5 August 2004)
5. Decision on certification by MTCC Certification Committee (18 October 2004)
6. First Surveillance visit - (10-18 October 2005) - Certificate maintained based on result during surveillance visit
7. Second surveillance visit - (18-24 March 2007)



Main Assessment

- 5 Minor CARs raised - Need to be addressed by next surveillance visit
 - One minor CAR (SEL-07) relates to blockade erected by Penans in Long Benalih
 - Corrective action recommended : There needs to be a resolution of existing grievances and a harmonisation of the rights and claims of indigenous communities in question and the needs of the FMU management



Main Assessment

- 2 Major CARs raised - need to be closed-out before FMU can be certified
 - Major CAR (SEL-05) : The marked buffer belt along a permanent waterway in Block 5 was infringed with large volume of soil being pushed down to the buffer belt
 - Major CAR (SEL-06) : Alignment & construction of skid trail in Block 5 did not adhere to RIL (Reduced Impact Logging) specifications



Action taken on Major CAR (SEL-05)

Before



Felled trees lying across river

After



Action taken to clear all debris from river



Action taken on Major CAR (SEL-06)

Before



Excess soil pushed to side of skid trail due to deep blading

After



Skid trail with minimal blading

SFM Liaison Committee for Sela'an Linau FMU

- Serves as forum for consultation on matters of common interest
- Chairman: Sarawak Forestry Corporation (SFC)
- Members: Samling, Resident's Office, District Office, and native communities
- Meets to review progress and ensure all community development projects carried out
- Efforts have been taken to expand the membership of indigenous communities and provision of logistic support to attend meetings



Complaints by Native Communities related to Sela'an Linau FMU

1. Complaint letter from Tual Kampung (TK) Bilong Oyau of Long Sait (located outside Sela'an Linau FMU) (+ 11 communities) (25 January 2005)
 - Not consulted on award of certificate
 - Have outstanding court case against Samling
 - Requested MTCC to revoke certificate issued to Samling
2. MTCC reply (21 February 2005)
 - Explained that certificate was awarded based on recommendation of independent assessor; assessor will be instructed to look into complaint during surveillance visit
 - Provided map of forest area certified by MTCC
 - Requested more information about court case
3. Reply from TK Bilong Oyau (25 February 2005)
 - Gave reference number of court case
 - Requested clinic to be constructed in Long Sait as previously promised by government
 - Other requests: Longhouse, piped water & new church

Complaints by Native Communities related to Sela'an Linau FMU

4. Letter from TK Bilong Oyau to Datuk Peter Chin, Minister of MPIC (15 April 2005)
 - Consider MTCC response to be inadequate
 - Request certificate issued by MTCC to be suspended
5. Reply from Datuk Peter Chin (31 May 2005)
 - Certificate was issued following due process based on recommendations of independent assessor
 - Such process is in line with international certification practices to ensure transparency and credibility of scheme
 - 4 out of 5 native communities located within FMU were consulted by auditors; 3 out of 6 communities located at perimeter of FMU were also consulted
 - Remaining communities located within and at perimeter of FMU will be consulted during next surveillance visit
 - Court case is still pending in Miri High Court; none of seven communities interviewed by auditors mentioned about court case

Complaints by Native Communities related to Sela'an Linau FMU

High Court case

State Government of Sarawak and Samling jointly sued by Penan of four longhouses (Long Kerong, Long Sepigen, Long Sait and Long Ajeng) situated in timber concessions held by Samling, seeking declaration that they have native customary rights over their claimed land located within the said timber concessions.

Case compounded by counter claims made by Kenyah communities in Long Semiang, Lio Mato and Long Tungan who have registered themselves as defendants in this case

Plaintiffs did not seek any court injunction against Samling or State government to cease operations



No.	Communities listed in letter	Located within FMU	Located outside FMU	Consulted on Main assessment	Consulted on 1st Surveillance
1.	Long Sait		✓		✓
2.	Long Kerong		✓		✓
3.	Long Sepigen		✓	✓	✓
4.	Long Ajeng		✓		
5.	Long Laman		✓		
6.	Long Morong		✓		
7.	Ba Pengaran		✓	✓	
8.	Long Benalih	✓		✓	✓
9.	Long Sabai		✓	✓	
10.	Ba Tik, Ngeluh		✓		
11.	Long Sepatal		✓		
12.	Long Pakan		✓		
Communities not listed in letter but located within the FMU					
13.	Long Lellang	✓		✓	
14.	Long Mala	✓			✓
15.	Long Buboi	✓		✓	✓
16.	Long Kenyong	✓			✓

First Surveillance Visit (10-18 October 2005)

- Auditors visited additional Penan communities located within and outside FMU i.e. Long Sait, Long Kerong, Long Kepang & Data Bila
- Auditors also revisited Long Benalih, Long Main, Long Sepigen and Long Mubul
- Discussions held with signatories of complaint letter:
 - TK Bilong Oyau & two other members of Long Sait
 - TK Ali Toi of Pengaran Kellan
 - TK Saun Bujang of Long Benalih
- Auditors provided explanation on pros and cons of timber certification in context of SFM – posed question whether MITCC should maintain certification status of FMU

First Surveillance Visit

- ◆ Consultations held with native communities – agreed that their request for withdrawal of certification be put on hold pending further consultations
- ◆ Identified communication and logistics as main constraints contributing to non-attendance of some native communities at Liaison Committee meetings
- ◆ Proposed that notification of meetings be announced over Radio Malaysia Sarawak (Kayan-Kenyah & Kelabit Services), two to three weeks prior to meeting date together with written notification
- ◆ Native communities invited to join survey teams to ensure that their legal and customary rights and claims would be taken into account

First Surveillance Visit

Auditors recognised *ad hoc* assistance rendered to native communities by Samling

- ◆ Construction of a mini-hydro and water supply system at Long Main
- ◆ Construction of longhouse at Ba Mubul
- ◆ Access roads linking villages to primary timber road
- ◆ Assistance to school libraries
- ◆ Annual contribution to school as awards for academic achievement to top five students at every level
- ◆ Re-forestation of unused native customary land with selected species and coffee-planting project



First Surveillance Visit

Results:

3 out of 5 minor CARs closed-out

2 minor CARs remained outstanding; one is related to the blockade. Taking into account the attempts made to reach an amicable solution, as well as the outcome of the consultations conducted during the surveillance visit, this minor CAR was extended until the next surveillance visit

As no major CAR was raised, SIRIM QAS recommended certificate be maintained

Briefing Sessions and Field Visit to Sela'an Linau FMU (16-22 April 2006)

- ◆ Organised following decision made at 27th MTCC BOT Meeting and requested by TK Bilong Oyau of Long Sait during First Surveillance Visit
- ◆ Team comprised representatives from MITCC & SFC with observers from Sahabat Alam Malaysia (Marudi office) & President of Sarawak Penan Association
- ◆ Objective to emphasise to native communities
 - Benefits of certification in context of SFM
 - Certification is not a one-time process; FMU is subject to periodic surveillance
 - Native communities can contribute positively to certification process through their involvement and participation in stakeholder consultations during assessment/surveillance visits

Briefing Sessions and Field Visit to Sela'an Linau FMU (16-22 April 2006)

Preparations:

- Posters & brochures in Bahasa Malaysia
- Invitation letters by hand (assisted by SFC)
- Radio announcement – Kenyah-Kayan / Kelabit services



Briefing sessions to 7 villages:

- ◆ Long Kepang, Long Main, Long Lellang (Kelabit community), Long Benalih, Long Sepigen, Long Sait and Long Kerong





Briefing Sessions and Field Visit to Sela'an Linau FMU (16-22 April 2006)

Field Visit:

Representatives from 3 villages i.e. Long Main,
Long Sait & Long Benalih

Social and environmental aspects of forest
management practices of FMU were shown:

- preservation of salt licks;
- preservation of fruit trees;
demarcation and protection of buffer zones
and water; catchments areas for provision of
water supply;
- logged-over forest with low density harvesting
and good residual stocking; and
- establishment of community coffee planting
project



Briefing Sessions and Field Visit to Sela'an Linau FMU (16-22 April 2006)

Outcomes

- ♦ native communities have better appreciation of MTCC
scheme in protecting their interests and enhancing SFM in
Sarawak
- ♦ some communities (Long Main and Long Lellang)
expressed full support for timber certification
- ♦ other communities did not express outright rejection but
requested for more time to evaluate benefits of timber
certification
- ♦ Participants in briefing sessions and field visit
acknowledged usefulness of explanations given by MTCC;
field trip enabled them to see forest management practices
implemented in FMU

Briefing Sessions and Field Visit to Sela'an Linau FMU (16-22 April 2006)

Outcomes

- ♦ Formation of Divisional Forestry Committee (DFC)
chaired by the Resident of Miri - to serve as a forum
to deliberate matters related to development plans and
availability of funds for the Penan communities living
in and around the FMU



13th Meeting of SFM Liaison Committee (13 June 2006)

Chaired by DO, Marudi

- ♦ Attended by Heads/Representatives of 8 native
communities, including Long Benalih
- ♦ Objective: Discuss construction of road linking
to Akah-Lellang and need to open blockade



13th Meeting of SFM Liaison Committee (13 June 2006)

Decisions

- ♦ All agreed to road construction if it is decision of
government. Long Benalih needed further
consultation and to inform DO within two weeks
- ♦ Samling agreed to build the road without carrying out
any logging in Coupe 1 (i.e. area where Long Benalih
is located) without prior consent
- ♦ Representatives of the villages are invited to
participate during the process of alignment of the road
by Samling, so that they can identify sites important to
them



ANNEXURE 5

Letter from the State Planning Unit, Sarawak



UNIT PERANCANG NEGERI
JABATAN KETUA MENTERI
Tingkat 6 & 7, Wisma Bapa Malaysia
93502 Kuching
Sarawak, Malaysia

Ruj. Kami : (23) UPN/S/MI/1/10.3
Tarikh : 24 September 2007

Tel : (6)082 – 492276/492285 Faks : (6)082 – 449481/442536 Laman web: <http://www.spu.sarawak.gov.my>

SEGERA

Setiausaha
Suruhanjaya Hak Asasi Manusia Malaysia
Cawangan Sarawak
(u.p. En. Sophian bin Osman)
Fax : 254937

Tuan,

LATARBELAKANG PENUBUHAN STATE CABINET COMMITTEE FOR PENAN AFFAIRS

Dengan segala hormatnya perkara di atas adalah dirujuk.

2. Bersama-sama ini dikemukakan Lampiran I dan II mengenai maklumat latarbelakang penubuhan Jawatankuasa Kabinet mengenai pengurusan hal-ehwal Penan untuk tindakan pihak tuan.

Sekian, terima kasih

"BERSATU BERUSAHA BERBAKTI"

(ISMAWI BIN HAJI ISMUNI)
Pengarah
Unit Perancang Negeri
b.p. Setiausaha Kerajaan Negeri Sarawak

Salinan Kepada:
SUHAKAM Kuala Lumpur (Fax: 03-26125673/26125620)
(Attn: Pn. Paremeswari)

BY FAX TRANSMISSION ON 25-9-07

Lampiran I**LATARBELAKANG PENUBUHAN STATE COMMITTEE FOR PENAN AFFAIRS****1 TARIKH PENUBUHAN**

- Kerajaan Negeri telah menubuhkan Jawatankuasa Kabinet mengenai Hal-Ehwal Penan pada Ogos 1987. Jawatankuasa ini telah dipengerusikan oleh YB Dato Sri Abang Zohari Bin Tun Abg Haji Openg.

2 MISI ATAU OBJEKTIF PENUBUHAN

- Objektif Jawatankuasa ini adalah untuk:
 - i. Merangka polisi, menyediakan dan melaksana rancangan pembangunan untuk kaum Penan; dan
 - ii. Membantu kaum Penan yang baru menetap untuk menyesuaikan diri dengan kehidupan baru dan asimilasi ke arus pembangunan setaraf dengan kaum lain

3 CARTA ORGANISISI

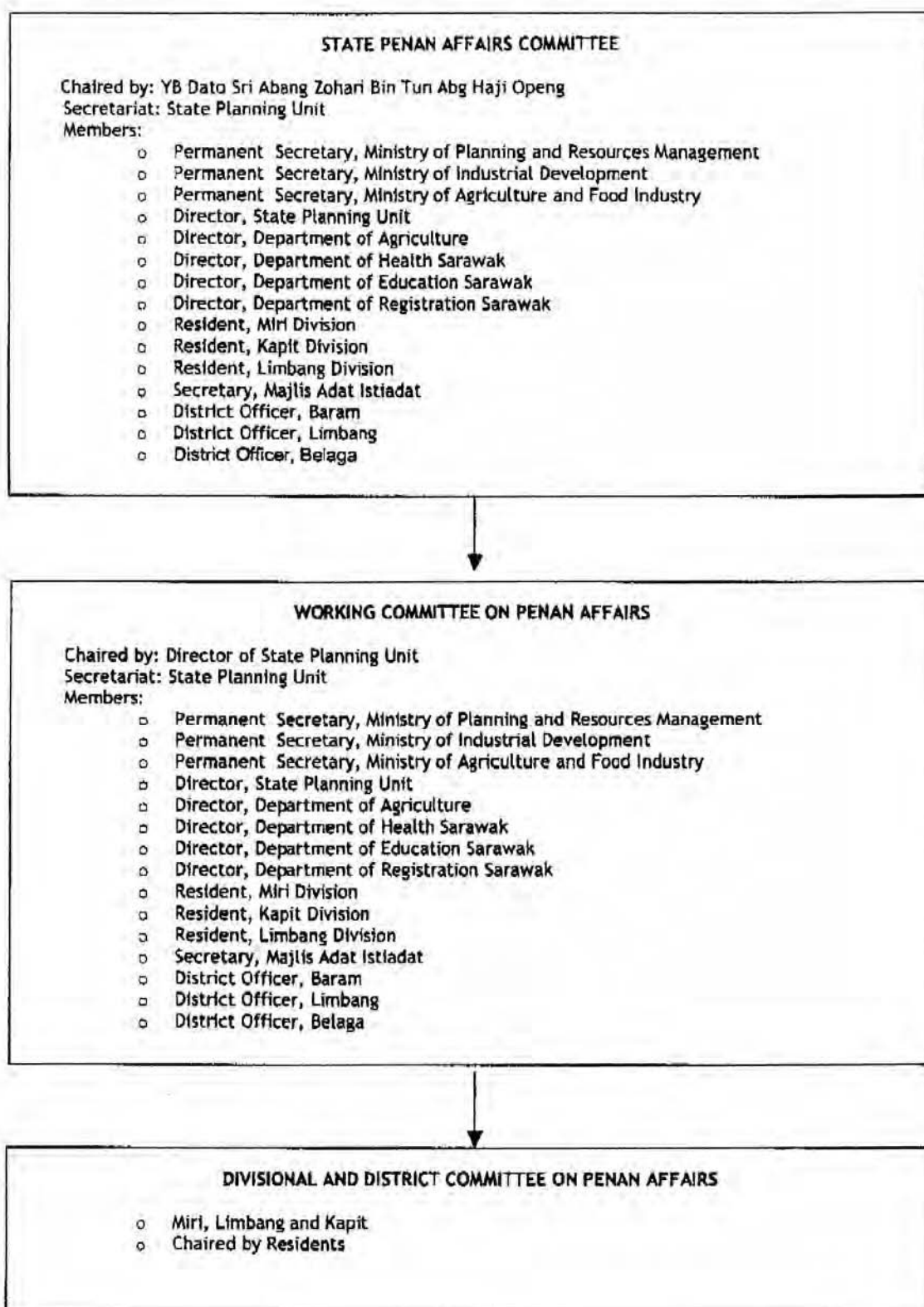
- *Rujuk Lampiran II*

4 STATUS PENUBUHAN (AKTIF ATAU TIDAK AKTIF)

- Jawatankuasa ini masih aktif dalam membantu kaum Penan dan setiap tahun peruntukan seperti bantuan pendidikan, elaun Sukarelawan; dan geran dan bantuan -bantuan lain disalurkan ke Bahagian Limbang, Miri dan Kapit .



Lampiran II



ANNEXURE 6

News and articles on the Penan Community



End blockade or face arrest, Penan told

<http://www.malaysiakini.com/news/57314>

End blockade or face arrest, Penan told

Fauwaz Abdul Aziz
Sep 26, 06 3:07pm

Adjust font size: - *

Leaders of the Penan community of Long Benali in Sarawak could face arrest if they do not comply with a deadline to dismantle barriers erected to deter loggers.

The deadline was conveyed in a meeting last week held between Miri Resident Ose Murang, police and district officers and leaders of Long Benali, according to a source in the community.

"We were told to dismantle the blockade (by today). If not, they said our leaders would be arrested," said the source when contacted.

The authorities, added the source, threatened the arrest of four persons in particular: headman Sound Bujang and villagers Henission Phusu Bujanag, Dennis Bujang and Allen Lai.



The blockade was set up in February 2004 to prevent the construction of a road and loggers of timber giant Samling Group from entering what the community claims to be its native customary land.

The Long Benali villagers, along with their fellow Penan have long resorted to blockades against logging and oil palm companies. They remain adamant despite the impending arrests.

"If they forcibly dismantle the blockade, it means that they are the ones violating our rights. We are just trying to defend our human rights," said the source.

As with other Penan communities in the Ulu Baram area of Sarawak, the villagers of Long Benali perceive Samling's ambitions to log the interior forest as threatening the environment and their present welfare and future sources of livelihood.

They also claimed Samling has encroached on their native customary rights over the land without consultation with all stakeholders.

Logging operations 'legal'

An ongoing High Court case in Miri has, since 1998, pitted four Penan against the Sarawak government and Samling over the logging licences issued.

Samling, however, has argued that its operations are licenced by the Sarawak government and certified by the Malaysian Timber Certification Council (MTCC).

It also said the interior Kelabit community of Long Leliang disagrees with the Penan of Long Benali, and wants construction of the access road as soon as possible.

When contacted, both the Miri Resident and Marudi district officer refused to comment.

Officers at the Miri district and Kuching contingent police stations said they had no knowledge of any impending arrests.

MTCC has not responded to questions from *malaysiakini*, while the Samling communications department said it was not the company's police to speak to the press on such matters.

Loggers closing in on Penan blockade

<http://thestar.com.my/news/story.asp?file=/2006/12/17/nation/163...>

Sunday December 17, 2006

Loggers closing in on Penan blockade

MIRI: Workers of a logging company here are about 1km away from a blockade set up by Penans in Sungai Benalih, ulu Baram in the interior Bario district.

The Sungai Benalih Penans, who claim the place as ancestral land, are trying to prevent the loggers from entering further into an area earmarked by the state for logging.

There is concern that the two groups could clash.

"It is just a matter of time before these workers end up at the blockade site.

"These workers have been instructed by their bosses to prepare the area for heavy duty logging vehicles to enter," said a source.

The Miri-based timber consortium has already been given the logging concession.

The Penans say the area belongs to them as their ancestors had lived there for centuries. They do not own land titles.

In Sarawak, any land without an official land title is considered state property and the state reserves the right to issue logging licences or land development licences as and when it deems fit.

Environmental watchdog, Borneo Resources Institute, is looking at the latest development in Sungai Benalih with concern.

Its coordinator for Sarawak Raymond Abin is worried that the timber company may resort to physical force to remove the blockade.

"Sooner or later, they will find a way to get rid of the blockade. They are very eager to get their hands on the timber there.

"I just hope nothing untoward happens," he said.

Ba'Kelalan assemblyman Nelson Balang Rining said he was informed that the timber company workers were merely repairing the existing timber road in the area.

"From the information I have received, these workers were directed to repair part of the road leading to the blockade sites. They were not instructed to dismantle the blockade," he stressed.

Balang said he was still confident that the dispute in Sungai Benalih could be resolved amicably.



Anti-logging blockade dismantled

<http://www.malaysiakini.com/news/63340>

Anti-logging blockade dismantled

Feb 13, 07 2:04pm

A three-year blockade set up by the Penans of Upper Baram in Sarawak to deter loggers has been dismantled.

This paves the way for logging of one of the country's last primary forests.

According to a statement from the Switzerland-based society for the protection of rainforest communities - Bruno Manser Fonds (BMF) - police personnel and workers of Malaysian logging giant Samling Group removed the blockade on the night of Feb 7.

By the time members of the Long Benali community which set up the blockade got wind of the operation and arrived at the blockade site the next morning, it was already too late as logging tractors and bulldozers had already moved in to begin construction of the access road.

"The Penan were forced to watch from the distance (as) the company started bulldozing their land," said BMF in a statement.

Legal suit

Samling has received certification and logging licenses from the Sarawak state authorities as well as from the Malaysian Timber Certification Council (MTCC).

The Penans, however, have contested these in a legal suit pending at the Miri High Court since 1998.

They also dispute the sustainable forest management certification that Samling received from MTCC in 2004 over its concession area in the Sela'an-Linau forest.

BMF said the Penan community and the Miri-based non-governmental organisation Borneo Resource Institute (Brimas) were "very disappointed" with the latest development.

They vowed, however, to continue the **three-year struggle** against what they consider is Samling's encroachment into their native customary land.

"If we don't defy the loggers now, all the remaining primary forests in the Upper Baram area will be gone within two years," BMF quoted a source as saying.

<http://www.survival-international.org/news/2228>

Police clear Penan blockade

20 February 2007

Members of a nomadic tribe who had been preventing loggers from bulldozing their rainforest home for two years have had their blockade dismantled by Malaysian police.

The Penan nomads had blockaded a logging road in an effort to stop one of the last remaining areas of virgin rainforest in the province of Sarawak from being logged.

The Penan are entirely dependent on the forest for all their food and shelter. The Samling logging company whose concession covers the Penan's territory have already cut down much of the tribe's rainforest.

In June 2006 the Malaysian authorities announced that they would remove the blockade, near the community of Long Benali, and arrest four Penan leaders. However, after protests by Survival supporters and others around the world, they took no action. Worldwide protests are now needed once again to stop the resumption of the logging.

Despite the destruction of their blockade, the Penan will continue to resist Samling's activities. According to one Penan, 'If we don't defy the loggers now, all the remaining forest in the Upper Baram area will be gone within two years'.

The blockade site is in an area certified by the Malaysian Timber Certification Council (MTCC) for 'sustainable logging'. However, the certification fails to acknowledge that this 'sustainable logging' is on the Native Customary Land of the Penan people, who have never given their consent for logging to take place.



Penan, Sarawak, Malaysia.

©Robin Hanbury-Tenison/Survival



Pertubuhan Berita Nasional Malaysia :: BERNAMA

14 Mac, 2007 21:43 PM

Kaum Penan Jangan Terlalu Ghairah Pertahan Hak Tanah Adat, Kata Pesuruhjaya Suhakam

MIRI, 14 Mac (Bernama) -- Masyarakat Penan tidak perlu terlalu ghairah untuk mempertahankan hak tanah adat mereka sehingga menafikan hak mereka sendiri untuk menikmati pembangunan seperti mana masyarakat lain di negara ini, kata Pesuruhjaya Suruhanjaya Hak Asasi Manusia (Suhakam) Dr Mohd Ritom Abdullah.

Katanya masyarakat Penan perlu membuka fikiran mereka dan bersedia untuk berunding dengan wakil kerajaan demi untuk menyelesaikan masalah yang mereka hadapi serta dapat melangkah lebih maju lagi.

"Kita harus mengambil kira keadaan semasa. Kadang-kadang kita terpaksa kehilangan sesuatu tetapi mendapat sesuatu yang lebih baik lagi," katanya pada sesi dialog Suhakam dengan ketua kampung dan wakil masyarakat Penan dari Ulu Baram di sini, hari ini.

Dua pesuruhjaya Suhakam lain, Datuk Dr Denison Jayasooria dan Datuk Khalid Ibrahim serta beberapa orang wakil dari badan bukan kerajaan (NGO) turut hadir pada majlis dialog yang bertujuan untuk mendengar permasalahan yang dihadapi oleh masyarakat Penan di Ulu Baram.

Dr Ritom berkata beliau mendapati setakat ini hak tanah adat dan pembalakan merupakan isu-isu pokok yang ditimbulkan oleh masyarakat Penan di Ulu Baram sehingga menyebabkan mereka menentang aktiviti pembalakan dan mendirikan sekatan berdekatan Long Benalih.

Menurutnya masyarakat itu perlu mengimbangi antara keperluan mempertahankan hak asasi mereka dan tanggung jawab mereka untuk memajukan diri dan generasi baru mereka.

"Kerajaan mempunyai tanggungjawab untuk membawa pembangunan ke kawasan anda dan janganlah jadikan hak terhadap tanah adat itu menyebabkan mereka (masyarakat Penan) terus terpinggir dari arus pembangunan," katanya.

Mengenai dakwaan penglibatan NGO menyokong penentangan kaum Penan terhadap aktiviti pembalakan, Dr Ritom berkata beliau mengakui adalah menjadi tanggungjawab mereka untuk mengemukakan isu itu kepada umum tetapi perlulah ada landasan fakta-fakta yang dapat menyokong dakwaan mereka.

Sementara itu, seorang wakil masyarakat Penan dari Long Kerong, Martin Bujang menafikan kaumnya antipembangunan dan sebaliknya mereka sentiasa menginginkan kemajuan seperti rakyat lain di negara ini.

Menurutnya mereka juga tidak mengharapkan syarikat pembalakan untuk membawa pembangunan ke kawasan mereka memandangkan syarikat berkenaan tidak mempunyai kepentingan jangka panjang terhadap kebajikan masyarakatnya.

"Kami mahu kerajaan sendiri yang buat jalan raya di kawasan kita kerana kalau syarikat pembalakan yang disuruh buat, mereka akan membuatnya bukan untuk kemudahan kita tetapi untuk kemudahan mendapatkan balak dari hutan," katanya.

<http://www.bernama.com.my/bernama/v3/bm/news.php?id=251301> 9/10/2007

Pertubuhan Berita Nasional Malaysia :: BERNAMA

Beliau mendakwa tindakan kaum Penan di Long Benalih mendirikan sekatan juga adalah sebagai penentangan mereka terhadap rancangan sebuah syarikat pembalakan untuk membuat jalan yang melalui kawasan tanah hak adat mereka.

Seorang lagi wakil Penan, Hon Talip pula menafikan mereka telah mendapat sokongan daripada NGO luar untuk menentang aktiviti pembalakan di Ulu Baram.

"Kami melakukannya sendiri. Walaupun sekatan hanya di Long Benalih tetapi mereka mendapat sokongan Penan dari kampung-kampung lain," katanya sambil menambah mereka akan tetap mendirikan semula sekatan yang telah dirobohkan Februari lepas.

"Jika sekatan baru yang kami dirikan dirobohkan lagi, kami akan mendirikannya semula sehingga kerajaan mengesahkan hak adat kita," katanya.

-- BERNAMA

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<http://www.bernama.com.my/bernama/v3/bm/news.php?id=251301> 9/10/2007



The Star Online > Nation

Friday March 16, 2007

Suhakam: Timber blockade issue needs consensus to resolve

By STEPHEN THEN

MIRI: There are too many conflicting views among disputing parties in the timber blockade issue in Sarawak, said the Human Rights Commission of Malaysia (Suhakam).

Unless there is a consensus among the disputing parties, timber blockades would be a long-term problem in Sarawak, said Suhakam commissioner Datuk Dr Denison Jayasooria.

“The state government, the timber companies and development agencies must put in more effort and time to communicate with the Penans and win their hearts and mind.

“The Penans must also be more open and talk to the government leaders to discuss their future well-being,” he said yesterday.

Dr Denison and two other Suhakam commissioners – Dr Mohd Hirman Ritom and Datuk Khalid Ibrahim – were here at the invitation of the Miri Resident Office to help resolve the ongoing blockades in Long Benalih.

They met representatives of the state government, development agencies, timber company representatives, non-governmental bodies and a group of Penan leaders to learn more of the issues at stake.

Among their findings were:

- While the timber companies and the state government claimed they had had meetings with Penans affected by logging projects, the Penans alleged they had never been consulted;
- The Penans' interpretation of native customary rights differs greatly from state government's version;
- The Penans say they are not against development but they do not want private timber companies on their land for fear of losing their resources forever; and
- State agencies are trying to help rural native groups prosper but their policies on Native Customary Rights (NCR) are not human-rights friendly ;

Penans tell Suhakam: Blockade to continue

Penans tell Suhakam: Blockade to continue

Tony Thien
Mar 16, 07 12:51pm

Attempts have been made to remove their blockade but the Penans are not budging. They declared that they will continue to block the road in order to protect their ancestral land.

This was the message the Penan community at Long Benalih in Ulu Baram, Sarawak, delivered to Suhakam commissioners and officials during a dialogue in Miri on Wednesday.

They said they are determined to continue with their road blockade to try and stop logging on their ancestral land inspite of recent action taken by a timber company with the support of police to forcibly remove the blockade.



"They want to log on our land. We will not allow that. The blockade will be up again if the situation warrants," the Penan delegation told Suhakam.

The government can, however, construct an alternative road access to the villages but not the logging company as their only interest is to take the timber, Suhakam was told.

Exercising our rights

The blockade at Long Benalih was dismantled by the authorities recently. The Penans claimed the dismantling was done without their knowledge and consent, and they were very upset by it.

"We do not oppose the government or development. The blockade is necessary and we are merely exercising our rights to the land, and the majority of our tribe support the blockade and oppose logging in our area," they told Suhakam.

During the dialogue, the Penans also refuted allegations that non-governmental organisations (NGOs) were behind them or instigated them in setting up the road blockade.



Suhakam fact-finding chairperson Dr Dension Jayasooria said a report would be tabled to the full commission meeting.

He said there were 'gaps' and 'contradictions' obtained after the dialogue sessions with the Miri Resident Office, the logging companies and the Penans.

"The authorities said a lot of dialogues were held but the Penans said there was no such discussion at all," he said, adding that "the situation calls for meaningful dialogues and discussion, and that the state government should do more to win the hearts and minds of the Penans".

<http://www.malaysiakini.com/news/64603>

3/26/2007



Timber council says indigenous groups back logging

Timber council says indigenous groups back logging

Mar 17, 07 12:21pm

The majority of the villages located within Samling's forest management unit (FMU) in the Sela'an-Linau forest in Sarawak support the logging giant's operations, said the Malaysian Timber Certification Council (MTCC).

According to MTCC, indigenous groups in the Upper Baram region have suffered from attempts to prevent the building of a road through the area claimed by the Long Benali community, who oppose Samling's logging operation.

Long Benali, one of the villages in the Samling area certified in 2003 by MTCC, has been protesting against logging encroachments into what they claim is ancestral land since 1993.



The villagers also believe logging will lead to environmental degradation of their area.

Last month, their **three-year** blockade at a strategic entry point into the area was dismantled by police personnel and workers from the company.

Villagers face hardships

In a statement received yesterday, MTCC said the blockade was removed by the state authorities as it had become a "development issue" and since "there have been appeals from other indigenous communities whose daily life has been adversely affected by the blockade."

Among the hardships, said MTCC chief executive officer Chew Lye Teng, were the communities' lack of easy access to the nearest town, for their children to go to school and for emergency purposes.

The blockade had also led to problems in transporting subsidised agricultural materials and equipments such as fertilisers and pipes, the shortage and high price of fuel and cooking gas, problems in electricity supply and medical treatment and equipment, said Chew.

"In this regard, the erection of the blockade by the indigenous community in Long Benali is considered to be an infringement of the relevant regulations," he said.

In a March 13 press release, environmental group Sahabat Alam Malaysia (SAM) said the dismantling of the Long Benali blockade

Timber council says indigenous groups back logging

indicates "serious flaws" in the MTCC certification scheme as it seems only to "provide the seal of approval to forests which have not earned it."

"In our view, MTCC is in serious need of revamping its scheme and must begin to address the flawed legal and governance framework in the Malaysian forestry sector.

"A certification scheme should not make sustainability and legality claims when it is not able to prevent small pockets of the ancestral domains of poor communities from being logged by a wealthy multinational timber corporation," said SAM president SM Mohamed Idris.



Scheme credibility unaffected

Chew, however, noted that MTCC proceeded with the assessment and certification of Samling's FMU (forest management unit) upon being satisfied that state and national legislative requirements had been fulfilled.

Other issues and concerns, meanwhile, held by the indigenous communities in relation to Samling's operations are discussed in a liaison committee whose membership include state and company officials as well as representatives from the indigenous communities within the FMU, said Chew.

"While it is acknowledged that the certification of the Sela'an-Linau FMU has been challenging, it has not affected the credibility of the MTCC scheme," he added.

Chew noted further that MTCC's certification is recognised by authorities in the United Kingdom, France, The Netherlands, Denmark, New Zealand and Japan.

<http://www.malaysiakini.com/news/64653>

3/26/2007



<http://www.survival-international.org/news/2228>

Penan rebuild blockade

2 April 2007

Members of the Penan tribe have rebuilt their logging blockade, a month after it was dismantled by police and loggers.

The Penan have been blockading the logging road to stop the Malaysian logging giant, Samling, from destroying one of the last remaining areas of pristine rainforest left in Sarawak.

The Penan rely on this forest for their food and all their needs; without it they cannot survive as an independent and self-sufficient people.

The Penan have told the Human Rights Commission of Malaysia (Suhakam) that they will continue to block the road in order to protect their ancestral land.

'They want to log on our land. We will not allow that', the Penan delegation told Suhakam officials at a meeting in the town of Miri last week.

The Penan believe that unless they defy the loggers all the remaining forest in the area will be gone in two years. Samling have already cut down much of the Penan's rainforest.

In June 2006 the Malaysian authorities announced that they would remove the blockade, near the community of Long Benali, and arrest four Penan leaders. However, after protests by Survival supporters and others around the world, they took no action. The blockade was finally dismantled on February 7th, 2007, amid international condemnation.



Malaysian police dismantle a previous Penan logging road blockade in 1993.

© Bruno Manser Fons. (BMF)

<http://www.survival-international.org/news/2228>

Armed police dismantle Penan logging blockade

10 April 2007

Malaysian police in Sarawak have for a second time dismantled a blockade set up by members of the Penan tribe to protect their rainforest land from logging by Malaysian company Samling.

‘The police and the company workers were very rude and did not negotiate with us,’ a Penan spokesman said. ‘We couldn’t do anything because we heard the police firing gunshots which made the situation really dangerous to us.’

The Penan had been blockading a logging road to prevent Samling from destroying one of the last remaining areas of pristine rainforest left in Sarawak. The Penan rely on this forest for their food and all their needs; without it they cannot survive as an independent and self-sufficient people.

Police dismantled the blockade on 4 April using chainsaws. The Malaysian authorities had announced in June 2006 that they would remove the blockade, near the community of Long Benali, and arrest four Penan leaders. However, after protests by Survival supporters and others around the world, they took no action. The blockade was first dismantled on 7 February this year, but the Penan rebuilt it in mid-March.



Berita harian : 20/4/2007

Penan letak lima sekatan

MIRI: Suku Penan di kawasan pedalaman Baram di sini, membuat bantahan besar-besaran dengan membina lima sekatan untuk menyekat kegiatan pembalakan yang didakwa mengancam kehidupan harian mereka.

Sekatan itu didirikan sejak minggu lalu di kawasan Long Sayan dan Long Kevok dekat Sungai Apoh, Long Lutin (Sungai Patah), Long Kevok (Sungai Sayun), Tutoh dan kawasan Ba'Bevan (Sungai Si'ang).

Pengerusi Persatuan Penan Sarawak, Ajang Kiew, berkata sekatan jalan balak dibuat kerana penduduk tidak puas hati terhadap tindakan syarikat pembalakan yang didakwa menceroboh kawasan mereka sewenang-wenangnya.

"Penduduk Penan turut pertikaikan pemberian lesen pembalakan yang tidak telus dan mengabaikan hak tanah adat suku itu. Sudah sekian lama, kami minta kerajaan negeri menyelesaikan pencerobohan ini, termasuk usaha meningkatkan taraf hidup kaum Penan di hulu Baram.

"Namun, sehingga sekarang permintaan kami tidak dilayan. Malah, perjumpaan yang dilangsungkan termasuk dengan Suruhanjaya Hak Asasi Manusia (Suhakam) belum menghasilkan penyelesaian diharapkan," katanya dalam kenyataan, di sini, semalam.

Ajang mendakwa syarikat pembalakan yang beroperasi di kawasan Baram tidak berminat berbincang dengan Penan, kecuali situasi terdesak.

Beliau berkata, pencerobohan syarikat pembalakan terbabit menyebabkan kemusnahan sumber hutan di kawasan Baram.

"Sumber hutan dimusnahkan sesuka hati, sungai tercemar malah pokok buah-buahan, milik kami ditebang. Perkara ini berlaku di Long Sayan dan Long Belok.

"Dalam kebanyakan perbincangan yang diadakan antara kampung Penan dan syarikat pembalakan, kami sering berada dalam keadaan tertekan walaupun dengan kehadiran kakitangan pihak berkuasa," katanya.

Masyarakat Penan, katanya, terpaksa bersetuju dengan perjanjian berat sebelah, kurang jelas dan tidak memberi kebaikan kepada mereka.

Beliau bimbang jika Penan gagal mempertahankan hak mereka, kebanyakan kawasan hutan yang sebelum ini menjadi tempat mencari rezeki musnah dan mereka akan kehilangan sumber makanan.

Sehubungan itu, Ajang berkata, penduduk Penan akan terus mendirikan sekatan pembalakan di kawasan berkenaan sehingga permintaan mereka dipenuhi.

Penan di Sarawak, katanya, mahu kerajaan negeriewartakan kawasan penempatan mereka untuk mengelak diceroboh oleh kegiatan pembalakan secara berleluasa.

Malaysiakini.com - Third blockade by Iban landowners

Third blockade by Iban landowners

Tony Thien

Apr 30, 07 12:03pm

Native customary rights (NCR) landowners in Kampung Aping and Kampung Abok in Sri Aman, 180km from Kuching, have erected a road block for the third time to stop loggers entering their land.

They alleged that the logging company and its contractors have caused considerable damage to their land and fruit trees, and stolen timber from communal forests meant for domestic use.

Barriers erected on two previous occasions were removed by the company's workers.

The village development and security committee, headed by Jacob Emang, held a meeting last Thursday at which it was decided the road block would be set up on Sunday.



In a statement to *malaysiakini*, the Iban villagers complained that the company and its contractors had also destroyed three water catchment areas - two at Aping and one at Abok - causing river water to become polluted and muddy.



"Due to this, the villagers have to get water from other smaller but clean streams further away from the polluted rivers," the statement said.

The landowners also urged the government to revoke the timber licence immediately and to help the villagers claim compensation for the damage and pollution.

They alleged that the company has extended the boundary of the timber concession, thereby further encroaching into NCR land.

"This false boundary is between the company's licensed area and the NCR area, and has caused

a dispute," said Jacob.

"We can prove this on the ground because the licensee is not only cheating us but working against the law and the government."

He said the committee would write to state police chief Talib Jamal and Bintulu MP Tiong King Sing regarding police inaction over their complaints.

Jacob and three other landowners were **arrested** earlier this month and remanded for about a week for allegedly burning mobile camps belonging to the company.



Malaysiakini.com - Penan blockade: Samling under pressure

Penan blockade: Samling under pressure

Sep 12, 07 12:16pm

"Resolve the land conflict with blockading Penan communities by November 2007 or we'll revoke your certification of 56,000 hectares of tropical forest in the Upper Baram region of Sarawak."

This was the clear message sent by the Malaysian Timber Certification Council (MTCC) to logging giant Samling recently.



MTCC chief executive officer Chew Lye Teng has told Samling to negotiate with the Penan community currently defending one of Sarawak's last remaining tracts of primeval rainforest against the loggers.

"If Samling fails to resolve the issue by November the council could revoke the company's certificate of sustainable management," Chew was quoted by AP.

According to the CEO, the council's order was based on a survey earlier this year by an independent inspection company.

Swiss-based rainforest NGO Bruno Manser Fund (BMF) in a statement welcomed MTCC's overdue clarification made after two years of intensive campaigning by the Penan communities, and Malaysian and international NGOs.

BMF director Dr Lukas Straumann said the council has realised that its loss of credibility outweighs the gains from the cooperation with Samling.

"We now expect Samling to immediately stop the road construction to Long Lellang and cease all logging activities both in the contested Penan areas and the few remaining primeval forests of Sarawak," he said.

The council's decision is an important campaign victory for Penan headman Saun Bujang (*right*) of Long Benali whose community has maintained the blockade of a Samling logging road for more than three years.

In July 2006, the blockade was dismantled by local police units but the Penans re-erected them several times.

Second blow

In 2007, Malaysian security forces set up a permanent camp close to the blockade site within the MTCC-certified Samling concession.

The local communities reported several incidents of intimidation by the police officers such as shots in the air and verbal threats.

According to the community, the Samling road construction has almost reached their village in the last weeks.

MTCC's ultimatum is the second major blow for Samling after the company lost its Forest Stewardship Council's (FSC) certification of



Malaysiakini.com - Penan blockade: Samling under pressure

570,000 hectares of tropical forest in Guyana
in Jan 2007.

The audit found that the Samling subsidiary 'could not demonstrate compliance with FSC certification requirements' due to 'systematic major nonconformities'.

Criticism of the Sarawakian company includes its dealings with the local indigenous communities, its environmental performance and its failure to comply with basic health and safety requirements for the company workers.



The Star Online: No need to use force to end blockades

The Star Online > Nation

Thursday May 3, 2007

No need to use force to end blockades

MIRI: There is no need to use force to end the timber blockades that have sprung up in several parts of the interior of Miri Division, said Ba'Kelalan assemblyman Nelson Balang Rining.

"It is possible to mediate for



»These blockades are instigated by non-governmental organisations which are making use of the Penans« NELSON BALANG RINI

an amicable solution because these blockades are instigated by non-governmental organisations which are making use of the Penans.

"There is no need to use physical force against the Penan protesters. There is no need to arrest any of them. I think the government can help resolve this through negotiations.

"I am trying to get in touch with the people in the areas concerned to find out what is the real reason for these blockades and what the ground situation is now," he said yesterday.

"As far as I know, there has been no confrontation between the disputing parties."

Balang was asked to comment on the fresh blockades erected by five different Penan communities in Long Lupin, Long Sayan and Long Lellang over the past weeks.

The protesters have set up blockades across several networks of timber roads in two logging concession zones, which have been leased out by the state government to two timber consortiums based here.

The blockade sites are more than 400km inland from here.

Asked whether the Penans were getting more discontented with the timber firms, Balang said he would have to look at the situation in each blockade site before he could draw any conclusions.

"We have been trying very hard to ensure that such disputes do not happen. I have personally met with the Suhakam commissioners recently to discuss this blockade problem at length.

"I have explained the government's side of the story, and on the role we are playing to help the Penans integrate into the mainstream of development and to help them out of the clutches of poverty," he said.

Balang said he would personally visit the blockade sites to mediate with the disputing parties if his help was needed.

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LAST STAND IN SARAWAK

Paul Malone

The Canberra Times, Saturday, 10 March 2007

http://canberra.yourguide.com.au/detail.asp?class=news&subclass=environment&story_id=564774&category=environment

THE BLOCKADE the Penan had erected looked pitiful in the rain, a few bamboo poles strung together across the muddy logging road that cuts through the rainforest near Long Benalih in the upper Baram River region of Malaysian Sarawak, near the Kalimantan border in Borneo. No one was in sight to man the blockade, nor was there any sign of the police who had knocked it down days earlier, or the men from the giant multinational logging company, Samling, on whose behalf they had acted.

Just as well. My guides were worried, frightened that Samling men or the police might catch us looking at the site or taking photos.

This flimsy structure was never going to stop Samling, with its fleets of bulldozers and trucks, from entering the region. But for almost exactly three years, since February 2004, the barricade had stood at the end of the road, symbolically blocking entry to the last remaining stand of the Penan's ancestral rainforest land. Steadily the loggers have moved east from the Sarawak coast and now they are at the last blockade.

In October 1987 the Penan, Kayan and Kelabit communities erected their first barriers, shutting down roads at over 20 sites in the Baram and Limbang river districts, about 100km to the west of the current barrier. About 2500 Penan took part in the eight-month-long protests, enduring harsh conditions and harassment from the logging industry, but maintaining a peaceful campaign.

After a Kayan man charged with obstructing a public thoroughfare was acquitted because the magistrate ruled that the road was part of customary land, the Sarawak Government made it an offence for any person to obstruct the flow of traffic along any road. Nevertheless the protests continued, with many people, mostly Penan, being arrested. Steadily the blockades have been knocked down, and loggers have ripped into the forest. In the early 1970s about 70 per cent of Sarawak's total area was covered by relatively undisturbed rainforest. Now the coastal strip is largely oil-palm plantations; the next strip inland is being prepared for oil palms or looks like wasteland; and the third is a mix of previously logged areas, choked with creeper overgrowth, recently logged areas and areas about to be logged.

Samling controls a 70km-long road that cuts west through to the latest blockade site at Long Benalih. Loggers fan out from the road to feed the timber jinkers that run non-stop, taking huge trees to the staging post of Lapok on the Tinjar River. Bulldozers and graders try to maintain the road, which in parts is deeply rutted and periodically collapses into ravines.

Imported Samling workers now hunt in the forests, making it more difficult for the Penan to find their keenly sought wild boar and other game. Representatives of some tribes have accepted payments for their land along the way but the Penan the original forest nomads have refused any offers. Their last stand is a claim on the 30km by 20km stretch of pristine forest around the Selungo River, covering such settlements such as Long Kerong, Long Benalih and Long Sait.

Samling has been accused in the past, by no less than the World Bank, of carrying out harvesting haphazardly and with unnecessary and excessive damage to the forest. Yet the company has



been granted the Malaysian Timber Certification Council's sustainable-logging concessions over most of this claim, though the Penan have never given their consent to logging.

On the internet Samling proudly says that it has major interests in plantations and is involved in property development, rubber product manufacturing and quarrying. But its plantations cannot replace native rainforest.

In response to questions from The Canberra Times, Samling said it operated strictly within the law and subscribed to sustainable forestry management guidelines. In Malaysia it was subject to an annual allowable volume of logs and there were also restrictions on the minimum tree diameter the company was permitted to harvest. "We selectively harvest trees, leaving the younger ones to grow for the next cutting cycle," the statement said. "We harvest our forests in Sarawak according to a 25-year cutting cycle and harvesting plans approved by the Sarawak Forest Department."

The Penan are widely regarded as having the greatest knowledge of the forest's plants and animals. They recognise more than 100 fruiting trees, 50 medicinal plants and eight blowpipe dart poisons, including one that is far more potent than anything used by any other Borneo tribe.

Despite this, they have been the most peaceful of all Dayak peoples, choosing to withdraw further into the forest when confronted with new settlers. Nevertheless, they are feared by many members of the other tribes. When a blowpipe fell from behind the sun visor in my four-wheel-drive, the Kenya driver explained that he kept it to ward off thieves in the town of Miri. "I put two darts in it so that they think I'm Penan," he said.

The Penan are known for their ability to fire three darts in quick succession down the pipe, a skill members of the other tribes have not mastered.

The Penan have sought to use legal means to gain title to their land. In 1998 they filed a land-rights case in the Malaysian High Court to claim native customary rights. The claim was led by the headman of the Long Kerong hamlet, Kelesau Naan. It has been referred back to the native courts where it is still dragging on.

So far the Sarawak provincial Government has not recognised any Penan native customary rights, arguing that the Penan, who were forced into settlements in the 1960s, had previously roamed the forests and therefore did not "use" the land.

At his home in the tiny settlement of Long Kerong, Kelesau told The Canberra Times through an interpreter of their fight to gain land rights. "The Penan are like mushrooms," he said. "They come from the ground."

He said they had inhabited the forest land around him before other native peoples had arrived. He was adamant that the Penan did not want money in compensation for their homeland, as other tribes had accepted. They wanted the land to keep everything in it, the sago, the rattan, the medicines, the fruit and the animals. "We have to object [to the logging] because this is our area," he said.

The destruction of the blockade would not stop them and they would re-erect it, he said.

As the lead signatory to the 1998 land-rights case in the High Court, Kelesau is the Eddie Mabo of Malaysian indigenous land claims. Just as Mabo campaigned to overturn the legal fiction of terra nullius in Australia, Kelesau and the other six headmen who took the case to the High Court are campaigning to overturn the Malaysian fiction that, because they were nomads, they did not

own and use the land. Samling says the High Court case is an ongoing dispute between the Government and "certain natives". The company had voluntarily ceased harvesting activities in the areas under dispute, pending the outcome of proceedings.

Because of where they work, some Penan cannot speak on the record but one said that if they did not stop the loggers now all the remaining forest in the Upper Baram area would be gone within two years.

One young man who spoke good English said they wanted the area to be saved from the loggers. They did not want it to be turned into a national park managed by the Government. They wanted it to be their land, which they would manage and where people could come and see the Penan's real way of life. Tourists would be able to see much wildlife and many beautiful waterfalls.

My first evening interview with Kelesau was not a great success. The local translators had limited English and my questions were too complex, or required details he could not recall. Kelesau recognised this as much as I did and the next morning decided to take me to meet another old man, Kelasih Payah, who had had long been involved in protests to save the forest and had been jailed in the past for his efforts.

Kelasih would add to the answers of the previous night, provide details on the history of the campaign and explain why the Penan were still trying to blockade the road near Long Benalih. After an hour-long trek through the rainforest we arrived at Kelasih's lean-too to find that he was not home. Whooping calls did not raise him.

After we had eaten, Kelesau cut a sapling down and slashed it in a number of places and stuck it in the ground. He placed a stick at the base, four small twigs in one slash, a folded sago leaf in another and various other items along the pole, topping it with a partly stripped fern leaf pointing like an arrow.

The stick read, "Don't be afraid. We are your friends. We came to visit you. We were hungry. We cooked your sago. We have gone off in the direction of the arrow."

On the way back, Kelesau, who must be in his 70s, quickly left me and my guide well behind. When we caught up with him he was high in a rambutan tree. I could not see how he had managed to get up there. There were no branches, or anything to grip on to for well over 15m. My guide explained that he had gone up a smaller tree also with no branches lower than 15m and had crossed at the canopy. Fruit-laden rambutan branches rained down on us.

In the evening Kelasih Payah arrived, and a long boat which had been sent down the river returned with a new interpreter. Kelasih said they wanted to have authority in their land to follow their own rules. They didn't want other people coming and telling them what to do in their land.

Even though the Penan now lived in villages and hamlets they were not the same as people who had always been settled, such as the Kenya and Iban. The Kenya, Kayan and Iban wanted money from the logging company in exchange for land. But the Penan just wanted their own area, away from the Kayan or the Kenya, who always wanted to fight.

The Penan did not want to be located with them because they were not the same and did not want to fight. The Kenya and Kayan did not walk in the jungle, as the Penan did. The Penan always went to the jungle and picked things that were important to them.

Communication across the Penan region, and with the outside world, is difficult, making it hard for the Penan to make their views known and respond to allegations made against them. The official



Malaysian media did not report any comment from the supporters of the blockade in their accounts of the police action in knocking it down.

One hamlet has a satellite phone but that does not even help within the region where it can take a 112-day walk through jungle to reach another village. The poor communication makes it well nigh impossible for the Penan to respond to sometimes wild allegations made against them such as that they are anti-education or opposed to the use of electricity.

At Long Kerong the Penan I interviewed, who were staunchly opposed to logging, were equally keen to see their children educated and happily used electricity one electric light bulb lit the room in which I interviewed leaders and, during the day, I observed one man using an electric power tool.

More seriously there have been complaints from the Kelabit community at Long Lellang, that the blockade has prevented them from getting essential supplies. When asked about this, Kelesau said the forest land was Penan land. The Kelabit were more recent arrivals from Indonesia who were willing to accept payment from the loggers for the land.

The difficulties faced by nomadic people claiming an area is illustrated by the fact that Kelabit say that the settlements established by the Penans are on land opened and worked by Kelabits.

Interestingly there is another logging road into Long Lellang which could have been used to supply the village, but according to a statement provided by Samling this road is now unusable and is not maintained "because logging operations have ceased".

The travel agent in Miri had challenged me, "Why would you want to go up the Baram River? There's nothing there to see."

Nothing to see? In 1974 when I first went up the river it was a tourist paradise a huge river with banks of tropical rainforests and a huge variety of bird life. Beyond Marudi you could travel by longboat, periodically forced to walk around the rapids as the boatmen gunned their Mercury outboard motors, and Penan, Kenyah or Kayan men poled or pulled the boat upstream.

Longhouses still held bags of shrunken heads from the warlike days of the Dayak tribes and some had ancient narrow-necked 1m-long cannon tied to their posts.

You won't find any cannon now, my guide told me as I instead went up the Limbang River. Chinese traders have been up and down the rivers and bought them all. Sure enough, at the very first longhouse we visited the headman told us that he once had had a cannon but he had sold it some years back. This was something he now very much regretted.

And in the lower Baram I wouldn't find any forest either. There the loggers had been through, changing the life of the longhouse people forever.

It is only in the upper Baram, where the Penan still hold out, that the forest, and a unique lifestyle that goes with it, still survives.

Berita Wilayah

http://www.bernama.com.my/bernama/state_news/bm/news.php?i...**Berita Sarawak**

October 21, 2006 18:26 PM

Berjalan Berjam-jam Untuk Rasa Nikmat Kemajuan

Oleh Linda Khoo Hui Li

LONG LELLANG (Miri), 21 Okt (Bernama) – Mampukah anda berjalan kaki berjam-jam melalui hutan tebal, mendaki bukit dan menuruni lembah serta menyeberangi sungai demi untuk merasa nikmat pembangunan dan kemajuan?

Bagi Romeo Pusu, 30, dari suku kaum Penan di Ulu Baram, itulah yang mesti dilakukannya.

Bapa kepada tiga orang anak yang berumur enam hingga 10 tahun yang menetap di Long Sabai itu berkata beliau perlu berjalan kaki kira-kira lapan jam dari kampungnya ke sini untuk menghantar anaknya bersekolah di Sekolah Kebangsaan (SK) Long Lellang atau mendapat rawatan di Klinik Kesihatan di sini.

Itulah secebis kisah seorang Penan ketika ditemui sekumpulan pemberita termasuk Bernama dalam lawatan mereka ke Long Lellang baru-baru ini.

Long Lellang merupakan sebuah penempatan yang dilengkapi dengan pelbagai kemudahan seperti klinik, sekolah rendah, dan landasan kapal terbang yang menghubungkannya dengan dunia luar.

Pekan itu merupakan pusat tumpuan tujuh kampung lain iaitu Long Main, Long Kepang, Long Benali, Long Sabai, Keramu, Pengaran Iman dan Pengaran Kelian yang dihuni oleh kaum Penan untuk mendapatkan kemudahan pendidikan, perubatan dan keperluan harian.

Persoalannya, kenapa keadaan hidup mereka masih begitu daif, terpinggir dari arus pembangunan moden sedangkan negara sudah hampir setengah abad mencapai kemerdekaan dan berhasrat menjadi negara maju pada tahun 2020?

Sebenarnya kerajaan berhadapan dengan pelbagai cabaran dan rintangan untuk membawa pembangunan dan perubahan bagi memodenisasikan kaum Penan di pedalaman Sarawak.

Residen Miri, Ose Murang berkata pelbagai projek dan usaha pembangunan dirancang kerajaan untuk membangunkan kawasan pedalaman termasuk membina jalan penghubung di sekitar 14 perkampungan yang dihuni kira-kira 1,444 orang yang majoritinya berketurunan Penan dan Kelabit.

Namun, usaha untuk membawa pembangunan dan meningkatkan taraf hidup mereka serta memudahkan perhubungan ke bandar berhampiran seperti Miri tidak mendapat sambutan.

"Segala program pembangunan yang dirancang kerajaan bukan sahaja tidak disambut baik malahan niat murni kerajaan didakwa akan mengancam kehidupan harian mereka.

"Segelintir Penan menolak bulat-bulat usaha kerajaan yang berniat membawa pembangunan kepada mereka," katanya kepada pemberita di pejabatnya di Miri, baru-baru ini.

Tidak dinafikan bahawa masih banyak kawasan pedalaman di Bahagian Miri kekurangan pembangunan, khususnya daripada segi sosio-ekonomi berpunca daripada tiadanya jalan masuk, faktor geografi yang luas dan kawasan bergunung-ganang, katanya.

Namun, katanya, itu tidak bermakna kerajaan harus berundur daripada membawa pembangunan ke kawasan tersebut.

Bagi membantu kerajaan meneruskan usaha pembangunan itu, Ose berkata kerajaan melantik ejen, iaitu sebuah syarikat pembalakan di kawasan itu, Samling Group, untuk membina jalan balak yang kemudiannya boleh dinaik taraf untuk dijadikan jalan penghubung utama.

Bagaimanapun, usaha itu ditolak segelintir kaum Penan yang mendakwa bahawa syarikat pembalakan tersebut hanya mementingkan keuntungan dan kegiatan syarikat hanya akan menjejaskan kualiti hidup penduduk di perkampungan mereka.

Ose menyanggah dakwaan itu dan katanya: "Syarikat pembalakan tidak seperti dulu lagi. Mereka menitikberatkan aspek sosio-ekonomi dan alam sekitar apatah lagi Sarawak Forestry telah memperkenalkan Pengurusan Hutan Mampan."

Ose berkata pembinaan jalan balak yang dirancang untuk menghubungkan bandaraya Miri ke Pa Debpur, Kelapang yang meliputi kampung berkenaan tergendala kerana sekatan jalan



Berita Wilayah

http://www.bernama.com.my/bernama/state_news/bm/news.php?i

yang dibina oleh sekumpulan Penan yang menentang projek itu.

Ketua Kampung Long Lellang A, Amat Aran, 71, mendedahkan segelintir kaum Penan dari Long Benali enggan menerima arus pembangunan telah mendirikan sekatan di permulaan jalan yang dicadangkan.

Katanya sekatan tersebut telah merencatkan pembangunan di kawasan berkenaan malahan penduduk di sekitar kawasan termasuk Kelabit menjadi mangsa dan terpaksa menanggung kos hidup yang membebankan, lebih tinggi dari mereka yang tinggal di bandar.

"Perbuatan mereka telah mendatangkan kesengsaraan dan penderitaan kepada seluruh masyarakat di kawasan itu," katanya sambil memberitahu bahawa sekatan yang dibina pada awal tahun 2004, terletak kira-kira enam jam berjalan kaki dari sini.

Amat berkata beberapa perjumpaan antara agensi kerajaan dengan wakil penduduk Long Benali untuk membuka sekatan tersebut sehingga kini masih gagal.

Selain merencatkan pembinaan jalan balak, sekatan itu menyebabkan penduduk di sekitar kawasan itu menghadapi kesukaran untuk mendapatkan barangan keperluan seperti bahan bakar, makanan, bahan binaan dan peralatan pertanian seperti gergaji rantai dan mesin pemotong semak-samun.

Satu-satunya sekolah rendah berasrama di sini, SK Long Lellang yang mempunyai 118 pelajar dari Tahun Satu hingga Tahun Enam berdepan dengan masalah kekurangan bekalan makanan, diesel, petrol, kerosin dan gas masak.

Masalah pengangkutan pula semakin rumit akhir-akhir ini apabila Fly Asian Xpress (FAX) yang mengambil alih Perkhidmatan Penerbangan Pedalaman daripada Penerbangan Malaysia (MAS) sejak Ogos lepas hanya menyediakan dua kali penerbangan seminggu berbanding tiga kali seminggu oleh MAS dahulu.

Seakan kembali ke penghidupan di zaman batu, penduduk sentiasa berada dalam kegelapan malam kerana tiada bahan bakar untuk menggerakkan generator manakala ubat-ubatan tidak dapat disimpan lama kerana pati sejuk tidak dapat berfungsi.

Ketua Kampung Long Lellang B, Joseph Wan Raja, yang berketurunan Kelabit, berkata penduduk di sini yang rata-ratanya berpendapatan rendah, iaitu kira-kira RM200 sebulan, terpaksa menanggung kos hidup yang tinggi.

Harga semua barangan keperluan di kawasan ini berlipat ganda. Sebuah tong gas masak (14 kg) (yang boleh bertukar) dijual dengan harga RM180 berbanding RM25.62 di tempat lain. Selain itu, satu dram diesel, petrol atau kerosin boleh didapati dengan harga RM35 berbanding RM7.22 (diesel), RM8.74 (petrol) dan RM9.32 (kerosin). Harga barangan keperluan lain seperti gula (RM6 per kg), tepung (RM4 per kg) dan minyak masak (RM8 per kg).

"Kami tiada pilihan dan terpaksa mengupah Penan di kawasan itu untuk mengangkat barangan dari sekatan itu ke kampung walaupun belanja tinggi. Kita tiada jalan lain selain jalan itu," katanya.

Tindakan membina sekatan itu bagaimanapun disifatkan wajar oleh sekumpulan penduduk Long Benali demi melindungi alam sekitar dan sumber air kawasan itu.

Antara mereka, Hanneson Bujang, 44, dari Long Benali berkata penduduk di kampung tersebut sebenarnya amat mengalu-alukan rancangan kerajaan menyediakan lebih banyak kemudahan asas, sekaligus meningkatkan taraf hidup penduduk.

Belajar dari pengalaman lepas, beliau berkata janji kosong syarikat pembalakan sebelum ini membuka mata masyarakat Penan di situ agar tidak mudah terpedaya dengan janji-janji manis.

"Sampai hari ini, kami tidak nampak kampung Penan di sekitar kawasan ini membangun. Mereka hanya bertujuan untuk mengaut keuntungan. Setelah habis aktiviti pembalakan, kami diabaikan. Jalan yang disediakan akan terputus dan ditinggalkan," katanya.

www.idesa.net.my/rita

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Wanita : Masyarakat Penan Masih Abai Kesihatan
Dihantar oleh Zero Cool on 2006/11/6 10:30:34 (47 bacaan)

Masyarakat Penan Masih Abai Kesihatan

Oleh Linda Khoo Hui Li

LONG LELLANG, Ulu Baram (Miri) 6 Nov (Bernama) -- Dua kali seminggu sebuah pesawat Twin Otter mendarat dan berlepas daripada sebuah padang terbang di sini dan sekumpulan kanak-kanak Penan yang duduk di luar pagar asyik memerhatikannya.

Yang pasti kanak-kanak itu gembira dengan apa yang mereka saksikan dan senyuman mereka memikat pelawat yang datang ke sini.

Di sebalik semangat dan perlakuan riang yang ditunjukkan oleh kanak-kanak Penan ini, terdapat hakikat yang mengejutkan, kebanyakan mereka mengalami kekurangan zat makanan, masalah gigi dan banyak lagi masalah kesihatan.

Lebih memilukan apabila melihat tapak tangan kanak-kanak Penan yang dipenuhi kesan tompok luka, ada yang bemanah kerana dijangkiti kudis buta dan terbiar tanpa rawatan.

Tetapi mengapa pula keadaan mereka begini?

MAKANAN LEBIH PENTING DARIPADA KESIHATAN

Pada dasarnya walaupun kerajaan telah mengambil pelbagai langkah untuk membantu meningkatkan taraf kesihatan mereka, kesedaran akan pentingnya penjagaan kesihatan di kalangan masyarakat Penan masih kurang.

Mereka ternyata lebih menitikberatkan usaha mencari sumber makanan bagi keluarga, kata sukarelawan Desa Penan di Jabatan Ketua Menteri, Seluma Jalong, 32, ketika ditemui di Long Main, sebuah perkampungan Penan yang terletak kira-kira satu jam perjalanan dengan kaki dari sini.

Beliau berkata usaha kerajaan untuk menangani masalah kekurangan zat makanan, kerosakan gigi yang serius dan pelbagai masalah kesihatan lain di kebanyakan kawasan pedalaman Sarawak juga sukar dilaksanakan sepenuhnya kerana saiz Bumi Kenyalang yang luas dan muka bumi bergunung-ganang yang menyukarkan perhubungan melalui jalan darat.

Seluma, yang menjadi sukarelawan di tujuh perkampungan Penan di sekitar kawasan ini, berkata Klinik Kesihatan Long Lellang yang terletak begitu jauh juga menyebabkan orang-orang Penan jarang mengunjunginya untuk mendapatkan rawatan atau pemeriksaan kesihatan.

"Penan dari Long Benali perlu berjalan kaki sekurang-kurangnya empat jam dengan meredah hutan belantara, mendaki gunung, menuruni lembah dan menyeberangi sungai untuk mendapatkan rawatan atau pemeriksaan di satu-satunya klinik kesihatan di sini," kata Seluma.

AMAL RAWATAN TRADISIONAL

Menurut Seluma yang bertanggungjawab menjaga kebajikan dan pembangunan di kalangan komuniti Penan di sekitar kawasan berkenaan, kanak-kanak khususnya memerlukan perhatian Jabatan Kesihatan bagi meningkatkan taraf kesihatan mereka.

Bagi penjagaan kesihatan, Seluma berkata penduduk Penan mengamalkan rawatan tradisional termasuk menggunakan ramuan herba untuk mengubati satu-satu penyakit.

Beliau memberi contoh kanak-kanak Penan di Long Main yang dijangkiti kudis buta menggunakan "tuba" iaitu sejenis akar bagi mengubatnya.

Tambahnya, ketiadaan penjagaan gigi di kalangan penduduk Penan turut menyebabkan kanak-kanak berdepan dengan masalah kerosakan gigi manakala golongan dewasa pula tidak dapat mengekalkan kesemua gigi mereka.

Seluma, yang telah berkhidmat di perkampungan berkenaan selama lebih 10 tahun, berkata bagaimanapun akhir-akhir ini terdapat perubahan positif di perkampungan Penan di sini khususnya daripada aspek kebersihan di rumah tetapi ia masih tidak memadai.

Wakil Kesihatan Kampung Long Benali, kira-kira empat jam perjalanan dengan kaki dari sini, Hanneson Bujang, 44, berkata stok ubat, khususnya ubat gastrik dan sakit mata di kampung itu tidak mencukupi.

"Saya telah memohon kepada Klinik Kesihatan Long Lellang tetapi mereka belum menghantar lagi ubat-ubat yang diperlukan. Pihak kami sering menghadapi masalah kekurangan bekalan ubat untuk penduduk kampung," katanya.



www.idesa.net.my-Berita

<http://www.idesa.net.my/modules/news/index.php?storytopic=12>

Menurut beliau, penduduk Penan di sini masih dahagakan lawatan berjadual Jabatan Kesihatan yang sudah tentu dapat meningkatkan lagi taraf kesihatan mereka.

TUGAS BERAT UNTUK MENDIDIK

Pembantu Perubatan di Klinik Kesihatan Long Lellang, Charles Gerina Janting berkata pasukan kesihatan memikul tugas berat untuk mendidik masyarakat Penan dalam usaha meningkatkan taraf kesihatan mereka.

Beliau berkata pihaknya pernah cuba memberikan ubat kepada pelajar-pelajar di SK Long Lellang yang dijangkiti kudis buta tetapi mereka tidak mahu menerimanya.

"Pihak sekolah memaklumkan kepada kami tentang penyakit kudis buta di kalangan pelajar. Kami kemudiannya cuba nasihati ibu bapa serta penduduk kampung tetapi mereka enggan menerima nasihat kami," jelasnya.

Charles yang telah berkhidmat selama setahun di sini berkata bukan mudah untuk mengubah pemikiran masyarakat Penan supaya menerima rawatan atau membuat pemeriksaan kesihatan.

CABARAN BESAR

Masyarakat Penan, katanya, akan menggunakan rawatan tradisional berdasarkan ramuan atau teknik yang diwarisi turun-temurun sekiranya mereka jatuh sakit.

Masyarakat Penan juga, katanya, tidak mahu keluar meninggalkan kampung mereka.

"Ini mungkin kerana tempat mereka tinggal jauh dari sini dan terpaksa berjalan berjam-jam. Oleh itu, mereka lebih suka mencari herba atau menggunakan rawatan tradisional," tambahnya.

Charles berkata pasukan kesihatan hanya akan mengunjungi kampung-kampung Penan setiap tiga tahun untuk membuat bancian.

Ini kerana di setiap kampung itu, terdapat wakil kesihatan yang menjadi mata dan telinga Jabatan Kesihatan bagi memantau dan menjaga kesihatan penduduk kampung.

Perkhidmatan Doktor Udara pula mengunjungi kawasan pedalaman dari masa ke masa di tempat-tempat yang ditetapkan untuk membuat pemeriksaan kesihatan.

Walaupun semua kemudahan disediakan, bagi masyarakat Penan, kesedaran bagi penjagaan kesihatan masih kurang dan mereka perlu mengubah pemikiran dalam aspek penting ini dalam kehidupan.

-- BERNAMA



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PRESS STATEMENT

SUHAKAM' S CONCERN OVER THE PLIGHT OF THE PENANS IN SARAWAK

The Human Rights Commission of Malaysia (SUHAKAM) is extremely concerned over the plight of the Penan in Sarawak. The continuous disregard of the community's claim on their ancestral land will push this community further into marginalisation.

SUHAKAM was recently made to understand that the Penan community in Long Singu, Belaga, Sarawak, will witness further destruction of their natural environment and livelihood following Shin Yang Forestry Sdn Bhd move to clear forest areas in September and October 2007 on land claimed by the Penan communities in Long Singu

and Long Jaik. The areas affected form fractions of the total 155,930 hectares of land located between Batang Belaga and Sungai Murum in the Belaga District, Kapit Division, Sarawak, which was licensed by the Government to Shin Yang Forestry Sdn Bhd under the Licence for Planted Forest (LPF)/0018 commencing from 19 November 1999 until 18 November 2059.

SUHAKAM had recently published a report entitled "Penan in Ulu Belaga: Right to Land and Socio-Economic Development". The Report is based on SUHAKAM's investigative research which was carried out as a response to complaints received by SUHAKAM from the Penan Headmen from Long Singu and Long Jaik in 2006. Their complaints pertained to logging and forestation activities, which they claimed have encroached on their ancestral land.

SUHAKAM's investigation found that despite being an indigenous group of Sarawak, the Penan's historic custom of ownership and stewardship of land is not considered in the Sarawak Land Code 1958. As a consequence, logging licences were issued and plantation activities were carried out with little consideration to the Penan's claim to land.

"Hak Asasi Untuk Semua"
 "Human Rights For All"



Further research found that through the Sarawak Land Code (amendment) Bill 2000 which was passed by the State Assembly on 9 May 2007, Section 5(2)f which provided 'any other lawful method' of establishing claim to land had been deleted. This provision was previously used constantly to argue for the Penan's claim to land. The deletion of the Section, however, has nullified their adat system from a legal perspective. It tacitly infringes on the indigenous group's right to exercise traditional claim over their territorial domain.

SUHAKAM also found that there is literature evidence on Penan paths and burial sites within the licenced area. These are in accordance to Section 5(2)d and 5(2)e of the Sarawak Land Code 1958. Reference should be made to this in weighing the Penan's right to land.

SUHAKAM, therefore, reiterates its recommendations in its report on "Penan in Ulu Belaga: Right to Land and Socio-Economic Development" which, among others, include the following:

- that the Government takes necessary action to amend the Sarawak Land Code 1958 to take into consideration the Penan's unique way of establishing land ownership and stewardship;
- that the Government alienate areas where there is evidence of Penan paths and burial sites which clearly reflects Section 5(2)d and 5(2)e of the Sarawak Land Code 1958;


- that sufficiently sized land be provided for the Penans who have lost their ancestral land following narrowly interpreted legislation and logging and plantation activities. Provision of land should take into consideration increasing family size and their dependence on jungle produce for food and daily necessities.


While the Government has repeatedly emphasised its commitment to protect its citizens, it seems that the inherent rights of the Penan in Sarawak are compromised. Besides the non-recognition of their traditional claims to land, SUHAKAM also found that the Penans live in abject poverty. This is partly contributed with the fact that the Penans are now living with depleting food source and polluted water.

SUHAKAM fears that continued disregard of the Penan's inherent rights would further displace the community and consequently, jeopardise their survival and livelihood.

... END ...

"HUMAN RIGHTS FOR ALL"


DATUK DR. DENISON JAYASOORIA
 Commissioner
 Human Rights Commission of Malaysia (SUHAKAM)
 13 August 2007


DR. MOHAMMAD HIRMAN RITOM ABDULLAH
 Commissioner
 Human Rights Commission of Malaysia (SUHAKAM)
 13 August 2007



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Penan EIA Puzzle

The Environment Impact Assessment done on an area designated for logging and oil palm cultivation by corporate Shin Yang claims that it had no human habitation prior to development. Other studies indicate otherwise. Such inconsistencies are baffling, to say the least, and give rise to territorial disputes with native settlers.

■ By Yvonne Chong

SARAWAK, with its rich diversity of ethnic groups, has some 40% of its population still residing in the interiors, some in the deep jungle. Thus, it was really baffling when an Environment Impact Assessment (EIA) report filed in early 2000 claimed that one specific area exceeding 2.2 times the size of Singapore was totally devoid of any human habitation.

A recent visit by the Human Rights Commission of Malaysia (Suhakam) found communities of Penans within that area – a total of 155,930 ha of land located between Batang Belaga and Sungai Murum in the Belaga District, Kapit Division, Sarawak that was in 1999 licensed to Shin Yang Sdn Bhd under the License for Planted Forest LPF/0018 for a period of 60 years from Nov 19, 1999 onwards.

Suhakam commissioner Datuk Dr Denison Jayasooria tells *Malaysian Business* that the commission found glaring contradictions and inconsistencies between the findings in the EIA report and the claims made by the Penans.

Suhakam's 270-page report entitled *Penan in Ulu Belaga: Right to Land and Socio-Economic Development* states: 'At the time of the EIA, previous to the EIA and since the EIA, there are seven



villages/longhouses within the project boundary.

'The social component of the EIA report contained a major and fatal flaw. It made assertions that are contrary to the facts on the ground at the time of the EIA and for at least fifty years prior to it,' says independent researcher Khoo Khay Jin in the Suhakam report.

The errors could have perhaps gone

unnoticed had the supposedly non-existent Penans, via two headmen, not raised their fears and apprehensions to Suhakam on July 26, 2006. Shin Yang had in 2001 commenced logging and oil palm plantation activities and the Penans felt that their livelihood was being threatened and their land rights being infringed upon.

Suhakam responded by launching a fact-finding field visit to Long Singu and

Long Jaik, Ulu Belaga.

'We held a series of dialogues with representatives from the Penan community concerned, government agencies, and Shin Yang, as well as NGOs, academicians and individuals who were concerned with the welfare of the Penans,' says Jayasooria, who was part of the Suhakam delegation. The others were Dr Chiam Heng Keng, Dr Mohammad Hirman Ritom Abdullah and Tunku Datuk Nazihah Tunku Mohamed Rus.

Despite having established permanent settlements and rice and vegetable cultivation on small farms, the Penans in Ulu Belaga remain dependant on the jungle produce for food and other basic necessities, especially when their small farms yield insufficient food supplies. The commencement of logging and oil palm plantation activities by Shin Yang on the land the Penans claim to be their ancestral land without their consent was seen as an

encroachment into their native land. Access to the forest became increasingly difficult and pollution from the activities also affected the rivers from which the Penans obtained fish and water.

The Penans were told by the company that the licence for forest and oil palm plantation was legally obtained and thus they had no right to claim anything from the company. Indeed, the Penan's unique custom of establishing land ownership and stewardship is not recognised by the Sarawak Land Code 1958 and thus claims made on ancestral land are often not considered by the relevant authorities and those clearing the land (*see box story*).

On the other hand, others, including the EIA consultants, claim that the Penans are opportunists. They allege that the Penans take advantage of logging or palm oil activities by setting up new settlements wherever these activities are in operation and claim for compensation. For some



Jayasooria:
EIAs can have
great impact

reason, the EIA consultants refer to the Penans as Punans.

'Even without considering native customary rights claims, all the matters pertaining to settlements, villages and longhouses could have been validated with little effort by a simple query at the Belaga District Office in Belaga or the Belaga Sub-District Office in Asap Resettlement ... It is thus a complete mystery that although the District Office Belaga is listed as one of the authorities consulted by the EIA, the EIA could still conclude that "there were no villages or longhouses within or near the project boundary", Khoo notes.

The EIA report, prepared by JB Agriculture Management Services from Bintulu, in association with GT & Associate Consultancy from Miri, was submitted to the Natural Resources and Environment Board (NREB) on Jan 5, 2000, less than two months after the licence was issued. The natural question one might ask is whether the period was perhaps too short a time, considering the size of the area, and especially so when they did discover some hints of human habitation.

What was the hurry?

Besides data from the Belaga District Office, there had also been other literature evidence, including research by local and international researchers, supporting the Penan's claims that their settlements were already at their current locations during the period of the EIA survey. Literature evidence suggests that they had never moved away from the main river system in Ulu Belaga.

The assessment made by the EIA consultants contain words such as

The Penan Land Rights Dispute

THE Penans, one of the indigenous communities of Sarawak, have a unique system of establishing ownership and stewardship of land. They have created the term *tana mengurip*, which labels their foraging area, including areas where they live and survive on. These foraging areas are identified through natural boundaries, which include watersheds, mountains and landmarks. These boundaries are called *saang tana*. Each group of Penans has its own foraging area, which is passed down from one generation to another.

They have also established a strategy known as *molong*, which means to lay claim on a particular resource.

Section 5(2) of the Sarawak Land Code 1958 outlines the methods by which native customary rights may be acquired:

- a) the felling of virgin jungle and the occupation of the land thereby cleared,
- b) the planting of land with fruit trees,
- c) the occupation or cultivation of land,
- d) the use of land for burial grounds or shrines, and
- e) the use of land of any class for rights of way.

However, some of the methods do not reflect the traditional method of ownership and stewardship of land practised by the Penans. This is despite documentation and evidence indicating the presence of the Penan community in Sarawak well before the code was enacted.

As such, Suhakam recommends that the Sarawak Land Code 1952 be amended to take into consideration the unique custom of the Penans in ownership and stewardship of land.

In addition, Suhakam recommends the government look into the land claims by the Penans, as there is documentation of burial sites and Penan paths which fall under Section 5(2d & e) of the code.



Shin Yang vs the Penans

Sarawakian indigenous people the Penans claim that conglomerate Shin Yang has failed to take into consideration their welfare when carrying out logging and oil palm plantation activities in the sprawling East Malaysian state. The company, however, claims the opposite. How the tussle unwinds will be interesting, not least as a precedent for other corporates to follow.

IT IS A TUSSLE between one of the poorest and most deprived communities in Malaysia and a huge conglomerate with financial strength.

The battle began when Sarawakian company Shin Yang Sdn Bhd was granted the Licence for Planted Forest LPF/0018 for a period of 60 years from Nov 19, 1999 for land totalling 155,930 ha. In 2001, following a disputable Environment Impact Assessment (EIA) report that claimed the area had no human habitation, Shin Yang commenced logging and oil palm plantation activities.

The Penan's area of concern centred on the status of their claim on their ancestral land. They alleged that since the commencement of the deforestation and development activities, their access to their ancestral land and to forest produce had been denied. Driven by fear that their livelihood was being threatened and that their land rights had been infringed upon, the Penans sought help from the Human Rights Commission of Malaysia (Suhakam).

Among other things, the Penans claimed that they were also not consulted by the company prior to commencement of the latter's activities. Some of them even claimed that the compensation paid was inadequate.

When queried by Suhakam, Shin Yang claimed the licence for forest and oil palm plantation was legally obtained

and that the Penans had no legal land rights. Nonetheless, the company had given compensation, commission and assistance to members of the Penan community on its own initiative. It also claimed that compensation and commission paid, as well as allowances to headmen, were in accordance with agreements signed.

Shin Yang maintains to have tried, as far as possible, to meet the Penan's demands but some of the claims were too excessive, it said. Shin Yang did not respond to *Malaysian Business*' queries as to what it thought would be fair, nor other queries.

To Suhakam, the company said it had provided a lot of assistance to the Penans, including the construction of roads, providing water supply and materials for the construction of houses, funeral arrangements including transportation, medical help and honorarium during festivities. Shin Yang informed Suhakam that although these efforts were done on an ad hoc basis, they could be used as its long-term guideline as its policy.

In regards to the Penan's claims of being denied to forest areas, Shin Yang clarified that the step was taken to avoid theft and social problems within the licensed area. It claimed that it would willingly grant access as long as early notification is given. However, it did not specify how far in advance notification was needed.

As the land size concerned is more than 2.2 times that of Singapore's, could not have Shin Yang cordoned off an area undisturbed to let the Penans live as they had?

It is understood that Shin Yang had promised to give affected Penan families plots of land as part of the compensation that would be 'bigger than those given to indigenous communities affected by the Bakun Dam' but there was no follow up as to the location of the size of the land to be allocated.

A Penan participant of the dialogue with Suhakam alleged that although Shin Yang had promised seven acres of land for housing, they were not provided building materials for the longhouses, hence making it impossible for the community to relocate. Shin Yang, on the other hand, claimed to have provided building materials.

The Penans also complained to have not benefited from the promised employment in the area, alleging that Shin Yang used 'unskilled' as an excuse as reasons for not hiring or giving poor pay.

Shin Yang replied that it had provided employment opportunities to the Penans, such as jungle felling, poly bag filling and pest extermination. It told Suhakam that about 90% of the employees at its oil palm plantation were members of the Penan community. However, it was not mentioned if they were from the affected communities or from communities outside the LPF/0018 area. The company also claims to provide training for all its employees, including the Penans. It said various efforts have been taken to offer employment opportunities to the

Penans but some had declined it.

Arguably, for a people group used to living a carefree simple life foraging in the jungle, full-time employment would be a drastic change.

General manager of Shin Yang oil palm plantation, Metannik Camp, Ting Khai Sik highlighted to Suhakam the problems faced by the company when hiring Penans, which included high absenteeism, low tolerance of the heat of the sun, and the tendency of Penan employees to bring their whole family to work, which affected the productivity of the Penans employed.

The Penans in Long Singu and Long Jaik are among the poorest people groups in the country and live below the poverty level. They have inadequate access to nutritious food, healthcare,

education, housing and even clean potable water. The majority do not have identification cards or birth certificates. Arguably, it is the government's job to provide for them, not commercial entities.

But Shin Yang is a huge conglomerate of companies with diversified business activities such as construction, shipping (domestic and international), real estate, plantations, quarrying and other small businesses. The profits Shin Yang could derive from the LPF/0018 over a period of 60 years would definitely be lucrative. It could more than afford to do more for the hardcore poor Penans as part of its corporate social responsibility efforts.

The land under licence LPF/0018 is divided into four areas under four logging licences, including T/3180, T/3127, T/3282 and T/3283. Out of the total land

size, only about 60% or 93,560 ha is plantable, while the rest would be preserved in situ as a buffer zone or greenbelts. The project development is divided into two parts – oil palm plantation and forest plantation. The forest plantation will initially take up 80% of plantable area, while oil palm plantation will occupy the remaining 20%.

It is estimated that 19% of the total Penan population reside in Ulu Belaga. The Sarawak State Planning Unit (SPU) has identified 20 Penan settlements in Belaga. No nomadic Penan group was identified in the area. There are eight Penan settlements which are affected by Shin Yang's logging and oil palm plantation activities under licence LPF/0018.

'probably' and 'believed', which could indicate uncertainty on their part, and the findings were not supported by concrete evidence, Suhakam notes.

The Suhakam report highlights a surprising fact that the EIA was conducted on behalf of Shin Yang, which has operated in the area carrying out logging operations either in its own name or through one or another of its subsidiaries or associate companies. Shin Yang had cited payments of allowances and compensation activities which are 'tantamount to evidence of not only recognition of their existence but to their rightful claims to the territory', it reasons.

'Suhakam strongly recommends that the government take necessary measures to ensure that only independent consultants, with expertise in the specified area, are appointed to assess and prepare the EIA report. This is to ensure greater objectivity and transparency and to negate all allegations of biasness. We also propose that the government ensures prompt action to review the procedures of the preparation and verification of the EIA report. This would ensure surveys done by consultants are based on facts rather than assumptions. EIAs can have

The EIA consultants, claim that the Penans are opportunists. They allege that the Penans take advantage of logging or palm oil activities by setting up new settlements wherever these activities are in operation and claim for compensation.

great impact,' Jayasooria says.

With regard to the EIA report for Shin Yang's Forest Plantation in Ulu Belaga, Jayasooria says Suhakam has recommended that the NREB, the agency in charge of approving the report, verify and ascertain the accuracy of its findings as soon as possible. Human lives are at stake and the Penans are among the most

hardcore poor in Malaysia, he adds.

Meanwhile, efforts by **Malaysian Business** to obtain some comments from Shin Yang, post-Suhakam report, were unsuccessful.

According to Jayasooria, there had been inconsistencies between Shin Yang's oral and written response to Suhakam's queries. But one thing was maintained throughout – the compensation, commission and assistance given to the Penans are at the company's own initiative, as it is under no legal obligation to do so. It is the state's job to look into the welfare of its citizens, Shin Yang had argued.

Its representatives informed Suhakam that it had spent some RM1 million by way of compensation, commission and allowances for affected members of the Penan community (*see accompanying story*).

'Shin Yang says it has not violated any laws. And it is right. However, ethically, shouldn't it plough part of its profits – which will definitely be huge – back to Penan sustainability? It should look at some other notable corporations such as Tata, Microsoft, and Ford – they have gone above and beyond legislative requirements,' Jayasooria comments. **mb**