

# Asian Indigenous & Tribal Peoples Network

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## Malaysia: Extinguishing Indigenous Peoples Rights<sup>1</sup>

[Contribution under the Universal Periodic Review of the Human Rights Council]

### Table of contents

1. EXECUTIVE SUMMARY: WHY UPR IS IMPORTANT FOR MALAYSIA .....	1
2. SITUATION OF HUMAN RIGHTS OF THE INDIGENOUS PEOPLES ON THE GROUND.....	1
A. THE ORANG ASLIS: THE SECOND CLASS BHUMIPUTRAS.....	1
<i>i. Non-recognition of land rights</i> .....	2
<i>ii. The litigation against the forcible evictions of Temuan Orang Aslis: Will the customary rights be recognized?</i> .....	3
<i>iii. Exclusion from benefits of development projects</i> .....	3
<i>iv. Proselytization of the Orang Aslis by the Islamists</i> .....	4
<i>v. Ineffectiveness of the Department of Orang Asli Affairs</i> .....	5
B. REPRESSION AS THE TOOL FOR DISPOSSESSION IN SARAWAK AND SABAH.....	5
<i>i. Preference for logging and plantations over cultivation in Sabah</i> .....	7
<i>ii. Targeting the Penans of Sarawak</i> .....	8
<i>iii. Displacement due to Bakun Dam in Sarawak</i> .....	10
3. RECOMMENDATIONS .....	10

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<sup>1</sup> . This report has been endorsed by Kebager te Ked-Inged (Philippines), Centre for Peace and Development (India), Asian Centre for Human Rights (India), Centre for Indigenous Peoples Research and Development (Bangladesh), Hill Watch Human Rights Forum (Bangladesh), Tribal Welfare Association (Bangladesh), Hill Women Federation (Bangladesh) and Mr Edtami P Mansayagan, Former Commissioner, National Commission for Indigenous Peoples, Philippines.

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## 1. Executive summary: Why UPR is important for Malaysia

Malaysia, which continues to remain a “police state”, refuses to cooperate with the United Nations. It has not ratified any major UN conventions except the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women.

Indigenous peoples who constitute of about 12% of the 28.6 million population of Malaysia have been specifically targeted for not giving their lands for plantations, logging, dams etc. Poor indigenous peoples - the Orang Aslis of Peninsular Malaysia, the Dayaks of Sarawak and the Natives or Anak Negeri of Sabah are being forced to approach the judiciary to fight against the companies and government which obviously are more resourceful.

Malaysia’s National Human Rights Commission (SUHAKAM) provided some palliative. However, in April 2008, the International Coordinating Committee of National Human Rights Institutions asked SUHAKAM to reply in writing within a year on why it should not be downgraded from Grade A to Grade B for not being fully compliant with the Paris Principles.<sup>2</sup> It shows increasing lack of protection at national level for the citizens in general and indigenous peoples in particular.

In the light of the non-ratification of key international human rights and downgrading of Suakam, the Universal Periodic Review of the Human Rights Council provides unique – only possibly only opportunity to scrutinize human rights records of the government of Malaysia including on indigenous peoples.

## 2. Situation of human rights of the indigenous peoples on the ground

### A. The Orang Aslis: The second class Bhumiputras

According to the records of the Department of Orang Asli Affairs (JHEOA), a total of 147,412 Orang Aslis or mere 0.6% of the national population were living in 869 villages in 2004.

The Orang Aslis, literally meaning first peoples have been treated as second class Bhumiputras, sons of the soil. The Special Provision made under Article 153 of the Constitution of Malaysia ensures “the special position of the Malays and natives of any of the States of Sabah and Sarawak” and makes no reference to the Orang Aslis. The references to the Orang Aslis under Article 8(5)(c), Article 45(2), Article 160(2) and

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<sup>2</sup>. Press Release: Imminent downgrading of SUHAKAM: Government must take action, The Malasian Bar, 25 July 2008

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Article 89 of the Federal Constitution<sup>3</sup> of Malaysia failed to address discrimination against the Orang Aslis.

### **i. Non-recognition of land rights**

The Orang Aslis possess over 1,38,862.2 hectares of land but they are not recognized as the lawful owners of their lands. The Malaysian government maintains the obnoxious position that the Orang Aslis "have no rights in the land itself" as they are mere "tenants" on the lands they occupy.

Under Section 12 of the Aboriginal People's Act of 1954, the authorities may at any time seize or take under its control by providing compensation for the loss of whatever grown on the land. Section 12 of the Act provides that "*if any land is excised from any aboriginal area or aboriginal reserve or if any land in any aboriginal area is alienated, granted, leased for any purpose or otherwise disposed of, or if any right or privilege in any aboriginal area or aboriginal reserve granted to any aborigine or aboriginal community is revoked wholly or in part, the State Authority may grant compensation therefore and may pay such compensation to the persons entitled in his opinion thereto or may, if he thinks fit, pay the same to the Director General to be held by him as a common fund for such persons or for such aboriginal community as shall be directed, and to be administered in such manner as may be prescribed by the Minister.*"<sup>4</sup>

Under this Act, indigenous Orang Aslis have been victims of systematic discrimination and forcible evictions by the State and the private companies.

The government has the right to gazette lands as Orang Asli Reserve and to degazette the same. However, land approved for gazetting as Orang Asli Reserves dating back to the 1960s was never officially gazetted. Some of these areas have been reclassified as State land or Malay Reserve land or given to individuals or corporations without the consent or knowledge of the Orang Aslis. In fact, the areas of the Orang Asli gazetted reserves have been decreasing over the years. For example, in 1990, 20,666.96 hectares was gazetted as Orang Asli Reserves. However, by 2003 only 19,222.15 hectares remained, with 1,444.81 hectares degazetted. During the same period, there was an increase in applications for Orang Asli Reserves, from 67,019.46 hectares to 79,715.53 hectares. A majority of these new applications were to replace Orang Asli lands de-gazetted for development projects, such as the Kuala Lumpur International Airport and Selangor Dam or for new resettlement schemes.<sup>5</sup>

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<sup>3</sup>. Orang Asli and Our Constitution – Protecting Indigenous Customs and Cultural Rights, available at: [http://www.malaysianbar.org.my/malaysian\\_law\\_conference\\_organising\\_committee/orang\\_asli\\_and\\_our\\_constitution\\_protecting\\_indigenous\\_customs\\_and\\_cultural\\_rights.html](http://www.malaysianbar.org.my/malaysian_law_conference_organising_committee/orang_asli_and_our_constitution_protecting_indigenous_customs_and_cultural_rights.html)

<sup>4</sup>. ORANG ASLI'S RIGHTS: Malaysia's Federal Court faces acid test, Asian Indigenous and Tribal Peoples Network, available at: <http://www.aitpn.org/Issues/II-03-06-Orang.pdf>

<sup>5</sup>. Orang Asli want development in sync with native rights, The Malaysian Bar, 1 November 2007, available at: <http://www.malaysianbar.org>

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## **ii. The litigation against the forcible evictions of Temuan Orang Aslis: Will the customary rights be recognized?**

In 1995, the State government of Selangor forcibly acquired 38 acres of land from 23 families belonging to indigenous Temuan tribe for the construction of the Nilai-Banting highway linking with the Kuala Lumpur International Airport. The eviction was done in haste so as to complete the highway project in time for the 1998 Commonwealth Games held in Kuala Lumpur. Their dwelling houses and standing plantations of oil palm, rubber and fruit trees were indiscriminately destroyed. The displaced Temuan tribes were given nominal compensation only for trees, fruits, crops and houses in accordance with section 12 of the Aboriginal People's Act of 1954.<sup>6</sup>

In the case, seven affected Temuan Orang Asli including Sagong Bin Tasi filed a case in the Shah Alam High Court, Selangor against the Selangor State government, United Engineers Malaysia, Malaysian Highway Authority, and Federal Government of Malaysia for the loss of their lands and dwelling houses. In an historic ruling in 2002, the Shah Alam High Court ruled that the Orang Aslis have a proprietary interest in the customary and traditional land occupied by them and that they have the right to use and derive profit from the land. The Court held that members of the Temuan tribe were unlawfully evicted from their ancestral land in central Selangor State to make way for the highway and ordered payment of compensation. The four defendants appealed before the Court of Appeal of Malaysia. But the Court of Appeal upheld the historic judgment of the Shah Alam High Court in 2005.<sup>7</sup>

Again the defendants have appealed to the Federal Court, the Highest Court of Malaysia. In April 2008, the case has been postponed by three-member panel led by Chief Justice Datuk Abdul Hamid Mohamad as the newly formed Selangor State government needed time to study the 13-year-old Orang Asli case.<sup>8</sup>

This is a test case on whether the interest of the Orang Asli over customary land is merely a right of usage of the land or it also includes a proprietary interest in the land. The survival of the Orang Asli to a large extent hinges on this keenly awaited judgment.

## **iii. Exclusion from benefits of development projects**

Poverty is widespread among the Orang Asli community. There were about 22,967 Orang Asli families whose monthly incomes are below the poverty line as in mid-2005.<sup>9</sup>

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<sup>6</sup>. ORANG ASLI'S RIGHTS: Malaysia's Federal Court faces acid test, Asian Indigenous and Tribal Peoples Network, available at: <http://www.aitpn.org/Issues/II-03-06-Orang.pdf>

<sup>7</sup>. Ibid

<sup>8</sup>. 13-year-old Orang Asli case postponed, The Borneo Post, 16 April 2008

<sup>9</sup>. The Development of the Orang Asli Community in Peninsular Malaysia: The Way Forward - Ministry of Rural and Regional Development Malaysia

The poverty is a direct consequence of the failure of the initiatives undertaken by the Department of Orang Asli Affairs (JHEOA) such as RPS (Rancangan Perkumpulan Semula, the Regroupment Schemes) launched in late 1970s to assimilate the Orang Aslis. The JHEOA launched RPS in Betau, Pahang; RPS and TSK Tanaman Semula Komersial Pos Jernang, Perak; and RPS Lenir Bekok, Johor.<sup>10</sup> These regroupment schemes were implemented to re-group the scattered Orang Asli settlements located near the main range of Peninsular Malaysia. Under these schemes forest areas were opened up and released by the Forestry Department for land development schemes. The land schemes are transformed into settlements of Malays, rubber and oil palm plantations.<sup>11</sup>

Obviously, the Orang Aslis did not benefit. These projects however isolated the Orang Aslis from their custom and culture, destroyed their homes and the natural resources, and made them poorer and more marginalised.

Further, dam projects are also displacing the Orang Aslis. The Che Wong Orang Asli community is facing relocation because of the Kelau Dam project in Pahang. About 500-plus Orang Aslis are affected by the construction of the Kelau Dam which is expected to inundate 4,090 hectare of land including 1,000 hectare of the Lakum forest reserve, Felda reserves and Orang Asli's ancestral lands.<sup>12</sup>

#### **iv. Proselytization of the Orang Aslis by the Islamists**

In 1960s, a policy of integration of the Orang Aslis was started through the Department of Orang Asli Affairs (JHEOA) with the ultimate aim of integrating them into the mainstream Malay society. However, this has taken a different shape. The Orang Aslis who traditionally do not follow mainstream Muslim religion have been targeted for proselytization by the Islamists.

Preachers who marry Orang Asli women receive a lump sum of 10,000 Ringgit (2,707 dollars) as well as free accommodation, a four-wheel drive vehicle and a monthly allowance of 1,000 Ringgit (Malaysian currency). More than 12,000 Orang Aslis reside in Kelantan State and 2,902 have already converted to Islam. But the provincial government is reportedly unhappy with the slow process of proselytisation and wants to complete the process of conversion by inducements.<sup>13</sup>

In June 2007, authorities in Kelantan State demolished a church shortly after it was built by members of the Temiar tribe in their ancestral land. The village headman and three others have challenged the State government in Court seeking a declaration that the land belonged to them and the demolition was unlawful. While the Kelantan government

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<sup>10</sup>. Orang Asli and Our Constitution – Protecting Indigenous Customs and Cultural Rights, The Malaysian Bar, 1 November 2007, available at: <http://www.malaysianbar.org>

<sup>11</sup>. <http://www.fao.org/DOCREP/ARTICLE/WFC/XII/0175-A2.HTM>

<sup>12</sup>. Orang asli refuse to move, The Star.com, available at:

<http://thestar.com.my/news/story.asp?file=/2007/3/12/nation/17103441&sec=nation>

<sup>13</sup>. Malaysia: Conversion by inducements, AITPN, April - June, 2006, available at:

[http://www.aitpn.org/IRQ/vol-I/story13.htm#\\_Toc145929116](http://www.aitpn.org/IRQ/vol-I/story13.htm#_Toc145929116)

claimed that the church was illegally built on State land and villagers ignored notices to stop construction.<sup>14</sup>

Kelantan is a province ruled by the Islamic fundamentalists.

#### **v. Ineffectiveness of the Department of Orang Asli Affairs**

The Department of Orang Asli Affairs (JHEOA) set up pursuant to the Aboriginal Peoples' Act of 1954 retains a paternalistic attitude towards the Orang Aslis. The JHEOA has been ineffective in safeguarding or guaranteeing their land rights. A 1961 Policy Statement which is still applicable states in respect of Orang Asli's land rights that "every effort will be made to encourage the more developed groups to adopt a settled way of life and thus to bring them economically into line with other communities in this country." In the same section, seemingly contradictory duties requires the Department to recognise "the special position of the aborigines in respect of land usage and land rights" and that they "will not be moved from their land without their free consent".<sup>15</sup>

The JHEOA with a majority of non-indigenous staff is perceived by the Orang Aslis as being distant, unapproachable and irrelevant in representing their interests at the national level. A 2001 resolution passed by the Orang Asli Association of Peninsular Malaysia calls for the dissolution of the Department, or the transfer of the effective control to the Orang Aslis themselves.<sup>16</sup>

#### **B. Repression as the tool for dispossession in Sarawak and Sabah**

In Sarawak, the indigenous peoples are collectively called Orang Ulu or Dayak. They constitute about 50% of Sarawak's population of 2.3 million people. While the indigenous population in Sabah (known as natives or Anak Negeri) makes up about 60% of the State's populations of 2.4 million.

The Federal Constitution has provisions which seek to preserve the rights and customs of the natives of Sarawak and Sabah. These included Article 153 where privileges given to Malays are extended to natives of Sabah and Sarawak; Article 161(5) which provides that Article 8 shall not invalidate any law for the reservation and alienation of lands for natives or for giving them preferential treatment with regards to alienation of land by the State; and Article 150(6A) which provides that Parliament's power to make laws with respect to any matter if it appears to parliament that the law is required by reason of the emergency shall not extend to any matter of native law and customs in the States of Sabah and Sarawak.<sup>17</sup>

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<sup>14</sup>. Malaysian tribe sue Islamic state government over church demolition, The Associated Press, 15 January 2008, available at: <http://news.id.msn.com/lifestyle/article.aspx?cp-documentid=1193041>

<sup>15</sup>. Sagong Tasi: Reconciling State Development and Orang Asli Rights in Malaysian Courts – By Cheah Wui Ling, available at: [http://article.melayuonline.com/?a=TEpQL1U5bWh1MGY%3D=#\\_ftn64](http://article.melayuonline.com/?a=TEpQL1U5bWh1MGY%3D=#_ftn64)

<sup>16</sup>. Ibid

<sup>17</sup>. Orang Asli and Our Constitution – Protecting Indigenous Customs and Cultural Rights, The Malaysian Bar, 1 November 2007, available at: <http://www.malaysianbar.org>

Yet, the government continued to alienate large tracts of native customary lands for logging, development projects and commercial purposes. Obviously, government provides preference to large-scale resource extraction and plantations of private companies over the rights and interests of the indigenous communities.

### **The Sarawak Land Code of 1958**

The Sarawak Land Code of 1958 remains the main land law in Sarawak State. It classified all land into five categories: Mixed Zone Land, Native Area Land, Interior Area Land, Reserved Land, and Native Customary Land. Native Customary Land (NCL) is defined as 'land in which native customary rights, whether communal or otherwise, have lawfully been created prior to the 1<sup>st</sup> day of January, 1958'. However, the people dependent on Native Customary Lands do not generally have copies of maps defining which areas of their lands have been officially documented as NCL.<sup>18</sup>

The amendment to Section 5(2) of the Sarawak Land Code further undermined the historic customs of the natives in Sarawak. It weakened the ability of the indigenous communities of Sarawak to establish their right to land. It imposes unreasonable burden to demonstrate ownership to native customary land. Further, the Land Code provides the State with extensive power to utilise native land as well as to extinguish native titles with only the direction by the Minister. The Human Rights Commission of Malaysia (SUHAKAM) received a total of 287 complaints since the establishment of its office in Sarawak in 2000. Of these, 158 complaints relate to native customary right to land. According to SUHAKAM, the unlimited control of the government on native land creates risks of impoverishment amongst indigenous communities and loss or destruction of unique traits of their cultural, spiritual and community life. This particularly affects those who heavily depend on their land for sustenance, livelihood and way of life.<sup>19</sup>

In May 2008, the High Court in Sabah and Sarawak at Kuching ruled that Section 5(3) and 5(4) of the Sarawak Land Code (SLC), which authorises the Minister of Planning and Resource Management to declare, by Gazette Notification, the extinguishment of native customary rights (NCR) over state land, and that compensation is to be paid to the rightful claimants of such NCR, are valid and constitutional. The Court held that the decision to extinguish the NCR by the Minister was "an exercise of administrative discretion depending on the exigency and expediency of the state". Therefore the extinguishment of the NCR belonging to a group of Orang Ulu validly effected according to the law. Earlier a group of Orang Ulu led by their headman Bato Bagi approached the High Court challenging the extinguishment of their NCR over land which would soon be flooded to create a reservoir for the Bakun Hydroelectric project. The government had agreed to compensate them but the natives had decided to challenge the extinguishment of their NCR on constitutional grounds in that they had cultural attachment to what they

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<sup>18</sup>. The Sarawak Land Code and the elimination of native customary rights, available at:

<http://dayakbaru.com/weblog08/?p=136>

<sup>19</sup>. SUHAKAM's Press Release, 12 August 2008

considered to be their “ancestral” land and their livelihood depends on their continued occupation of their native customary land. On the other hand, the government took the stand that their land is required for a public purpose.<sup>20</sup>

### **i. Preference for logging and plantations over cultivation in Sabah**

In southern part of Sabah, the State has given the lands which lie within the Kalabakan Forest Reserve to several companies against the repeated appeals from the Serudung Murut of Kalabakan. Several indigenous communities have established settlements and farms in forest reserves as more lands are being taken for oil palm plantations. The process of demarcation and recognition of customary lands is very slow, while the alienation of large areas for plantations, logging and protected areas is rapid. The National Human Rights Commission urged the government to consider the problems faced by the villagers who have been residing in the areas since before it was gazetted as a Forest Reserve.<sup>21</sup>

In recent years, the government rapidly expanded oil palm cultivation especially in States of Sarawak and Sabah. At least 55-59 percent of oil palm expansion between 1990 and 2005 occurred at the cost of forests. The area of oil palm plantations more than doubled to 3.6 million hectares and at least 1.04 million hectares were converted for the oilseed during the period.<sup>22</sup>

Further, Native Customary Lands are being converted to corporate monocultures in Sarawak. The Sarawak’s Land and Survey Department signs away NCR lands before communities give prior informed consent. For example, a South Korean-Malaysian joint venture is about to set up a cassava plantation on about 2,000 hectares of Native Customary Rights (NCR) land initially in Balut area in Julau district. The State Land and Survey Department reportedly confirmed the land status. The government states that the project will benefit the people and landowners besides creating jobs and business opportunities, etc.<sup>23</sup>

As a result of Native Customary Rights (NCR) being continuously eroded, on 20 February 2008, a memorandum containing land claims from 32,352 natives over a collective area of 339,984 acres from 18 districts in Sabah was submitted to Head of State Tun Ahmadshah Abdullah and Chief Minister Datuk Seri Musa Aman.<sup>24</sup>

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<sup>20</sup>. Decision on NCR lawful: Court, The Borneo Post, 22 May 2008

<sup>21</sup>. The Indigenous World 2008, International Work Group for Indigenous Affairs, Copenhagen

<sup>22</sup>. Half of oil palm expansion in Malaysia, Indonesia occurs at expense of forests, Mongabay.com, 20 May 2008, [http://news.mongabay.com/2008/0520-palm\\_oil.html](http://news.mongabay.com/2008/0520-palm_oil.html)

<sup>23</sup>. Biofuels from cassava plantation in Sarawak: new corporate monoculture planned on NCR lands without prior informed consent of indigenous communities, available at: <http://borneoproject.org/article.php?id=671>

<sup>24</sup>. Memo on land claims submitted, The Daily Express, 21 February 2008

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## ii. Targeting the Penans of Sarawak

The conditions of the indigenous Penans in Sarawak State remained deplorable. In July 2007, the SUHAKAM following a fact-finding mission issued statement identifying seven key areas requiring “drastic improvement” by the government in order to improve the situation of the Penans. The SUHAKAM listed the following concerns – land rights; Environmental Impact Assessment (EIA) reports; poverty; personal identification documents; education; health and the duty of the Sarawak State government to protect the rights of the Penans. The SUHAKAM stressed the need to amend the Sarawak Land Code of 1958 as the Code has no provision on the rights of the Penans to land ownership.<sup>25</sup>

### **Certifying the extinction process:**

In 2001, the Malaysian Timber Certification Council (MTCC) started a dubious method of legalizing its illegal trade of timber by issuing “certificates” in the name of promoting environmentally sound logging practices. The MTCC issues two certificates - Certificate for Forest Management and Certificate for Chain-of-Custody. The Certificate for Forest Management certifies that the Forest Management Units (FMU) is sustainably managed and that timber was harvested legally. The Certificate for Chain-of-Custody assures the buyers that timber products originated from MTCC-certified FMUs. MTCC states that participation and consent of local communities, particularly forest-dwelling indigenous people, is a key criterion for issuing of such “certificates”.<sup>26</sup>

However, since 2001, the Network of Indigenous Peoples and Non-Governmental Organisations on Forest Issues (JOANGOHutan) withdrew from talks with the government on certification process. The organisation held that the scheme is “only concerned with the sustainability of timber production and not the social-cultural sustainability of indigenous livelihoods”. Like elsewhere, participation of indigenous peoples is tokenism at its best.<sup>27</sup>

In January 2007, the Sarawak authorities prevented the indigenous leaders from meeting an official delegation of European Union which visited Sarawak as part of the negotiations between the EU and Malaysia to reach a “Voluntary Partnership Agreement” to control illegal logging and work towards sustainable forest management in Malaysia.<sup>28</sup>

The so-called certification process by the MTCC has been allowing the illegal loggers to flout the sustainable forestry practices and indigenous peoples' rights over their lands and resources. The MTCC has reportedly certified 4.73 million hectares of Permanent Forest Reserves (PFR) that include eight forest management units (FMU) in the peninsula and

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<sup>25</sup>. The Indigenous World 2008, International Work Group for Indigenous Affairs, Copenhagen

<sup>26</sup>. Malaysia: Certifying extinction of indigenous peoples, Indigenous Rights Quarterly -Vol. II: No. 01, Jan-March, 2007, AITPN, available at: <http://www.aitpn.org/IRQ/vol-II/issue-1.htm>

<sup>27</sup>. Ibid

<sup>28</sup>. Ibid

the Selaan-Linau FMU in Sarawak. The practice is therefore proving to be disastrous for the survival of the indigenous peoples who are largely dependent on forests produce.<sup>29</sup>

### **Manipulating Environmental Impact Assessment:**

Environment Impact Assessments for projects are often manipulated by the authorities. In the Belaga in Sarawak, the Environmental Impact Assessment (EIA) done by JB Agriculture Management Services for an oil palm and forest plantation totally overlook the presence of the Penans by saying that there was no evidence of human settlements in Ulu Belaga forests. However, the Malaysian Human Rights Commission (SUHAKAM) following a fact-finding mission to Sarawak in September 2006 found contradictions and inconsistencies in the EIA on Shin Yang Forest Plantation which stretches between Batang Belaga and Sungai Murum. The EIA of the plantation scheme erroneously declared that there is no human settlement in the 155,930ha project area. Earlier, in 1999, Shin Yang had obtained a 60-year Licence for Planted Forest. The project is divided into 80% forest plantation and 20% oil palm. Suhakam which released its report 'Penan in Ulu Belaga: Right to Land and Socio-Economic Development' in August 2007 revealed that 19% of the Penan population of 15,500 reside in Ulu Belaga, with 20 settlements in the disputed region.<sup>30</sup>

### **Killing as the response:**

Those who oppose logging were targeted. Many Penans have been arrested and jailed for their actions. In December 2007, a village chieftain identified as Kelesau Naan (70) was found dead in the jungles of Borneo in Sarawak state. Some of his bones were reportedly broken indicating that he had been assaulted. He disappeared in 23 October 2007 while checking an animal trap near the remote village of Long Kerong in eastern Sarawak State. Kelesau Naan has been a key figure in anti-logging efforts by the Penans.<sup>31</sup> Many supporting activists who carried out fact-finding missions or spoke out against atrocities perpetrated by logging companies, police, etc were banned from entering Sarawak.<sup>32</sup>

On 28 January 2008, an Iban village chief and two others identified as Tuai Rumah Taman Anak Embat (55), Robert Anak Gickson Sawing (23) and Alu Anak Embat (58) were arrested for setting up a blockade to stop encroachment by plantation company, Saradu Plantation Sdn Bhd for logging activities into their Native Customary Rights (NCR) land in Ulu Balingian.<sup>33</sup>

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<sup>29</sup>. Ibid

<sup>30</sup>. Overlooked minority, The Star.com, 30 October 2007, available at:

<http://thestar.com.my/lifestyle/story.asp?file=/2007/10/30/lifefocus/20071030094513&sec=lifefocus>

<sup>31</sup>. Borneo tribesman who fought logging found dead in Malaysia, family says, The Bangkok Post, 3 January 2008

<sup>32</sup>. The Indigenous World 2008, International Work Group for Indigenous Affairs, Copenhagen

<sup>33</sup>. Ulu Balingian Ibans held for setting blockade, The Rengah Sarawak, 29 January 2008

### iii. Displacement due to Bakun Dam in Sarawak

In late 2007, the government of Malaysia decided to resume the controversial Bakun Hydro Electric Project in Sarawak to its original design to generate 2,400 megawatts of electricity power.<sup>34</sup> The Dam has already destroyed 23,000 hectares of virgin rainforest and displaced 9,000 indigenous people. The communities claimed that the survey conducted on the ground was not properly carried out. On 9 August 2007, Australia-based Rio Tinto Aluminium signed a deal with Malaysian conglomerate Cahya Mata Sarawak for a joint study to build a US\$ 2 billion smelter in Similajau near Bintulu, 80 km inland from the Bakun Dam.<sup>35</sup> The indigenous people were struggling to survive on resettlement sites due to unemployment and hunger. The indigenous people displaced by the dam project claimed that they have not been properly resettled and adequately compensated. However, the State government has denied these and claimed that only the older generation had reservations about the resettlement program.<sup>36</sup>

### 3. Recommendations

The judiciary in Malaysia has been attempting to set the standards on the rights of indigenous peoples. In 2007, two landmark judgments were made in Sarawak and Sabah.

On 8 October 2007, the Federal Court concluded a civil appeal case between the Superintendent of Lands and Survey, Sarawak and the Sarawak government and Madeli bin Salleh representing several indigenous groups with customary land rights. The Court upheld a Court of Appeal decision to recognize the pre-existence of native customary rights over land before any statute or legislation.<sup>37</sup>

In another landmark judgment on 9 July 2007, Justice Datuk Ian H.C. Chin of the High Court of Sabah and Sarawak issued a series of directions/orders in favour of Rambilin Binti Ambit, a Dusun indigenous woman of Kampung Gailun Salimpodon in the district of Pitas in Sabah province, in a civil suit and two related judicial reviews to recognize her customary rights.

The United Nations Human Rights Council should recommend the government of Malaysia to: (1) ratify the key UN Conventions and the ILO Convention No 169 relating to indigenous peoples; (2) amend the Constitution and national laws like the Aboriginal People's Act of 1954 to strengthen affirmative actions and customary rights of indigenous peoples; and (3) establish a National Commission on Indigenous Peoples and had over the Department of Orang Asli Affairs to the Orang Aslis.

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<sup>34</sup>. Malaysia Government should respond to the Report of World Commission on Dams, The Rengah Sarawak, 7 January 2008

<sup>35</sup>. Indigenous World 2008 and Indigenous World 2007, The Indigenous World 2008, International Work Group for Indigenous Affairs, Copenhagen

<sup>36</sup>. IWGIA, available at: <http://www.iwgia.org/sw18360.asp>

<sup>37</sup>. The Indigenous World 2008, International Work Group for Indigenous Affairs, Copenhagen