



**SURUHANJAYA HAK ASASI MANUSIA MALAYSIA
HUMAN RIGHTS COMMISSION OF MALAYSIA**

EDITOR, NEWS DESK

FOR IMMEDIATE RELEASE

PRESS STATEMENT

**SUHAKAM'S REPORT ON
PENAN IN ULU BELAGA: RIGHT TO LAND AND SOCIO-
ECONOMIC DEVELOPMENT**

The Human Rights Commission of Malaysia (SUHAKAM) had received complaints from two Penan headmen from Long Singu and Long Jaik, Ulu Belaga, Sarawak pertaining to logging, oil palm plantation and reforestation activities surrounding their area and how these activities had impacted on their right to land and the life of the community concerned.

As a response, the Economic, Social and Cultural Rights Working Group (ECOSOC) together with SUHAKAM Sarawak Office had conducted field visits and dialogues with the affected Penan members, representatives from Government agencies and the company involved in the abovementioned activities as well as NGOs, academicians and concerned individuals. SUHAKAM's delegation was led by Datuk Denison Jayasooria (the Chairperson of the ECOSOC Working Group), Dr. Chiam Heng Keng, Dr. Muhammad Hirman Ritom Abdullah and Tunku Datuk Nazihah Tunku Mohamed Rus.

The executive summary of the report is as per attached. Please be informed that the report can be collected from the Public Affairs Division or call En. Syarizal Bakar at 03-2612 5689 for further inquiry.

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"HUMAN RIGHTS FOR ALL"

PENAN IN ULU BELAGA: RIGHT TO LAND AND SOCIO-ECONOMIC DEVELOPMENT

EXECUTIVE SUMMARY

The Penans are one of the indigenous communities of Sarawak. The Penan population to date is estimated to be 15,485 persons. A majority of this community have changed their lifestyle from a nomadic way of life to that of a settled community. The Penans in Ulu Belaga, Sarawak are among those who have established permanent settlements as early as the late 1950s and 1960s. It is estimated that today only 3% of the total Penan population remain nomadic.

The Penans, including those residing in Ulu Belaga, have a unique system of establishing ownership and stewardship of land. This practise of land ownership has been handed down from one generation to another up until today.

Despite having established permanent settlements and cultivating rice and vegetable on small farms, the Penans in Ulu Belaga remain dependent on jungle produce for food and other basic necessities, especially when their small farms yield insufficient food supplies.

In 2001, when logging and oil palm plantation activities were commenced by the company, Shin Yang Forestry Sdn. Bhd., in Ulu Belaga, the Penans, felt that their livelihood was threatened and that their land rights were infringed upon.

On 26 July 2006, the Penans raised their concerns, fears and apprehensions to the Human Rights Commission of Malaysia (SUHAKAM) via two Penan headmen, Chief Alung Ju of Long Singu, and Chief Matu Tugang of Long Jaik, both from Ulu Belaga, Sarawak.

SUHAKAM responded to these complaints by conducting fact-finding field visits to Long Singu and Long Jaik, Ulu Belaga and having a series of dialogues with representatives from the Penan community concerned, Government agencies, the Company concerned, as well as with Non-Governmental Organisations [NGOs], academicians and individuals who were concerned with the welfare of the Penans.

Six other Penan headmen, who alleged that their villages were similarly affected, attended the dialogues as well.

The Penan community's area of concern centred on the status of their claim on their ancestral land. They alleged that since the commencement of deforestation, logging and oil palm plantation activities, their access to their ancestral land and to forest produce was denied.

They further claimed that they were not consulted by the Company prior to the commencement of their activities. Some of them have even claimed that the compensation paid to them was inadequate.

Their complaints also touched on inaccessibility to basic human rights like adequate housing, health care, education, clean water, employment, right to valid documents and amenities like transportation.

SUHAKAM'S OBSERVATIONS AND RECOMMENDATIONS

From the visits made and the dialogues held, SUHAKAM makes the following observations and recommendations:

Right to Land

Observation:

SUHAKAM observed that the Penan's unique custom of establishing land ownership and stewardship is not recognised by the Sarawak Land Code 1958, despite being an indigenous community of Sarawak. As a result, claims made on ancestral land are often not considered by the relevant authorities and those who clear the forests areas and commence logging and oil palm plantation activities.

SUHAKAM's Recommendations:

The Sarawak Land Code 1958 has no provision for the protection of the Penan community's right to land ownership. This, despite the fact that there is documentation and evidence indicating the presence of Penan community in Sarawak well before the Sarawak Land Code 1958 was enacted.

As the Penans do not seem to have legal rights to land ownership, SUHAKAM recommends that the Sarawak land Code 1958 be amended to take into consideration the Penan's unique way of establishing land ownership and stewardship.

Section 5(2)d and 5(2)e of the Sarawak Land Code 1958 specifies that methods of establishing claims to NCR land includes the use of land for burial ground and of any class of right of way. SUHAKAM, therefore, recommends that where there is documentary evidence of the existence of Penan burial sites and paths, these evidences be taken into consideration when land is alienated for logging and oil palm plantation activities.

Additionally, SUHAKAM recommends that the terms of Section 5(3) of the Sarawak Land Code 1958 which extinguishes native customary land rights be reviewed accordingly, as the current provision increases the vulnerability of the indigenous communities' right to land ownership.

Environmental Impact Assessment (EIA) Report on the Existence of Penans in the Licenced Area

Observation:

SUHAKAM observes that there seems to be contradictions and inconsistencies between the findings of the Consultant of the EIA Report on the Proposed Shin Yang Forest Plantation and the claims made by the Penans. The EIA report which was prepared before the commencement of logging and oil palm plantation activities states that there is no evidence of any human settlement within the proposed forest plantation.

Corroborating to the claims made by the Penans, a literature review on local and international research, as well as data from the Belaga District Office provides evidence of Penan settlements in Ulu Belaga at the time when EIA report was prepared.

SUHAKAM's Recommendation:

SUHAKAM recommends that the Government takes necessary measures to ensure that only independent consultants are appointed to assess and prepare the EIA report. This is to ensure greater objectivity and transparency and to negate all allegations of biasness. It is also recommended that the Government review the procedures of the preparation and verification of the EIA report.

With regard to the EIA report for Shin Yang's Forest Plantation in the Ulu Belaga, it is recommended that the Natural Resources and Environmental Board (NREB), the agency in charge of approving the EIA report, verify and ascertain the accuracy of its findings. In the event that it is found the EIA report has misled the authorities concerned, it is recommended that immediate measures be taken to rectify the situation.

Issues on Poverty

Observation:

SUHAKAM found that the Penans in Long Singu and Long Jaik are among of the poorest groups in the country and live below the poverty level. They have inadequate access to nutritious food, health care, education, housing and clean potable water.

SUHAKAM's Recommendations:

In line with the Government's aspiration under the Third Thrust of the Country's Ninth Malaysia Plan to address persistent socio-economic inequalities constructively and productively, there is an urgent need for the Government to ensure the availability of basic necessities for the Penans to ensure that they do not continue to live in abject poverty. More specifically, SUHAKAM strongly recommends that poverty eradication and income generations be implemented; that the number of Service Centres in Ulu Belaga be increased; that the Sarawak Land Consolidation and Rehabilitation Authority (SALCRA) Scheme be extended to the Penan Community; that the programmes outlined in the First Malaysia Plan 1966-1970 (Green Book) on rural development be revived.

To ensure the effectiveness of poverty eradication and income generation programmes in the Ulu Belaga, there is the need for the Government to ensure regular visits and monitoring by relevant Government Officials.

Issue of Documentation

Observation:

SUHAKAM observed that the majority of the Penans met by SUHAKAM do not have Identification Cards [ICs] and Birth Certificates [BCs], while only a handful had temporary identification slips which validity were continually extended. Among the causes identified include unavailability of registration offices in the area; fees imposed; cost and the time taken to travel to the nearest registration service in Bintulu, Sarawak; and the requirement for the production of ICs and marriage certificates of Penan parents.

SUHAKAM's Recommendation:

SUHAKAM strongly recommends that the Government ensures that vital registration services and facilities are made available to the Penans. This would enhance their accessibility to basic rights namely, the right to vote; right to education, health care services, welfare services, financial assistance; as well as access to poverty eradication programmes.

Further it is recommended that the Government waive the late registration fees imposed on the Penans in Ulu Belaga considering the Penans are amongst the poorest community in Malaysia. The Penans could also be exempted from the condition of requiring parents' ICs and marriage certificates to be produced when procuring birth certificates since most of them do not have these documents. Validation by Penan headmen for this purpose should be sufficient.

Issues on Education

Observation:

SUHAKAM found that a majority of the Penan children residing in the longhouses in Long Singu and Long Jaik do not attend school. A number of reasons have been identified, such as the lack of proper documentation; the lack of proper transportation to and from schools; poverty and the limited financial assistance needed to ensure access to education.

It has to be acknowledged that whilst the Sarawak State Education Department plays a major role in ensuring that education is accessible to all, including the Penans, limited resources have impeded the Department's efforts in reaching out to the Penans in Ulu Belaga.

SUHAKAM's Recommendation:

SUHAKAM recommends that pre-schools, either run by the Government or NGOs, or run collectively by the Government and NGOs, be established in Penan villages to meet the basic education needs of the young Penan children.

It is further recommended that at the very least, primary school curriculum of up to standard four be made available and accessible in Penan villages.

In addition, affirmative action needs to be formulated and implemented to facilitate the enrolment of Penan children in secondary schools and at the tertiary level. Measures to enhance accessibility to financial assistance need to be implemented and made available as well.

It is also important to consider self reliance education or training for the Penans. Additionally, skill-related training - based on their current knowledge on agriculture and blacksmithing - could be provided, especially for those who have been unfortunate to miss formal school education or who have failed to complete primary and secondary education.

Issues on Health

Observation:

SUHAKAM observed that access to health care services is limited for the Penans in Ulu Belaga. These include limited access to Government clinics and to emergency services, limited medical supply and irregular visits by the Flying Doctor Service.

SUHAKAM found that as with the State Education Department, limited resources have hampered the Sarawak State Health Department's commitment to ensure access to health care for the Penan community.

SUHAKAM's Recommendation:

SUHAKAM recommends that the Government allocation for rural health development under the Ninth Malaysia Plan 2006-2010 be increased and a portion of it be channelled specifically to improve access to healthcare for the Penan community.

SUHAKAM further recommends that the number of community health workers be increased to meet the health needs of the Penan. Expectant Penan mothers and children, in particular, need to be given basic healthcare – like proper nutrition, vitamins and clean water.

The relevant District Office can play a vital role in educating and creating awareness on healthcare amongst the Penans.

It is further recommended that the Government ensures all components of the right to health are easily accessible and available to the Penans. These components include maternal, child and reproductive health; a healthy workplace in a natural environment; prevention, treatment and control of diseases, including access to essential medicines and access to safe potable water.

State's Duty to Protect the Rights of the Penans

Observation:

As primary duty bearer, the Government is obligated to ensure its citizens enjoy human rights, including right to land. However, in the case of the Penans in Ulu Belaga, it appears that the task to settle NCR claims was transferred to the Company by the Government.

In addition to right to land, the Penans are also deprived of their right to basic amenities. As the Penans found it hard to gain the Government's attention, they often turn to the Company operating in Ulu Belaga to provide them with those amenities.

SUHAKAM's Recommendation:

SUHAKAM recommends that in the spirit of ensuring compliance with Government's human rights obligations, the grievances and complaints of the Penans be looked into and protected – in particular their rights to native customary land, to education, employment, documentation and healthcare as

well as other rights as enshrined in the Universal Declaration of Human Rights (UDHR).

CONCLUSION

A majority of the Penans remain one of the most deprived communities in Malaysia. The major issue of grievance and concern of the Penans pertains to the status of land claims based on their traditional system of ownership and stewardship of land. This fear is compounded by deforestation, logging and oil palm plantation activities carried out by certain companies.

Apart from land issues, the survival, livelihood and development of the Penans is further stunted as a majority of them live in abject poverty. Whilst the Government has formulated and implemented various poverty eradication programmes for the rural communities, it appears that the Penans have limited access to those programmes. They also have limited access to other vital facilities and services including education, healthcare, registration and transportation, as well as basic amenities such as electricity and clean water supply.

As the primary duty bearer, the Government is chiefly responsible to ensure the Penans' right to life and an adequate standard of living. The Government, therefore, has to ensure that the Penans have adequate access to their basic human rights as enjoyed by the mainstream society as ignorance will take its toll on the Penans.