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PRESS STATEMENT

SUHAKAM’S REPORT ON PENAN BENALIH BLOCKADE ISSUE

The Human Rights Commission of Malaysia (SUHAKAM) is concerned over the issue of land rights of the Penan Community in Sarawak. In relation to the efforts in obtaining legal recognition of their ‘customary rights’ claims over ancestral and contemporary foraging areas, 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.

The investigation provided SUHAKAM with the opportunity to ascertain the issues confronted by both the villagers and Government agencies. The Community 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 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 or Ms. Parames at 03-2612 5684 for further inquiry.

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"HUMAN RIGHTS FOR ALL"
SUHAKAM’S REPORT ON PENAN BENALIH ISSUE

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.

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