

SUHAKAM'S REPORT ON

THE MURUM HYDROELECTRIC PROJECT
AND ITS IMPACT TOWARDS THE
ECONOMIC, SOCIAL AND CULTURAL RIGHTS
OF THE AFFECTED INDIGENOUS PEOPLES
IN SARAWAK



LEVEL 29, MENARA TUN RAZAK, JALAN RAJA LAUT
50350 KUALA LUMPUR, MALAYSIA
603-2612 5600 (T)
603-2612 5620 (F)
humanrights@suhakam.org.my (E)

Cetakan Pertama / *First Printing, 2009*

©Hak Cipta Suruhanjaya Hak Asasi Manusia (SUHAKAM), 2009
©*Copyright Human Rights Commission of Malaysia (SUHAKAM) 2009*

Diterbitkan di Malaysia oleh / *Published in Malaysia by*
SURUHANJAYA HAK ASASI MANUSIA /
HUMAN RIGHTS COMMISSION OF MALAYSIA
E-mail: humanrights@suhakam.org.my
URL: <http://www.suhakam.org.my>

Dicetak di Malaysia oleh / *Printed in Malaysia by*

LEGASI PRESS SDN. BHD.
NO. 60 (GROUND FLOOR),
JALAN METRO PERDANA TIMUR II,
KEPONG ENTREPRENEUR PARK,
52100 KUALA LUMPUR.

603-6250 5190 (T)

603-6250 8190 (F)

Hak cipta laporan ini adalah milik SUHAKAM. Laporan ini boleh disalin dengan syarat mendapat kebenaran daripada SUHAKAM.

The copyright of this report belongs to SUHAKAM. This report may be reproduced with SUHAKAM's permission.

Perpustakaan Negara Malaysia Data-Pengkatalogan-dalam-Penerbitan
National Library of Malaysia Cataloguing-in-Publication-Data

SUHAKAM'S REPORT ON THE MURUM HYDROELECTRIC PROJECT AND ITS IMPACT TOWARDS THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS OF THE AFFECTED INDIGENOUS PEOPLES IN SARAWAK

Includes bibliographical references

ISBN 978-983-2523-55-0

1. Murum Hydroelectric Project and Its Impact. 2. Indigenous People 3. Suruhanjaya Hak Asasi Manusia Malaysia.



TABLE OF CONTENT

	PAGE
EXECUTIVE SUMMARY	i
 PART A: SUHAKAM'S REPORT	
I INTRODUCTION	2
II BACKGROUND ON THE MURUM HYDROELECTRIC PROJECT	3
III ISSUES	6
IV SUHAKAM'S OBSERVATIONS AND RECOMMENDATIONS	7
V CONCLUSION	16
 PART B: REPORT ON SUHAKAM'S DIALOGUE AND MEETINGS	
I SUHAKAM'S MEETING WITH REPRESENTATIVES FROM THE RELEVANT GOVERNMENT AGENCIES	18
II SUHAKAM'S DIALOGUE WITH INDIGENOUS COMMUNITY LEADERS	30
III MEETING WITH REPRESENTATIVES FROM NGOS AND OTHER CONCERNED GROUPS AND INDIVIDUALS	35
 PART C: ANNEXURES	
ANNEXURE 1 SARAWAK HYDROPOWER DEVELOPMENT FEEDBACK FROM THE SARAWAK ENERGY BOARD	41
ANNEXURE 2 SUBMISSION BY THE PENAN COMMUNITY LEADERS TO SUHAKAM	51
ANNEXURE 3 UNITED NATION'S DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES	55
ANNEXURE 4 NEWSPAPER REPORTS/ARTICLES MASING SNIPES AT DAM CRITICS	69



EXECUTIVE SUMMARY

The Sarawak State Government's recent decision to implement the Murum Hydroelectric Project (MHP) in Sarawak has raised concerns over its impact towards the economic, social and cultural rights of the indigenous communities who would be internally displaced or affected by the construction of the hydroelectric dam.

A total of 8 Penan villages would be affected by the construction of the Murum hydroelectric Dam. They are the settlements in Long Singu, Long Tangau, Long Luar, Long Menapah, Long Wat, Long Malim, Long Jaik and Long Peran.

The community leaders of the above affected villages are afraid that they would face similar adjustment problems to those who were resettled at the Asap resettlement associated with the Bakun Hydroelectric Project. Reference was also made to a previous EIA report which erroneously stated that their villages were only recently established. They felt they would be dispossessed from their native land which is their main source livelihood and that the government has not brought any significant development to their communities. While acknowledging the inevitability of the construction of the dam, the general sentiment of the community is against the dam and the prospect of being resettled. In the event of being forced to be re-settled they want to have prior consultation, adequate compensation in terms of housing, facilities and available land for farming and communal forest areas to supplement their livelihood.

Concerns were also raised by non-governmental organisations and environmental groups. The rationale of the need to construct another dam was questioned. They felt that the Bakun hydroelectric dam would generate more than adequate energy to meet the state and national needs. The potential risk of transmitting electricity via underwater cables across vast area of international water was also raised. The risks to the environment associated with the flooding of vast areas of forest would lead to the accumulation of toxic gases detrimental to local as well as global eco-system.

In order to address the concerns expressed by the local communities, civil society and environmental groups, the Human Rights Commission of Malaysia (SUHAKAM) held a series of meetings with representatives from the relevant Federal and Sarawak State Government agencies, indigenous community leaders from affected villages, as well as NGOs and other concerned groups and individuals.

The following information on the relevant issues was obtained from parties engaged in this investigation.

Free, fair and informed prior consultation

The Murum Hydroelectric Dam Project like the Bakun and other dams being proposed is part of the government effort to generate renewable energy to ensure adequate energy supply to the state as well as the national power grid. Planning of the MHP dam goes back as early as 1994. The relevant EIA study has been made and awaiting finalization. The government has through the resident office and other agencies met with members of the local communities. A special unit has recently been set up to look into issues related to the resettlement of the internally displaced communities. Public awareness of the project came about only via the China-ASEAN Power Cooperation & Development Website after its Forum in Naning, Guangxi, Peoples Republic of China in October 2007.

It seems that there is a shortfall in the extent of free, prior and informed consultation with



Suruhanjaya Hak Asasi Manusia Malaysia
Human Rights Commission Of Malaysia

the affected communities. Neither were civil society and environmental groups invited for their relevant views on the proposed project before its implementation.

Environmental Impact Assessment (EIA) Report

The commission has no access to the current EIA report as it has not been finalized. It is understood that the consultant report is reviewed by a special board so as to minimize the possibility of conflict in interest leading to inaccurate and uninformed report. The state Natural Resources and Environment Board is the lead agency involved. The board does not put up the report for public scrutiny.

It seems paradoxical that work on a mega project has been contracted out without the finalization of an EIA study. Civil society groups do not have access to the report.

Issues on Native Land

The community leaders expressed concern that the dam will lead to the loss of their ancestral land.

The Penan community right to establishing native customary rights to land where they have resettled has not been resolved. The Sarawak Land Code 1958 as it stands presently does not provide provisions for the Penan community to establish ownership of land which they have traditionally lived within for generations.

This can lead to non compensation and under compensation for the internally displaced and affected communities.

Issues on Resettlement

The community leaders felt that these consultations were in fact directives by the Government to which they have to comply. They felt that they have no say in this process. They were worried of their ability to cope with change if they were not provided with adequate land for cultivation and adjoining forest to supplement their livelihood.

There is a special unit in the Chief Minister's Department to handle the ongoing process of engaging the communities who will be resettled. The proposed areas are being studied to meet the need of the displaced communities. The compensation mechanism is being worked out. The resettlement area will be provided with the necessary facilities and infrastructure.

There is a need for more informed and inclusive consultation by this newly established unit to engage the community. Problems experienced by the internally displaced groups at Asap resulting from the Bakun dam construction should not be repeated with the communities displaced by the Murum dam construction.

Fiduciary Duty of the Government

The affected Penan communities who will be internally displaced or affected by the construction of the dam are marginalized communities. This is partly due to their scattered and remote habitation. They have been without proper access road, basic services and amenities. The great majority are without personal identification document. These forest based communities are increasingly threatened by logging and estate development activities. They are at a risk of regressing into abject poverty unless special affirmative



programs are designed and implemented urgently. Poverty eradication programs of the various Malaysian development plans do not appear to reach them.

SUHAKAM'S RECOMMENDATIONS

While SUHAKAM is cognizant of the Government's right to exploit the nation resources, in this case the harnessing of hydro-electric power, it bears the heavy responsibility that such developments do not infringe on the rights of its citizen. It is also the duty of the state party that any burden placed on the internally displaced communities should be minimized and that they should be able to benefit directly or indirectly by such developments.

Based on its observations, SUHAKAM makes the following recommendations:

Ensure compliance to international human rights laws and standards

The Government is reminded of its obligation to ensure that human rights principles as expressed in the UDHR, UNDRIP and Part II of the Federal constitution are adhered to in the implementation of the construction of the Murum dam.

Interpretations of the existing land code must be in line with these commitments to ensure that the internally displaced communities' rights are not infringed upon.

Ensure transparency and accuracy of the EIA

SUHAKAM emphasizes the importance of independent consultants involved in the preparation of the EIAs to ensure a fair and accurate report.

SUHAKAM further recommends that the committee involved in reviewing the EIA must be representative of all stake holders.

It is prudent that the EIA report be made available to civil society groups so as to ensure its inclusiveness.

Ensure Adequate and Just Compensation

SUHAKAM urges the Government to ensure that compensation, whether monetary or in other forms, such as land, are provided adequately and justly to the affected families. As contained in UDRIP; "unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress" is referred to.

Ensure Access to Information

The Government must ensure that the internally displaced and other affected communities have access to information on the dam from the planning till the final implementation. Civil society access to such material should be enhanced to ensure it is free, fair and informed.

Ensure Right to Participation

The state party must take steps to ensure the consultations at all stages of implementation that are carried out or being planned must be broad based. All views, inclusive of objections



Suruhanjaya Hak Asasi Manusia Malaysia
Human Rights Commission Of Malaysia

must be given fair and due consideration.

Ensure Availability and Accessibility of Public Amenities and Facilities before Resettlement

SUHAKAM urges the Government to ensure that resettlement areas are complete and with access to the necessary amenities and facilities - including, among others, clean piped water, electricity, schools and clinics - before villagers are relocated.

The state party must take steps to ensure the communities have a support system to facilitate their ability to cope with their new environment. Capacity building of the community must be central in this system. They must be adequate and appropriate opportunities to earn their living.

Safety net systems must be in place to mitigate any adjustment difficulties.

CONCLUSION

The Penan communities to be internally displaced or affected by the construction of the Murum dam, like the majority of forest based communities in Sarawak still suffer from poverty. There are genuine and pressing human rights issues affecting them. SUHAKAM recognizes that harnessing the country's natural resources is within the right of any government. However, this should be done with prudence and due regard to the protection and promotion of basic human rights of these marginalised group. To mitigate the anticipated adjustment challenges in their new environment there must be free, informed and fair consultation with the affected Penan communities. Fair and appropriate compensation mechanisms inclusive of their right to their customary land must be in place.

Suruhanjaya Hak Asasi Manusia Malaysia
Human Rights Commission Of Malaysia

**PART A:
SUHAKAM'S REPORT**

*SUHAKAM'S REPORT ON THE MHP AND ITS IMPACT TOWARDS THE ECONOMIC, SOCIAL
AND CULTURAL RIGHTS OF THE AFFECTED INDIGENOUS PEOPLES IN SARAWAK*

I. INTRODUCTION

The development of large dams raises major concerns at national and international levels, in particular, their impact towards not only the environment but also towards society. Although there are many potential economic benefits such as flood control, enormous amount of clean hydroelectric power and navigation, there are also concerns about, among others, the relocation of people who have been or will be displaced by the rising waters. According to the World Commission on Dams (WCD), global estimates of the magnitude of impacts involve 40-80 million people who are displaced by the building of dams.

The recent furore over the Government of Sarawak's plan to proceed with the Murum Hydroelectric Project (MHP) had brought about concerns over its effects towards human rights, in particular, the economic, social and cultural rights of indigenous communities whose lives would be directly affected by the construction of the proposed dam.

Equally concerned, the Human Rights Commission of Malaysia (SUHAKAM), via its Economic, Social and Cultural Rights Working Group (ECOSOC WG) together with SUHAKAM Sarawak Office, organised a series of meeting with representatives from the Federal and State government agencies, indigenous community leaders as well as NGOs and other groups and individuals.

SUHAKAM'S MEETINGS WITH STAKEHOLDERS

The overall objective of the series of meetings was to ascertain the background of the MHP and its rationale and the concerns of indigenous communities on the potential effects of the MHP towards their economic, social and cultural rights.

Meeting with representatives from relevant government agencies

The Meeting with representatives from the relevant Federal and State government agencies was held on 25 August 2008 in Kuching, Sarawak. The meeting was held with the specific aim to understand the background of the MHP and to identify human rights issues that have arisen and could potentially arise with the dam's construction.

Participants from the Sarawak State government agencies were from the Ministry of Resource Planning and Development; Ministry of Public Utilities; Sarawak State Planning Unit; Natural Resources and Environment Board; Land and Survey Department, Sarawak; and the Sarawak Energy Berhad. Also present was the representative from the Economic Planning Unit.

Dialogue with indigenous community leaders from affected villages

SUHAKAM's dialogue with the indigenous community leaders from affected villages was held on 13 September 2008 in Bintulu, Sarawak.

The objective of the meeting was to provide an arena for participants to highlight their views, concerns and recommendations with regards to the issue in question.

Those who attended the dialogue were the headmen and representatives from Long Jaik, Long Peran, Long Luar, Long Wat, Long Tangau, Long Singu, Long Malim, Long Menapa, Long Bangan, Long Liko, Uma Lasah, Uma Kejaman, Sungai Arip, Sungai Asap, and Tatau. Also at the dialogue were the representatives from the Pejabat Daerah Kecil Asap, Pejabat Daerah Belaga, State Planning Unit, and Sarawak Energy Berhad. SUHAKAM's

Resource persons who were present were Mr. Khoo Kay Jin, an independent researcher, and Mr. Jayl Langub from UNIMAS.

Meeting with representatives from NGOs and other groups

A meeting with the representatives from NGOs and other groups was held on 20 October 2008 in Kuala Lumpur. The meeting was held to obtain their perspectives, concerns and recommendations with regards to the issue.

Participating were those from Centre for Environment, Technology and Development, Malaysia, Sahabat Alam Malaysia, Consumers Association of Penang, Environ Consulting Services and University Putra Malaysia.

II. BACKGROUND ON THE MURUM HYDROELECTRIC PROJECT

In Malaysia, there are currently 10 dams which are either in operation or under construction. They include the Batang Ai Dam (Sarawak); Batu Dam (Selangor); Cenderoh Power Station (Perak); Klang Gates Dam (Kuala Lumpur suburb), Pergau Dam (Kelantan); Selangor Water Works (Selangor); Sultan Mahmud Power Station (Terengganu); Temenggor Dam (Perak); Tenom Pangi Dam (Sabah) and the Bakun Hydroelectric Project (Sarawak).

The Bakun Hydroelectric Project (BHP), soon to be largest dam in Malaysia, is one that received the major criticisms from national and international bodies on their costs and benefits, particularly towards the indigenous peoples who were said to have been displaced and had lost their native lands and main source of livelihood. It also raised concerns over the communities' participation in decision making and informed consent, compensation as well as adequate housing, and thus implicates their human rights.

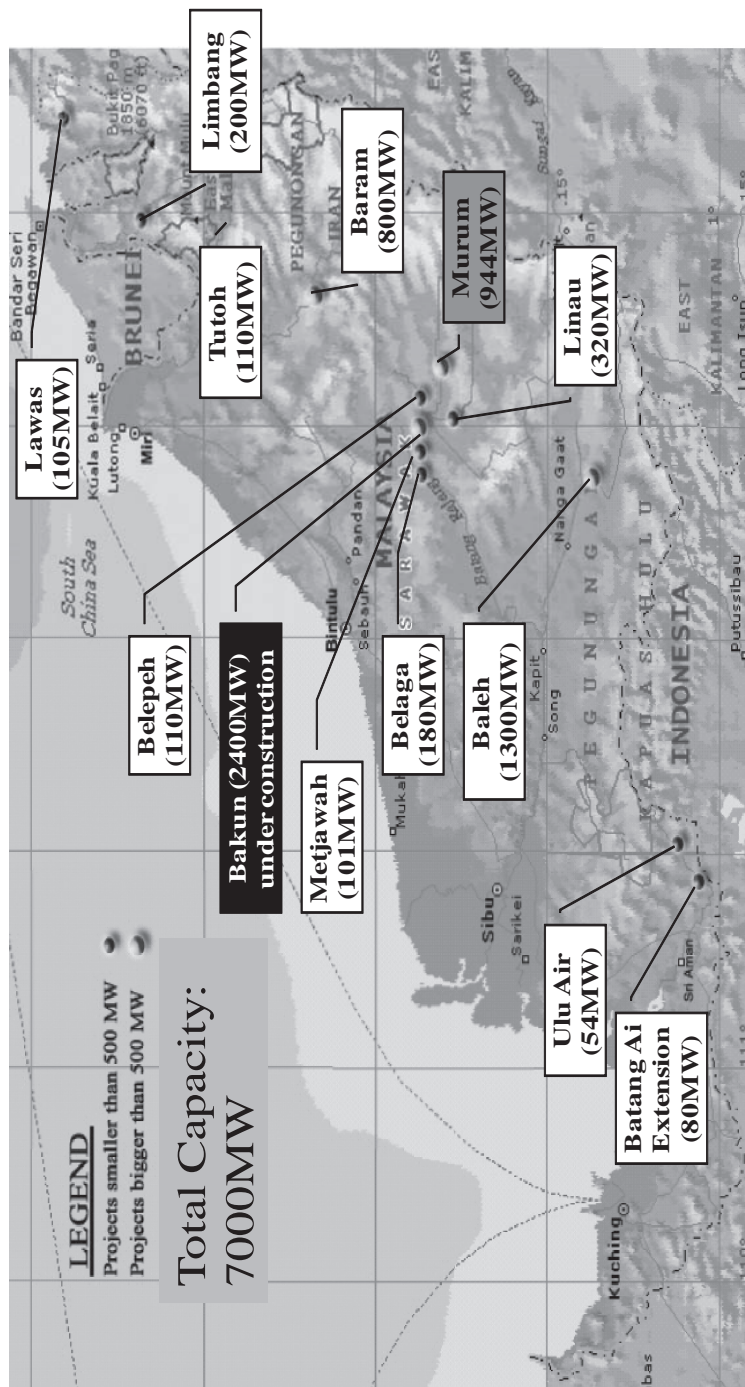
The State Government of Sarawak at present is embarking on another mega dam known as the Murum Hydroelectric Project (MHP). The MHP is one of the 10 dams that were planned by the Sarawak State Government for construction in Sarawak in the future.

The Murum Hydroelectric Dam

The plan to construct the MHP was done in 1985 and construction was recently leased out by the Government of Sarawak to the China Three Gorges Project Corporation (CTGPC). The construction of the Dam is expected to begin in 2008 and due for completion in late 2012 and commissioned the following year.

Map 1 plots the Hydropower Projects in Sarawak to be implemented between 2008 and 2020 while Table 1 shows the current status of those projects.

Planned Hydropower Projects (2008–2020)



Source: Sarawak Energy Berhad – Refer to Annexure 1, page 45.

TABLE 1: STATUS OF THE 12 PROJECTS (AS OF 24 APRIL 2009)

Project	Installed Capacity (MW)	Status
Murum	944	Start of construction
Batang Ai Extension*	80	Decided not to proceed
Baram	800	Feasibility study
Baleh	1,300	Feasibility study
Limbang	200	Feasibility study completed
Lawas	105	Feasibility study
Metjawah*	101	Not feasible
Belaga	180	Feasibility study
Ulu Ai	54	Tender design completed
Tutoh	110	Basin study
Belepeh	140	Basin study
Linau	320	Basin study

Note: The project marked with (*) will be replaced with other projects.

Source: *Sarawak Energy Berhad – Refer to Annexure 1, page 43.*

According to Tan Sri Datuk Amar Abdul Aziz Husain, the Group Managing Director of the Sarawak Energy Berhad, during the China-ASEAN Power Cooperation & Development Forum, held in Guangxi, China in October 2007, the MHP would generate 900MW of energy. Additionally, the Chief Minister of Sarawak, Tan Sri Abdul Taib Mahmud was reported to have said that the MHP will make up for the energy from the Bakun dam which will be transmitted to Peninsular Malaysia. Further, the MHP would enable the setting up of two proposed aluminium smelter plants in Bintulu over the next three years.³

Similar to the BHP, the MHP has attracted criticisms from NGOs and community based organisations who were concerned that indigenous communities who would be affected by the MHP, would receive the same fate as those affected by the BHP.

3. Source: The Star Online on CM: Sarawak needs Murum hydro project for energy-intensive industries, 1 April 2007; The Star Online on Sarawak to call tenders for Murum dam, 8 May 2008; The Star Online on Murum hydro dam project attracts 14 bidders, 28 June 2008; The Borneo Post Online on Chinese firm to build the Murum Dam, 4 August 2008; The Star Online on China Three Gorges awarded RM3b Murum dam project, 5 August 2008. See also Bruno Manser Fonds Website at http://www.bmf.ch/files/news/Sarawak_Energy_Confidential.pdf

COMMUNITIES AFFECTED BY THE MHP

Based on the meeting with representatives from the relevant government agencies on 25 August 2008, SUHAKAM was informed that 8 indigenous community villages would be affected. They include **Long Singu, Long Tangau, Long Luar, Long Menapah, Long Wat, Long Malim, Long Jaik** and **Long Peran**.

SUHAKAM notes that all the above villages consist of the Penan community. These were the same communities who were focused by SUHAKAM in its previous study on 'Penan in Ulu Belaga: Right to Land and Socio-Economic Development'. In this previous research by SUHAKAM, they were amongst the communities whom were affected by plantation activities by the Shin Yang Forestry Sdn. Bhd. who was awarded the Licence for Planted Forest (LPF)/0018.

III. ISSUES

Based on the respective meetings with the indigenous community leaders, representatives from the relevant government agencies as well as NGOs and other groups and individuals, several issues were apparent.

The plan to proceed with the construction of the MHP had triggered concerns amongst the indigenous communities residing within and on the fringes of the relevant site. Their concerns were based on their previous experience in which they were promised development but ended up being deprived of their land and lost their main source of sustenance as well as being left without proper assistance to cope with change. The communities felt that they were better off in their current locations.

Some felt that the authorities would only look into their existing plight when they have a proposal for development projects on land being inhabited by the communities. Without such projects, the communities would be left to find their own way.

In addition, SUHAKAM's attention was also drawn to issues pertaining to access to education, healthcare, registration and other vital public services. Consequently, many objected to the authority's proposal for their resettlement, and also acknowledging that their villages would be flooded as a result of the construction of the dam.

There were concerns raised on the rationale of the Government on the future construction of the MHP given that there would be energy surplus generated from the Bakun project. It was said that the MHP was supposed to be an alternative to Bakun, but some were puzzled when both were implemented. In this light, the planning process of the state government was seen as poor so much so that even the Bakun project had resulted in the flooding of a larger area than what was planned.

It was also contended that the plan to transmit energy from Sarawak to Peninsular Malaysia via underwater cable was seen as high in terms of risk, like sabotage, as it would be placed within international water.



IV. SUHAKAM'S OBSERVATIONS AND RECOMMENDATIONS

SUHAKAM's observations and recommendations are made based on information obtained via the respective meetings with representatives from the relevant government agencies and NGOs and other groups and individuals, its dialogue with indigenous community leaders as well as from observations made during previous studies that focus on the indigenous peoples in Sarawak. These are viewed with due consideration to human rights and international human rights standards and laws, such as the Declaration on the Rights of Indigenous Peoples⁴ and others.

SUHAKAM'S OBSERVATIONS

Concerns over the Murum Hydroelectric Project

Access to Information and Participation

Access and right to information appears to be a repetitive issue highlighted in many of SUHAKAM's dialogues with communities as well as community-based and non-governmental organisations. With respect to the MHP, the same issue was highlighted.

While SUHAKAM notes that information on the MHP is available on the China-ASEAN Power Cooperation & Development Website, this, however, was only uploaded and became publicly available after the China-ASEAN Power Cooperation & Development Forum held in Nanning, Guangxi, PR China on 28 - 29 October 2007, whereas the information and plan for the MHP had been with the Government since 1994. SUHAKAM feels that had the above information been made publicly available from 1994, this would have given opportunity for the public to propose for their participation in the process.

The rights to participation and free and informed consent are fundamental aspects and move parallel with the right to information.

SUHAKAM acknowledges and commends the fact that NGOs and community-based organisations were part of the planning process of the numerous hydroelectric projects in Sarawak which was done in the early 1990s. On the other hand, it appears that this participation was only at the beginning stage and not throughout, which includes the decision making process.⁵

Additionally, SUHAKAM was made to understand that NGOs had agreed to the MHP, but only as the alternative to the Bakun Hydroelectric Project. The former was agreed upon since the projected impacts towards the environment and number of community to be relocated was lesser compared with the impact of the latter project. Nonetheless, this opportunity for participation was later proved as merely perceived opportunity when both projects were implemented.

It has to be noted that, in addition to the participation of the mainstream society, the

-
4. The Declaration on the Rights of Indigenous Peoples was adopted by the UN at its 61st General Assembly on 13 September 2007, following 143 in favour to (including Malaysia), 4 against (Australia, Canada, New Zealand and the United States), with 11 abstentions (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa, Ukraine).
 5. See the discussion session of the Meeting with representatives from NGOs and other concerned groups and Individuals on the Bakun Project, on page 50, Part II of this Report.



importance of the participation of indigenous peoples in such processes is apparent as this is repeated in a number of articles of the Declaration on the Rights of Indigenous Peoples (DRIP), namely articles 5, 18, 27 and 41. Article 18 in particular, enshrines the right of indigenous peoples to participate in decision making in matters that would affect their rights. Additionally, Part II, Section 10(1a) of the Federal Constitution of Malaysia gives the right of every citizen the freedom of speech and expression. SUHAKAM considers that the indigenous peoples should be involved throughout the planning process to ensure that their legitimate interests are properly articulated and their human rights are safeguarded.

Despite their rights being guaranteed in principle, it appeared that the Penan communities in the area affected were mere receivers of the Government's development plans rather than active participants in the whole process. Their views, concerns and expectations, while have been noted, appeared to be discounted.

Concerns over the EIA

SUHAKAM had requested for a copy of the relevant Environmental Impact Assessment (EIA) which would examine the possible environmental and social impact of the MHP. However, at the time of this report, the EIA was still being reviewed and a copy has yet to be received by SUHAKAM. Therefore, SUHAKAM would not speculate on the content of the EIA on the MHP.

Nonetheless, SUHAKAM notes that 7 out of the 8 villages named by the State as those which would be affected by the MHP, were the same villages affected by the oil palm plantation under the Licence for Planted Forest (LPF)/0018 which commenced from 19 November 1999 to 18 November 2059. SUHAKAM found glaring flaws in the EIA for the oil palm plantation which resulted in the infringement of the villagers' rights. The licence under LPF/0018, was awarded to the Shin Yang Forestry Sdn. Bhd. Following complaints lodged to SUHAKAM by two Penan headmen whose villages were affected, SUHAKAM had set out on a fact finding mission in late 2006, and later, came up with a report on its findings based on the mission. In brief, one of SUHAKAM's findings was a glaring flaw in the EIA⁶ for the LPF/0018 (EIA for the Shin Yang Forest Plantation), in particular, the existence of local villages within the licenced area. More specifically, the EIA for the Shin Yang Forest Plantation stated that there was no permanent local settlements found within the site and that there was no legal claim of NCR within the land. The Communities, when met by SUHAKAM, disputed the EIA claim. SUHAKAM, upon reviewing the EIA, found that it did not provide any evidence to support its claim. In contrast, the EIA for the Shin Yang Forest Plantation's report on social impact indicated uncertainties.⁷

Later, SUHAKAM was surprised to find easily obtainable data from the Belaga District Office which documented the date of appointment of Penan Headmen and their

6. This refers to the EIA Report for the Proposed Shin Yang Forest Plantation Located between Batang Belaga and Sungai Murum, Belaga, Kapit.

7. Paragraph 2 of item 2.2.1 Chapter 2 of the said EIA report states the following:

Evidence of previous shifting cultivation could be seen along the logging roads giving rise to patches of 'temuda'. These 'temuda' believed to be left by logging workers during their logging operation within the licenced area. Some remnants of a small Punan settlement are seen near lower Sg. Jaik, but this nomadic Punan are long gone. There is a recent illegal Kenyah longhouse (about 15 doors) downstream of Sg. Belepeh which was probably built taking advantage of the logging activities and the logging roads. However, this longhouse is at present abandoned and the people are believed to have moved to the Asap

jurisdictions as well as national and international researches which supported the claims by the Penan and simultaneously negated the claim made in the said EIA.⁸ In addition, during the meeting with representatives from the relevant agencies to discuss on the MHP, SUHAKAM was informed that one of the consultants who prepared the said EIA was also an employee of Shin Yang.

With respect to the EIA on Shin Yang Forest Plantation, SUHAKAM notes that based on SUHAKAM's finding, the Government had taken action towards the Consultant firm by way of disqualifying the firm from the registered list of consultants for the government.⁹ On the other hand, there appear to be no measure taken to restitute or compensate the villagers for their loss resulting from the flawed EIA.

In addition to its concern over the delay in compensating the villagers for their loss following the flawed EIA on Shin Yang Forest Plantation above, SUHAKAM is equally apprehensive if the rights of these communities were, again, ignored in the name of the nation's development.

Issue on Native Land

Compensation for Acquisition of Land

Compensation remains another issue of contention for many of the indigenous communities in Sarawak. Those who were met by SUHAKAM during its dialogue cited inadequate compensation as one of the main reasons that they refuse to leave their current location.

Once bitten twice shy, the communities felt that they would lose more of their land if they were to relocate, and would be given unfair compensation in return. A significant number of participants shared their previous experience after they were relocated to the Sungai Asap Resettlement following the construction of the Bakun Dam. In the case of the Sungai Asap resettlement, SUHAKAM was informed that they were only compensated with 3 acres of land for each entitled families. Those lands were, however, later found to be unsuitable for cultivation as some were swamps and rubbles. Some others were too far away from the Sungai Asap Resettlement.

Compounded by their very limited knowledge of permanent cultivation as well as their high dependence on their forest land for produce and wild game as their main source of sustenance, the Penan found difficulty to adapt with the very 'foreign' environment at the Sungai Asap Resettlement. This became one of the factors for some to return to the

Resettlement.

No permanent local settlements are found within the site. There is no legal claim of NCR land within the land.

- 8. The Penan claims that they were already at their current locations during the survey for the EIA was conducted was proved and supported by submissions by local researchers like Mr. Jayl Langub and Mr. Khoo Kay Jin as well as international researches like those conducted by Guy Arnold based on his expedition known as the Oxford Expedition in 1955 and Prof. Dr. J. Peter Brosius who conducted his research on the Penan in the 1980s. Please see SUHAKAM's Report on Penan in Ulu Belaga: Right to Land and Socio-Economic Development, 2007. The Report is available at www.suhakam.org.my
- 9. See explanation by the representative from NREB on the EIA on Shin Yang Forest Plantation during the discussion session of the Meeting with the relevant government agencies on 25 August 2008, on page 37, Part II of this report.

forest.

Indeed SUHAKAM views with concern if the same fate should befall upon the communities who would be affected by the MHP. At this juncture, SUHAKAM emphasises that article 28 of the DRIP states that the indigenous peoples have the right the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent. The article further states that unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Claim on Undocumented Native Land

Unlike those who have documented or titled land, many of the Penan communities remain with their traditional practices and customs to establish ownership to land without documentary evidence. While so, throughout its history, these practices and customs as well as land titles emerging from them, were recognised and protected by the various governments of Sarawak.¹⁰

Despite being historically recognised and protected, these traditional practices and customs were excluded as lawful methods of establishing ownership to land when the Sarawak Land Code 1958 was enacted. As a result, vast acres of land that were traditionally owned by the Penan were removed from them.

While the Sarawak Attorney-General's Chamber says that native customs must have sanction of the law for them to have effect as 'customary law',¹¹ the DRIP establishes the following:

Declaration on the Rights of Indigenous Peoples:

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

10. These governments include from the time of the Sultan of Brunei, during the rule of the three Rajahs from 1841 until 1946, throughout the reign of the British Crown, and upon Sarawak's entry into the Federation of Malaysia in 1963. See SUHAKAM's report on Legal Perspectives on NCLR in Sarawak, 2008.

11. During the Majlis Dialog bersama SUHAKAM which was held on 13 December 2001, the then Sarawak Attorney General's Chamber, in its presentation to SUHAKAM said "The natives of Sarawak may have and in fact do have many customs but these costumes to have effect as "customary law" they must have sanction of the law"...."Thus, in relation to land, the practice of native custom does not necessarily give rise to rights over land. It is only of those customs which are part of the customary law of Sarawak, which can create rights to land and this is evident by the provisions Section 5(1) of the Land Code...."

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Therefore, SUHAKAM affirms to the DRIP and acknowledges that these customs, which have existed before the Sarawak Land Code 1958, should therefore, form the basis of state laws rather than the latter becoming the basis for the extinguishment of the former.¹²

Issues on Resettlement

Free and Informed Consent for Resettlement

An important human rights principle that should go along with development projects by the Government, such as the MHP, that requires the removal of indigenous peoples from their lands and territories, is obtaining the free and informed consent of Communities affected.

It should therefore be noted that SUHAKAM was informed by the relevant government agency that representatives from the affected villagers expressed their desire for development and for the government to improve their livelihood. Further, SUHAKAM was informed, in a positive manner, that the communities had highlighted the site of their choice if they were to be relocated. However, when SUHAKAM met with the Indigenous community leaders from the affected villages, it was clear that they were resistant to the idea of relocation, to the extent that some had clearly indicated to SUHAKAM that they would stay in their present locations despite being informed that their villages would be flooded as a result of the MHP. While the communities highlighted an alternative site for their relocation, SUHAKAM was informed by the community leaders that this was only an alternative if they are, by any reason whatsoever, forced to vacate their current villages without their consent.

Instead of giving options to the Indigenous communities on whether or not to be resettled, the 'consultations' were carried out by the Government was only used as a mechanism to inform the communities of the Government's decision and its impact towards those communities. The only choice given to them was for their resettlement to another area identified and approved by the Government.

In this respect, it was, again, apparent to SUHAKAM that the Communities were mere

12. It should also be noted that the Oxford Dictionary of law 2002, defines 'customary rights' as 'a practice that has been followed in a particular locality in such circumstances that it is to be accepted as part of the law of that locality. In order to be recognized as customary law it must be reasonable in nature and it must have been followed continuously and as if it were a right, since the beginning of legal memory'.

receivers of development initiatives, rather than active participants whose free and informed consent to be resettled is supposed to be firstly obtained by the Government.

This is, therefore, not in line with article 10 of the DRIP which states that Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Right to Determine and Develop Priorities and Strategies for Development and Assistance after Resettlement

SUHAKAM maintains that the resettlement of those communities should only be carried out with their free and informed consent. After which, resettlement could proceed but without denying the communities' right to participate in the process.

The Penan community leaders, who were met by SUHAKAM, again cited the experience of those who were relocated to the Sungai Asap Resettlement who confronted various problems when they first came to the Resettlement. They had insufficient access to clean piped water and electricity, as well as problems in accessing land for cultivation. In addition, extremely limited access to employment and other income generating activities had further compounded their hardship. These were among the prevailing factors that had contributed to the return of some to the forest.

Based on this experience, the community leaders met by SUHAKAM felt that instead of benefiting, resettlement would further lead to their marginalisation and that they would be dispossessed from their native lands.

SUHAKAM reiterates the importance of ensuring the participation of affected local communities in any government plans for their development. This could ensure that development plans are formulated based on the economic, social and cultural needs of the communities. The Penan for instance, has a unique economic, social and cultural way of life which had been continually practised but in the forest isolations. They have very limited contact with the mainstream or more advanced society in Sarawak, and therefore, are without the necessary knowledge to lead the mainstream or more advanced way of life in order to maintain their sustenance and livelihood.

Therefore, in order to ensure that such communities as the Penan, are able to adapt to their new and foreign environment, the Government must ascertain the communities' needs, and the best mechanism to ascertain this is through their participation in the process of their resettlement. This is in line with article 23 of the DRIP which states that Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

In providing the above in resettlement areas, SUHAKAM realises that cost is indeed incurred by the Government, and some of which, has to be paid by villagers which are charged to them in the form of monthly bills, such as charges for electricity and water supplies, among others. However, most could not afford this, and as a result, supplies were cut off. During its visit to the Sungai Asap Resettlement in 2006, SUHAKAM was informed that this was a common problem for the relocated families.

While SUHAKAM acknowledges that the public has to cover certain costs of the services provided by the Government, the Government, on the other hand, must ensure that communities are given the opportunity to earn a living. Based on its observation during the visit to the Sungai Asap Resettlement, SUHAKAM found that the resettlement was quite a distant from the Belaga town where economic activities were carried out. As a result, income generating activities could only be done between communities and in very small scales. These generated very minimal incomes which were not even enough for them to purchase basic household necessities. As a result, utility bills could not be paid by the families.

Fiduciary Duty of the Government

Distrust towards the Government amongst the community leaders met by SUHAKAM was apparent when some stated that the government only appeared to be interested in ensuring the community's wellbeing when there were Government projects to be implemented on their land. They said that they would become victims and were frequently asked to sacrifice whatever they had in the name of the nation's development.

SUHAKAM emphasises that the Government has the fiduciary duty to ensure the interests of people are protected. Similarly, article 41 of the DRIP clearly states that the organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established. It must be noted that Malaysia is among the countries that had cast its vote in support of the DRIP. Therefore, there is the need for the Government to take cognizance of the articles set forth by the Declaration of the Rights of Indigenous Peoples. SUHAKAM reiterates that while the Government holds the right to utilise resources for the nation's development, this must be balanced with the promotion and protection of the rights of all its citizens. The Government must ensure that, as far possible, all known marginalised or disadvantaged communities such as the Penan are provided with the opportunities and assistance, taking into consideration their economic, social and cultural needs.

SUHAKAM'S RECOMMENDATIONS

Based on its observations, SUHAKAM makes the following recommendations:

Ensure compliance to international human rights laws and standards

SUHAKAM strongly recommends that the Government ensures that human rights principles and standards are anchored in all development plans. This is part of the Government's fiduciary duty to ensure that the interests of its people are protected. It is therefore, necessary for the Government to ensure that commitments to protect those rights, such as the provisions set forth by the Declaration on the Rights of Indigenous Peoples, are translated into meaningful action.

In line with the above, SUHAKAM strongly recommends that the Government ensures that local legislations are in line with international standards and are not interpreted in ways that could result in the infringement of human rights. Therefore, with respect to the right to native land of the Penan in Sarawak, SUHAKAM reiterates its recommendation on the need for the Government to amend the Sarawak Land Code 1958, in particular, Section 5(2), to ensure that it takes into consideration the customs of the Penan in ownership and stewardship to land.

In addition to land rights, there is also the need for the government to ensure that the Penans are able to enjoy their inherent rights as those enjoyed by the mainstream society. Given the rather backward economic, social, cultural, civil and political status of the Penan, SUHAKAM recommends that affirmative action be in place to assist the Penan.

Ensure transparency and objectivity of the EIA

With respect to the EIA, SUHAKAM reiterates its recommendations that there is the need for the Government to ensure that only independent consultants, with expertise in the specified area, are appointed in order to ensure greater objectivity and transparency of the EIA report.

SUHAKAM further recommends that the Government take prompt action to verify information in the EIA report once it is completed. The Government must also ensure that consultants appointed to prepare the EIA provide facts and supporting evidence on its findings rather than assumptions.

Ensure Adequate and Just Compensation

SUHAKAM urges the Government to ensure that compensation, whether monetary or in other forms, such as land, is provided adequately and justly to the affected families. As set forth by the DRIP, unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Ensure Access to Information

There is the need for the Government to ensure that regardless of the development scale, information on these should be made public.

SUHAKAM further recommends that such information should be made public from the time plans were mooted, rather than making them available and publicly accessible only after plans are finalised. By doing so, the public would have ample time to highlight their views and concerns to be considered by the Government. This would also reflect the transparency of the Government.

Ensure Right to Participation

It is recommended that the Government ensures that consultations initiated are not merely a mechanism for the Government to inform affected communities on approved projects. Instead, consultations should ensure that the affected communities can enjoy their right to be heard and their concerns are taken cognizance before such projects are implemented. This forms a fundamental aspect in consultations.

In addition to their right to be heard, the Government has to ensure that the affected communities have given their free and informed consent prior to the implementation of such projects, especially when projects would be implemented on their native land. While SUHAKAM notes that the Communities had expressed that they were not against the construction of the MHP, the MHP would require the resettlement of affected communities which the communities strongly objected.

With respect to resettlement of communities, SUHAKAM strongly recommends that the Penan community be part of, or at the very least, be involved in the planning of their resettlement. This, however, should be strictly preceded by their free and informed consent on their resettlement. Thus, it is necessary for the Government to take cognizance of their proposals which were presented to SUHAKAM.

- The Penan should be the one to decide where they should be resettled and that their area of choice for resettlement is Ulu Pleiran;
- The Government must ensure that basic amenities are readily available before the communities are resettled. Such amenities should, among others, include concrete houses, water, electricity, clinic, school and others. They should be made available for free;
- Land must be provided and allocated to the affected families for cultivation. They should be suitable in quality and sufficient in size;
- Each affected family should be compensated with RM500,000.

Ensure Availability and Accessibility of Public Amenities and Facilities before Resettlement

SUHAKAM urges the Government to ensure that resettlement areas are complete and with access to the necessary amenities and facilities - including, among others, clean piped water, electricity, schools and clinics - before villagers are relocated.

In resettling those communities, the Government must also take initiative to ensure that the communities have access to economic and income generating activities. Land development programmes such as the Sarawak Land Consolidation and Rehabilitation Authority (SALCRA), could be implemented near the resettlement and to be run by the resettled communities.

V. CONCLUSION

The human rights related issues concerning the Penan in Sarawak, appear to persist until today. SUHAKAM's previous and current studies on of the Penan continue to show their marginalisation, from disputes with the Government on the legal recognition of their customs to establish ownership of native land, to inadequate access to their other economic, social and cultural rights.

SUHAKAM reiterates that it is not against the government's plan to implement development projects which could benefit the nation's economic status which would in turn, benefit the citizens of Malaysia as a whole. On the other hand, it needs to be established that as individual's rights do not supersede collective rights, similarly, collective rights do not supersede the individual's rights.

While there is no 'one way' to address all the issues affecting the indigenous communities in Malaysia, it has to be emphasised that taking away their native land and leaving them unassisted in resettlements would definitely not encourage their development. Instead, there is the need for the Government to determine the needs of communities such as the Penan's by taking into consideration what is acceptable and otherwise based on their culture, spiritual beliefs and way of life.

If the Government sees that there is the need for the change of mindset and practices for survival and livelihood amongst the Penan, it must realise that this would not be achieved without intensified assistance to help them to adapt to more developed way of life.

Thus, there is the need for the Government to ensure that in implementing development programmes for the nation, it has to make sure that projects do not impact negatively on the rights of individuals, especially minorities such as the indigenous Penan. In contrast, such minority groups are those who require much attention to ensure that they are able to enjoy their human rights as those enjoyed by the mainstream society. It is with this reasoning that the international human right law acknowledges the need for special measures or affirmative action, which is not intended to discriminate, but the ensure that marginalised communities such as the Penan are able to move away from their current disadvantaged position and towards a more favourable one which is at par with the other mainstream society. This is the fiduciary duty of the government to ensure that the rights of all individuals within its jurisdiction are protected.

Suruhanjaya Hak Asasi Manusia Malaysia
Human Rights Commission Of Malaysia

PART B:
REPORT ON SUHAKAM'S DIALOGUE AND MEETINGS

*SUHAKAM'S REPORT ON THE MHP AND ITS IMPACT TOWARDS THE ECONOMIC, SOCIAL
AND CULTURAL RIGHTS OF THE AFFECTED INDIGENOUS PEOPLES IN SARAWAK*

I. SUHAKAM'S MEETING WITH REPRESENTATIVES FROM THE RELEVANT GOVERNMENT AGENCIES

INTRODUCTION

On 25 August 2008, the Economic, Social and Cultural Rights Working Group (ECOSOC) and the SUHAKAM Sarawak Office, had jointly held a meeting with the relevant government agencies. The meeting was held following concerns over the potential impact of the future Murum Hydroelectric Project (MHP), towards the economic, social and cultural rights of several indigenous villages in the interior of Sarawak, who would be affected with its construction.

As preliminary background research, the above meeting with the representatives from relevant government agencies was held to understand the background of the MHP and to identify potential human rights issues that have arisen and could potentially arise.

SUHAKAM was represented by Datuk Dr. Denison Jayasooria who was also the Chairperson of the ECOSOC WG, and Dr. Mohammad Hirman Ritom Abdullah who was also the Resident Commissioner of the SUHAKAM Sarawak Office. They were assisted by SUHAKAM Officers and staff.

Participants of the Meeting included representatives from the Ministry of Resource Planning and Development, Sarawak; Ministry of Public Utilities, Sarawak; Economic Planning Unit; Sarawak State Planning Unit; Natural Resource and Environment Board; Headquarters of the Land and Survey Department, Sarawak; and the Sarawak Electricity Board.

PROCEEDING OF THE MEETING

The Meeting began with the Welcoming Remarks by SUHAKAM Commissioner, Dr. Mohammad Hirman Ritom Abdullah, who also gave the introduction and objectives of the meeting.

The meeting went on with the following session which was chaired by SUHAKAM Commissioner, Datuk Dr. Denison Jayasooria. During this session, the Chairperson invited the relevant government agencies to provide backgrounds on their work in relation to the construction of the MHP. Later, the Chairperson opened the session for discussion.

Welcoming Remarks and Introduction to the Meeting

SUHAKAM Commissioner, Dr. Mohammad Hirman Ritom Abdullah welcomed participants present at the meeting and highlighted the purpose of the meeting held by SUHAKAM.

In the offset, Dr. Mohammad Hirman emphasised that the meeting was not an arena to engage a debate with the state agencies on whether there was the need for the dams. Instead, it was to ensure that in the drive to development, the human rights factors needs to be looked into.

He noted that the planned dams were part of the State's drive to seek for renewable energy sources to meet the energy needs of the state and country. He said that while the Government has the prerogative to plan and decided development projects to be carried out, there was the need for it to engage the public in such plans and to ensure that such plans benefit local communities.

In addition to the above, it was noted that such development would have inevitable impact towards the environment. Nonetheless, the Government must mitigate such diverse impact.

Dr. Mohammad Hirman then outlined the human rights aspects that could arise following the MHP project which, among others, included the following:

Right to environment

There were concerns over the flooding of huge areas which some have claimed would include a national park. The meeting could, therefore, ascertain on this.

Civil, Political and Economic, Social and Cultural Rights

A massive development project such as the MHP should consider the economic, social and cultural rights of the local communities, such as their right to participation, right to information and others.

Right to development

While the Government had the prerogative to provide development for the population, the communities too have the right to receive development. This could be viewed from a positive manner whereby the meeting could assess the benefits of the dam in enhancing the development of the local communities.

Right to self determination

The communities whose lives would be affected by the project must be given sufficient and correct information on the requirement and affects of the dam to enable them to make their informed decisions.

Right to housing

This includes matters such as eviction, relocation, resettlement and compensation following loss of land, loss of earning which many agencies might have experience from the issues arising from the Batang Ai and Bakun Dams.

Right to Land

There was the need for the government to take into consideration the right to land, both individual and communal land. In addition to the above, issues on compensation a matter that repeatedly arises.

Right to a standard of living

There were previous cases of resettlement of indigenous communities which resulted in their inability to cope with change, particularly on new means for their own sustenance and livelihood due. SUHAKAM had previously seen this amongst the resettled communities in Sungai Asap, Belaga, Sarawak.

With respect to the resettlement of such communities, the government must ensure the right of the communities towards adequate housing was not infringed.

Right to clean and consumable water

Historically, forest based people could have easily taken water for consumption from rivers as they were clean and unpolluted. Dams are known to be one of the major causes of polluted rivers and this could mean the scarcity of clean consumable water source.

Right to freedom from discrimination

In all the human rights aspects above, an important human rights principle that comes into play would be the right to freedom from discrimination. For instance, after 20-30 years of the Batang Ai Project, there were settlements located just along the power lines that have yet to receive electricity.

Dr. Mohammad Hirman concluded by saying that the input gathered from this meeting would be included in a report by SUHAKAM, prior to which, information would be helpful in a future meeting with indigenous community leader that would be organised by SUHAKAM.

Briefings by Participants

During this session, Datuk Dr. Denison Jayasooria welcomed participant to provide information on the progress of the proposed dam and the involvement of the agencies whose representatives were present at the meeting.

- **Sarawak Energy Berhad on the Background of the MHP**

Mr. Yong Kiong Chun from the Sarawak Energy Berhad (SEB) provided the background of energy producing plants in Sarawak and the SEB's the MHP and the projected progress of the MHP in the next two years.

He explained that Sarawak was a big exporter of energy and second largest facility in the world. He went on the brief participants of the existing power plants and the states potential for energy generation which including oil, gas, coal, and hydro dams, among others. This was attributed to Sarawak's topography and rainfalls which were more favourable for dam operations compared to the other states in Malaysia.

He opined that energy production from hydro dams was the most cost efficient compared to other sources like to escalating cost and price for gas and unsuitable wind flow for energy generation through wind turbines.

He then briefed the meeting on the background of other existing plants as well as future hydroelectric dam plans in Sarawak which includes areas in Bakun, Batang Ai, Murum, Lawas, Belepeh, Tutoh, Limbang, Baram, Metjawah, Belaga, Baleh, Linau, and Ulu Air. He explained that the master plan and study to identify suitable areas for the construction of hydroelectric dams in Sarawak was made in 1981. A total of 155 areas were identified and the list was later narrowed down to 51 sites.

He emphasised that contrary to what had been claimed by some individuals, the information of the 12 hydroelectric projects was not confidential. In fact, the information on the projects was available on the ASEAN Power Cooperation & Development Forum Website.¹³

The study on the Murum site was ongoing and that the decision whether or not the MHP could be constructed would only be known next year. Information on the environmental and social aspects of the study would be updated to reflect the current status. On the other hand, information on the other proposed dams were all in pre-study forms.

The proposed MHP was 40 Kilometres from the Bakun Hydroelectric Dam and could be considered the best project taking into consideration the morphology of the ground. Mr. Yong Kiong Chun further exemplified the preservation of structures that were held sacred by the natives in affected areas.

Mr. Yong, in conclusion said that a paper would be prepared by the SEB on the background of the projects to be submitted to SUHAKAM.¹⁴

• **Natural Resources and Environment Board on the EIA on the Murum Project**

Dr. Penguang Manggil who was the representative from the Natural Resources and Environment Board (NREB), firstly, expressed his disappointment on the statements issued by certain NGOs who said that hydroelectric dams do not require Environmental Impact Assessment (EIA). He corrected this perception and said that all proposed construction of dams required EIAs with no exception to the MHP.

He explained that Article 77 of the Federal Constitution which states the powers of the legislature of a state to make laws with respect to any matter not enumerated in any of the list set out in the Ninth Schedule of the Constitution, and not being a matter in respect of which Parliament has power to make laws. In this regard, the Natural Resources and Environmental Ordinance (NREO) and its prescribed activities was formulated by the State in 1994. Therefore the EIA and also the Environment Quality Act were under the purview of the NREO.

He added that the EIA process that had been carried out were subject to scrutiny by NGOs. He further emphasised that this process was in consonance with guidelines for impact assessment established by international associations.

In respect to the EIA for the MHP, he said that the detailed EIA was submitted on 13 April 2008 and has under gone detailed review by an external review panel. This panel consists of various agencies at the State and Federal level. The meeting of the external review panel was held on 4 July 2008 and had encouraging participation from various agencies and organisations as well as universities. At this meeting, experiences were shared by the participants and lessons learned from previous projects such as the Bakun Hydroelectric Project.

13. SUHAKAM did a search to the said website but was unable to retrieve to information. However, SUHAKAM was made to understand that the information was leaked and could be found via the Bruno Manser Fond website at http://www.bmf.ch/files/news/Sarawak_Energy_Confidential.pdf

14. The background paper on the projects prepared by the SEB is enclosed as ANNEX 3.

The said EIA is being reviewed taking into consideration the various opinions by stakeholders. As of 25 August 2008, and would be received by the NREB after the review.

He later outlined the main components of EIAs which includes matters regarding environmental, biological, technical and financial aspects, among others. Social and local population issues fall under matters regarding the environment. The EIA would ascertain and analyse the potential effects of the dam construction toward the environment which includes socio-economic matters. Mitigation measures would be introduced and monitoring of other activities post the dam would be maintained.

While the EIA report was a public document, he explained that the EIA was not provided for the general public's review for a number of reasons. He explained that the public review post EIA method was carried out for the Bakun Hydroelectric Project. However, comments that were obtained were non-constructive and he said that the concerns that were raised were on petty issues. Thus, public participation would be at the beginning of the process which is before the preparation of the EIA report rather than after. Dr. Penguang Manggil said that this includes dialogues or meetings with the public and even questionnaires. These, he explained, were mechanisms used to obtain public views on the Murum Dam construction. Those concerns would be taken into consideration, including in designing the mitigation measures.

Dr. Hirman, at this juncture, requested that a copy of the EIA after review be forwarded to SUHAKAM. The representative from NREB agreed.

- **Ministry of Resource Planning and Development, Sarawak on the Rationale of Choosing Hydroelectric Dams as apposed to other sources for energy**

The representative from the Ministry of Resource Planning and Development, Sarawak, En. Adana Haji Jed, explained that the Ministry's regulatory role was similar of that with the Suruhanjaya Tenaga in Peninsular Malaysia. They would oversee the expertise provided by SEB in terms of planning to ensure the generation of adequate, reliable, timely and affordable electricity in the State.

He said that the Government was planning of the long-term energy needs of Malaysia and not just the immediate need. As it was earlier explained that while Malaysia at the moment, seem to have more than enough energy sources, it was anticipated that there would be power shortage in a few years to come.

Due to this anticipation, he said that the Government was seeking options for additional energy sources, including wind turbines, solar and nuclear energy, but found that hydroelectric dams would be more suitable. While the hydroelectric dams would bring about impact to local communities as well as inevitable adverse affect towards the environment, the Government was seeking measures based on EIAs to mitigate them.

In addition to hydroelectric dams, the state works on other sources for optimal generation and development of power. Malaysia also produces energy from among others, oil and gas as well as coal, and therefore, creates a mix of energy sources being used in Malaysia. However these were non-renewable sources, and therefore, hydroelectric dams, as of now, remain the next best source of renewable energy source.

While wind turbines might have minimal affects to the environment, they would be unsuitable for Malaysia. He explained that wind turbines operates well when there was constant

strong wind and were being use in, among others Europe, Australia and Tasmania. In Malaysia, however, strong wind was inconsistent as it depends on the monsoon wind which was seasonal and would come for short periods. And with no technology to store energy, the wind turbine would not be an ideal source for energy in Malaysia.

With regards to solar power, he explained that this would be far more expensive.

This massive scale of energy seeking in Sarawak was being done as energy would not only be consumed by Sarawak, but would also be channelled to Peninsular Malaysia and Sabah. This is in view that both would have critical energy shortages in a few years time.

In addition to this, countries like Indonesia and Brunei have approached Malaysia to obtain energy supply.

Singapore has its own energy generation capability but during peak demands, they could obtain extra energy from Tenaga Nasional Berhad (TNB) and vice versa. This was an arrangement so that when Country A experiences higher energy demand compared to available supply, Country A would offset this by obtaining extra energy from Country B. TNB has a similar arrangement with IGAT, Thailand.

For the transmission of energy to Peninsular Malaysia, the Government was considering submarine cables to transmit approximately 1,000MW. While other options were also being considered to find the most cost effective solution, there was the concurrent need to take into account that energy would be scarce in Peninsular Malaysia in only a few years time, while developing dams and transmission of energy could take up more than 5 years.

• **Sarawak State Planning Unit on the Resettlement of Communities Affected**

Mr. Limanar Numpang from the State Planning Unit started by informing SUHAKAM Commissioners that he was just recently assigned to his current post in the Special Task Section for Resettlement which was set up under the SPU. Other members of this Section include NREB and Resident and District Office(s), assisted by its secretariat.

He explained that the Section was currently recruiting more staff and would look into the resettlements of the Penan. Once the section obtains sufficient manpower, some would be stationed in Belaga. He said that in terms of such resettlement, they follow the same rules as those abided by the district offices.

He then told the meeting of his experience on the resettlements of local communities in Rajang, which was voluntary, and Bakun. On the latter, he said that it took him 4 years to journey and speak to the local communities in 15 longhouses which involved approximately 10,000 persons. He highlighted that while in the beginning, there were many objections for resettlement in Sungai Asap, they eventually preferred to move as they wanted development. In terms of projects to cope with change of environment and livelihood, he explained that there were no long-term projects. Instead, the government had implemented short-term development projects for the resettled communities as basis for them to stand on their own two feet.

With respect to the MHP, Mr. Limanar Numpang explained that based on the data gathered by the relevant District Office, around 300 households from 8 villages would be directly affected by the MHP including **Long Singu, Long Tangau, Long Luar, Long Menapah, Long Wat, Long Malim, Long Jaik** and **Long Peran**.

He had started his task to meet with the communities, starting with each a penghulu and headman of a village that was located in the area which would be submerged by water once the MHP was constructed. He said that the discussion with the village representatives was fruitful as the village representatives expressed their desire for development and for the government to assist in improving their livelihood. During his meeting with the village representative, they also mentioned the site of their choice if they were to be relocated. He said that the government included in the list of sites considered for their resettlement. Later, he said that the government's first choice for resettlement was the Penyuan area which was about 20 Kilometres from Sungai Asap. He said that this had been approved by the Government.

Mr. Limanar Numpang said that he would continue to visit other local villages that would be affected by the construction of the MHP and would brief them on the project itself, its benefits and affects as well as the proposal for their resettlement. The Government was also aware of the problems faced by the communities in terms of access to public facilities and services like poverty eradication programmes and schools, proper sanitation. These would all be taken into account.

Mr. Limanar Numpang said that the resettlement of the communities was still on planning stage. However, he expected that the process would be the same as that of the resettlement process following the Bakun Dam. He explained that for the case of the Bakun Dam, after the SPU had informed the Land and Survey (L&S) Department on villages and areas that would be submerged by water, the L&S and also personnel from the museum investigated and inventoried the number of crops that would be destroyed, graves and cemeteries that would be submerged and others. For graves and cemeteries, rituals were required to be performed by the communities and were regarded by the agencies.

- **Land and Survey Department on Land Acquisitions**

The representative from the Land & Survey Department (L&S), En. Zaidi B. Haji Mahdi began by highlighting that the L&S was an implementing agency and in such Government projects, they were normally responsible for land acquisition to ensure the availability of sites for the purpose of implementing government projects.

He explained that the L&S would follow a procedure for land acquisition. After identifying a site, it would need to be approved by the state planning authority, and only then the land could be acquired.

He anticipated that land to be gazetted for the resettlement would not cover titled land. However, to be sure of this, the Government would issue notices to inform communities of the gazetted land and as provided under Section 5 of the Sarawak Land Code 1958, the Government would invite those who wish to submit claim of ownership to do so within 60 days after the notices were issued. In the even that ownership claims were made, it was the responsibility of the L&S to investigate the claims and decide whether claims made were genuine or otherwise.

In addition, En. Zaidi emphasised that it was mandatory under section 5 of the Land Code that the L&S Divisional Officers carry out dialogues with the communities concerned who were believed to have interest on the land. For instance, if a project were to be carried out in 'Village A', a dialogue with them would be held with the 'Village A' community. In this dialogue, the community would be told on how to submit the claim and that genuine claims would be compensated by the Government.

After investigation has been carried out on the perimeter of the project and genuine land claims, they would inventory those items which would be compensated which include not only land, but also fish ponds, crops, longhouses and others. Those genuine claimants would be compensated in accordance to existing law(s).

As part of their acquisition process, the L&S would also meet with land owners or claimants who might not be satisfied with the decision in terms of amount of compensation and proof of ownership. They could bring the case to arbitration or the court respectively.

Open Discussion Session

- **Issues pertaining energy demand, the MHP and its EIA Report**

Energy Shortage and Demand in Malaysia

Mr. Yong from the SEB said that the country was in need of additional energy sources as generating energy from the existing gas sources would not last. It was projected that gas sources in Malaysia would deplete not too long from now, while the demand for energy would concurrently grow.

He added that the EIA would be the document to determine the social and environmental impacts which would be used by the relevant parties to mitigate their adverse effects.

Could the MHP be shelved if it has massive adverse effects?

On the question on whether the MHP could be shelved in the event the impact to the local community was negatively massive, and whether the State had in fact obtained informed consent from the local communities affected for the construction of the dam and matters on resettlement, the representative from the NREB said that their task was to identify those whose livelihood was directly impacted from the construction of the dam. He claimed that dialogues and meetings with the local communities affected were held which found that there were no strong objections except for one or two representatives from the communities. The same was found for the Bakun Hydroelectric Project.

Dr. Hirman opined that at this stage, they were not in the position to reverse the project. Instead, he said that the dialogue could look into the possible social and environmental impact following the construction of the dam, and based on these, to identify mitigating procedures to minimise the adverse impacts. In terms of social impact, this could include the livelihood that would be taken away from the local communities, their cultural practices, among others. The Penan community in the Sungai Asap Resettlement for instance, were unfortunate as they had no knowledge on settled agriculture to this day. While some would be provided with assistance like fish for rearing, they were financially unable to acquire fertiliser. Similarly, when some were resettled to housing that were complete with electricity and piped water supply, they were unable to pay the bills and consequently, the supplies were disconnected.

In addition, Datuk Dr. Denison highlighted that based on previous discussions with local communities in Sarawak who were affected by such projects, SUHAKAM was given the impression that the resettlement of the local communities were involuntary and were against their will. He inquired again whether the local communities affected were involved in the decision making process.

Mr Yong from SEB confirms this and said that dialogues with the local communities were held. He added that the communities were informed of the matters regarding the project and proposal for their resettlement. He, however, raised concerns on groups that influence the local communities by instilling doubt towards the Government's intentions.

Commencement of Projects before EIAs

On the question by Dr. Hirman inquired whether there were any state provisions that allow the commencement of such projects before the relevant EIA reports have been finalised and accepted, the representative from the NREB explained that this only applied to the setting up of nurseries which does not involve a big area. This did not apply to projects like dams.

Independence and Transparency of Consultants

With reference to the briefing by the representative from NREB on the EIA on the Murum Project, Dr. Hirman highlighted the principle of informed consent and exemplified SUHAKAM's previous study on the Penan in Ulu Belaga and the EIA report pertaining to the area licenced by the Government to a private company under the Licence for Planted Forest (LPPF)/0018, whereby it was found that the Penan communities who were residing within and near the affected area were blatantly disregarded by the consultant employed by the private company to prepare the EIA. This despite obtainable data and information from the Belaga District Office that proves the communities' existence within the area at the time of the EIA survey. As a result, their human rights to land, housing, development and others were overlooked. In view of such instance, Dr. Hirman raised concerns on the independence and transparency of appointed consultants.

In response, the representative from NREB expressed his gratitude for the opportunity to respond to the particular issue that was highlighted by Dr. Hirman. He then gave a brief background on the project referred to by Dr. Hirman and said that in that particular case, it was found that one member of the consultant was indeed an employee of the private company and therefore, was against the practice. Based on this, and the findings of SUHAKAM's relevant report, the private company was issued a show cause letter and was later disqualified from the registered list of consultants for the government.

In view of such incident above, three cabinet papers have been prepared and would be tabled this month. One of the papers relates to the natural resources and environmental consultants whereby stringent rules have been set forth to ensure professionalism and integrity of consultants. These rules would be legally binding. Therefore, in the event that the consultants submit incomplete or flawed EIA reports, they would be charged RM2,000 the first time. They would be charged double if it was found that the resubmitted EIA Reports were still flawed. The SEB would be responsible to ensure that the EIA reports are not flawed.

- **Issues pertaining to Land Acquisition and Compensation**

Land Acquisition for Resettlement

On the question whether there would be land acquisition, E. Zaidi from the L&S said that as of the meeting, it was at the second stage of the land acquisition process as earlier mentioned. At his stage, the state planning authority would determine and approve the land. After this stage, the L&S would then follow-up.

Compensation for Loss of Native Land

Dr. Hirman requested for clarification in terms of compensation that would be given to the communities for their loss of native land, while at the same time, emphasised that many of those forest based communities would have their own definition of native customary right to land based on their customs which may not be included in the existing Sarawak Land Code 1958. The Penan was a good example on this. He then expressed his concern that the legal documents were being interpreted in a very narrow manner which have led to the infringement of human rights.

With respect to the MHP, En. Zaidi from the L&S said that they have yet to officially carry out any survey and investigation since they have yet to obtain approval of the site from the state planning authority. Investigation would only be carried out after they have obtained this approval, notices were issued and claims of ownership have been made within the stipulated time based on the Land Code 1958.

- **Issues on Resettlement and Assistance after Resettlement**

Resettlement of Local Communities

With respect to the question on resettlement and livelihood after resettlement, the representative from NREB said that the NREB were aware of such incidents following previous project and lessons have been learned. This time around, consultants for EIAs would be obligated to include this via more detailed research to obtain the local communities' perception on the project as well as their views on the proposal for their resettlement, location of resettlement, and matters on their means of livelihood that would be lost following settlement and compensation, among others.

Facilities in Resettlement areas

On the question on facilities that would be provided in the resettlement area ,
Mr. Limanar Numpang said that a form of land development scheme would be provided for the communities once they were relocated. There would also be a centre for housing. In addition, public amenities and services, such as a school would also be made accessible.

Assistance after Resettlement

As informed by the representative from the SPU, Dr. Hirman noted that the resettlement of the MHP-affected local communities would be done by the SPU as part of the poverty eradication programme and not purely a resettlement scheme. He inquired on the tasks that would be taken by the SPU to ensure that this does not end as purely a resettlement scheme with the resettled communities being left on their own to cope with drastic change in lifestyle and livelihood. He explained that this appeared to be the case in Sungai Asap, especially the resettled Penan community. While losing land which they considered native as well as losing access to the forest as their main source of sustenance, the families, after relocation, were only given three acres of land which they later found were either too far away from their resettlement area or land given were unsuitable for planting, for instance swamps and boulders.

Datuk Dr. Denison reiterated the point made by Dr. Hirman and said that it appeared that the Government has planned and decided on everything and the process now was more on getting the local communities to accept to decision, regardless of whether they agree or otherwise.

Mr. Limanar Numpang in response said that by placing the project under the poverty eradication programme, the communities would be provided with the necessary assistance after resettlement for poverty eradication.

Volunteer Corp to Assist Resettled Communities

En. Zaidi from the L&S highlighted that the Penan Volunteer Corp was a government initiative to instil change and encourage development amongst the Penan. This, he opined, was a good programme and steps should be taken by the Government to strengthen the Corp to ensure that they were more effective in their role.

Dr. Hirman noted the Corp and its role and agreed that this should be strengthened. This can be done through training and sufficient funding in order for them to be more effective. Nonetheless, he emphasised that the Government was the main duty bearer to ensure that the rights of the indigenous people, like the Penan, were respected and protected, including their right to development.

- **Others**

SUHAKAM's involvement in the Process

Datuk Dr. Denison said that the NREB could engage SUHAKAM from early in the process as it could assist on human rights related issues and based on its experience in public feedback processes. This was seen as ideal compared to studies that were carried out after complaints were made which findings could either reflect positively or otherwise on the Government. He felt that by engaging SUHAKAM and the public throughout the process, human rights infringement could be, as far possible, avoided. This could also ensure a win-win situation for the Government and the general public which includes the disadvantaged indigenous communities.

LIST OF PARTICIPANTS OF THE MEETING WITH AGENCIES TO DISCUSS THE HUMAN RIGHTS ISSUES CONCERNING THE MURUM HYDROELECTRIC DAM ON 25 AUGUST 2008

Ministry of Resource Planning and Development, Sarawak

- En. Adana Haji Jed

Ministry of Public Utilities, Sarawak

- S.M. Fauzi Shahab

Economic Planing Unit

- En. Mohd Iqbal Bin Abdullah

Sarawak State Planning Unit

- En. Limanar Numpang

Natural Resource and Environment Board

- Dr. Penguang Manggil

Headquarters of the Land and Survey Department, Sarawak

- En. Zaidi B. Haji Mahdi

Sarawak Energy Berhad

- E. Yong Kiong Choon (Hydropower Development Division)
- En. Zuraimy Kushaili

SUHAKAM Commissioners

- Datuk Dr. Denison Jayasoora
- Dr. Hirman Ritom Abdullah

SUHAKAM Officers and Staff

- Pn. Rafidah Yahya
- En Sophian Osman
- Pn. Linya Anak Subah
- En. Mohamad Bin Mail

II. SUHAKAM'S DIALOGUE WITH INDIGENOUS COMMUNITY LEADERS

On 13 September 2008, SUHAKAM, via its Economic, Social and Cultural Rights Working Group (ECOSOC) held a dialogue with the indigenous community leaders whose villages were affected by the Government's plan to construct the MHP.

The dialogue which was held in Bintulu, Sarawak, was the follow-up to the Meeting with the relevant government agencies which was held on 25 August 2008. The dialogue with the indigenous community leaders was held with the following objectives:

- (i) To provide an arena for Indigenous community leaders to highlight their concerns over the MHP, and to identify their expectations towards the government in order to protect their economic, social and cultural rights;
- (ii) To hear the views of several NGOs and CSOs on the MHP and their concerns over the impact of the MHP towards the indigenous peoples and their economic, social and cultural rights;
- (iii) To collate their views above to be forwarded to the government, together with SUHAKAM's observations and recommendations on the issues highlighted.

Besides the indigenous community leaders and SUHAKAM Commissioners and Secretariat, also present at the dialogue were representatives from the Belaga District Office, Asap Sub-District Office, State Planning Unit and the Sarawak Energy Board. Also joining the dialogue were SUHAKAM's resource persons on the subject.

PROCEEDING OF THE DIALOGUE

The Dialogue began with the Welcoming Remarks by the Vice Chairman of SUHAKAM, Tan Sri Datuk Seri Panglima Simon Sipaun. This was followed by the remarks by the Belaga District Officer, En. Abdul Halim Abdullah. The Dialogue proceeded with the briefing by SUHAKAM Commissioner, Dr. Muhammad Hirman Ritom Abdullah, on the objectives of the Dialogue.

The Dialogue was later opened for a discussion session which was chaired by the Chairperson of the ECOSOC. Participants of the Dialogue were invited to provide their views, concerns and recommendations with regard to the issue in discussion.

Issues Raised

Resettlement of Communities affected

The Penan Community leaders emphasised that they were not against development projects introduced by the Government. Nevertheless, the 8 community representatives,¹⁵ whose villages would be affected by the construction, unanimously said that they were unwilling to relocate from their existing village location. The representatives from Long Peran, Long Tangau, Long Malim and Long Pelutan said that while they were aware that their villages would be flooded when the MHP was constructed, they were determined to stand their ground and remain in their existing village locations.

15. SUHAKAM, during its meeting with representatives from the relevant government agencies on 25 August 2008 that villages that would be affected by the construction of the MHP were Long Singu, Long Tangau, Long Luar, Long Menapah, Long Wat, Long Malim, Long Jaik, and Long Peran.

The representatives from Long Singu and Long Luar maintained that while they would not prevent the construction of the dam, they, including their villagers, would remain around or at the fringes of the construction.

Further, the representative from Long Jaik said that his village was within the Seping area and believed that his village would not be affected by flood or the dam construction. Therefore, he saw no reason why they should be relocated. However, he was puzzled when Government Personnel proposed for their relocation.

In addition, the representative from Long Jaik expressed early dissatisfaction if the Government proposes to relocate other villages to Long Jaik as the area was too small to accommodate other villagers. He explained that while they previously had a larger area to live on, a significant part had been taken over by private companies for oil palm plantations.

The reasons that were given by the representatives met by SUHAKAM was traced back to their negative experience following the resettlement of indigenous communities to the Sungai Asap Resettlement was highlighted as the main reason for their current stand:¹⁶

- They explained that those who were relocated had confronted various problems like insufficient access to clean piped water and electricity as well as insufficient access to land for utilisation. Clean piped water and electricity supply, in particular, were only supplied much later from the time the communities had relocated to the Sungai Asap resettlement.
- In addition, extremely limited access to employment and income has further compounded the hardship of some families who were resettled at the Sungai Asap Resettlement.

Duty to protect the rights of the disadvantaged Penan

The indigenous community leaders met felt that the Government would only show concern of the communities' plight and needs only when Government projects like oil palm plantation, logging and hydro dam construction, were scheduled to be implemented on their land.

They said that each of such instances, the local communities would be the victims and were usually asked to sacrifice whatever they had, in the name of the Country's development. However, in return, they failed to see any of the benefits that were promised and at the same time, they would have lost their native land, in addition to their other rights.

They felt that it was unfair for the Government to request them to sacrifice, when the Government itself was unwilling to sacrifice or help its own citizens, especially communities such as the Penan who were clearly disadvantaged.

16. SUHAKAM, during its meeting with representatives from the relevant government agencies on 25 August 2008 that villages that would be affected by the construction of the MHP were Long Singu, Long Tangau, Long Luar, Long Menapah, Long Wat, Long Malim, Long Jaik, and Long Peran.

Other Issues

Similar to SUHAKAM's previous meetings with the Penan communities which discussed on other issues, SUHAKAM was again inundated with complaints pertaining to access to education, vital registration services and undocumented Malaysian citizens.

Issues on Access to Education

The community leaders met affirmed that education was an important tool that could advance the development of the Penan. While they note that this has been theoretically emphasised by the Government, some of those who were met were disappointed of the attitude shown by the Government which appeared to be indifferent in terms of the Penan community's plight in accessing education. They informed SUHAKAM that there were no schools in or near their village. Those available were too far away from their villages, and it was impossible for the villagers to send their children to school as there were no public transportation services that reach their villages.

Issues on Undocumented Penan

Another issues that has been repeatedly highlighted by all the community leaders was on difficulty in applying for birth certificates and Identity Cards. The Headman of the Tuai Rumah in Long Tangau, for instance, informed SUHAKAM that in his family, only two siblings had identity cards, while the rest of his siblings remained undocumented citizens of Malaysia. All the community leaders said that the process of acquiring birth certificates and identity card had become a stumbling block.

Issues on Land and Forest Resources

The Community leaders present at the dialogue emphasised that they were greatly dependant on their land and the forest resources to maintain their sustenance and livelihood.

In addition, they said that they had difficulties in learning the new techniques of farming and livestock rearing introduced. They added that the Penan communities, who were resettled at the Sungai Asap Resettlement following the construction of the Bakun Dam, experienced the same. They felt that this problem was worsened when they found that each family resettled was only given three acres of land for cultivation.

One the other hand the community leaders who were present said that they realised that in the future, they would not be dependent entirely on land for their development. Nonetheless, they felt that the Government should provide them the opportunity and room for transition and to adapt to the new environment. Abrupt transitions would not be suitable, especially for the Penan who have been long practicing their own economic, social and cultural way of life in the deep and isolated forests in Sarawak.

Proposals made by the Penan

The Community Leaders insisted that they would prefer to stay in their current villages. However, in the event that they were to be forced or evicted, the Government should ensure that the affected communities were consulted and subsequently, a written agreement be signed by both parties.

In brief, SUHAKAM was informed of their claims if they were to be removed from their current villages as follows:

- The Penan should be the one to decide where they should be resettled. They informed SUHAKAM that their area of choice for resettlement was Ulu Pleiran;
- The Government must ensure that basic amenities are readily available before the communities are resettled. Such amenities should include concrete houses, water, electricity, clinic, school and others. They should be made available for free;
- Land must be provided and given to the affected families for cultivation. They should be suitable in quality and sufficient in size;
- Each affected family should be compensated with RM500,000.

The Penan community leaders said that all the above should be made readily available for the affected communities before they are forced to move to the new resettlement.

Briefing by the Belaga District Officer

The Belaga District Officer informed SUHAKAM that the Government had a similar discussion with the affected Penan communities on the same matter. All the concerns, views and recommendations made today were the same as those highlighted in the Government's previous discussion with the said communities.

He added that the communities would be resettled within the same perimeter of their current location, and there were 4 areas identified and offered by the Government to the communities. However, none was accepted by the affected communities. In contrast, the communities had named an area which was much further from their current villages locations.

He explained that it was impossible for the Government to construct schools and clinics in all of the villages which were isolated and very small in terms of its populations.

He said that he notes the concerns that were highlighted by the communities and said that the Government would take important consideration of those concerns.

With respect to the issue of non-documentation of natives, especially the Penan community in Sarawak, the Belaga District Officer concurred to the claims and recommended that SUHAKAM emphasises this issue to the relevant agency so that further action could be taken to eradicate the problem.

Briefing by the Sarawak Energy Berhad

The representative from the Sarawak Energy Berhad (SEB) said that SEB was assigned by the relevant authorities to construct the MHP. He added that while the SEB would own the MHP, it had established the ownership based on the procedures that had been set out by the State Government.

He further said that the State Government would set up a taskforce to supervise the Project. He explained that the relevant procedures for this as well as for the resettlement of the affected communities would be determined by the Government.

PARTICIPANTS OF THE DIALOGUE ON 13 SEPTEMBER 2008

Long Jaik

- En. Matu Tugang
- En. Nyipa

Long Peran

- En. Luhat
- En. Chiri

Long Luar

- En. Madai Salok
- En. Suie Along
- En. Engan Kuleh

Long Wat

- En. Pinang Bo
- En. Bato Bueng

Long Tangau

- En. Abok Jalong
- Tatau, Bintulu
- Adang ak Jiram
- Yusuf Abdullah

Balui Liko

- En. Mai Lagiw
- Uma Kejaman

- En. Paul Tivan

Pejabat Daerah Kecil ASAP

- En. Mering Lebet
- En. Kuba Lusat

Sarawak Planing Unit

- En. Awie Abang

Resource Person

- En. Mr. Jayl Langub
- En. Khoo Kay Jin

Long Singu

- En. Paren Usak
- En. Alung Ju

Long Malim

- En. Asan Jalong
- En. Ugang Jalong

Sungai Asap

- En. Jack Paran Langu (ASAP Belaga)
- En. Juba (Jubam)
- En. Stem Liak (Uma Bakah)

Long Bangan

- En. Michael Jok
- En. Mu Douglas Ding
- En. Belarek Tinggang
- En. Abong Tegom

Long Menapa

- En. Dian Binak
- En. Japan Tadang
- Uma Lasah
- En. Joseph Mering

Gansau, sg Arip

- En. Lasa Sulau
- Pejabat Daerah Belaga
- En. Abd. Halim Abdullah
- Sarawak Energy Berhad
- En. Sipol Ambun

III. MEETING WITH REPRESENTATIVES FROM NGOS AND OTHER CONCERNED GROUPS AND INDIVIDUALS

On 20 October 2008, SUHAKAM had a meeting with representatives from several NGOs and other concerned groups to obtain their perspectives on the MHP and its impact towards the affected indigenous communities in Sarawak.

SUHAKAM was represented by Dr. Mohd Hirman Ritom who was also the Resident Commissioner of the SUHAKAM Sarawak Office. He was assisted by several SUHAKAM Officers.

Participants of the Meeting included representatives from the Center for Environment, Technology and Development, Malaysia (CETDEM), Sahabat Alam Malaysia (SAM), Consumers Association of Penang (CAP), Environ Consulting Services (Environ), and University Putra Malaysia (UPM).

PROCEEDING OF THE MEETING

SUHAKAM Commissioner, Dr. Hirman Ritom Abdullah welcomed participants present at the meeting and highlighted the purpose of the meeting held by SUHAKAM. After his introduction, Dr. Hirman Ritom Abdullah invited participants to highlight their concerns associated to the Sarawak State Government's recent decision to construct the MHP.

After the Briefing, participants engaged in an interactive discussion session to further discuss their issues highlighted.

ISSUES RAISED

The following issues were raised by participants during the meeting:

Murum Dam as Alternative to Bakun Dam

Mr. Gurmit Singh from CETDEM highlighted that the issue concerning the proposed dams in Sarawak was an old issue. He explained that during the government-organised consultations with NGOs in the 1990s, the Murum Dam was proposed and understood as only an alternative to the Bakun Dam rather than an addition to the latter. In fact, the NGOs who were involved in the consultations then, were in favour of and proposed for the Murum Dam since they projected that the energy that would be generated from the Murum Dam would be sufficient to meet Sarawak's energy demand. Furthermore, it was projected that the Murum Dam would result in fewer villages being relocated and lesser negative impact to the local villagers and environment. The proposal was, however, declined by the Government and carried out the construction of the Bakun Dam instead.

Poor Energy Planning in Malaysia

According to Mr. Gurmit, the real issue was energy planning in Malaysia. He explained that it appeared that Malaysia's approach was to generate energy supply and later, offer supply to possible clients rather than firstly determining demand followed by steps to identify the best ways to meet those demands. He opined that the latter method was ideal whereby demands are matched with existing energy sources, including energy generated from mega and mini hydroelectric dams, solar, petroleum and others.

Another primary issue was that Malaysia was without a national energy policy. Nonetheless, the Country's energy development is governed by existing energy generating policy and petroleum development policy. However, Sarawak is not bound by the national policies. This was a fundamental constitutional issue as well. CETDEM had recommended to the Government on the need for a national energy policy.

With the Bakun Dam already in place, Mr. Gurmit Singh felt that Malaysia should firstly maximise the usage of energy from the Bakun Dam before embarking on a new dam such as the Murum Dam. Otherwise, there could be the risk of significant waste of energy sources.

Ms. Mageswari Sangaralingam from SAM agreed and said that there would be excess energy generated from the Bakun Dam in Sarawak. While the demand for energy could increase in the future, she felt that hydroelectric dams such as the Murum Dam, should not be the only choice of energy source. There were many other options such as those listed by the representative from CETDEM.

Security in Transmitting Energy from Sarawak to the Peninsular

Mr. Gurmit said that since there would be excess energy from the Bakun Dam, he question the rationale of erecting the Murum Dam. The were reports that indicated that a significant amount of energy generated from the Bakun Dam would be sold to Peninsular Malaysia via underwater cables. Thus, this raises security issue since cables may run along international waters. Consent must be obtained from the relevant country(s) and there was the risk of cable lines being sabotaged.

Beneficiaries of Energy from the Murum Dam

Ms. Mageswari also questioned on whether there was assurance that local communities would benefit from the Murum Dam rather than it being benefited solely by production plant companies like the aluminium smelting plant which the Government plans to bring in.

Mr. Gurmit added that aluminium smelting plants were energy intensive industry. Such industry could heighten the national GDP and thus, could be the motivating factor for the Government to expedite the construction of the Murum Dam along with the other planned dams to be constructed in the near future.

Right to Participation

Participants of the RTD all agreed that the public holds the right to participate in the planning and decision making processes, including those involved in hydroelectric projects. Some participants expressed disappointment over the Government's failure to consult and encourage public participation in the decision making as the public too were stakeholders.

Ms. Mageswari said that SAM was informed that affected Penan, while they were met by Government personnel, it was only an arena for the Government to inform the community that they were to be relocated. The session was not intended as a consultation process for the Government to take into account the views and concerns of the villagers affected. The participant said that many affected villagers were against the idea of their relocation.

Dr. Mohammad Hirman responded by informing participants that based on the Meeting with the relevant government agencies which was organised by SUHAKAM on 25 August 2008, SUHAKAM was informed that the location for resettlement had not been determined by the Government. SUHAKAM had highlighted the same concerns at the said meeting,

in particular, on the rights of the indigenous peoples including their rights to information, participation, native customary land, right to a clean and safe environment and issues to be overcome by the Government if communities were to be relocated.

Right to Information

Participants emphasised the correlation between the right to information and right to participation. To enable the public to participate meaningfully, they must be provided with the information.

Participants of the RTD expressed concern because information on the Murum Dam, and other planned hydroelectric projects in Sarawak was not readily available in the public domain. If not for the China-ASEAN Power Cooperation & Development Website, information on the dams would not have been accessible to the public. While information could be obtained from the internet, it should be noted that not all in Malaysia have access to the internet, especially communities like some Penan villagers. Information on development projects such as the Murum Dam should be made available and easily accessible to the public, especially to those whose lives would be directly affected by the dams' constructions.

Right of Community to Determine and Maintain Way of Life

Mr. Gurmit emphasised that like the mainstream community, the Penan holds the right to determine and maintain their own way of life. They should be permitted to continue to reside on their land if they choose to do so. The Government has the duty to respect this human right and should not force the community to relocate.

Ms. Mageswari agreed and said that the communities who were relocated to the Sungai Asap Resettlement following the Bakun Dam encountered major difficulties in adapting to the new environment. While they were compensated, communities like the Penan, were not cash oriented communities and were not knowledgeable on investing the compensations received. Given that many were without education and technical skills, they were unable to find work. As a result, compensations were used up within several months or years and have remained without any source of income, and thus, pushing them to extreme poverty. SAM was in the midst of preparing a report on this and a memorandum on this would be submitted to SUHAKAM.

Dr. Khamuruddin Mohd. Noor from UPM agreed and said that in case that communities had to be relocated, in addition to obtaining informed consent, the Government has the to ensure that the communities are compensated sufficiently. In addition to compensation in monetary form, the Government should ensure that the communities are able to access the same form of resources that they have enjoyed before relocation. This would include access to land, especially their native customary land.

Catchments Area

There were concerns that the construction of the proposed Murum Dam would result in the destruction of catchments. There has been no guarantee that catchments within the area would be protected. Mr. Gurmit exemplified with a catchment located in Bakun which ended up with excessive siltation rates due to erosion. This had happened while the government had previously maintained that the catchments in Bakun would be protected from adverse impact of the Bakun Dam.

Aluminium Smelting Plant by Nosyk Hydro

Ms. Viji Samuel from Environ Consulting Services (Environ) - currently in contract with Norsk Hydro to gather relevant information on the relevant issues for a proposed aluminium smelting plant to be established in Sarawak - said that Norsk Hydro was indeed concerned about sustainability issues and thus, would only decide to operate its plant in Sarawak if the said dam was operated in a sustainable manner. At the time of this RTD, Environ and Norsk Hydro was at the preliminary stage of gathering information and data before any decision was to be made. The first round of consultations with the Natural Resources and Environmental Board (NREB), SUHAKAM, Suara Rakyat Malaysia (SUARAM), Universiti Malaysia Sarawak (UNIMAS) and other NGOs and organisations was carried out earlier in 2008. Among the issues that they have heard and taken into account were primarily on the human rights of local communities and the environment. After the first series of consultations, Norsk Hydro had withdrawn from the plan to establish the plant. However, the Company later decided to resume this plan as they saw the potential in Sarawak. Nonetheless, they kept watch based on the issues that were highlighted before and would maintain their commitment to sustainable development which they were required to ensure based on their corporate policy. The Company risked losing the confidence of other international organisations if this policy was breach. Currently, Norsk Hydro and Environ were at their second round of gathering information on the issues arising.

Among their major concerns with respect to the Murum Dam related to forced relocation, insufficient assistance and amenities after relocation, compensation and pollution.

LIST OF PARTICIPANTS OF THE MEETING WITH REPRESENTATIVES FROM NGOS AND OTHER CONCERNED GROUPS AND INDIVIDUALS ON 20 OCTOBER 2008

- Mr. Gurmit Singh - CETDEM
- Ms. Mageswari Sangaralingam - Sahabat Alam Malaysia / Consumers Association Penang
- Ms. Viji Samuel - Environ Consulting Services
- Dr. Khamuruddin Mohd. Noor - University Putra Malaysia

Suruhanjaya Hak Asasi Manusia
Human Rights Commission Of Malaysia

**PART C:
ANNEXURE**



Suruhanjaya Hak Asasi Manusia Malaysia
Human Rights Commission Of Malaysia

**ANNEXURE 1:
SARAWAK HYDROPOWER DEVELOPMENT
FEEDBACK FROM THE SARAWAK ENERGY BERHAD**

*SUHAKAM'S REPORT ON THE MHP AND ITS IMPACT TOWARDS THE ECONOMIC, SOCIAL
AND CULTURAL RIGHTS OF THE AFFECTED INDIGENOUS PEOPLES IN SARAWAK*

ANNEXURE 1

SARAWAK HYDOPOWER DEVELOPMENT

1. Introduction

Hydropower represents the largest, indigenous, renewable energy resource in Malaysia. The bulk of this hydropower potential lies in Sarawak which has a total exploitable potential of 87,000 GWh per year, which is about 70% of the total potential of 123,000 GWh for the whole country.

2. Favourable Setting

Sarawak covers a total area of 123,600 sq km. Two factors contribute to making the State to be richly endowed with hydropower potential.

The first factor is its climate which is characterised by heavy rainfall, uniformly high temperatures and high humidity. four rainfall seasons are recognised in Sarawak and their differing characteristics owe much to the location of the State in relation to the prevailing ,wind systems, especially the two monsoons. The north-east monsoon brings heavy rainfall to most part of Sarawak and occur from October to February or March, a period known locally as the Landas season. From April to July or August a weaker and more variable in direction south-west monsoon brings less rainfall. Two shorter transitional seasons of about eight weeks occur between the monsoons. Subject to this prevailing wind systems, practically the whole of Sarawak has an average annual rainfall of over 3500 mm.

The second factor is topography. The State comprises three broad relief zones, namely, an alluvial coastal plain which is succeeded inland by a belt of undulating country, and finally the sharply rising mountainous interior. In most of the interior mountain areas where ridge and valley or broken hill topography prevails, the rivers, for the most part fast-flowing with numerous falls and rapids, form a rough trellis pattern. This pattern. in which the tributaries of the same river system flow between steep. narrow, interconnected ridges up to 1200 metres high, is characteristic of most of the hinterland area of Sarawak, and is favourable for the siting of potential dam sites.

3. Preliminary Survey

The first preliminary survey of the hydropower potential of Sarawak was undertaken in 1962 by the Snowy Mountains Hydro-Electric Authority of Australia under the Colombo Plan aid programme. The survey was primarily confined to the assessment of hydropower potential available in the State and identification of potential sites which could be economically developed for electricity generation.

The survey took cognisance of the vast hydropower potential in the State, and estimated the theoretical hydropower potential to be approximately 190,000 GWh per year. But it concluded that its development was not economically feasible in view of the small energy demand, high investment costs of hydropower projects and relatively 10 w prices of fossil fuels prevailing then.

SARAWAK HYDOPOWER DEVELOPMENT

In 1977, a second preliminary survey was carried out by the Sarawak Electricity Supply Corporation (SESCO) with a view to reassess the total hydropower resources and to formulate a rational policy for the harnessing of these resources. This second survey identified 42 sites with capacity ranging from 10 MW to 1,400 MW with a total exploitable potential of 10,700 MW.

4. Comprehensive Survey

In 1979 a more detailed and comprehensive survey of the hydropower potential was initiated in conjunction with an Electricity Masterplan Study to explore the various options for meeting the electricity needs of Sarawak: as well as that for Sabah and Peninsular Malaysia.

This Masterplan for Power System Development was carried out jointly by a project team from SESCO and a group of West German and Swiss consultants who were sponsored under a Technical Aid Programme extended to Malaysia by the German Technical Cooperation Ltd. (GTZ) on behalf of the Government of the Federal Republic of Germany.

The general procedure adopted in this survey started with a desk study of all available topographical hydrological and geological information to identify potential dam sites. Each river was considered as a whole and the study went into necessary detail to determine the power output and other relevant physical features of each site. The basic criterion was to utilize as fully as possible the natural head from the source to the mouth of the river, taking into account the possibility of inter-basin water transfer.

After the desk study, a field reconnaissance of the identified dam sites followed. Project layouts were adjusted to actual field information on site topography and geology. Subsequently, power potential computations were carried out and cost estimates prepared.

In this manner the study identified a total of 155 potential dam sites with a total aggregate capacity of 80,000 MW and a total annual energy output of 340,000 GWh. However, this potential cannot be fully harnessed because some of these sites were mutually exclusive, that is, the construction of some would entail the creation of reservoirs that would submerge the other upstream sites.

A subsequent evaluation of the optimum development chains for all the river basins was carried out to determine the best means of harnessing their respective hydropower potentials. It was found that a total of 51 projects (Figure 1) could be developed to give a total exploitable potential of 20,000 MW with a total energy output of 87,000 GWh/year. This potential constitutes the major portion of the unexploited hydropower resources in Malaysia.

Most of these favourable projects are located in the Upper Rajang River Basin. Feasibility studies on the three most favourable schemes in this basin, namely,

Pelagus, Bakun and Murum were subsequently carried out completed in 1982, 1983 and 1994 respectively.

5. Planned Development

With a view to meet the power demand for the Sarawak Corridor of Renewable energy (SCORE) as well as those in Sabah and Peninsular Malaysia, 12 projects have been planned for implementation for the period 2008 – 2020. The locations of these projects are shown in Figure 2. These projects, including the 2,400 MW Bakun presently under construction, would provide a reliable and renewable bulk energy at a total installed capacity of about 7,000 MW.

6. Project Status

The status of these 12 projects are as follows:

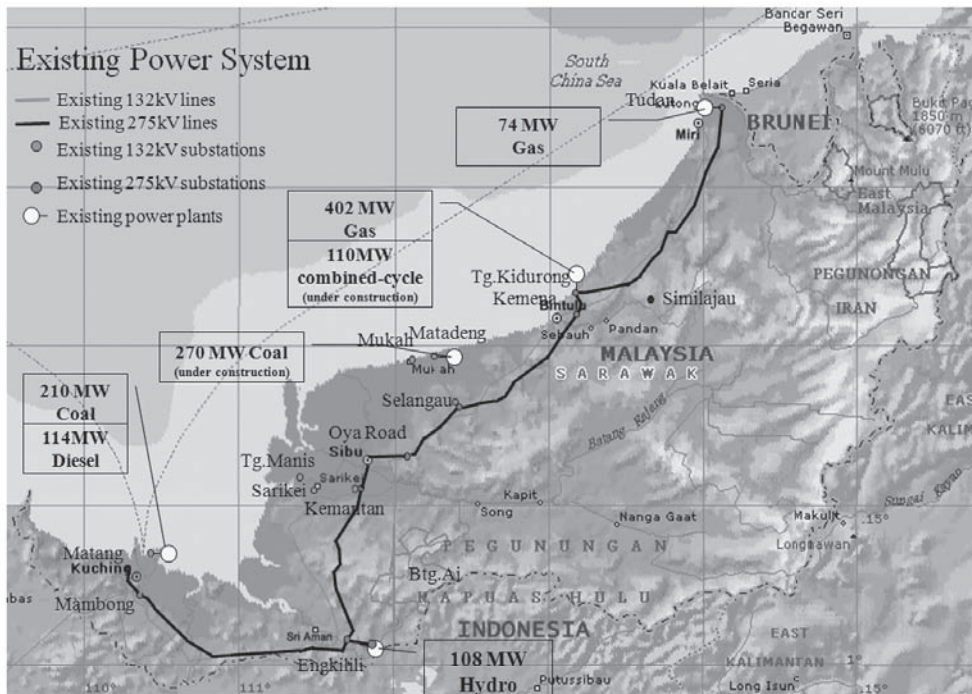
Project	Installed Capacity (MW)	Status
Murum	944	Pre-construction
Batang Ai Extension*	80	Under tender
Baram	1,000	Feasibility study
Baleh	1,400	Feasibility study
Limbang	150	Feasibility study
Lawas	105	Feasibility study
Metjawah*	300	Feasibility study
Belaga	60	Feasibility study
Ulu Ai	54	Tender design completed
Belepeh	110	Basin study
Linau	290	Basin study
Tutoh	220	Basin study

Note: The project marked with (*) will be replaced with other projects.



Sarawak Hydropower Development

24 April 2009



25 Aug 2008

Sarawak Hydropower Development

Slide No. 2

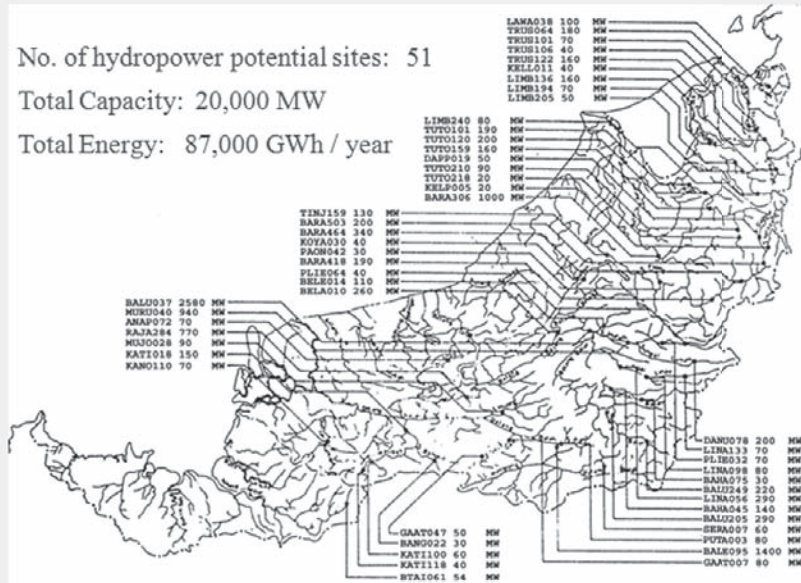
Private & Confidential - Do not duplicate or distribute without written permission.

SARAWAK HYDOPOWER DEVELOPMENT



1981 Electricity Master Plan Study

No. of hydropower potential sites: 51
 Total Capacity: 20,000 MW
 Total Energy: 87,000 GWh / year



25.Aug.2008

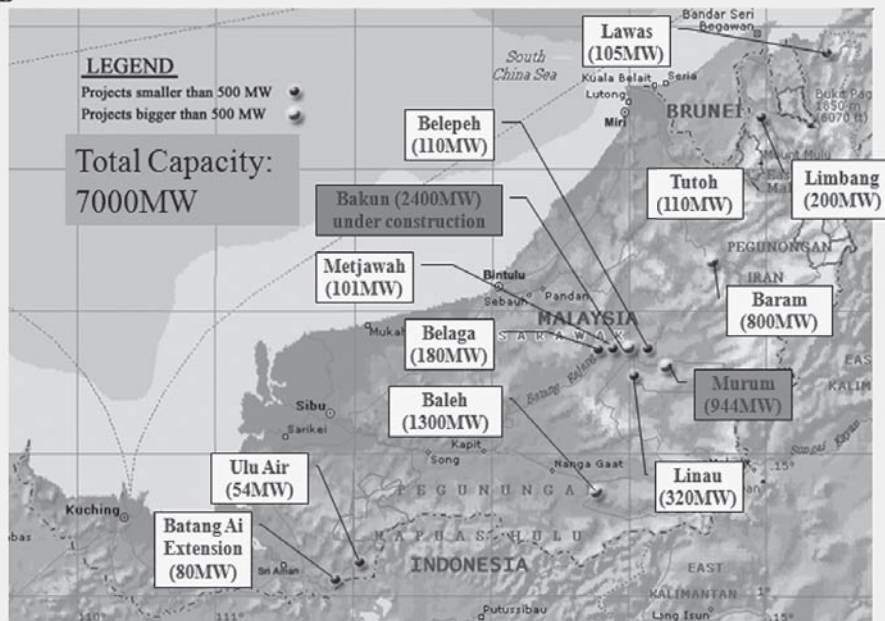
Sarawak Hydropower Development

Slide No. 3

Private & Confidential - Do not duplicate or distribute without written permission.



Planned Hydropower Projects (2008 –2020)



23.Aug.2008

Sarawak Hydropower Development

Slide No. 4

Private & Confidential - Do not duplicate or distribute without written permission.



STATUS

- Bakun: Under Construction (2010)
- Murum: Under Construction (2013)
- Batang Ai Extension: Decided not to Proceed
- Baram: Feasibility Study
- Baleh: Feasibility Study
- Limbang: Feasibility Study
- Lawas: Feasibility Study
- Belaga: Feasibility Study
- Metjawah: Not Feasible
- Pre-feasibility study stage for the rest

25 Aug 2008

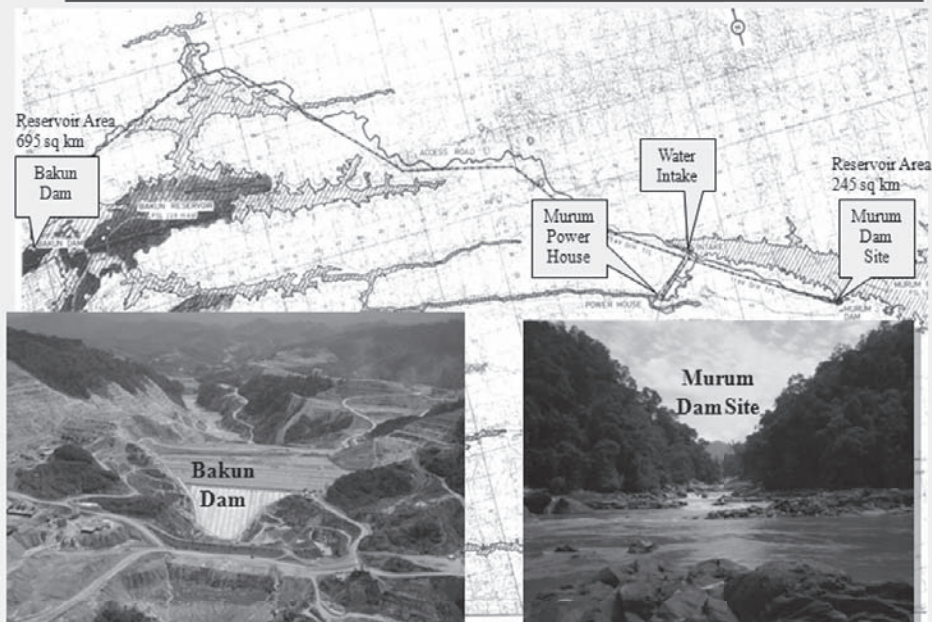
Sarawak Hydropower Development

Slide No. 5

Private & Confidential - Do not duplicate or distribute without written permission.



Murum Dam Site relative to Bakun Dam Site



25 Aug 2008

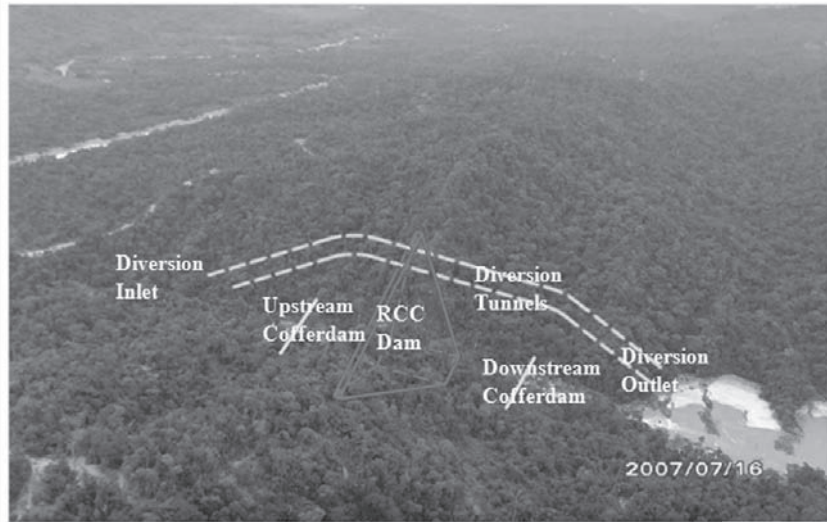
Sarawak Hydropower Development

Slide No. 6

Private & Confidential - Do not duplicate or distribute without written permission.



Murum Project Features



25.Aug.2008

Sarawak Hydropower Development

Slide No. 7

Private & Confidential. Do not duplicate or distribute without written permission.



Milestones

- River Closure: 2009
- Dam Completion: 2011
- Commence Reservoir Filling: 2011
- Project Completion: 2013

25.Aug.2008

Sarawak Hydropower Development

Slide No. 8

Private & Confidential. Do not duplicate or distribute without written permission.



Artist's View of Murum Dam



25 Aug 2008

Sarawak Hydropower Development

Slide No. 9

Private & Confidential - Do not duplicate or distribute without written permission.



Artist's View of Murum Power House



Installed Capacity: 944 MW (4x236MW)
Annual Average Output: 5,542 GWH

End of Presentation

25 Aug 2008

Sarawak Hydropower Development

Slide No. 10

Private & Confidential - Do not duplicate or distribute without written permission.

SUHAKAM'S REPORT ON THE MHP AND ITS IMPACT TOWARDS THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS OF THE AFFECTED INDIGENOUS PEOPLES IN SARAWAK



Suruhanjaya Hak Asasi Manusia Malaysia
Human Rights Commission Of Malaysia

ANNEXURE 2
SUBMISSION BY THE PENAN COMMUNITY LEADERS
TO SUHAKAM

*SUHAKAM'S REPORT ON THE MHP AND ITS IMPACT TOWARDS THE ECONOMIC, SOCIAL
AND CULTURAL RIGHTS OF THE AFFECTED INDIGENOUS PEOPLES IN SARAWAK*

1. **SYARIKAT BALAK DAN KELAPA SAWIT MENGGUNAKAN SAMSENG SEBAGAI SECURITY** – kebanyakan syarikat-syarikat gergasi seperti KTS, Shin Yang, Samling Rimbunan Hijau dan banyak lagi syarikat yang terlibat, menggunakan SAMSENG (Gangsters) sebagai security di kawasan pembalakan atau pun di ladang kelapa sawit di banyak kawasan di Sarawak khususnya di kawasan Tubau dan Belaga. Ini bererti:
 - 1.1 *Psychological pressure on the Natives* – orang kampung menganggap mereka ini sebagai agen pemusnah dan perampas.
 - 1.2 *Bersubahat dengan pihak Polis* – Mereka biasanya nampak bersubahat dengan pihak polis terutama pasukan PGA. Pasukan dari pihak SAPU pun sama juga.
 - 1.3 *Menakut-nakutkan penduduk rumah panjang* – memang banyak kali berlaku bahawa mereka menggunakan nama 'KERAJAAN' untuk menakutkan orang kampung.
 - 1.4 *Menggunakan kekerasan* – ada beberapa kes dimana mereka pernah mencabar orang kampung khususnya mereka yang membantah kemasukan sesebuah syarikat ke kawasan mereka.
 - 1.5 *Menyekat kebebasan orang tempatan* – memberi terlalu banyak alasan sebelum melalui 'Main Gate' yang menuju ke kampung masing-masing.
 - 1.6 *Mereka bermaharajalela di kawasan kita* – pengaruh samseng ini amat menarik perhatian anak-anak muda kita. Ramai anak-anak tempatan bekerja dengan mereka. Kumpulan samseng yang menetap di hulu sungai biasanya mempunyai senjata bahaya seperti samurai, senapang patah (ada yang simpan pistol), menjual dadah dan lain-lain lagi. Sila siasat!
2. **BANYAK SYARIKAT TIDAK MEMATUHI UNDANG-UNDANG YANG SEDIA ADA.**
 - 2.1 *Buffer Zone* – Syarikat yang wujud di kawasan Tubau dan Belaga seperti SOPB, Pusaka KTS, Samling, Shin Yang dan lain-lain lagi tidak pernah menghormati undang-undang ini. Mengapa orang atasan buta dengan keadaan seperti ini.
 - 2.2 *Banjir kilat* – banyak rumah panjang yang terkena oleh banjir kilat ini. Banjir seperti ini telah merosakkan harta benda orang-orang tempatan.
 - 2.3 *Anak-anak sungai telah bertukar wajah* – bukan sahaja ada banjir kilat tapi anak-anak sungai telah menjadi cetek dan keruh. Ini menyusahkan para petani yang bergantung kepada anak sungai untuk mendapatkan ikan. Semua susah.
 - 2.4 *Kurang bertanggungjawab* – walaupun mereka tahu bahawa semua sungai sudah cetek, keruh dan mungkin keracunan, maka mereka masih terlalu kurang dalam CSR (Corporate Social Responsibility) mereka terhadap orang tempatan. Orang terbakar rumah panjang pun tidak pernah ditolong.

- 2.5 *Kebanyakan syarikat gergasi kepunyaan orang kenamaan – BPR tolong siasat! Siapa yang membuat undang-undang dan siapa pula yang melanggarkannya? Sekiranya seorang menteri ataupun YB ataupun saudara mara mereka yang mempunyai syarikat berkenaan, bagaimana dan kepada siapa kah orang tempatan harus melapor masalah tersebut?*



Suruhanjaya Hak Asasi Manusia Malaysia
Human Rights Commission Of Malaysia

ANNEXURE 3
UNITED NATION'S DECLARATION ON THE RIGHTS OF
INDIGENOUS PEOPLES

*SUHAKAM'S REPORT ON THE MHP AND ITS IMPACT TOWARDS THE ECONOMIC, SOCIAL
AND CULTURAL RIGHTS OF THE AFFECTED INDIGENOUS PEOPLES IN SARAWAK*



General Assembly

Distr.: General
2 October 2007

Sixty-first session
Agenda item 68

Resolution adopted by the General Assembly
[without reference to a Main Committee (A/61/L.67 and Add.1)]

**61/295. United Nations Declaration on the Rights of
Indigenous Peoples**

The General Assembly,

Taking note of the recommendation of the Human Rights Council contained in its resolution 1/2 of 29 June 2006,¹ by which the Council adopted the text of the United Nations Declaration on the Rights of Indigenous Peoples,

Recalling its resolution 61/178 of 20 December 2006, by which it decided to defer consideration of and action on the Declaration to allow time for further consultations thereon, and also decided to conclude its consideration before the end of the sixty-first session of the General Assembly,

Adopts the United Nations Declaration on the Rights of Indigenous Peoples as contained in the annex to the present resolution.

107th plenary meeting
13 September 2007

Annex

United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter,

Affirming that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

Affirming also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

1. See Official Records of the General Assembly, Sixty-first Session, Supplement No. 53 (A/61/53), part one, chap. II, sect. A.

Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

Reaffirming that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

Recognizing also the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

Emphasizing the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

Considering that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

Considering also that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights² and the International Covenant on Civil and Political Rights,² as well as the Vienna Declaration and Programme of Action,³ affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

Bearing in mind that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

Encouraging States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

Emphasizing that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

Believing that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

Recognizing that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

2. See resolution 2200 A (XXI), annex.

3. A/conf.157/24(part 1).chap.iii

Article 1

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights⁴ and international human rights law.

Article 2

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 6

Every indigenous individual has the right to a nationality.

Article 7

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

4. Resolution 217 A (III).

Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

2. States shall provide effective mechanisms for prevention of, and redress for:

- (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
- (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
- (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
- (d) Any form of forced assimilation or integration;
- (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the

right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writingsystems and literatures, and to designate and retain their own names for communities, places and persons.

2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Article 14

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

Article 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.

2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Article 16

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.

2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

Article 17

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.

2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.

3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Article 22

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.

2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional

ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

Article 30

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.

2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Article 35

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

Article 36

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

Article 37

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.

2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

Article 38

States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

Article 39

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Article 41

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

Article 42

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

Article 43

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Article 44

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

Article 45

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

Article 46

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.



Suruhanjaya Hak Asasi Manusia Malaysia
Human Rights Commission Of Malaysia

ANNEXURE 4
NEWSPAPER REPORTS/ARTICLES
MASING SNIPES AT DAM CRITICS

*SUHAKAM'S REPORT ON THE MHP AND ITS IMPACT TOWARDS THE ECONOMIC, SOCIAL
AND CULTURAL RIGHTS OF THE AFFECTED INDIGENOUS PEOPLES IN SARAWAK*

Masing snipes at dam critics

Posted By Rajlira On 2nd August 2008 @ 10:00 In Local

Environmentalists should be responsible and understand issue at hand

KUCHING: Another state leader has lashed out at certain environmentalist who criticized the proposed building of 12 hydro-electricity dams in Sarawak.

Land Development Minister Dato Sri Dr James Masing, in reminding the environmentalist to be responsible when making criticisms, said those people were making unfavorable judgments about the dams just to 'cakap-cakap' (make noise) in order to get the fund from their sponsors.

"They just 'cakap-cakap'. If they do not 'cakap-cakap' there would be no fund," said Masing, who is Parti Rakyat Sarawak (PRS) president.

Believing that the activists did not understand the actual issue at hand, Masing said they should be fair and avoid using that kind of incentive (making noise).

When met at a function here yesterday, Masing said he would like to pose them a challenge.

"Be more responsible. My challenge is for them to be responsible sometimes and do not judge others when not knowing what to do.

"They may not know but we (government) do," he said.

He pointed out that hydro power was one of the cleanest renewable energies which people look for all over the world and one could find that in Sarawak.

"To me, the government has the right to build the hydro dams.

"And more so when they are to build in scarcely populated areas.

"For people to assume that we do not care for the environment is wrong as the Sarawak government is a responsible one and it is mindful of any impact of any development on the environment.

"We are as good as anybody else in understanding the issue. Our leaders are equally qualified and careful in this matter.

"Hydro power is clean and cheap renewable energy. As we have it why don't we develop it?" he asked.

Masing said he regretted that certain fellow Malaysians had accused the government for being irresponsible and careless about the environment.

He said even the government did not have the ability to understand environment issue and relevant experts, it could always find the experts from outside the country.

<http://www.theborneopost.com/?p=39286&print=1>

“if we don’t have the ability (to understand), we buy it (knowledge) from somewhere or if don’t have the brain (experts) we buy the brain. But nobody should accuse us of not caring about the environment,” the minister said.

On the environmentalists’ fear that rural people would be displaced should such developments go on, Masing said it might sometimes be inevitable.

But he assured that the so-called Baleh dam – which can generate 1,400 megawatt of electricity – was situated in an area where there were no people.

He said resettlement was not an issue.

Masing, who is Baleh assemblyman, said should resettlement occur, the government would never neglect the affected people because “after all they are our people”.

On July 30, Chief Minister Pehin Sri Abdul Taib Mahmud said the 12 hydro-electricity dams would go on for the sake of economic development despite the constant criticisms, sometimes destructive, coming from the activists.

The environmentalists might have their say on the environment but it would be the people in the government who decided on how best to chart the course of the state’s future and also to further develop its economy,” he had said.

“They voice their concerns but the government decides.

“And we have to weigh development and its impact on the environment,” he said, adding that he could not allow a small group to decide on the betterment and future of the people.

Such development would enhance the economy which would then benefit the people of Sarawak, he said during a special interview for the media in connection to the state’s 45th independence anniversary.

He said criticisms, particularly from the environmentalists, only focused on their own point of view or concerns but failed to consider other aspects including economic prosperity.

The government’s plan to build the 12 hydro-electricity dams in Sarawak have been criticized by the environmentalists.

Among other things, they questioned the impact on Mulu National Park, if the Tutoh dam were built.

They are also worried that the dams would lead to the destruction of Borneo’s natural environment and wildlife and also the displacement of the rural people.

Besides Tutoh, the other proposed dams are located at Ulu Air, Metjawah, Belaga, Baleh, Belepeh, Lawas, Limbang, Baram, Murum and Linau rivers.

The plan which also seeks to meet future individualization needs would also include an extension to the Batang Ai dam.

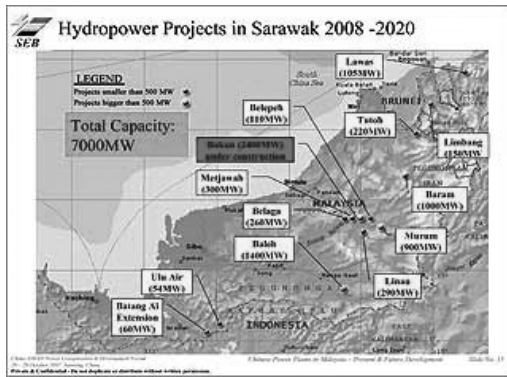
Article printed from The Borneo Post Online: [http:// www.theborneopost.com](http://www.theborneopost.com)
URL to article: <http://www.theborneopost.com/?p=39286>

ANNEXURE 4

NEWSPAPER REPORTS/ARTICLES

Sarawak's 12 new dams alarm environmentalists

Fauwaz Abdul Aziz | Jun 19, 08 1:46pm



Sarawak has proposed to build 12 massive dams in the next decade to harness its hydroelectric power, putting the state in a collision course with environmentalists.

sarawak energy board slide show hydropower project in sarawak 180608The bold plan, which has not been made public, has irked activists who fear further destruction to Sarawak's rainforests - considered as one of the world's oldest - and the forcible relocation of thousands of indigenous peoples.

While the state does not need more power, it hopes to generate electricity for energy-guzzling industries and for export - both to Peninsular Malaysia and neighbouring Indonesia.

Half of the power produced by the controversial Bakun dam is expected to be consumed by an aluminum smelter to be built in Bintulu by mining multinational Rio Tinto, while the rest will be transported to Peninsular Malaysia through undersea cables.

The mega-smelter is a joint project between Rio Tinto and Cahya Mata Sarawak, a conglomerate owned by family members of Chief Minister Abdul Taib Mahmud.

Document made public 'accidentally'

Sarawak's bold ambition of generating a colossal 7,000MW of electricity between 2008 and 2020 - which include the 2,400MW Bakun dam - was unwittingly revealed in document made available on a China-based website.

The document appeared to be a slide presentation made by Sarawak Energy Berhad (SEB) managing director Abdul Aziz Husain in October last year at the China-Asean Power Cooperation and Development Forum in Nanning, China.



According to Abdul Aziz, Sarawak's rivers have the potential to generate a total of 20,000KW of power.

penan benalih baram blockade logged forest 280807 barrenPublished 'accidentally' on the website dedicated to the international forum, it was discovered by Switzerland-based NGO

<http://www.malaysiakini.com/print.php?c=news&id=84715>

Bruno Manser Fonds (BMF).

According to BMF, an organisation set up by Swiss environmentalist Bruno Manser who spent six years with Sarawak's Penan and subsequently went missing in 2000, the document has since been removed.

But before the document was taken down, BMF was able to make a copy and it is now made available on the organisation's website [available as PDF file].

A quick search on the Internet revealed such a document - entitled 'Chinese Power Plants in Malaysia – Present & Future Development' - had existed, but can no longer be found.



Mulu National Park at risk

The 48-page document provides the specific locations of the 12 new hydropower plants, aside from Bakun dam, which is to be completed in 2010 [see map].

sarawak energy board slide show hydropower project in sarawak 180608 bakun damThe construction of the RM3.2 billion Bakun dam - the region's largest dam - wiped out a swatch of rainforests the size of Singapore and displaced 10,000 indigenous peoples.

Understandably, environmentalists fear the worst on hearing the state government's proposal for another dozen of hydropower plants.

penan logging blockade 220606 headman panai irang and familyIf the plan, described by BMF as "excessive", is to proceed, hundreds of Sarawak's native communities in Sarawak's interior will lose their traditional lands and have to be relocated to elsewhere.



"It is to be expected that all of the proposed dams will adversely affect indigenous communities living in Borneo's unique tropical rainforest environment," warned BMF in a press statement.

berawan gunung mulu appeal 030508 riverNational treasures such as the world-renowned Mulu National Park may also fall victim when parts of it will be submerged under the planned 220 megawatts dam on the Tutoh river in northeastern Sarawak.

The Mulu National Park is listed by the United Nations Educational, Scientific and Cultural Organisation (Unesco) as a world heritage site because of its biodiversity and its extensive network of caves.

<http://www.malaysiakini.com/print.php?c=news&id=84715>

No public participation in EIAs

BMF slammed the state government for its lack of transparency in land and forest matters, pointing out that Sarawak legislation does not obligate developers to include public participation in the environmental impact assessment (EIA) process.

The NGO also decried that the natives, as in the past, are likely to be “doomed to pay the price for the production of export energy”.

None of SEB's top officials, including Abdul Aziz, could be reached for comments.

Meanwhile, state DAP deputy chairperson Chiew Chin Sing said the state government should put the interests of Sarawak people before those of multinational corporations.

The Kidurong state assemblyperson added that delivering electricity through 700km of undersea cables to Peninsular Malaysia would result in tremendous wastage.

“Also we cannot deny the indigenous communities their right to their land,” Chiew told Malaysiakini yesterday.



<http://www.malaysiakini.com/print.php?c=news&id=84715>

Unesco queries dam plan in Sarawak

Tony Thien | Jul 5, 08 3:35pm

The United Nations Educational, Scientific and Cultural Organisation (Unesco) has sought clarification from Malaysian authorities concerning a controversial dam project in Sarawak said to affect a world heritage site.



The Unesco World Heritage Centre had on June 25 wanted the Malaysian authorities 'to clarify the situation and provide us with any further information on the hydropower plans at Gunung Mulu National Park World Heritage site, a spokesman of the Paris-based UN organisation confirmed to the Switzerland-based Bruno-Manser Fund (BMF).

sarawak dam project 050708 tutoh damBMF stated this in an email to Malaysiakini today.

A leaked confidential document, which was made public by the BMF, has recently shown

Sarawak Energy Berhad's (SEB) plan to realize a 220 MW dam on Sarawak's Tutoh river.

The proposed dam would submerge parts of the Gunung Mulu National Park - one of only two Unesco World Heritage sites in Malaysia.

The proposed Tutoh dam is part of SEB's controversial to build 12 new hydropower projects in Sarawak from 2008 to 2020.

If these plans were to be realised, several thousand natives would lose their traditional lands in the Bornean rainforest and would have to be relocated.

While Sarawak's energy consumption amounted to 1,120MW in 2005, the new projects have a power generation capacity of 7,000MW.

Sarawak, Malaysia's largest state located on the northern coast of Borneo, is criss-crossed by rivers, and the Sarawak government has announced plans to harness its hydro-power potentials, a move that has been accelerated because of rising fuel costs and the global demand for clean air and environment.

Bakun's unresolved problems



Like the existing Batang Ai and Bakun dams, it is also feared that the new dam will also lead to the displacement of many natives from their traditional lands.

Even the yet-to-be-completed 2,400MW Bakun Dam is facing many long-standing and unresolved problems following the resettlement of about 10,000 natives as they complain of lack of amenities and lack of suitable land for cultivation and loss of income from traditional sources.

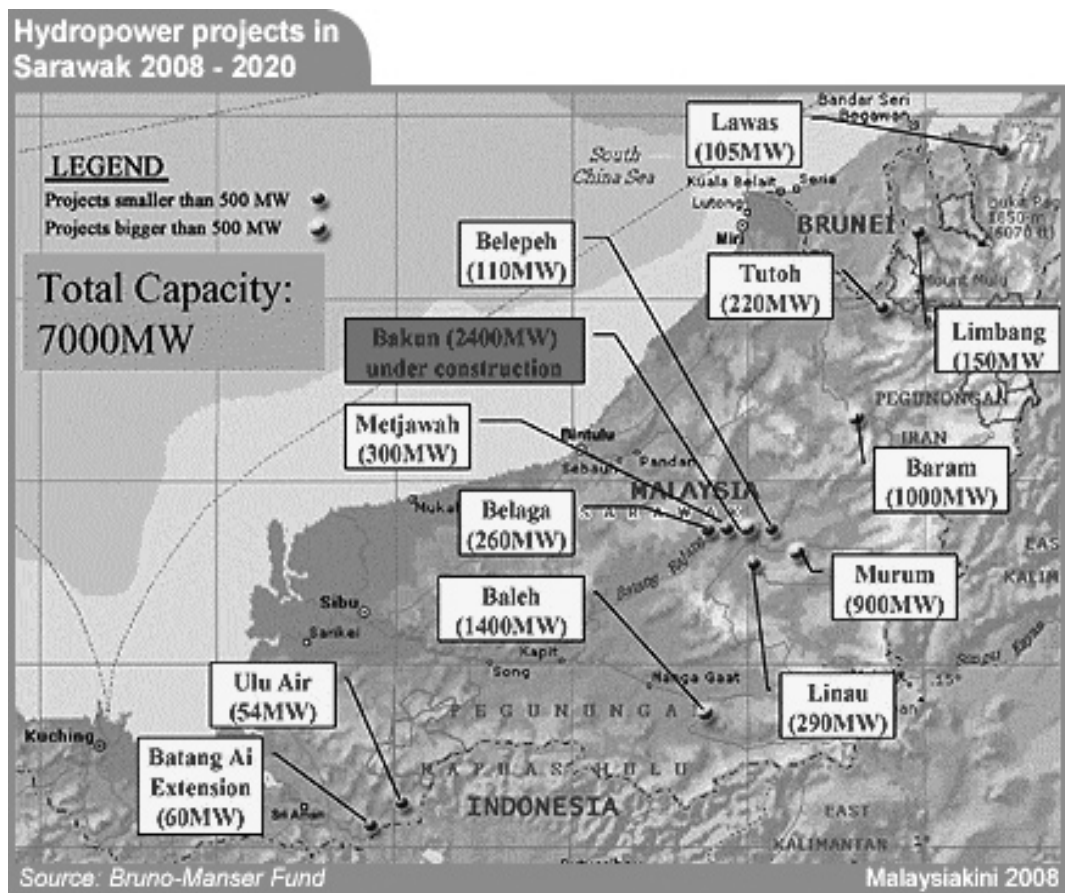
<http://www.malaysiakini.com/print.php?c=news&id=85627>

Sime Darby, a major player in the development of the hydroelectric dam project, has announced it is pulling out and this has threatened to delay the start of the construction of the undersea cable from Sarawak to Peninsular Malaysia to bring the excess power from Bakan and future dams to the mainland.

leo moggie 03Tenaga Nasional Bhd chairperson Leo Moggie, commenting on this, told Malaysiakini in Miri recently that the government would have to find a new company to take over from Sime Darby. Up to now, he had no idea who that would be.

Without the undersea cable link, it would be meaningless to embark on the development of so many hydro dams in Sarawak as it is unlikely that Sarawak could find energy-intensive industries within a short period of time to take up all the available energy, after the start of the proposed smelter plants in Bintulu.

“It does look things may slow down a little,” industry sources said, adding that “the planned projects will go on, perhaps on a re-scheduled implementation plan.”



<http://www.malaysiakini.com/print.php?c=news&id=85627>

Injunction obtained against eviction from Bakun area

Tony Thien | Jul 19, 08 7:07pm

The Kayan community of Uma Apan have obtained an interim injunction to set aside an eviction order to vacate the land on which they have near the site of the Bakun dam.

The ex-parte injunction was obtained late yesterday afternoon in the chambers of Bintulu High Court judge Sangau Gunting, pending hearing in three weeks.

The land and survey department had obtained the eviction order in October last year and had enforced it with the help of the police by demolishing houses and farms of the Kayan community.

The authorities have been served with the interim court order.

Counsel Paul Rajah who is representing 41 Kayan families told Malaysiakini that his clients had filed a writ of summons against the authorities in November last year, claiming native customary rights (NCR) over the land which they have settled on for more than century.

Contrary to claims by state land development minister Dr James Masing, no compensation had been forthcoming to the Kayan families, added Rajah.

Two other lawyers - See Chee How and Baru Bain - are acting for other affected villagers in the Bakun Dam area are also applying to set aside the eviction notice.

Compensation sought

See told Malaysiakini that the question of compensation for the number of houses and farms demolished would be raised in court and the villagers would seek compensation from the authorities.

Representatives from the Uma Juman village affected by demolition has lodged a police report on the matter and has sought police protection from further encroachment.

In total, five Orang Ulu settlements, including Uma Apan and Kampung Sambop, are affected by the eviction order.

It is learnt that they are occupying part of the land now required by the government for the construction of the overhead transmission cables for Bakun dam as well as part of the leased lands granted to two plantation companies - Shin Yang and Ekran Plantation.

Meanwhile, a few hundred natives, mainly from the ethnic Kayan and Kenyah tribes would be holding a special meeting today in Kampung Sambop to discuss issues relating to the eviction orders.

Their lawyers, including PKR state assemblyperson Dominique Ng, will be present.

<http://www.malaysiakini.com/print.php?c=news&id=86432>

Dam may affect Unesco heritage listing

Jul 23, 08 1:37pm



Sarawak's plan to build a hydroelectric dam threatens the World Heritage status of the Mulu National Park, environmentalists warned today.

sarawak dam project 050708 tutoh dam Parts of Mulu National Park in Sarawak would be flooded if the proposed 220 megawatt hydropower plant on the Tutoh river went ahead, said Swiss-based group the Bruno Manser Fund (BMF).

Activists warned the damage would change the boundary of the park, which could see its World Heritage status revoked under the regulations of the UN cultural body Unesco.

The sensitive 52,864 hectare park contains some 3,500 species of plants with 109 species of palms, according to the Unesco website.



The park is dominated by Gunung Mulu, a 2,377 metre high sandstone pinnacle containing at least 295km of explored caves that are home to millions of cave swiftlets and bats, it said.

gurmit singh "One of the requirements under the heritage site listing is that no boundary changes should be done in the area without prior consent from Unesco," said Gurmit Singh, chairman of the Centre for Environment, Technology and Development Malaysia.

"It has asked the Malaysian government to clarify this but they have not received a reply so far and it has been a month," he said.

"If there is a change without consent... then Unesco can revoke the heritage site listing for the park."

joseph salang anak gandum 00 Deputy Energy, Water and Communications Minister Joseph Salang Gandum said the proposed Tutoh dam by state energy firm Sarawak Energy Berhad was "necessary to meet energy demands in the state", according to the Star daily.

But BMF said ethnic groups who live in the national park would have to be relocated if the project went ahead.

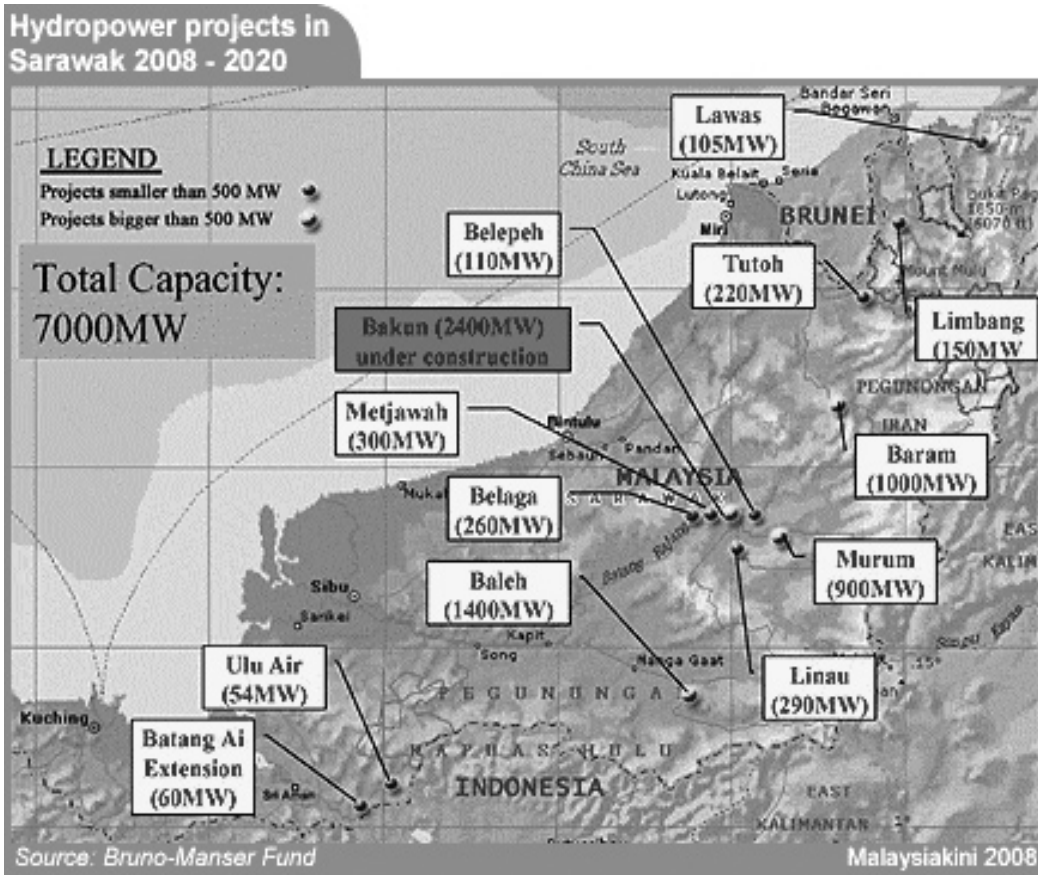
"If these plans were to be realised, several thousand natives would lose their traditional lands in the Bornean rainforest and would have to be relocated," it said in a statement.

12 new dams



The Tutoh dam is part of plans for 12 new hydroelectric projects in Sarawak and with the 2,400 megawatt Bakun Dam project, will increase the state's total power generating capacity by 600 percent in 2020.

<http://www.malaysiakini.com/print.php?c=news&id=86613>



SUHAKAM'S REPORT ON THE MHP AND ITS IMPACT TOWARDS THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS OF THE AFFECTED INDIGENOUS PEOPLES IN SARAWAK

Currently, the state's power production of 933 megawatts is enough to meet its daily needs, but the government plans to expand the aluminium smelting industry which will need more power, the paper reported.

Power from the 12 new hydroelectric projects will meet this increased demand, with excess output transferred to peninsular Malaysia to help meet the rest of the country's energy needs.

However, environmentalists disagree with the government's forecast.

"The projects... are not sustainable. The current Bakun Dam would be enough for the aluminium smelter the state has planned to build right now," Gurmit said.

"Even if they could generate that much (excess) power, it would be very costly to bring the electricity to peninsular Malaysia via undersea cables."

<http://www.malaysiakini.com/print.php?c=news&id=86613>

The actual beneficiaries

At a press conference held this afternoon, reports Fauwaz Abdul Aziz, Gurmit said it was apparent that the actual beneficiaries targeted by the huge dam project were the aluminium producers and other “energy-guzzling” industries and not the local communities or end-users on the peninsula.

“The people of Sarawak do not need this much energy. The energy-guzzling industries do,” he said.

The issue reflected the “short-sightedness and gaps in the nation’s energy and environmental policies” in the absence of a comprehensive and integrated energy policy, he added.

“It illustrates an energy-planning strategy that is supply-driven and inconsistent with the principles of sustainable development. Malaysia has committed to the Rio Declaration to undertake sustainable development, but there are very little signs of that.

“At the same time, it fails to adequately factor in impending environmental threats such as climate change, which is projected to cause water scarcity and eco-system disruptions.

“It makes little sense to build 12 additional dams since Bakun dam has the capacity to generate three times the amount of energy that is currently consumed by Sarawakians,” he added.

Environmental group Sahabat Alam Malaysia (SAM) policy research officer Azrul Zabidi, meanwhile, said rather than ‘subsidising’ the aluminium and other industries, the government could better benefit the people through the funding of transportation and education projects.

Workers’ advocacy group Tenaganita added that other than the impending displacement of local communities, the latter’s “food security and sovereignty” would also be under threat.

“It is very unjust that indigenous peoples are facing deprivation of what international treaties and covenants have identified and acknowledged as their right to their land,” its program officer Steven Ng told malaysiakini.

Malaysia already faces fierce criticism over the environmental impact of the Bakun dam project in Sarawak, which involves flooding an area the size of Singapore island.

Some 10,000 residents have had to evacuate the project site, including the indigenous Penan tribe, a nomadic people who live off the forests in Borneo.

The plight of the Penan was made famous in the 1990s by environmental activist Bruno Manser, who campaigned to protect their way of life and fend off the loggers. He vanished in 2000, a suspected victim of foul play.

<http://www.malaysiakini.com/print.php?c=news&id=86613>

Conduct studies on dams first

Tony Thien | Jul 26, 08 1:22pm



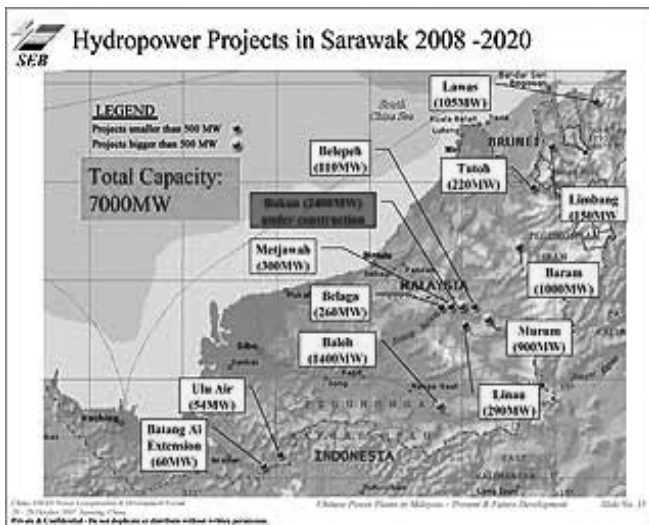
Carry out EIA studies first before building the dams - this was the call from a senior Sarawak PKR leader to the state government today. sarawak dam project 050708 tutoh dam

Nicholas Bawin, the state PKR deputy chief (Dayak section), stressed the importance of carrying out Environmental Impact Assessment (EIA) studies first before going ahead to build a series of 12 hydroelectric dams in Sarawak.

"Many people believe that if we were go to ahead and build the dams across Sarawak, it would not only destroy a lot of the natural riverine systems, take away a big land mass and displace many indigenous people but also will be environmentally disastrous for the state," he told Malaysiakini today.

The PKR leader was commenting on state-owned public-listed Sarawak Energy Berhad (SEB) to build the dams with assistance from the Chinese government.

Land destroyed, people suffer



Malaysiakini learnt that the Three River Gorges Project Corporation of China has already put forward proposals to build the RM3 billion 900MW Marun dam above Bakun, likely to take place after the completion of the Bakun dam in two years' time.

sarawak energy board slide show hydropower project in sarawak 180608Bawin, a former president of the Sarawak Dayak National Union (SDNU), said the experiences with the two existing dams - the 2400MW dam now under construction in Bakun and the 600MW Batang Ai dam - had shown the extent of the land mass affected and the sufferings of the displaced indigenous groups.



"Building 12 new dams to produce 7000MW of electricity means the cutting of many rivers, not to say the extent of the land mass which affects native customary rights (NCR) land and the number of people who would be displaced," he said.

Therefore, it is necessary to undertake socio-economic studies as well as studies on environmental impact on each of the planned hydro dams, he added.

<http://www.malaysiakini.com/print.php?c=news&id=86775>

Bawin also opined that there is no need to build so many dams in Sarawak for economic reasons, if the dams are going to adversely affect so many people and only benefit a few financially.

Meanwhile, well-known environmentalist Gurmit Singh also came out strongly to criticise the proposed Tutoh dam project which he said will affect the Mulu National Park, a Unesco World Heritage Site.

But Sarawak Chief Minister Abdul Taib Mahmud defended his government's decision yesterday, saying the environmentalist does not know what he is taking about as the Tutoh dam is far away from the site and will not affect the Mulu National Park.

Same old tune



Taib said critics are playing 'the same old tune' and are ignorant of Sarawak's conditions and its future direction. He said the world is facing depleting energy resources, particularly fossil fuel.

taib mahmud in shock "The world has been trying to overcome this and someone in Penang comes up to sing the same old tune and criticise Sarawak without knowing what the condition is like here, the chief minister said.

"He (Gurmit Singh) should make a careful study before opening his mouth," Taib lashed back.

Meanwhile, Deputy Chief Minister Alfred Jabu also hit back at those Dayak professionals who have joined PKR recently and are now out to defend NCR lands.

These people, he said, are only keen to become leaders and they are now instigating the people to hate the government by playing up on such issues.

Lately, state government policies, especially on NCR land matters, have been the focus of attention of the opposition PKR, in longhouse meetings and dialogues and that some Dayak leaders, especially Jabu and Masing, have come under increasing criticisms for their failure to address such issues.

In response to Jabu's comments, one of the lawyers defending native customary land rights Baru Bian said the best way is to let the people and the world judge what they do.

"This is a democratic country, we can join whoever we want," he said, adding that everything that the natives have done to oppose what has been described as land grab in Sarawak, that is the taking of NCR land without prior consultation and without compensation, is within the law.

<http://www.malaysiakini.com/print.php?c=news&id=86775>

Sarawak CM irks activist over dams

Tony Thien | Jul 31, 08 7:01pm



A Sarawak social activist - in reference to his Chief Minister Abdul Taib Mahmud's rebuff of environmentalists - said sardonically that the state need not stop with their dam building craze.

See Chee How said that if the state was planning to export electricity from dams - the 12 new dams they plan to build in the next 12 years - they might as well keep building on dams.

bn supreme council mt meeting sapp sabah issue 190608 taib mahmudTaib was quoted in local newspapers as saying that "environmentalists may have their say on the environment but it would be the people in the government who decide how best to charter the course of the state's future and also to further develop its economy".

He said the 12 dams totalling 7,000 MW production capacity collectively will go on ahead "for the sake of economic development despite the criticisms, sometimes destructive, coming from certain activists."

"They voice their concerns but the government decides."

Taib added that he would also not allow a small group to decide on the betterment of the people, and that protests don't solve economic problems like hunger and poverty.

See - a lawyer and state PKR state liaison committee member - told Malaysiakini that initial hydro power studies first carried out by an Australian engineering group under a Colombo Plan Plan Technical Aid in the early 1960s , already identified more than 50 suitable dam sites.

Further studies - including master plan studies - in the 1970s identified dam sites - including Bakun and Murum for immediate implementation. It was recommended that power should be passed to Peninsular Malaysia via an undersea cable.

The state's first hydroelectric dam is at Batang Ai in Sri Aman Division, with a capacity of 600MW. The second 2400MW Bakun Dam is at advanced construction stages and is expected to be completed in two to three years.

The social activist questioned the chief minister's rationale, and said that despite many poverty alleviation projects in rural areas, many remain under the poverty line.

NGO disclosures

See sounded that if foreign NGOs and local activists did not discover and disclose state-owned Sarawak Energy Bhd (SEB)'s plan to develop the 12 hydro-power plants, it would have stayed a secret.

He thanked the Bruno-Manser Fund (BMF) for obtaining SEB presentation material at a briefing in China early this year. It showed plans for the proposed dams.

<http://www.malaysiakini.com/print.php?c=news&id=87076>

The PKR man said that the government should be responsible and transparent, and not keep vital information from the public.

Malaysiakini learnt today that two Chinese companies - Three Gorges Hydro Project Corporation and Sino-Hydro - are competing to bid for the RM3billion 950MW Murum dam, located slightly above Bakun in central Sarawak.

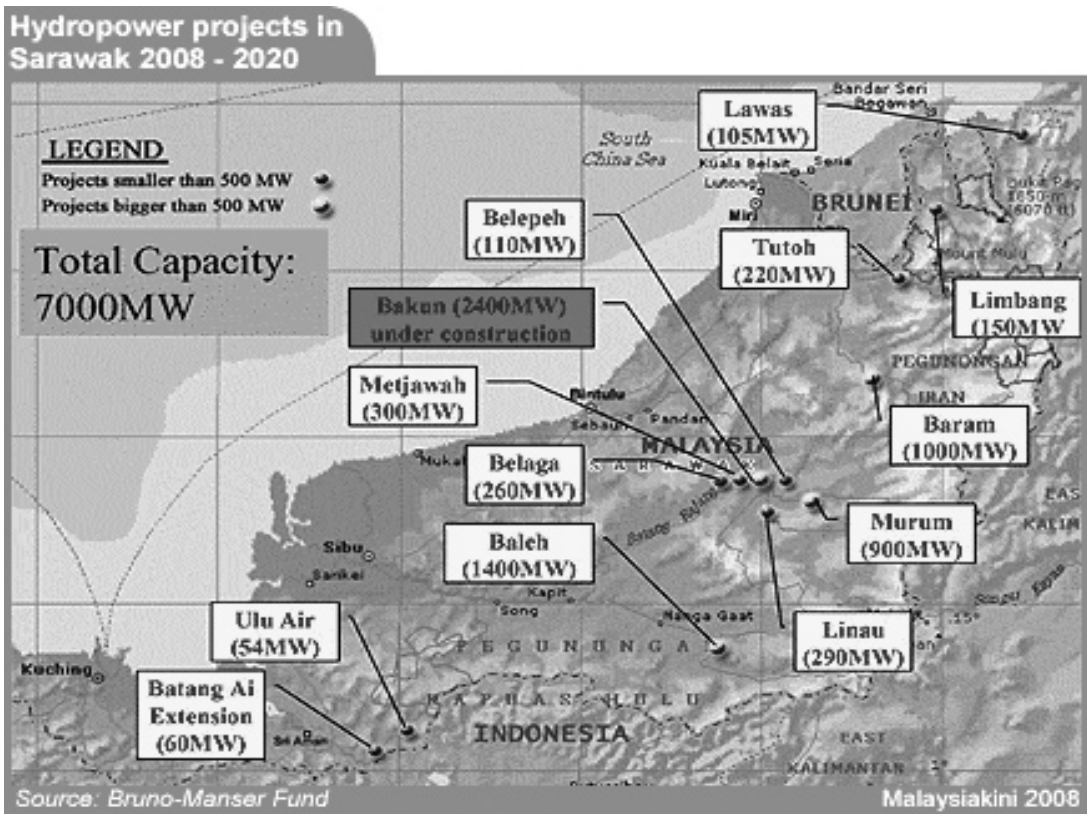
It is further known that officials from both companies are keenly awaiting the state cabinet's final decision on the matter.

Sino-Hydro is already in Sarawak, involved in the construction of the Bakun dam as well as a much smaller dam in Bengoh near Kuching and has teamed up with a local public-listed company Naim Cendera - which has close links to state leaders.

Many countries, especially in the West, are moving away from hydro dams and instead concentrating on enhancing energy efficiency and conservation, See said.

A local leading Dayak activist Nicholas Bawin last week told Malaysiakini that the government should carry out socio-economic and environmental impact assessment studies first before going ahead with dam constructions.

Main concerns are the enormous amount of land mass used which encroach native customary rights lands, communities displaced and reduction of water quality, according to Bawin who is also state PKR state liaison committee deputy chairperson.



<http://www.malaysiakini.com/print.php?c=news&id=87076>

