

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



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EXECUTIVE SUMMARY

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

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

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

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

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

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

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

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

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

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

SUHAKAM'S OBSERVATIONS AND RECOMMENDATIONS

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

Right to Land

Observation:

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

SUHAKAM's Recommendations:

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

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

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

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

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

Observation:

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

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



SUHAKAM's Recommendation:

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

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

Issues on Poverty

Observation:

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

SUHAKAM's Recommendations:

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

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

Issues on Documentation

Observation:

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

SUHAKAM's Recommendation:

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

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

Issues on Education*Observation:*

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

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

SUHAKAM's Recommendation:

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

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

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

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

Issues on Health*Observation:*

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



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

SUHAKAM's Recommendation:

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

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

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

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

State's Duty to Protect the Rights of the Penans

Observation:

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

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

SUHAKAM's Recommendation:

SUHAKAM recommends that in the spirit of ensuring compliance with Government's human rights obligations, the grievances and complaints of the Penans be looked into and protected – in particular their rights to native customary land, to education, employment, documentation and healthcare as well as other rights as enshrined in the Universal Declaration of Human Rights (UDHR).

CONCLUSION

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

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

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

PART 1
SUHAkam'S REPORT

1. INTRODUCTION

I. SUHAKAM'S VISITS AND DIALOGUES IN ULU BELAGA, SARAWAK

On 27 July 2006, the Human Rights Commission of Malaysia (SUHAKAM) received complaints from two Penan headmen, Chief Alung Ju and Chief Matu Tugang from Long¹ Singu and Long Jaik (Jek), Ulu Belaga, Sarawak, respectively. Their complaints pertained to logging, oil palm plantation and reforestation activities by Shin Yang Forestry Sdn. Bhd. (Shin Yang) and their impact on the right to land and the life of the community concerned.

As a response to the complaints, the Economic Social and Cultural Rights Working Group (ECOSOC) together with SUHAKAM Sarawak Office decided to conduct field visits and dialogues with affected Penan members, representatives from Government agencies and the Company as well as NGOs, academicians and concerned individuals.²

SUHAKAM's delegation was led by Datuk Dr. Denison Jayasooria [the Chairperson of the ECOSOC Working Group], Dr. Chiam Heng Keng, Dr. Mohammad Hirman Ritom Abdullah and Tunku Datuk Nazihah Tunku Mohamed Rus.³

THE COMPLAINTS

The complaints made to SUHAKAM's by Chief Alung Ju and Chief Matu Tugang on 27 July 2007, pertained to the effects of logging, oil palm plantation and reforestation activities by Shin Yang on their right to land, their livelihood and survival.

Whilst Chief Alung Ju made a verbal complaint at the SUHAKAM Sarawak Office, Chief Matu Tugang came to the same office with a written complaint, highlighting his dissatisfaction with the oil palm plantation activity by Shin Yang. He alleged that the Company was operating on land that the Penans had inherited from their ancestors. They had cultivated the said land for generations – as early as the 1950s. In his letter of complaint, he also made an appeal to SUHAKAM to assist in ensuring that the land between the Reloh Camp near the Danum River and at upstream of Sungai Jaik, located about 1 kilometre from the Seping riverbank, be reserved for the Penans for rice cultivation and for collecting of forest produce.⁴

ISSUES ADDRESSED BY SUHAKAM

Apart from responding to the complaints made, SUHAKAM also examined whether the issuance of the Licence by the Government to Shin Yang for logging, oil palm plantation and reforestation activities have affected the Penans' economic, social and cultural rights.

¹ The word 'Long' or Lg. is a Kayan term with cognates in the various Orang Ulu Languages. It carries the same meaning as the Malay word 'kuala' which refers to the confluence of two rivers, with the confluence named after the smaller river. Thus, for example, Long Jaik is the confluence of the Jaik with the Seping. See Dr. Khoo Kay Jin's Briefing to SUHAKAM on 'Penan and the EIA for the Shin Yang Forest Plantation' attached as Annexure 3.

² SUHAKAM's programme on the visits and dialogues is attached as Annexure 2

³ SUHAKAM Commissioners were assisted by four SUHAKAM Officers and staff including Rafidah Yahya, Sophian Osman, Wan Mazlan and Mohammad Bin Mail.

⁴ The letter by Chief Matu Tugang is attached as Annexure 1.



OBJECTIVES

SUHAKAM's aims in visiting and holding the dialogues were:

- i) to investigate on the complaints made by affected Penan members and to further observe whether their economic, social and cultural rights were denied as a result of logging, oil palm plantation and reforestation activities;
- ii) to obtain feedback from the relevant Government agencies and the Company itself on the allegations made by the affected Penan members;
- iii) to obtain the views from representatives of NGOs, academicians and concerned individuals on the issues affecting the Penans;
- iv) to recommend to the Government on the possible line of action to address relevant issues.

METHODOLOGIES USED

The following methodologies were used by SUHAKAM:

- i) Field visits to Long Singu and Long Jaik, Ulu Belaga;
- ii) Dialogues with the community concerned, representatives from Government agencies, the Company, as well as NGOs, academicians and individuals concerned with the Penan's rights;
- iii) Written responses from Government agencies and the Company concerned on the issues highlighted at the dialogues;
- iv) Briefings by local and foreign researchers who are familiar with Penan issues; and
- v) Literature review on written materials and secondary data.

SUHAKAM'S FIELD VISITS AND DIALOGUES

SUHAKAM's fact finding activity was fourfold. They include the following:

Site Visits and Dialogues at Affected Penan Villages

SUHAKAM firstly organised site visits and dialogues with the community concerned. These visits and dialogues were organised to obtain greater insight on the concerns of the affected community.

SUHAKAM's visits to Penan villages and dialogues with their residents took place at the Alung Ju and Matu Tugang Longhouses on 18 September 2006. SUHAKAM's dialogues with the Penans were also attended by other Penan headmen whose villages located in Long Luar, Long Tangau, Long Wat, Long Pelutan, Long Peran, Long Tengah and Data Sengelang, were affected by Shin Yang's activities. Apart from the Penan headmen, several members of the Village Security and Development Committee (JKKK) also attended the dialogues.⁵

Dialogue with Representatives from Shin Yang Forestry Sdn. Bhd.

Based on the allegations made by the Penans, SUHAKAM met with the Manager of Shin Yang Oil Palm Plantation, Metannik Camp located in Sungai Jaik, Ulu Belaga on 18 September 2006. Another dialogue with representatives from the Company's headquarters in Miri, Sarawak, was held on 12 October 2006.⁶

5 The proceeding report on SUHAKAM's dialogues with the Penan at the Alung Ju Longhouse in Long Singu and Matu Tugang Longhouse in Long Jaik, Ulu Belaga is in Chapter 4 of this Report.

6 The proceeding report on SUHAKAM's dialogues with representatives from Shin Yang Forestry Sdn. Bhd. is in Chapter 5 of this Report.

The dialogues were held to obtain the Company's feedback on the claims made by the Penans and to ascertain the activities carried out by the company as part of their social responsibility.

Dialogues with Government Agencies

Since the Government is the primary duty bearer to protect the rights of the Penans and was also responsible for the granting of the forest plantation licence to Shin Yang, SUHAKAM found that it was necessary to meet with relevant Government agencies to obtain their feedback on the claims made, as well as grievances and concerns raised by the Penans.

SUHAKAM's dialogues with representatives from Government agencies were held at the district and state level on 19 September and 13 October 2006 respectively. SUHAKAM also met with the Minister in charge of Penan Welfare on 13 October 2006.⁷

Dialogue with NGOs, Academicians and Concerned Individuals

A dialogue with representatives from NGOs, academicians and concerned individuals was held on 14 October 2006.⁸ The Dialogue was held to gain participants perspectives on the issues faced by the Penans in Ulu Belaga.

Apart from the dialogue with NGOs, academicians and concerned individuals, SUHAKAM was also briefed by several local and foreign researchers who have studied on various aspects of the Penans.⁹



SUHAKAM's Meeting with Dato' Sri Abang Haji Abdul Rahman Zohari, the Minister in charge of Penan Welfare.

⁷ The proceeding report of SUHAKAM's dialogues with Government agencies and officials is in Chapter 6 of this Report.

⁸ The proceeding report on SUHAKAM's dialogues with NGOs, academicians and concerned individuals is in Chapter 7 of this Report.

⁹ SUHAKAM was briefed by Dr. Khoo Kay Jin, independent researcher; Mr. Jayl Langub, researcher and currently attached with UNIMAS; and Dr. J. Peter Brosuis, a Professor of Anthropology from University of Georgia, Athens, United States.



II. LOCATION OF BELAGA AND LAND LICENCED (LPF/0018) TO SHIN YANG

LOCATION OF BELAGA, SARAWAK

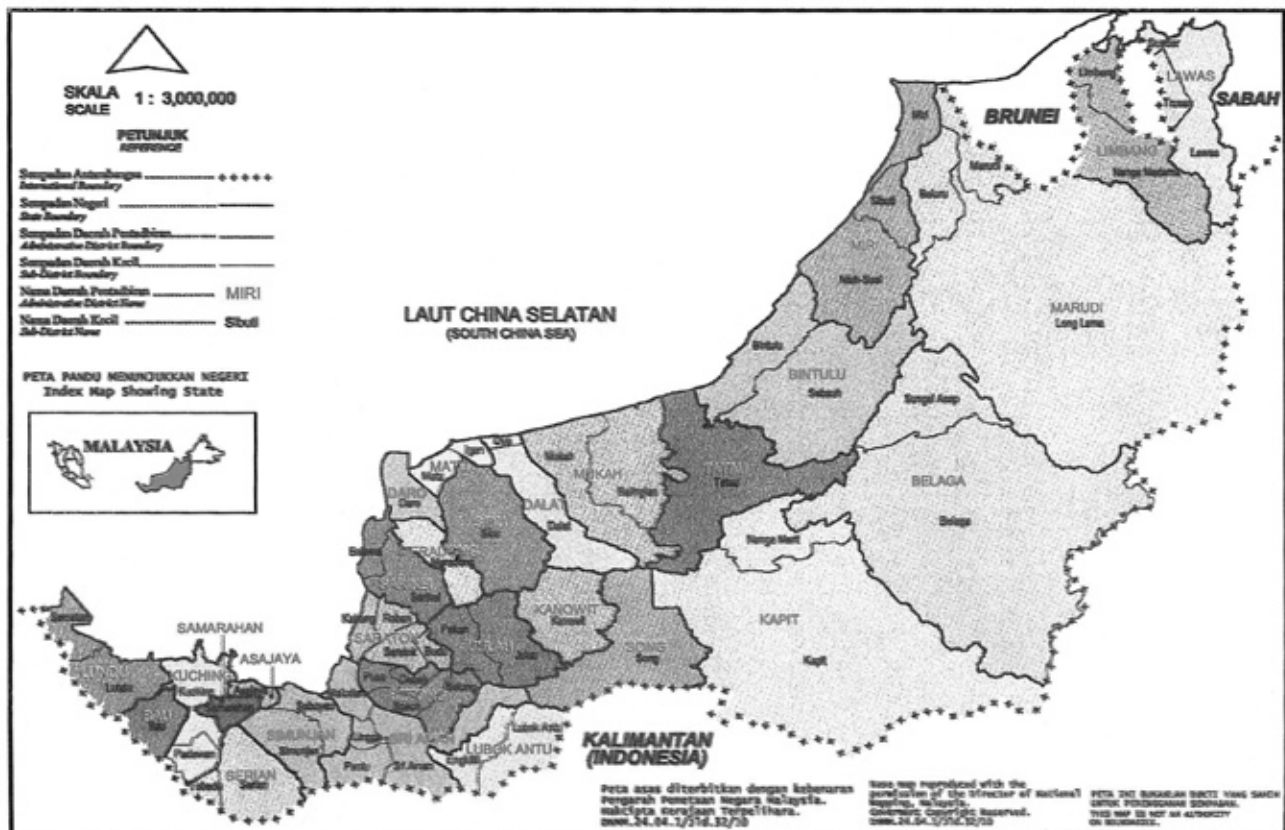
The Belaga District is located in the Upper reaches of the Rajang River. Belaga is neighboured by several districts including Marudi, Bintulu, Tatau and Kapit. The east of Belaga is bordered by Kalimantan, Indonesia. Map 1 shows the location of Belaga, Sarawak.

LOCATION OF LAND LICENCED TO SHIN YANG (LPF/0018)

In 1999, a total of 155,930 hectares (ha.) of land between the Batang Belaga and Sungai Murum in the Belaga District, Kapit Division, Sarawak, was licenced by the Government to Shin Yang under the Licence for Planted Forest (LPF)/0018, commencing from 19 November 1999 to 18 November 2059 (60 years). The land is more than 50 kilometres north of Belaga town in Belaga District, Kapit Division. The Asap Resettlement is about 30 kilometres to the northwest of the site, while the Bakun Hydro Electric Plant (HEP) is about 13 kilometres in the southwestern direction.¹⁰

The northern side of the site is bordered by the oil palm plantations of Samling Plantation Sdn. Bhd. and PASB Plantation Sdn. Bhd. The west side of the site below Sg. Penyuan is bordered by Pusaka-KTS Forest Plantation. Much further to the south of the site is the area for the proposed wildlife sanctuary near Pelagus. There is no other development east of the site. Map 2 shows the general location of the project site under the LPF/0018.¹¹

MAP OF SARAWAK



MAP 1

¹⁰ Extracts from the EIA Report for the proposed Shin Yang Forest Plantation located between Batang Belaga and Sg. Murum, Belaga, Kapit.

¹¹ Ibid.

GENERAL LOCATION OF PROJECT SITE (LPF/0018)



Source: Environmental Impact Assessment. Report for the Proposed Shin Yang Forest Plantation located between Batang Belaga and Sg. Murum, Belaga, Kapit.

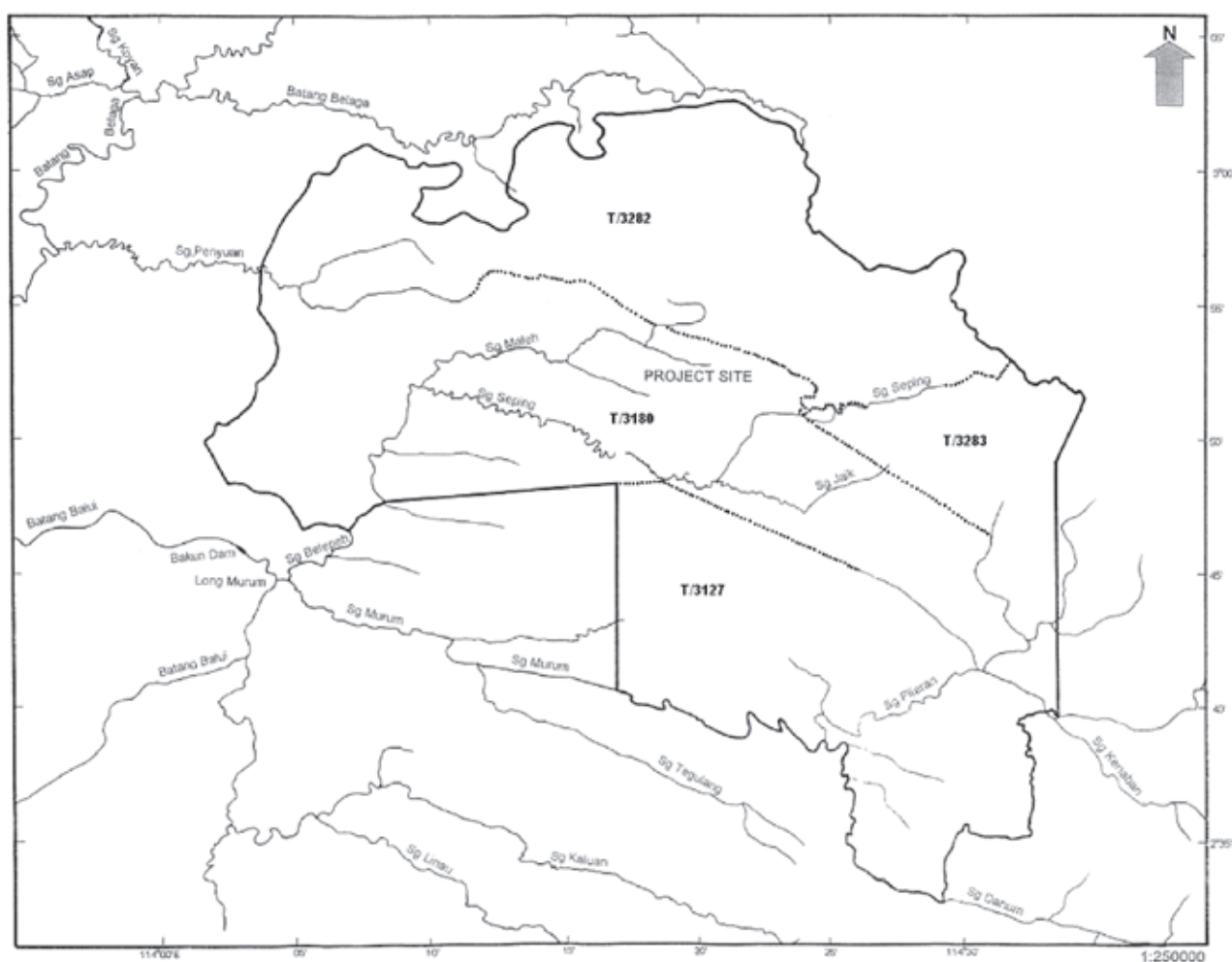
MAP 2

The land under this Licence is further divided into four areas under four logging licences including T/3180, T/3127, T/3282 and T/3283. Map 3 shows the division of four logging licences under LPF/0018.¹²

¹² Ibid.



DIVISION OF FOUR LOGGING LICENCES UNDER LPF/0018



Source: Environmental Impact Assessment. Report for the Proposed Shin Yang Forest Plantation located between Batang Belaga and Sg. Murum, Belaga, Kapit

MAP 3

Out of the total size of land licenced, only about 60% or 93,560 h.a is plantable, while the rest would be preserved in situ as buffer zone or greenbelts.¹³

The project development is divided into two parts, namely for the oil palm plantation and forest plantation.

The forest plantation will initially take up 80% of plantable area, while oil palm plantation will occupy the remaining 20%. The oil palm plantation has three phases of development which would be carried out in three years. At the end of the first cycle of 25 years, the area would be replanted with selected forest trees.

The forest plantation will be developed in 10 phases over 10 years. During the 10-year phase, existing forest trees would be logged in stages, while at the same time replanting of certain tree species would commence to replace felled trees. Harvesting of planted trees would commence on the 10th year, after which, a new cycle of replanting will be carried out for the next 10 years.¹⁴

¹³ Ibid.

¹⁴ Ibid.

III. THE PENANS IN SARAWAK

The Penans are recognised as one of the indigenous communities in Sarawak as provided in the Sarawak Interpretation Ordinance (Cap. 1 1958 Ed.). According to the schedule under Section 3 of the Interpretation Ordinance (Cap. 1 1958 Ed.), ethnic groups, and the admixture of them with one another, that are considered to be indigenous groups in Sarawak include Bukitan; Bisayah; Dusun; Dayak (Laut / Darat); Kedayan; Kalabit; Kayan; Kenyah (including Sabup and Sipeng); Kajang (including Sekapan, Kejaman, Lahanan, Punan, Tanjong, Kanowit); Lugat; Lisum; Melayu; Melanau; Murut; Penan; Sian; Tagal; Tabun; and Ukit.

In 2006, it was estimated that the total population of the Penan in Sarawak was 15,485¹⁵ persons. Table 1 shows the main Penan population distribution in Sarawak for 2006.

TABLE 1: MAIN PENAN POPULATION DISTRIBUTION, 2006

No	Division	District	No. of Settlement	No. of Population
1.	Miri	Baram	69	9,223
		Miri (Suai-Niah)	5	1,637
3.	Bintulu	Bintulu	8	1,187
4.	Limbang	Limbang	10	397
5.	Belaga	Belaga	20	3,041
	TOTAL		112	15,485

Source: Sarawak State Planning Unit based on data from Miri, Kapit, Limbang and Bintulu Resident and District Office, 2006

The main Penan population can be further divided into 26 sub-groups based on their location. Table 2 shows the distribution of Penan sub-grouping.

¹⁵ Data forwarded by the State Planning Unit, Sarawak on its feedback to SUHAKAM with regards to the issues of the Penans in Long Singu and Long Jaik, Ulu Belaga. The data was obtained by SPU from Source: Miri, Kapit, Limbang and Bintulu Resident and District Office.

**TABLE 2: DISTRIBUTION OF PENAN SUB-GROUPING BASED ON CERTAIN CHARACTERISTICS**

Major Group	District	River System	No. of Settlements		Population	
			Settled	Nomadic	Settled	Nomadic
Linau	Belaga	Linau	5	0	698	0
Danum	Belaga	Danum	2	0	286	0
Seping	Belaga	Seping	2	0	225	0
Pleiran	Belaga	Pleiran	4	0	682	0
Urun	Belaga	Belaga	5	0	602	0
Sg. Asap	Belaga	Sg. Asap	2	0	206	0
Lower Tinjar	Baram	Tinjar	5	0	755	0
Upper Tinjar	Baram	Tinjar	5	0	510	0
Pelutan	Baram	Pelutan	3	0	467	0
Lower Akah	Baram	Akah	2	0	419	0
Silat	Baram	Silat	4	0	676	0
Selaan	Baram	Selaan	1	1	150	234
Selungo	Baram	Selungo	3	0	471	0
Upper Baram	Baram	Baram	2	1	680	85
Upper Akah	Baram	Akah	2	4	205	621
Lower Akah	Baram	Akah	2	0	419	0
Patah	Baram	Patah	4	2	324	228
Apoh	Baram	Apoh	2	0	331	0
Lower Apoh	Baram	Apoh	2	0	456	0
Layun	Baram	Layun	5	0	706	0
Mulu	Baram	Melinau	2	0	449	0
Magoh	Baram	Magoh	3	5	229	273
Kebaan	Baram	Kebaan	1	2	45	181
Pa Kelapang	Baram	Kelapang	1	0	81	0
Medihit	Limbang	Limbang	0	5	0	222
Adang	Limbang	Adang	0	5	0	145

Source: SPU based on data obtained by SPU from the Resident and District Office, Limbang, Miri and Kapit, 2002 (Note: classification based on Jayl, Langub, MAIS, 2002)

LOCATION OF PENAN SETTLEMENTS WITHIN LPF/0018

It is estimated that 19% of the total Penan population reside in the interior of Belaga (Ulu Belaga). The Sarawak State Planning Unit (SPU) has identified 20¹⁶ Penan settlements in Belaga. No nomadic Penan group was identified in the area.¹⁷

¹⁶ See written response from the Sarawak State Planning Unit in Annexure 7 of this Report. Table 1 shows the Penan population distribution in Sarawak.

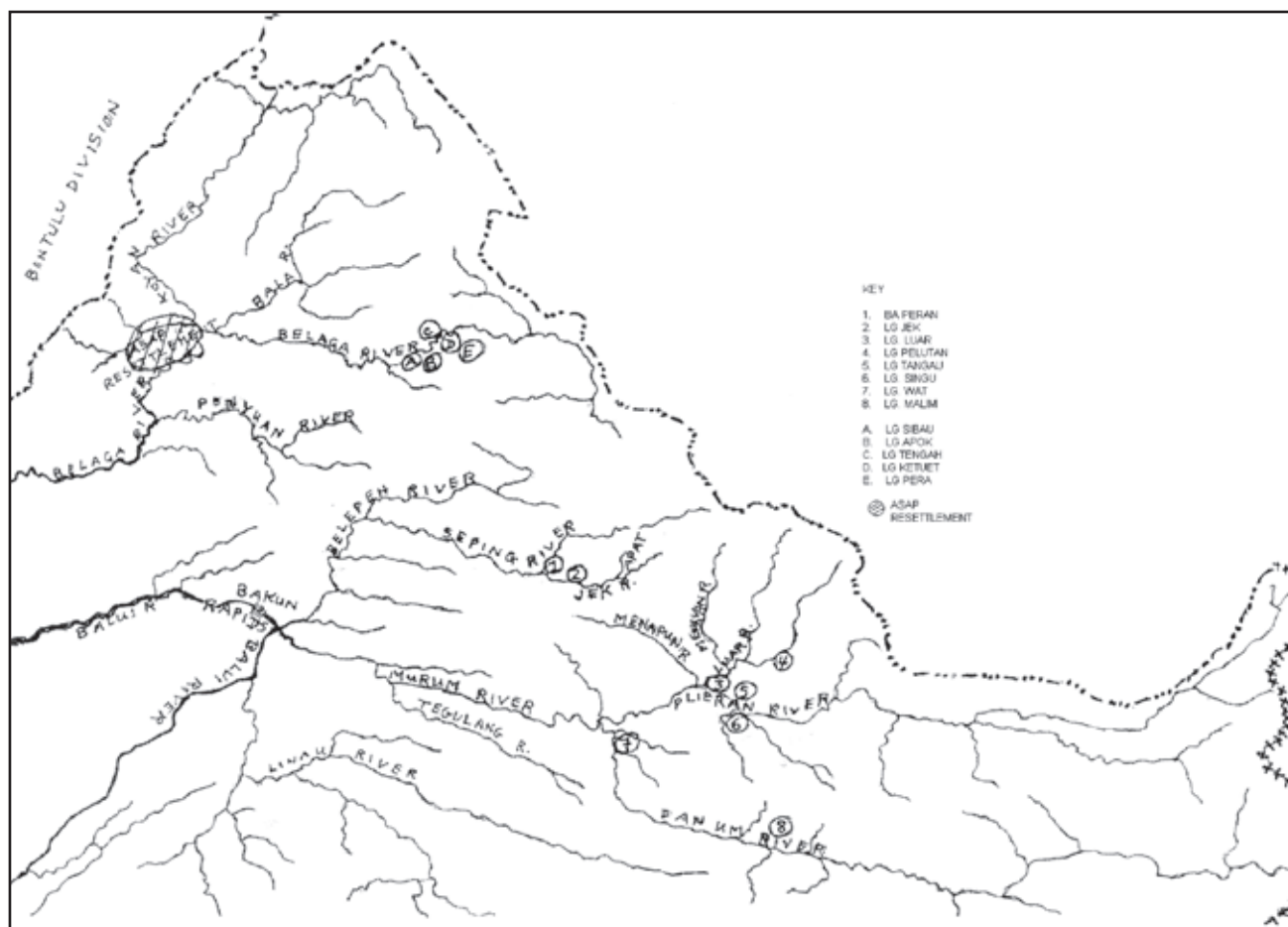
¹⁷ See written response from the Sarawak State Planning Unit in Annexure 7 of this Report. Map (Figure 1.3) shows the location of Penan Settlements in Belaga.

There are 8 Penan settlements which are affected by Shin Yang's logging and oil palm plantation activities under the licence LPF/0018.

Map 4 shows the location of Penan longhouses in Ulu Belaga, affected by logging and oil palm plantation activities in Ulu Belaga.¹⁸

A comparison between Maps 3 and 4 found that the Penan settlements in Long Peran along the Seping River, and Long Jaik along the Jaik River fall within the T/3180 logging licence area. The Penan settlements in Long Luar, Long Pelutan, Long Tangau, Long Singu, Long Wat, and Long Malim, are located either within or at the border of land under the logging licence T/3127.

LOCATION OF 8 PENAN SETTLEMENTS IN THE SEPING, PLEIRAN AND DANUM AND 5 PENAN SETTLEMENTS IN THE UPPER BELAGA RIVER



Source: Mr. Jayl Langub, Researcher from UNIMAS

MAP 4

COMPOSITION OF PENAN VILLAGES AFFECTED BY SHIN YANG'S ACTIVITIES

Table 3 shows the number of apartments/doors and population size of each longhouse affected by Shin Yang's oil palm plantation.

¹⁸ Map sourced from Mr. Jayl Langub, Researcher, UNIMAS

**TABLE 3: PENAN LONGHOUSES AFFECTED BY SHIN YANG'S OIL PALM PLANTATION**

	LOCATION OF LONGHOUSE	NO. OF LONGHOUSE	NO. OF DOOR PER LONGHOUSE	POPULATION
1.	Long Peran	1	21	103
2.	Long Jaik (Jek)	1	25	122
3.	Long Luar	1	56	159
4.	Long Tangau	1	21	97
5.	Long Singu	1	46	194
6.	Long Pelutan	1	22	99
7.	Long Wat	1	48	233
8.	Long Mallim	1	27	153
	TOTAL	8	260	1,160

Source: Belaga District Office, 2000

BACKGROUND ON THE PENAN LIFESTYLE

The Penan community used to be nomadic. However, a majority of them have adopted a more settled lifestyle since the late 1950s and early 1960s. In 2006, it was estimated that the total number of nomadic Penans was 458¹⁹ persons and they were unequally divided into 9 groups. These groups could be found in the headwaters of Tutoh and Magoh river system of the Baram District.²⁰ Some of the settled Penans, like the Penan community in Ulu Niah in Miri for instance had adapted the modern way of life.

The settled Penans, including those in Ulu Belaga, have started to cultivate rice and vegetable farming on a small scale. Land that is actively used by the Penans for cultivation is called temuda.

In addition to small scale cultivation, the Penans in Ulu Belaga still forage in the jungle for wild game, fruits and vegetables, especially when cultivated farms yield poor harvest.²¹

For the Penans, the foraging activity would establish ownership and stewardship of the forest. The Penans had created the term tana mengurip which labels their foraging area, including areas where they live and survive on. These foraging areas would be identified through natural boundaries, which include watersheds, mountains and landmarks. These boundaries are called saang tana. Each group of Penans has their own foraging area which is passed down from one generation to another.²²

They have also established a strategy known as molong which means to lay claim on a particular resource. Therefore, when a person molong, for instance a fruit tree, he is then responsible to ensure proper management of that fruit tree.²³

¹⁹ Source: Sarawak State Planning Unit based on data given to them by the Miri Resident Office.

²⁰ Source: Sarawak State Planning Unit

²¹ Source: "Profile of Five Penan Longhouses" by Jayl Langub, UNIMAS lecturer, and formerly attached to the Majlis Adat Istiadat under the Chief Minister's Department. This paper was presented at the Workshop on Community Profiles of Ethnic Minorities in Sarawak held on 26-27 May 2000 at the Centre of Modern Management, Kuching, Sarawak.

²² Source: "The Socio-Economic conditions of the Penan of Sarawak: A Briefing to the Poverty Sub-Committee of the Majlis Perunding Ekonomi Negara II" by Mr. Jayl Langub, who was attached with the Majlis Adat Istiadat under the Chief Minister's Department. This paper was presented to the Committee in Putrajaya, on 17 February 2000.

²³ Ibid.

Apart from domestic use, the Penan obtains products from the jungle for trading. The Penan trade with their Kayan, Kenyah and Berawan neighbours. Barter products include mats and baskets, blowpipes and the Parang, which are produced by Penan members.

IV. ISSUES ARISING FROM THE COMMENCEMENT OF LOGGING AND OIL PALM PLANTATION ACTIVITIES UNDER LPF/0018

The commencement of logging and oil palm plantation activities by Shin Yang on land the Penans claim as their ancestral land and without the Penans' consent, was seen as encroachment on their native land.

For the Penans, land that has been cultivated, regardless of the size, as well as foraging area which is their main source of livelihood, belongs to them. The Penans feel that since they have stayed or roamed in the Ulu Belaga for generations, their claim to land should be recognised.

However, they were unable to protect their land rights as they were told by the Company that the licence for forest and oil palm plantations was legally obtained by the Company from the State (Government). Therefore, the Penans were told that they do not have the right to claim anything from the Company. As a result, the Penans' claims on ancestral land did not give weight to their demands.

On the other hand, others have claimed that the Penans were opportunists. It was alleged that the Penans would take advantage of logging or oil palm activities by setting up new settlements wherever these activities are in operation. They would then claim for compensation. This allegation was disputed by the Penans who stated that their settlements were established since the 1960s and that they had never moved out from the settlements since then.

When forest and oil palm plantation activities commenced, access to the forest became increasingly difficult for the Penans. Consequently, access to food and basic necessities – once easily obtained from the forest – becomes increasingly limited.

Pollution resulting from logging and oil palm plantation activities has affected the rivers from which the Penans obtain fish and water for drinking, washing and bathing.

With increasingly limited access to food sources to maintain their basic sustenance, the Penans in Ulu Belaga are dragged further into a poverty cycle.

As an indigenous community in Malaysia, they could seek assistance from the State. However, welfare assistance is difficult to obtain as a majority of the Penans do not have the required proper documentation like ICs and BCs.

With regard to health care services, some of the Penans in Ulu Belaga are forced to travel to the Sungai Asap Medical Centre which is about three hours away. This is due to the fact that healthcare services in Ulu Belaga are inadequate. Since the Penans do not possess vehicles, and given their economic situation, they could not afford to charter a vehicle as it could cost them up to RM600 from Ulu Belaga to Sungai Asap. As a result, the Penans often ask assistance from the Company for transportation. To make matters worse, since most of them do not have ICs or BCs, they are, at times, charged twice as much for medical treatment as they are mistaken for foreigners.



While undocumented Penan children are allowed to enroll in schools, they, however, can only stay in schools until up to Form Three and are not allowed to take the Penilaian Menengah Rendah (PMR) exam. In addition to this, undocumented Penan children do not have access to financial assistance. A precondition for obtaining financial assistance is the production of ICs and BCs.

While there seems to be leniency in the enrollment of undocumented Penan children, SUHAKAM found that a significant number of them do not attend school simply because of the distance of the school from their longhouse. For instance, all the children living in the Matu Tugang Longhouse do not go to school as the nearest school is located in Long Urun, which is a two-hour walking distance from the Matu Tugang Longhouse.

Due to their socio-economic situation, the Penans in Ulu Belaga, with their own means, could not afford to travel to the nearest Government Office in Sungai Asap to ask for assistance. As visits from Government officials to their villages were also very seldom, the Penans had to turn to the next viable alternative available to them, which is to seek assistance from the commercial giant, Shin Yang.

2. SUHAKAM'S OBSERVATIONS AND RECOMMENDATIONS

I. INTRODUCTION

SUHAKAM's observations are gathered from the visits and dialogues with affected members of the Penan community, representatives from the relevant company, government agencies, NGOs, academicians and concerned individuals. The following recommendations are made based on the observations:

RIGHT TO LAND

During the dialogues had, SUHAKAM found that participants recognised the existence of the Penans. However, it was further highlighted that most of them settled only after 1958 and did not demonstrate to have cleared land prior to 1958. The Penans only engage in small scale cultivation and still depend on the forest for food and other daily necessities.

The Sarawak Land Code 1958 provides that prior to 1958, natives must demonstrate to have carried out certain methods of activities to establish native customary right (NCR). In particular, section 5 (2); Part II of the Sarawak Land Code 1958 on Native Customary Rights states the following:

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

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

Based on the above, the following observations are made on the legal definition of customary land rights and the methods of establishing native customary land titles.

Definition of Customary Land Rights

The Sarawak Attorney General's Chambers, in its presentation paper to SUHAKAM on 'Native Customary Laws and Native Rights Over Land in Sarawak'²⁴ stated the following:

"The natives of Sarawak may have and in fact do have many customs but these customs to have effect as "customary laws" they must have the 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....."

However, 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 recognised 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'.

²⁴ The presentation paper was presented on 13 December 2001 at the Majlis Dialog bersama SUHAKAM. The presentation paper is attached as Annexure 6.



It should then be noted that the Penan's occupation in the Usun Apau Plateau²⁵ and their way of life can be traced back to 1951. Various national and international researches, journals and publications²⁶ have documented the Penans and their practice of land ownership over the years which has been accepted by that community as a way of establishing land rights. This custom, which has existed before the Sarawak Land Code 1958, should be considered as a basis of State laws.

Methods of Establishing Native Customary Land Title

Section 5(2) of the Sarawak Land Code 1958 outlines the methods by which native customary rights may be acquired. Some of the methods however, do not reflect the traditional method of ownership and stewardship of land which was practiced by the Penans since before the said Land Code. As a result, they are not recognised as having any legal claim to land.

With regard to establishing claim on native customary land titles by way of land cultivation and clearing as well as the use of land for burial sites and right of way, the following observations are made:

Clearing of Land

It has been established that although the Penans have engaged in small scale cultivation, they still depend on the forest for food and other daily necessities, especially when their farms yields poor harvest.

The Penans knowledge on farming remains the same since thirty years ago. As a result, harvest can range from abundant to very poor. Therefore, the Penans would make frequent trips to the forest to look for sago.²⁷

Consequently, the Penans found no reason to clear land as this action might affect their food supply especially during poor harvest.²⁸

Right of Way and Burial Sites

Guy Arnold in his publication on 'Longhouse and Jungle: An expedition to Sarawak' had documented the existence of Penan's paths and burial grounds in the interior of Belaga District.²⁹ The documentation of those paths and burial ground was made based on his expedition to the Usun Apau in 1955. Ulu Belaga forms part of the Usun Apau.

Map 4 shows the route taken by Guy Arnold during his expedition in 1955. The Map also shows the existence of Penan paths and burial sites within the Usun Apau.³⁰

25 The Usun Apau is an old volcanic plateau at the head-waters of the Rajang, Sarawak's largest river. The Usun Apau plateau includes Ulu Belaga. See definition by Guy Arnold at [http://links.jstor.org/sici?sici=0016-7398\(195706\)123%3A2%3C167%3ATUAP%3E2.0.CO%3B2-O](http://links.jstor.org/sici?sici=0016-7398(195706)123%3A2%3C167%3ATUAP%3E2.0.CO%3B2-O)

26 Among the journals and publications on the Penan include Nomadic Penan in the Upper Rejang by Guy Arnold; "Some Kenyah/Penan Relationships" in T. Harrison (ed) The Peoples of Sarawak Kuching: Adaptation to a settled life by the P[e]nan of Belaga Subdistrict" by Jayl Langub in the Sarawak Museum Journal 22(43):295-301.

27 Profile of Five Penan Longhouses by Jayl Langub.

28 Additionally, Guy Arnold in his publication entitled "Longhouse and Jungle: An Expedition to Sarawak" (1959; p. 49) which was based on his expedition to the Usun Apau in 1955 or better known as 'The Oxford Expedition' stated the following:

"..... Lian acted as interpreter and after exchanging greetings and telling them why I had come I asked whether they would be prepared to work for the expedition. They were willing to make huts for us, but they were not prepared to help to cut the clearing for the airdrop. They were emphatic about this, saying that working under the sun's rays made them ill. All the Penans avoided the sun when they could."

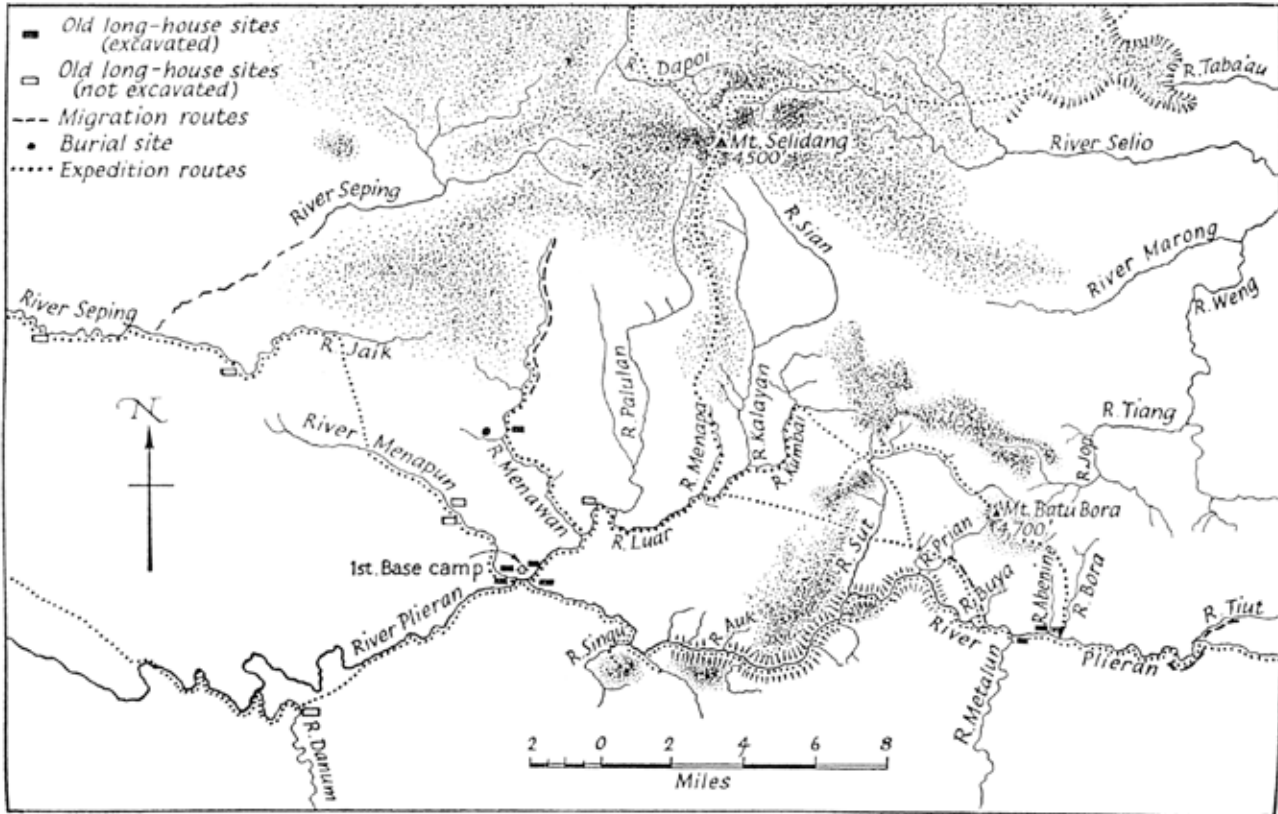
29 Guy Arnold in his publication entitled "Longhouse and Jungle. And Expedition to Sarawak" (1959, p.99) said,

"I had long talks with him (Chief Tama Tingang, the Headman of the Luar Penan settlement) about the Penan paths and he told me the routes he thought I should take on the various journeys that lay ahead of us. He had worked for Shell geologists' expedition in 1954; he said they had used a compass and gone through round and round in circles and he could not think why they did not use the Penan paths."

30 Guy Arnold's map also shows the Penan migration routes. It should be noted that although the Penans moved from one river system to another, they have never moved out from the Usun Apau. See Annexure 4 on "Briefing to SUHAKAM on Various Issues raised by the Penan of Seping, Pleiran and Danum Rivers, and also the 5 villages of Penans in Upper Belaga River" By Jayl Langub, p.42

This paths and sites are in line with provisions under section 5(2)d and 5(2)e of the Sarawak Land Code 1958. Despite those evidence, there is no indication that these areas were excluded from logging and oil palm plantation activities.

THE PLEIRAN RIVER: LONGHOUSE SITES FOUND DURING THE OXFORD EXPEDITION 1955



Source: 'Longhouse and Jungle. An Expedition to Sarawak' (1959), by Guy Arnold, page 122

MAP 4

Legal Provisions that Increase Vulnerability of the Penans and other Indigenous Communities

Besides having their customs and traditional practices ignored, the vulnerability of indigenous communities is heightened as NCR titles can be easily extinguished by section 5(3) of the Sarawak Land Code 1958. This section states that 'any native customary right may be extinguished by direction issued by the Minister and the land under such rights shall revert to the Government'.

Although it is provided that compensation shall be paid to those affected from extinguishment of NCR Land – with the condition that the claim for compensation is made within 60 days of the order – communities such as the Penans may not have the adequate facilities and resources to make claims within the stipulated time.

SUHAKAM's Recommendation

SUHAKAM recommends that the Sarawak Land Code 1958, in particular, section 5(2) regarding Native Customary Rights, be amended to take into consideration the unique custom of the Penans in ownership and stewardship of land.



In addition, SUHAKAM recommends that the Government look into the land claims by the Penans as there is documentation of burial sites and Penan paths which fall under section 5(2 d & e) of the Sarawak Land Code 1958.

It is also recommended that the Government review the provisions under section 5(3) of the Land Code 1958 that allows the extinguishment of NCR land which increases the indigenous community's vulnerability, in particular, on their right to land.

ENVIRONMENTAL IMPACT ASSESSMENT (EIA) REPORT ON THE EXISTENCE OF PENANS IN LICENCED AREA LPF/0018

Section 11A(1) of the Natural Resources and Environment Ordinance stipulates the statutory requirement for Environmental Impact Assessment (EIA) for development activities having impacts on the environment. Those activities subjected to EIA requirement are named as 'Prescribed Activities'.³¹

Shin Yang's plantation activity in Ulu Belaga comes under the prescribed activity 7 of the First Schedule of the EIA under "Development of agricultural estate or plantations of an area exceeding 500 hectares from land under secondary or primary forest". Shin Yang was required to prepare an EIA Report to assess the possible impact of their activities on the people and environment in the area.³² The 'EIA Report for the Proposed Shin Yang Forest Plantation Located between Batang Belaga and Sungai Murum, Belaga, Kapit' was prepared by a consultant³³ approved by the Government.

Paragraph two of item 2.2 in Chapter 2 of the 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) downstram 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 Resettlement.

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

Similarly, paragraph 21 of the Executive Summary of the same EIA Report states that:

In terms of local settlement within the site, there was an illegal 15-door Kenyah Longhouse at lower Sg. Belepeh which had already been abandoned. It was built earlier probably taking advantage of the logging activities then. At lower Sg. Jaik, there were some remnants of a small former Punan settlement. The Punan people had already migrated to other place long ago. There were no villages of longhouses within or near the project site. The nearest community was the Asap Resettlement about 30 km northwest from the site.

31 See NREB website at <http://www.nreb.gov.my/cgi-bin/cdsp.cgi?f=187> . See also para 1.6 of the EIA Report for the Proposed Shin Yang Forest Plantation Located Between Batang Belaga and Sg. Murum in Belaga, Kapit, p.1-5

32 According to H.K. Bong, the Manager of JB Agriculture Management Service, the EIA consultant, in his letter to SUHAKAM dated 9 November 2006, said that the methods used for the survey include field visits and interviews with local communities. They had found no evidence of human inhabitation in the area licenced under LPF/0018, except for remnants of old longhouses and banana and bamboo bushes which indicated previous short term occupation. The logging people who were there at that time confirmed that there was not existing human inhabitation.

33 The EIA report was prepared by JB Agriculture Management Services from Bintulu, in association with the GT & Associate Consultancy from Miri, Sarawak

Contradiction between EIA Findings and Penans Claims

The statement of the EIA was disputed by affected Penans, and a number of sources seem to support the Penan's claims that their settlements were already at their current locations during the period of survey conducted by the relevant EIA consultants in late 1999. Literature evidences also suggest that they had never moved away from the main river system in the Ulu Belaga.

For instance, data obtained from the Belaga District Office below shows the documentation of date of appointment of 7 Penan headmen and the location of their longhouses. Table 4 shows the name, date of appointment and jurisdiction of some Penan headmen whose villages are affected by the Company, Shin Yang's activities.

During its fact finding activity, SUHAKAM found that as of 18 September 2006, all 7 headmen and longhouses were at the same locations as documented by the said District Office. It could, therefore, be implied that during the survey by the consultants, the villages were already at their current locations.

TABLE 4: DATE OF APPOINTMENT AND JURISDICTION OF SOME PENAN HEADMEN

	NAME	DATE OF APPOINTMENT	JURISDICTION
1.	Abok Jalong	01.12.2004	Uma Penan, Long Tangau, Belaga
2.	Alung Ju	06.05.1998	Uma Penan, Long Singu, Belaga
3.	Asan Jalong	29.07.1999	Uma Penan, Long Malim, Sg. Murum, Belaga
4.	Luhai Ayup	01.01.1986	Uma Penan, Long Luar, Sg. Belaga
5.	Madai Salo (Salok)	01.10.1985	Uma Penan, Long Luar, Sg. Pleiran
6.	Pinang Bo	06.05.1998	Uma Penan, Long Wat, Sg. Murum
7.	Tugang Sugun ⁿ	01.01.1986	Uma Penan, Long Jaik, Sg. Seping

^{Note} The late Tugang Sugun was the previous headman of the current Matu Tugang Longhouse. Chief Matu Tugang is the son of the late Tugang Sugun

Source: Extracts of Belaga District Office website at http://www.belagado.sarawak.gov.my/Ketua_Masyarakat.html

Additionally, Guy Arnold in his publication entitled 'Longhouse and Jungle: An Expedition to Sarawak'³⁴ documented Penan settlements within the Usun Apau, which includes the area in question.

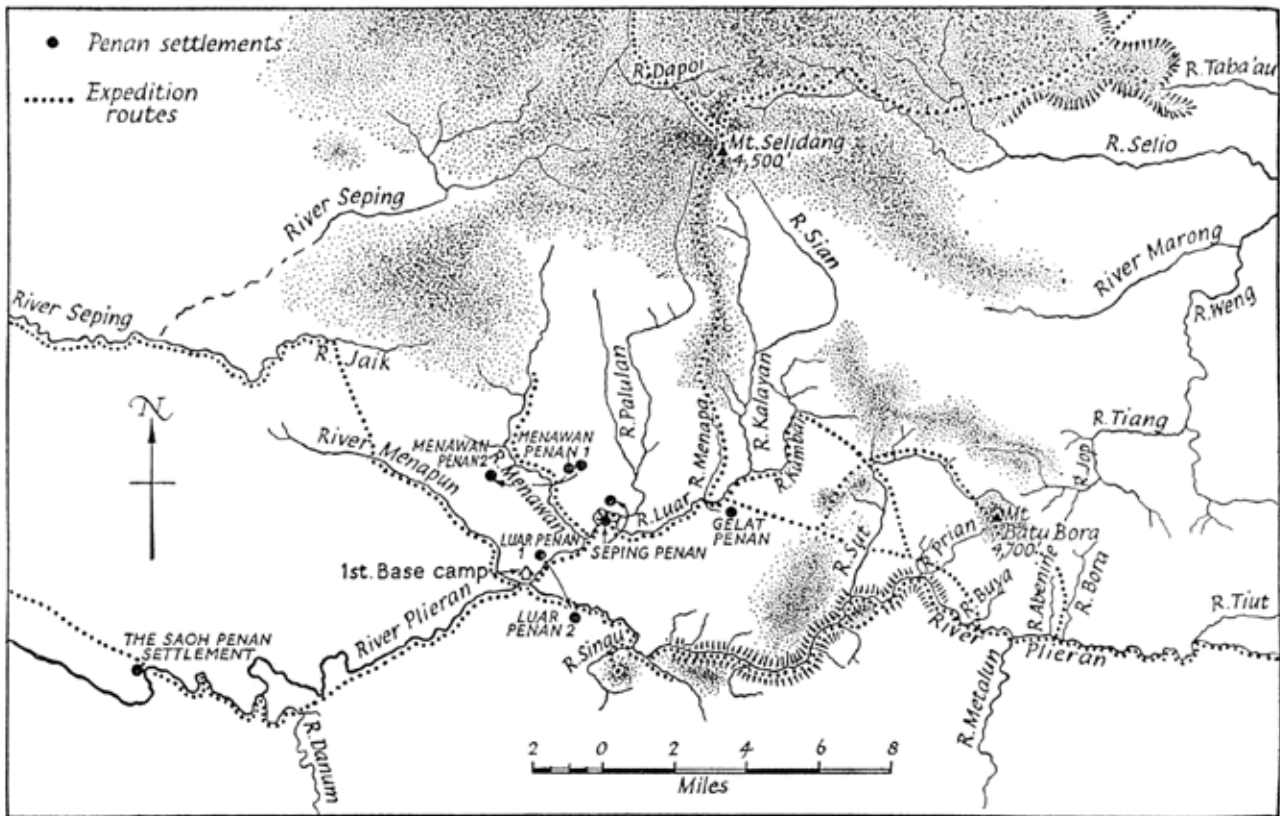
Map 5 indicates the Penan settlement as documented by Guy Arnold based on his expedition in 1955.

Further, Mr. Jayl Langub, a researcher who has been involved with the Penan issue, emphasised that although the Penans were previously nomadic, their movement was limited from one river system to another within the Usun Apau area.

³⁴ This publication is based on Guy Arnold's expedition in Sarawak, better known as the Oxford Expedition, conducted in 1955



MAP 5: PENAN SETTLEMENTS FOUND DURING THE OXFORD EXPEDITION 1955



Source: 'Longhouse and Jungle. An Expedition to Sarawak' (1959), by Guy Arnold, page 98

Uncertainty in the EIA Findings

The assessment made by the consultants in the EIA Report on the existence of human settlements contains words such as 'probably' and 'believed' which could indicate uncertainty from the part of the Consultants. Moreover, the findings of the EIA are not supported by concrete evidence.

It has to be emphasised that the extent of the adverse impact of logging and oil palm plantation on human beings is sufficient reason for the government/consultants/company to ensure that data collected is precise and supported by evidence that can be verified by others.

The claims of the Penans, when weighed against the findings in the EIA Report submitted to SUHAKAM, seem to be more consistent with the findings of local and international researchers. This proves that the Penans occupied Ulu Belaga long before the relevant EIA. Additionally, other documentation – which are consistent with the Penans' claims - proved that at least 7 concerned longhouses existed within the licenced area during the survey by the Consultants.

SUHAKAM's Recommendation

It is recommended that the Government ensures that only independent consultants, with expertise in the specified area, are appointed in order to ensure greater objectivity and transparency of the EIA report.

It is also recommended that the Government ensures prompt action to verify information presented in EIA reports. This would, at the same time, ensure surveys done by consultants are based on facts rather than assumptions.

As regards the EIA Report on "Proposed Shin Yang Forest Plantation located between Batang Belaga and Sungai Murum, Belaga, Kapit", it is suggested that the NREB further verify the accuracy of the findings and to take measures to make good if the report is found to have misled or misinformed the authority concerned.

If it is found that the Penans were indeed in the Licenced area at the time of the survey by the Consultants of the said EIA Report, the Government should take necessary measures to ensure that the affected Penans are adequately protected and compensated.

ISSUES ON POVERTY

SUHAKAM found that the the Penans in the areas visited were living in deplorable conditions; they had inadequate access to basic needs like nutritious food, healthcare, education, housing, clean and safe drinking water.

It should be noted that the right to a standard of living³⁵ is guaranteed by the Universal Declaration of Human Rights (UDHR).

Whilst some may say that the UDHR does not bind a country, the preamble of the UDHR states that the UDHR has been proclaimed by the General Assembly as a common standard of achievement for all peoples in all nations. Therefore, all States of all countries in the world – even without ratification – are obligated to ensure the progress of the rights – as provided in the UDHR – of all peoples within their respective jurisdiction.



SUHAKAM's Dialogue with the Penans at the Matu Tugang Long House in Long Jaik, Ulu Belaga; There was no electricity supply, so the Community used handmade lanterns for light.

³⁵ Article 25 (1) of the UDHR states the following:
Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.



SUHAKAM's Recommendation

SUHAKAM recommends that these groups of Penans – who are among the hardcore poor in Malaysia – be given adequate assistance to enable them to have a reasonable standard of living as stated in the 9th Malaysia Plan.

More specifically, SUHAKAM recommends:

Poverty Eradication Programmes for the Penans

Given that the Penans are socially and economically disadvantaged, poverty eradication programmes are crucial for their advancement.

Instead of looking upon the Penans as a factor that could delay the Government's target to eradicate hardcore poverty by 2010, poverty alleviation programmes need to be taken up expeditiously and special measures or affirmative action be implemented to ensure that the Penans have access to services that are available to the mainstream society.



SUHAKAM's visit to the Penan Longhouse in Long Singu found that the Community was living in deplorable condition.

Implementation of the Food Basket Programme

Apart from poverty eradication programmes, SUHAKAM recommends the implementation of programmes that enhance access to nutritious food for the Penans in Ulu Belaga, such as the food basket programme.

Increase the Number of Service Centres

Currently, there are two service centres in Ulu Belaga, located in Long Jekitan and Lusong Laku. It is recommended that the number of such service centres be increased to ensure all Penan members have access to necessary services such as registration, information and health care.

Establish SALCRA Scheme for the Penans

The Sarawak Land Consolidation and Rehabilitation Authority (SALCRA)³⁶ scheme is equivalent to the Federal Land Development Authority (FELDA³⁷) Scheme which has been widely established in Peninsular Malaysia. The FELDA in particular has proven to be effective in assisting the economic advancement of the rural community. The same opportunities ought to be extended to the Penans.

Therefore, SUHAKAM strongly recommends that the SALCRA Scheme be extended and run by members of the Penan community to assist them to escape the poverty trap.

Revival of Programmes under the First Malaysia Plan 1966-1970

SUHAKAM recommends the revival of the programmes on rural development once held under the First Malaysia Plan 1966-1970. The Plan's objectives were to promote the welfare of all citizens, and improve the living conditions in rural areas, particularly among low-income groups.

ISSUES ON DOCUMENTATION

SUHAKAM found that a majority of the residents of the Alung Ju and Matu Tugang Longhouses do not have identification cards (ICs) and birth certificates (BCs), while others only had temporary identification slips, which validity was continuously extended by the relevant authorities. SUHAKAM was able to identify the causes of non-documentation of the Penans which include lack of access to registration services; the Penan's inability to pay for fees imposed; unavailability of marriage certificates and parents ICs which are required to apply for their children's BCs; and Penan members mistaken to be foreigners by the authorities.³⁸

SUHAKAM draws attention to Section 3 of the Sarawak Interpretation Ordinance (Cap. 1 1958 Ed.)³⁹, whereby the Penan community is identified as one of the indigenous peoples of Sarawak. It is an undeniable fact that they are citizens of Malaysia as well.

Article 32 of the Draft United Nations Declaration on the Indigenous Peoples states that the Indigenous peoples have the collective right to determine their own citizenship in accordance with their customs and traditions. Indigenous citizenship does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

It is imperative to highlight two major implications of non-documentation. They are:

36 The idea to set up SALCRA came during the Mid-Term Review of the Second Malaysia Plan (1971-1975), when the Government of Sarawak decided to form another statutory body with the objective of developing and managing NCR land. It was thought that development of NCR land is an appropriate strategy to bring about socio-economic development to the rural areas, hence, enabling the participation of rural communities into the mainstream of Sarawak's development. SALCRA was officially established on 1st May 1976, after the Dewan Undangan Negeri Sarawak passed the SALCRA Ordinance, 1976 in March of the same year. The formation of SALCRA was to enable and assist the State Government in achieving the objectives of the New Economic Policy (NEP), particularly concerning the eradication of poverty. See SALCRA website at http://www.salcr.gov.my/salcra%20web/intro_back.html

37 FELDA was established with the purpose to help the government carried out rural land development schemes and to uplift the economic status as well as living standard of the rural community. To date, FELDA has developed approximately 480 new areas totalling 853,313 hectares which became plantation and settlement areas. A total of 104,946 people were chosen as settlers from among the rural poor and landless community. Together with their families, they were resettled in the new settlement. Land development and settlement in the rural areas has now brought economic and social development as well as political stability to the country. See FELDA website at http://www.felda.net.my/felda/english/fel_latarbelakang.asp

38 SUHAKAM was told by the Penan representatives that Penan headmen were authorized by the Government to certify whether a member of their respective longhouse is a Penan or otherwise for the purposes of registration. However, this endorsement is most of the time rejected by the NRD Office. The Penans claimed that the NRD considered applicants as foreigners and certification by headmen carried no weight. See issues raised by Penans in Chapter 4 on the proceeding report on SUHAKAM's visits and dialogues in Long Singu and Long Jaik, Belaga, Sarawak.

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



- Non-documentation does not allow Penan members to assert their political right - namely their right to vote;
- Non-documentation often results in Penan members being excluded from the data which the Government relies on to determine statistics, including the target groups for poverty eradication programmes;

From the dialogues, it was also found that non-documentation has led to inadequate access to education, financial assistance and health care services amongst the Penan members.

However, the discussion with the representatives from the NRD at the Dialogue with State Government agencies on 13 October 2006 brought about positive outcomes when representatives from the NRD agreed that a delegation be deployed to investigate on this issue. The Deputy Sarawak State Secretary supported this move. The agencies however maintained that if the Penans made applications for ICs and BCs, the relevant fees will be imposed as required by their administrative system.

SUHAKAM's Recommendation

SUHAKAM urges the Government to ensure access to vital registration services for the Penan in Ulu Belaga. Given their socio-economic status, it is imperative for the Government to make this service readily available in Penan villages.

It is further recommended that visits by registration officers to rural villages be made more regular and effective. This would ensure that Penan members have adequate access to education, health care services, financial assistance and poverty eradication programmes.

It is also recommended that the Government waive the current fees imposed on Penan members when making applications for ICs and BCs taking into consideration their inability to pay the fees.

Another recommendation is that the Penans in Ulu Belaga be exempted from having to provide their parent's ICs and marriage certificates when procuring the children's birth certificates. Endorsement or certification by their respective headmen should be sufficient.

ISSUES ON EDUCATION

Despite efforts by the Sarawak State Education Department to ensure education is available to all children, including the Penans in Ulu Belaga, the limited resources made available to the Department have hampered their endeavor.

SUHAKAM found that as a result of this, a majority of the children residing in the Alung Ju Longhouse in Long Singu and almost all the children residing in the Matu Tugang Longhouse in Long Jaik, do not attend school. Some of them had dropped out. Among the reasons include distance to schools, non-documentation, inability to pay the fees imposed, unavailability of financial assistance and the lack of transportation to and from schools.

Transportation Problems

Factors which contribute to transportation problems include errant transportation contractors who had failed to show-up for pick up. Another contributing factor is the failure of Penan children themselves to turn up at pick-up points.

Inaccessible Financial Assistance due to Non-Documentation

Financial assistance is often inaccessible due to non-possession of the relevant documents by those who apply for assistance.

Lack of Commitment amongst Teachers

Some participants at SUHAKAM's dialogues questioned the commitment of teachers posted to the interior schools in Belaga. The non-commitment of these teachers affects the quality of education provided to the Penan children.⁴⁰ These teachers should be trained to handle the Penan children, taking into consideration their customs and traditions.

When these issues were highlighted to the Government representatives at SUHAKAM's dialogue in Kuching, Sarawak on 13 October 2006, SUHAKAM was informed that provisions for transportation and financial assistance were available, but, in some cases, these assistance do not reach the targeted groups.

Recognising the limitations, the Government has made efforts to encourage parents to send their children to boarding schools. However, Penan parents are reluctant to part with their children given their children's young age.

In Malaysia, education is given great emphasis by the Government. The Education Act 1996 was amended in 2002 to make primary education compulsory, thereby putting an obligation on parents to ensure that their children receive primary education starting from age 6+. Parents are to ensure that the children remain in primary school for the duration of the compulsory education for 6 years. This 6 year requirement may be completed within five years. Section 29A (4) of the Education Act 1996 further provides for the punishment of parents who fail to do so.⁴¹

SUHAKAM fully supports the amendment to the Education Act 1996. However, putting an obligation on parents to ensure their children attend school must be matched with the Government's duty in ensuring that schools and other education - related facilities are physically and economically accessible and available to all sectors of society.

The General Comment on article 13 the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁴² outlined the core features of providing education for all which includes:

Availability

States are to ensure functioning educational institutions, in sufficient quantity to accommodate the needs of the society. In addition, facilities such as sanitation, safe drinking water, trained teacher

who receive domestically competitive salaries, teaching materials, library, computer facilities and information technology should be provided.

⁴⁰ Some Penan claimed that the teachers posted in their villages were not committed. For instance, one Penan who is currently working for the Government said that during his visit to his village in Long Lamai, Baram, Sarawak he saw teachers playing table tennis (ping pong) outside of a classroom. The Penan children were inside the classroom unattended.

⁴¹ It should be noted that article 28 (a) of the Convention on the Rights of the Child (CRC) says that State Parties to the Convention, such as Malaysia, must recognise every children's right to education and must ensure that this right is realized progressively and equally. However, SUHAKAM notes that Malaysia has made reservation to Article 28 (a) of the CRC.

⁴² SUHAKAM notes that Malaysia is not a State Party to the ICESCR. However, SUHAKAM agrees that to ensure access to education for all, the features set forth by the ICESCR are vital.



Accessibility

States have to ensure education is accessible to all. Three coinciding dimensions which are important to ensure accessibility include:

- *Non-discrimination* – whereby education must be accessible to all with special attention to vulnerable groups;
- *Physical Accessibility* – to ensure that physical educational institutions, including schools, are within safe physical reach. This can either be geographically convenient locations or through modern technology, for instance, distance learning;
- *Economic Accessibility* – education should be affordable to all.

Acceptability

States to ensure that education and the manner that it is provided should conform to the society's needs. This includes relevant, culturally appropriate and of good quality.

Adaptability

Education has to be flexible to ensure it adapts to the dynamic needs of the society. It should also be adaptable to the diverse social and cultural setting that may exist in the society.

SUHAKAM's Recommendation

Translocation of children too young of age to boarding schools may pose a problem as Penan parents, like most parents, may be reluctant to part with their children. It is, therefore, recommended that pre-schools be established in Penan villages to meet the basic education requirement of young children. These pre-schools could be run by the Government or NGOs or done in partnership.

It is also recommended that the Government take immediate action to plan for a primary school system that ensures early education is readily available to the children in the Penan villages. These schools could provide education for children up to primary four, after which, these children would be old enough to be enrolled in boarding schools to complete their primary education.

Affirmative action needs to be formulated and implemented to facilitate the enrolment of Penan children in secondary schools and at tertiary education levels.

Given the socio-economic background of the Penans, it is further recommended that the Government implement affirmative action to ensure enhanced access to financial assistance by the Penans.

SUHAKAM further recommends that the Government strengthen its monitoring system to ensure teachers posted to interior areas such as Ulu Belaga, give their full commitment in educating the children. Other facilities that support an effective learning environment such as teaching materials must be readily made available.⁴³

Consequently, there is the need to ensure teachers posted in such areas are provided with the necessary facilities, such as adequate housing, electricity and clean water supply.

⁴³ Apart from ensuring facilities for the students, the welfare of teachers posted in rural areas should be taken into account. They have to be provided with adequate necessities and amenities during their posting. The same issue was highlighted in SUHAKAM's Report on The Human Rights Approach to the Millennium Development Goals. Goal 2: Achieve Universal Primary Education, pg. 21.

Besides academic facilities, skill related training, which is built on the Penan's current knowledge in agriculture and blacksmithing, could also be provided especially to those who have been unfortunate to miss or fail to complete primary and secondary education.

Education and training on self reliance is also an important aspect to consider when developing a curriculum for the Penans.

ISSUES ON HEALTH

Although SUHAKAM acknowledges that the Sarawak State Health Department is one of the more committed agencies, limited resources allocated to the Department have resulted in insufficient access to health care services in Ulu Belaga.

Government clinics are not available within the area resided by the affected Penan members, while Medical Assistants posted to the villages cannot do much as medical supplies are inadequate. Although there is the Flying Doctor Service (FDS), the frequency of visits, due to several reasons, are irregular. These areas also lack emergency services.

As a result, the Penans are forced to request for transportation assistance from logging companies to take them to the Government medical centre located in Sungai Asap, Belaga which is about a three-hour drive away. This, at the same time, poses a problem when there are health related emergencies amongst the Penans in Ulu Belaga.

In addition, while Penan members, without valid documentation, are allowed to obtain medical treatment in Government clinics and hospitals, they are charged fees as that imposed on foreigners.

It is then imperative to note that the 'right to health' is enshrined in various international human rights instruments, including the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC), which Malaysia is a State Party to.

The UN Committee on Economic, Social and Cultural Rights (CESCR), in particular, states that 'right to health' as enshrined in article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁴⁴ means the right to obtain health care and the underlying determinants of health, which include medical facilities, goods, service as well as conditions pertinent in obtaining the highest attainable standard of health.

The Special Rapporteur on 'The right of everyone to the enjoyment of the highest attainable standard of physical and mental health' states that the right to health has both freedom and entitlement:

Freedom – means everyone's right to be free from discrimination and to non-consensual medical treatment;

Entitlement – means everyone's right to a health protection and care, which also includes the underlying determinants of health.

The Special Rapporteur further explained that right to health contain several important components which include:

⁴⁴ The Committee on Economic, Social and Cultural Rights in its General Comment on article 12 of the ICESCR. SUHAKAM however notes that Malaysia is not a state party to the ICESCR. See also Para. 17 & 18 of the Report of the Special Rapporteur, Paul Hunt on 'The rights of everyone to the enjoyment of the highest attainable standard of physical and mental health' (E/CN.4/2004/49/Add.1).



- Maternal, child and reproductive health;
- Healthy workplace and natural environments';
- The prevention, treatment and control of diseases, including access to essential medicines;
- Access to safe and potable water.

Similar to the salient features to ensure the progress of the right to education, the determinants of right to health include availability, accessibility, acceptability and quality.

From the visits to Long Singu and Long Jaik, SUHAKAM observes that there exist other factors which could negatively affect the health of the Penans. They include:

Poor access to clean water source.

SUHAKAM found that the residents in the Alung Ju Longhouse in Long Singu, depended on a river which was clearly polluted. During SUHAKAM's visit, was a Penan lady was doing her washing; while her young child was bathing in the polluted river.

No Proper Clothing

SUHAKAM's visit to both areas also found that most of the young children did not have any clothes on them. This is a cause for concern as they might be exposed to diseases and infections.



SUHAKAM's visit to the Penan Longhouse in Long Singu, Ulu Belaga, found that a significant number of Penan Children were without proper clothing.

Malnutrition

Some of the Penans in the visited Longhouses, in particular children, were thin, but with swollen abdomen. This could be an indication of malnutrition.⁴⁵

As highlighted by a participant during SUHAKAM's dialogue with NGOs, academicians and concerned individuals, the recent measles epidemic which killed 13 Penan children and an adult indicates malnutrition amongst Penan children as undernourishment increases the risk of fatality amongst measles patients.

In addition, the clearing of forests and setting up of barricades limiting the Penans' access to jungle produce has resulted in reduced food supplies for the community. This has the effect of increasing incidence of malnutrition.

SUHAKAM's Recommendation

From the dialogue with representatives from Shin Yang, SUHAKAM found that the Company was in the midst of setting up a clinic in Ulu Belaga. The Company informed SUHAKAM that the services of the clinic would be made available to the Penans. SUHAKAM feels that the Government as the primary duty bearer could provide the same.

In addition, the number of community health workers need to be increased to meet the health needs of the Penan.

There is also the need for the Government to ensure that the Community affected has adequate access to nutritious food. Awareness programmes on the importance of nutritious food could also be implemented.

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

STATE'S DUTY TO PROTECT THE RIGHTS OF THE PENAN

The human rights law is based on the principle that the State, as the primary duty bearer, is responsible to ensure the respect, protection and fulfillment of the rights of its citizens. The State is required to ensure laws, policies and programmes are formulated and implemented in ways that guarantee and protect the rights of its people. It is also obliged to provide resources, including financial ones, for these purposes.

One of the primary concerns of the indigenous communities pertains is to their right to native land. The Government is chiefly responsible to ensure the right to property is protected. However, this obligation of the State appears to have been transferred to the Company licenced to carry out forest clearing, logging and oil palm plantation activities.

Section 8(2)e states that if any part of the said land is held under and subject to native customary rights, the written consent of the claimant of such rights has to be obtained or written evidence is

⁴⁵ On 17 May 2007, the Malaysian National News Agency (BERNAMA) reported that the measles outbreak in 2005 resulted in 18 deaths which included 17 children. The measles was prevalent among the very young and malnourished children. See BERNAMA article dated 17 May 2007 on Measles Outbreak Mainly From Penan Settlements, Assembly Told at http://www.bernama.com/bernama/v3/news_life.php?id=262461



furnished to the Director to show that such rights have been extinguished under any written law. This provision has placed the responsibility for the determination of NCR in the area on the Licencee, and not on the governmental authorities. This raises a question on whether such transfer of duty is appropriate discharge of the fiduciary duty of the Government as raised in the judgment of the Court of Appeal in the Case of *Kerajaan Negeri Selangor & 3 Ors v. Sagong Bin Tasi & 6 Ors* (2005).⁴⁶

In addition to land issues, the Penans living in the area affected by Shin Yang's logging and plantation activities seemed to have inadequate or no access to basic amenities including health care services, clean water supply and electricity. Instead, the Company claimed to be providing such amenities, which is actually the responsibility of the Government.

In addition to inadequate access to basic amenities, it was found that there is limited active outreach programmes by the Government for the community concerned.

SUHAKAM's Recommendation

The Government is obliged to ensure the right of the indigenous communities towards native land is protected. Hence, the task of resolving NCR claims should be handled by the Government rather than the Company.

In addition, in line with the duties of the State, as enshrined in various international human rights instruments, the Government has to spearhead efforts to ensure availability of basic human needs, such as nutritious food, education, health care, clean and safe drinking water, electricity and other economic, social and cultural related rights.

46 See Annexure 4 of this report on Briefing on Penan and the EIA for the Shin Yang Forest Plantation by Khoo Khay Jin

3. CONCLUSION

Despite being one of the indigenous communities of Malaysia and their predicament being repeatedly highlighted nationally and internationally, the Penans remain one of the most deprived and marginalized communities in Malaysia.

The main issue that seems to surface frequently is on their status to native customary land claims, whereby the Sarawak Land Code 1958 does not recognise the traditional customs and methods of land ownership by the Penans. This has had a negative impact on the Penan community in the past and present and will continue to have a negative impact if the situation is not put right as soon as is possible.

In addition to land issues, it seems that a majority of the Penans in the area are living in extreme poverty. Inadequate physical and economic access to services, facilities and programs to assist their socio-economic progress has further impeded development of this community.

While SUHAKAM recognises that logging and oil palm plantation activities contribute to the country's development, it appears that the Penans do not benefit from this. Rather, logging, oil palm plantation and forestry activities have added constraints on the development of the Penans and has further displaced this community given their distinct economic, social and cultural life.

Although several State Government agencies have made various efforts to address the dilemma of the Penans, the fact that the Penans live in very remote areas has led to the ineffectiveness of these programmes. Based on documentation such as the Sarawak gazette, it seems that efforts to reach the Penans were more intensive in the 1960s and 1970s compared to recent years, despite the fact that Malaysia was a less wealthy country back then.

Hence, as the primary duty bearer to ensure the progress of the rights of its citizens, the Government needs to step up its efforts to reflect the Government's promise of development for all. Ultimately, there is the need for the formulation and implementation of affirmative action to ensure that the Penans are able to secure adequate socio-economic and human rights advancement.

PART 2
REPORT ON SUHAKAM'S VISITS AND DIALOGUES

4. SUHAKAM'S VISITS AND DIALOGUES IN LONG SINGU AND LONG JAIK, BELAGA, SARAWAK

I. INTRODUCTION

SUHAKAM's visits and dialogues in Long Singu and Long Jaik were held on 18 September 2006 following complaints made by two headmen, Chief Alung Ju and Chief Matu Tunggang. The complaints arose from the establishment of logging, oil palm plantation and reforestation activities by Shin Yang and their impact on the economic, social and cultural rights of the affected Penan community.

During the visits, SUHAKAM was assisted by Dr. Khoo Kay Jin, an independent researcher who has worked with the local Penans.

OBJECTIVES

The objectives of the visits and dialogues include:

- to obtain greater insight on the complaints made by both heads of longhouses;
- to observe the progress of the Penans residing in both longhouses in terms of their economic, social and cultural rights.

II. DIALOGUE IN LONG SINGU, BELAGA, SARAWAK

SUHAKAM's dialogue in Long Singu on the morning of 18 September 2006 was held at the Alung Ju Longhouse.

Apart from the residents of the Alung Ju Longhouse, four other heads of longhouses including Chief Madai Salok from Long Luar; Chief Abok Jalong from Long Tangau; Chief Pinang Abok from Long Wat; and Chief Lion Bui from Long Pelutan, were also present at the Dialogue. Their villages were also affected by the logging, oil palm plantation and reforestation by Shin Yang.

The Dialogue began with a welcoming note by Chief Alung Ju. He then informed SUHAKAM's delegation, in brief, on the issues faced by the residents of his Longhouse. This was followed by an introduction by Datuk Dr. Denison Jayasooria, who briefed participants on the objective of the visit to Long Singu. An open dialogue session followed thereafter.

Various issues were highlighted by participants which touched not only on the negative impacts of logging, oil palm plantation and reforestation activities carried out by Shin Yang, but also on other issues pertaining to their economic, social, cultural as well as political rights.

ISSUES RAISED BY PENAN LEADERS WITH REGARD TO LOGGING, OIL PALM PLANTATION AND REFORESTATION ACTIVITIES

Loss of Claim on Land

It was highlighted by Chief Alung Ju that since the commencement of activities by Shin Yang, members of the community have lost their ancestral land. Representatives of Shin Yang had told him that the Company has a valid licence from the State Government to carry out their activities in the area and thus, the Penans did not have any legal claim on the affected land. As such they are not entitled to



demand anything from the Company. His contention was supported by the other Penan headmen who attended the dialogue.

No Prior Consultation

Chief Alung Ju expressed his dissatisfaction that Shin Yang did not consult the heads of longhouses, specifically before commencement of the Company's oil palm plantation activities.

He further explained that previous consultation by the Company was specifically for logging activities and not for oil palm plantation.

Inadequate Amount / No Compensation

The Penan headmen who attended the dialogue felt that the Penan villagers affected were given inadequate compensation. Some alleged that they had not received any compensation at all.

Chief Madai Salok from Long Luar said that when logging activities commenced, he received only RM100 (given only once) from Shin Yang, while families residing in his longhouse were not compensated.

SUHAKAM was further informed that when a sawmill was built in the area, only residents of the longhouse in Long Luar received RM4,000 from the Company, while other longhouses affected by the establishment were not compensated at all.

With regards to oil palm plantation activities, no compensation was received either by the headmen or the residents of all affected longhouses.

No Access to Surrounding Forest Areas

SUHAKAM was informed by Chief Alung Ju that the land licensed to the Company for plantation activities had been fenced and gated and security personnel had been placed. As a result, the Penan villagers were refused access to these areas. He expressed his dissatisfaction on the Company's action since members of the Penan community still rely on the jungle for food.

SUHAKAM was informed by those present that even Government officers were, at times, denied access to certain areas.

Limited Chances of Employment with the Company

SUHAKAM was informed that the Penan villagers affected have limited chances of employment with Shin Yang. There were claims that Shin Yang preferred foreign labour since it is much cheaper.¹ They felt that development, therefore, did not benefit the local community.

¹ SUHAKAM was informed by a member of the Penan community that the usual wage asked by the Penans was RM20 a day while foreign labours would settle for RM10 – RM15 a day.

ISSUES RAISED BY PENAN LEADERS WITH REGARD TO THEIR SOCIO-ECONOMIC STATUS

Issues on Documentation

Undocumented Members of the Penan Community

SUHAKAM was informed that a majority of the Penans residing in Long Singu, Long Luar, Long Tangau, Long Wat and Long Pelutan did not possess identification documents. For instance, only 3 persons from Long Luar and another 3 persons from Long Tangau have Identification Cards (ICs). Some have temporary identification slips, whose validity is continually extended by the relevant local authority.

Lack of Accessibility to Registration Services

SUHAKAM was informed that there is no national registration office in the area. The nearest office is located in Bintulu, which is about three to four hours drive away. Since none of them have vehicles and since traveling cost to Bintulu is about RM 700 per trip, it is difficult for the Penans to register.

As a result, the Penans depended on visits made by registration officers. However, SUHAKAM was informed by Chief Abok Jalong from Long Tangau that since they first settled in the 1970s, registration officers have only visited twice.

Affected Member Mistaken as Foreigners

The Penan headmen who were present informed SUHAKAM that they were given the authority by the Government to certify whether a member of their respective longhouse is a Penan or otherwise for purposes of registration. Chief Alung Ju presented SUHAKAM with his certificate received from the Government which certified him as the headman of Alung Ju Longhouse. However, they explained that when some members of their respective longhouses applied for ICs with an endorsement from the headmen, their applications were often rejected by the Registration Department. They claimed that Officers from the Registration Department considered these applicants as foreigners and that their certificate of authorization carried no weight.

Regulations Imposed to Obtain Birth Certificates

Concerns were also raised by participants on the regulations imposed on members of the Penan Community in order to obtain birth certificates for newborn babies.

As required by the Registration Department, application for birth certificates necessitates documents such as parents' ICs and marriage certificates. Since most Penan families do not have ICs and marriages are solemnised by the head of that longhouse – without any certificate of marriage – applications for birth certificates were difficult.

Application for Birth Certificates Dependant on Visits by the Flying Doctor Service

SUHAKAM was informed that the community depends on the Flying Doctor Service (FDS) to obtain forms to apply for birth certificates.² However, since the frequency of flying doctor visits was reduced following previous air crashes, the interval of each visit, at times, is up to three months.

² During SUHAKAM's dialogue with local government agencies at the Sungai Asap District Office on 19 September 2006, SUHAKAM was informed by Dr. Chin Zin Hing from the MOH that they assists the registration Department to distribute birth certificates application forms to the indigenous communities residing in isolated areas.



SUHAKAM was also informed that, in line with the Department's regulation, unregistered babies who have reached the age of three months are not permitted to register until late registration charges are paid. Given their economic status and the distance of registration office from their villages, the Penan villagers depended on the FDS service for registration forms. Nonetheless, parents of children who were born between the visits and have reached the age of three by the next FDS visit are imposed charges of late registration which they cannot afford to pay.

Issues on Education

Inadequate Access to Education

Participants of the Dialogue said that one of the factors that limit access to education is non-documentation.

They explained that although their children were able to enroll in primary school and were allowed to sit for the Ujian Penilaian Sekolah Rendah (UPSR) examinations, their children could only continue secondary school up to form three and were not allowed to sit for the Penilaian Menengah Rendah (PMR) examinations.

Distance of Schools

It was said that the distance of schools from the Penan settlements was too far. This had contributed to absenteeism amongst Penan students.

Costs Involved in Sending Penan Children to School

Whilst in principle, primary education in Malaysia is free, the ancillary costs associated with sending children to school is not. The community does not have the means to pay for these costs.

Lack of Financial Assistance

Penan children who do not have birth certificates especially those in secondary schools are unable to obtain financial assistance from the Government.

Poor Access to Healthcare Services

SUHAKAM was informed that access to healthcare services was poor. Currently, the Penan community relies on the FDS which visits only certain areas once in a few months. Apart from the FDS, the *Wakil Kesihatan Kampung* (WKK) or village medical assistants help to provide rudimentary care. However, the number of these assistants is inadequate.

SUHAKAM was further informed by a WKK who was present at the dialogue, that medical supply was very limited. Hence, most ill Penan members were often told to visit the hospital in Sungai Asap, Belaga, which takes 3 hours to travel by vehicle at a cost of up to RM600 per trip.

Lack of Welfare Support for Persons with Disabilities

A participant of the dialogue appealed for welfare support for members with disabilities. Although they are aware that this service is provided by the Government, he alleged that this does not reach the Penan in Ulu Belaga.

III. DIALOGUE IN LONG JAIK, BELAGA, SARAWAK

SUHAKAM's dialogue in Long Jaik was also held on 18 September 2006 at Matu Tugang Longhouse.

Besides Chief Matu Tugang and his family, three other Penan headmen including Chief Balan Utung from Long Pra; Chief Labang ubet from Long Tengah; and Chief Paik Awan from Data Sengelang were also present.

The dialogue began with a welcoming note by Chief Matu Tugang followed by a brief introduction by SUHAKAM Commissioner Tunku Datuk Nazihah Tunku Mohamed Rus. An open dialogue session followed thereafter.

The issues raised by those present at the dialogue in Long Jaik, Belaga, were similar to those highlighted during the dialogue at Alung Ju Longhouse in Long Singu, Belaga. The main issues relate to the effect of logging, oil palm plantation and reforestation activities by Shin Yang on their claim to ancestral land, livelihood and survival. They also highlighted issues affecting their economic, social and cultural rights.

ISSUES RAISED BY PENAN LEADERS WITH REGARD TO LOGGING AND OIL PALM PLANTATION ACTIVITIES

Loss of Claim to Land

SUHAKAM was informed by Chief Matu Tugang that he had confronted representatives from Shin Yang to claim compensation on ancestral land encroached by Shin Yang's oil palm plantation. Chief Matu Tugang was told by the Company that the Penans have no legal claim to land hence are not entitled to demand anything from Shin Yang.

No Prior Consultation

Participants of the dialogue said that they were not consulted when Shin Yang's oil palm plantation activities commenced. Similar to the contention made by Chief Alung Ju from Long Singu, they said that a verbal agreement with representatives of the Company was made, but this agreement was solely for logging activities.

They felt that this was unfair since they have stayed there for generations and claimed that several plots of land affected were inherited by them from their forefathers.

They added that before Shin Yang, another logging company operated in the area. However, they said that they did not encounter such problems previously. They said that the previous logging company which operated in the area was very helpful and sensitive to the Penans' needs.

No Access to Surrounding Area

All heads of longhouses who attended the dialogue claimed that they were not granted access to area licenced to Shin Yang. This has affected their source of food.

Development Activities do not Benefit the Penans

A participant at the dialogue felt that development activities carried out were not beneficial to the Penan community. He added that at the beginning of the oil palm plantation activities, the Penans



were informed of the benefits, including employment opportunities. However, this was limited with the excuse that they lacked the necessary skills and experience.

Issues on Compensation

A participant informed SUHAKAM that not all heads of longhouses were given compensation, as only heads of longhouses certified by the Government were compensated. He claimed that this payment, which was based on a verbal agreement with the company, was compensation for logging activities only and not for oil palm plantation.

Promise of Alternative Plots

A participant further added that the Company had promised to give affected Penan families plots of land as part of the compensation. However, they have not been notified of the location and the size of land allotted to them.

ISSUES RAISED WITH REGARDS TO THEIR SOCIO-ECONOMIC STATUS

Undocumented Members of the Penan Community

A large number of the Penans residing in Long Jaik, Long Pra, Long Tengah and Data Sengelang were undocumented. For instance, out of the 122 persons staying in Long Jaik, only 8 have ICs.

The contributing factors of non-documentation include lack of registration services; reliance on FDS for registration; members deemed to be foreigners by authorities and the regulations imposed on affected members given their socio-economic status and way of life.

Issues on Livelihood

SUHAKAM was informed by participants of the dialogue that some Penans were involved in the selling of handicraft and other jungle products. Although this is a good source of income, they felt that they are often cheated as they lack economic knowledge.

While some were involved in selling of handicraft, others opted for employment with Shin Yang. Some participants of the dialogue claimed that the company paid them RM12 a day which they felt was insufficient.

Issue on Adequate Housing

A participant of the dialogue clarified that although the Company had promised 7 acres of land for housing, they were not provided building materials for the longhouse. Hence, it was impossible for the community to move out from their current settlement.

Issues on Education

SUHAKAM was informed that none of the children residing at Matu Tugang Longhouse attended school. The nearest boarding school is located in Long Urun, which is two hours away from Long Jaik. This made it difficult for parents to send their children to school.

In addition, the lack of transportation and the cost involved aggravated this problem.

SUHAKAM was further informed by a participant from Long Urun that some Penan families could only send their children to school when they were older. However, the relevant schools had enrolled these students at the primary levels based on their age. For instance, a child of 10 years of age who had never been to school was automatically enrolled to primary four. As a result, some Penan children were unable to cope and quit school.

Other Issues

Apart from Shin Yang, another Company's activities were also highlighted. The representative from Long Urun highlighted several issues faced by the residents of his longhouse in Long Urun following the establishment of an oil palm plantation by Amanah Saham Sarawak (ASSAR).

About 100,000 hectares of land was converted to oil palm plantation by ASSAR. Part of the land was legally owned by some members of the Penan. However, as a result of the conversion, Penan members were left with inadequate land for hill rice cultivation.

PARTICIPANTS OF THE DIALOGUE WITH THE PENAN REPRESENTATIVES

Dialogue with Penans in Long Singu, Ulu Belaga Sarawak, 18 September 2006

- Chief Alung Ju from Long Singu
- Chief Madai Salok from Long Luar
- Chief Abok Jalong from Long Tangau
- Chief Pinang Abok from Long Wat
- Chief Lion Bui from Long Pelutan
- Residents of the Alung Ju Longhouse
- Dr. Khoo Kay Jin, Independent Researcher

Dialogue with Penans in Long Jaik, Ulu Belaga, Sarawak, 18 September 2006

- Chief Matu Tugang from Long Jaik
- Chief Balan Utung from Long Pra,
- Chief Labang ubet from Long Tengah and
- Chief Paik Awan from Data Sengelang
- Residents of the Matu Tungang Longhouse
- Dr. Khoo Kay Jin, Independent Researcher



5. DIALOGUE WITH SHIN YANG FORESTRY SDN. BHD.

I. INTRODUCTION

As part of its fact finding activities, SUHAKAM organised two meetings with representatives from the Shin Yang Forestry Sdn. Bhd. The first meeting was held on 18 September 2006, with the general manager of Shin Yang's oil palm plantation, Metannik Camp, located in Sungai Jaik. The second meeting was held on 12 October 2006 with several of the Company's representatives at the Company's Headquarters in Miri Sarawak was held on 12 October 2006.

OBJECTIVES

The objectives of the meetings with representatives from Shin Yang were as follows:

- to obtain feedback from representatives of the Company on the issues raised by members of the Penan community;
- to ascertain the efforts taken by the Company to assist members of the Penan community.

II. DIALOGUE AT SHIN YANG'S OIL PALM PLANTATION, METANNIK CAMP, SG. JAIK, BELAGA

At the Meeting, Shin Yang was represented by Mr. Ting Khai Sik, the General Manager of Shin Yang's oil palm plantation, Metannik Camp, located in Sungai Jaik, Belaga, Sarawak.

Mr. Ting Khai Sik informed SUHAKAM that as the manager of the oil palm plantation, Metannik Camp, his knowledge is limited to activities carried out by the Camp. Nonetheless, during the dialogue, he occasionally referred to general initiatives done by Shin Yang for members of the Penan community.

ISSUES DISCUSSED

The issues discussed with Mr. Ting Khai Sik are summarised as follows:

Compensation

Mr. Ting firstly clarified that compensation, commission and assistance given to members of the Penan community is at the Company's own initiative.

With regard to Shin Yang's logging activities, compensation and commission were given to the heads of longhouses and the members of the Village Security and Development Committee or *Jawatankuasa Keselamatan dan Kemajuan Kampung*, (JKKK). The quantum of compensation is based on the agreements signed between the parties involved. He added that compensation was only given once, that is, at the initial stages of Shin Yang's logging activities. No additional compensation was given when Shin Yang's oil palm plantation started since both activities were carried out by the same concessionaire.

In addition to compensation and commission, the relevant heads of longhouses and JKKK were also given monthly allowances. These too were in accordance with agreements signed.

Further, compensation for *temuda* (native customary land) and *pemali* (payment for a ritual propitiation) were also paid to affected Penan vilalges.³ With regard to the *pemali*, he said that the amount was discussed and agreed upon between Shin Yang, the Sarawak Planning Authority (SPA) and relevant village leaders as well as representatives from the Orang Ulu Association. All payments were done at the Sungai Asap District Office, witnessed by a Sarawak Administrative Officer (SAO).

In addition to monetary compensation, Mr. Ting informed SUHAKAM that the Company also reserved land for members of the Penan community who were affected by the establishment of the oil palm plantation. The size of the land reserved for this purpose was not disclosed. However, Mr. Ting clarified that the size of land given was bigger than those given to the indigenous communities affected by the Bakun Dam.

Mr. Ting then pointed out the problems faced by the Company with regards to claims of compensation made by members of the Penan community. They include:

Claims of compensation to land - Some members of the Penan community made claims of compensation to land that was far away from where they resided. For instance, Penan's residing in Long Luar and Long Tangau claimed that the land currently taken up by Shin Yang's Metannik Camp was once their foraging area and therefore, claimed compensation on the land. Mr. Ting added that affected members of the Penan community involved had agreed and consented to the establishment of an oil palm plantation, currently known as the Metannik Camp and the area utilised for oil palm plantation.

Excessive requests – The requests made by some members of the Penan community were sometimes excessive. For instance, last year, Chief Matu Tugang, who lives in Long Jaik asked for a total of 1,000 hectares of land as reserve for his village. The issue was brought to and resolved at the District Office in the presence of representatives from Shin Yang and Chief Matu Tugang. Despite having agreed to the solution reached at the District Office, Chief Matu Tugang had changed his mind upon returning to his village.

Employment Opportunities for the Penan Community

SUHAKAM was informed by Mr. Ting that the Company provided employment opportunities for members of the Penan community, for instance jungle felling, poly bag filling and pest extermination.

He clarified that wages were either paid on a daily or on contract basis. However, employment was usually on a contract⁴ basis, which could amount up to RM800 a month, compared to RM15 per day on a daily basis.

In addition, the Travel and Traveling (TNT) allowance was also provided for those who work in Long Jaik and Long Urun, Belaga.

He further explained that previously, the Company employed a total of 30 Penan members. He recalled that 5 were jungle felling contractors with a good salary.

He added that training was also provided to employees, including Penan members. He stressed that members of the Penans who were employed did not have the necessary knowledge and skills. This was overcome with a six-month on-the-job training, which he felt benefited the Penan members.

³ Mr. Ting later disclosed that the amount of compensation for *temuda* was RM300 for every hectare and RM1,880 for the *pemali*. He added that the amount for *pemali* was paid once.

⁴ Mr. Ting explained that for nursery bag filling for instance, wages will be paid according to the number of bags filled.



However, he highlighted the problems faced by the Company when employing members of the Penan community which include high absenteeism amongst the Penan employees; Penan employees could not bear the heat of the sun; and Penan employees tended to bring all the family members when they work, which negatively effected productivity of the Penans employed.

Social Responsibility

With regard to social responsibility, SUHAKAM was informed by Mr. Ting that all assistance provided to the Penans by the Company was on goodwill.

Mr. Ting clarified that since Shin Yang's oil palm plantation started only recently, they have not established much that could benefit the local community. However, he assured SUHAKAM that in the future, more amenities would be provided by the Company.

Nonetheless, he mentioned some contributions made by the Company as a whole, in the Belaga area. He explained that a private clinic is under construction and will be accessible anyone living in the area, including members of the Penan community.

In addition, the Company assisted the Penans by setting up catchments and water pipelines as well as leveling of soil for longhouse construction and construction of longhouses. These are all provided for free by the Company.

Transportation is also extended to members of the Penan community when they need to travel to Sungai Asap, Belaga. He explained that prior to the establishment of the clinic, the company helped members of the Penan community by providing transportation to send sick family members to the clinic in Sungai Asap, Belaga for treatment.

In addition, Penan members who had to go to Sungai Asap to apply for Identification Cards (ICs) were usually given assistance. However, the company must be notified in advance as last minute notification could not be entertained.

He added that company vehicles passing from one point to another permitted Penan hitchhikers to get a ride. However, they do not permit this with timber lorries as this could be dangerous to both lorry driver and hitchhiker.

III. DIALOGUE AT SHIN YANG FORESTRY SDN. BHD. HEADQUARTERS, MIRI

SUHAKAM had scheduled a meeting with Y. Bhg Datuk Long Chiong Ho, the General Manager of Shin Yang Forestry Sdn. Bhd. on 12 October 2006 at Shin Yang's Headquarters in Miri. However Y. Bhg. Datuk Long Chiong Ho was unable to attend the Meeting and was represented by several of his employees including the Company's Forest Manager, Legal Manager, Cap Public Relations Officer and Surveyor.⁵

By way of introduction, the Company's representatives were briefed on the purpose of the Meeting and on the relevant issues arising from SUHAKAM's visits and dialogues in Belaga, Sarawak. This was followed by a briefing by Ms. Loretta Lau, on the Company's activities based on Licence for Planted Forest (LPF/0018). An open dialogue session followed thereafter.

⁵ The list of Shin Yang's representatives at this Meeting is attached as Annexure 3

ISSUES DISCUSSED

The discussion between SUHAKAM and representatives from Shin Yang is summarised as follows:

Status of Shin Yang's Development Activities in Belaga

SUHAKAM was informed that work has been done on only 20% of the total land awarded under the said license. The clearing of the area was done according to the Sarawak Forest Ordinance 1958, which amongst other things, required the Company to exclude development on prohibited land such as water catchments.⁶ In addition, the Company also followed the standards set by the Government for the development of plantation and logging activities.

Recognition of the Penan Community and their Claim to Land

According to Ms. Loretta Lau, the Company is aware of the existence of the Penan Community and *temuda* within the licensed land. However, she clarified that only two settlements, Long Jaik and Long Liam were identified as stated in the relevant EIA report.⁷

She added that the existence of other Penan settlements within the licensed area may be a result of split ups of the communities from two settlements identified. She believed that some Penans have moved from the two identified settlements and established new settlements within the licenced area. Villagers of the new settlements then make claims from the Company.

Compensation on Land

On the issue of compensation, representatives from Shin Yang explained that the Company had spent approximately RM1 million by way of compensation, commission and allowances to affected members of the Penan community.

They said that the Company had paid compensation to 6 villages that were affected by the Company's activities, out of which only 2 villages expressed their dissatisfaction on the amount of compensation.

In addition, the Company had also paid RM 300 per hectare to affected members of the Penan community, who claimed that those plots of land were *temuda*.

Further, SUHAKAM was informed that the Company had also paid monthly allowances of RM300 for each head of longhouses from 8 villages, and paid between RM80-RM100 for each member of the JKK. They have paid 6 to 8 members of JKK to date.

However, they said that outsiders had taken advantage by establishing new settlements within the licensed area so that they can make claims of compensation from the Company.

Housing for the Penans in the Area

Mr. Anthony Ades informed SUHAKAM that as directed by the General Manager of the Company, a meeting would be held between representatives of the Company and relevant heads of Penan longhouses on 21 October 2006 to discuss on the development of new housing for affected villages, which includes moving affected members to the new area. He added that the company is proposing a centralised settlement for the affected villages.

⁶ The exclusion of development on water catchments is provided under the Second Schedule of the Sarawak Forest Ordinance 1958.
⁷ However, after scrutinizing the said EIA report, SUHAKAM found that paragraph 21 of the Executive Summary and Chapter 2, paragraph 2.2 of the EIA report stated that there were only remnants of Punan Settlements in along the Jaik River, and an illegal 15 door Kenyah longhouse which has been abandoned. The EIA further reported that no permanent local settlements were found within the site.



Mr. Anthony Ades emphasised that this effort is solely taken by the Company, despite the fact that it is the responsibility of the Government to ensure the well-being of members of the Penan community as citizens of Malaysia.

Assistance accorded to Members of the Penan Community

Ms. Loretta Lau explained that the Company's policy ensures that respect is given to members of the Penan community by not invading and protecting their villages.

Apart from protecting these villages, the Company also provided other assistance for the Penans including the construction of roads, providing water supply, materials for construction of houses as well as assistance for funeral arrangements including transportation, financial assistance for coffins and other cost associated with the funeral.

Additionally, the Company had no objections to giving lifts to Penan hitchhikers as long as the destination was not too far. However, timber lorries were not allowed to take passengers due to safety reasons.

The Company had also given honorarium (*wang saguhati*) to Penan members during festive seasons. For instance, on Christmas, besides honorarium, the Company allowed Penan members to take whatever basic necessities they needed from the Company's canteen for free.

Although these efforts were done on an ad hoc basis, it could be used as the Company's long-term guideline and as the company's policy.

Employment Opportunities for Members of the Penan Community

Ms. Loretta Lau clarified that about 90% of the employees at the Company's oil palm plantation were members of the Penan community. Among others, their tasks included jungle felling and poly -bag filling.

It was further clarified by the Company's representatives that although they had taken various efforts to offer employment opportunities to members of the Penan community, some had declined this offer.

Access to Forest Area for the Penan Community

With regard to the Penan's claim of being denied access to forest areas, it was clarified that the Company had taken that step to avoid theft and social problems within the licensed area. However, the company is willing to grant access to the licensed area as long as early notification is given.

PARTICIPANTS OF THE DIALOGUES WITH REPRESENTATIVES FROM SHIN YANG FORESTRY SDN. BHD.

Dialogue with Representative from Shin Yang Forestry Sdn. Bhd. Oil Palm Plantation, Metannik Camp, Sg Jaik, 18 September 2006

- Mr. Ting Khai Sik, General Manager, Shin Yang Forestry Sdn. Bhd. Oil Palm Plantation, Metannik Camp.

Dialogue with Representatives from Shin Yang Forestry Sdn. Bhd., Headquarters, Miri, Sarawak, 12 October 2006

- Mr. Wong Tho Ang – Forest Manager;
- Mr. Wong King Hing – Surveyor;
- Mr. Anthony Ades – Camp Public Relations Officer; and
- Ms. Loretta Lau – Legal Manager.



6. DIALOGUES WITH GOVERNMENT AGENCIES

I. INTRODUCTION

SUHAKAM held a series of meetings with representatives from relevant government agencies. The first meeting on 19 September 2006 was held at the Sungai Asap District Office. This Meeting was attended by representatives from district level agencies.

After obtaining the views and concerns from representatives from the district agencies, SUHAKAM held a Meeting with relevant State Government agencies on 13 October 2006 in Kuching, Sarawak, to get further clarification.

Information gathered by SUHAKAM through the dialogues with the community concerned and representatives from relevant Government agencies were brought to the attention of the Minister in charge of the Penan Community's Welfare, Dato' Sri Abang Haji Abdul Rahman Zohari, at a meeting on 13 October 2006.

OBJECTIVES

The objectives of the meetings include:

- to obtain feedback from government agencies on issues highlighted by members of the Penan community during SUHAKAM's dialogues in Long Singu and Long Jaik on 18 September 2006;
- to ascertain the Government's efforts to protect the rights of the Penans;
- to come up with alternative solutions to address the dilemma of the affected members of the Penan community

II. DIALOGUE WITH REPRESENTATIVES OF GOVERNMENT AGENCIES AT THE DISTRICT LEVEL

The meeting with representatives from relevant local Government agencies at the district level was held at the Sungai Asap District Office on 19 September 2006.

The participants of the meeting include among others, representatives from the Belaga District Office, District Education Office, the National Resource and Environment Board (NREB) and the District Health Office.⁸

In addition to government agencies, representatives from Shin Yang also attended the Meeting.

The Meeting at the Sungai Asap District Office began with an Introduction by SUHAKAM Commissioner, Datuk Dr. Denison Jayasooria, followed by a briefing by SUHAKAM Commissioner Dr. Hirman Ritom Abdullah on the issues affecting the Penan communities in Long Singu and Long Jaik, Belaga.

Mr. Tom Hem Mijod, Belaga District Officer later joined the Meeting and delivered a brief welcoming note to SUHAKAM and participants of the Meeting.

The Meeting continued with an open discussion with representatives from government agencies giving feedback on the issues raised by SUHAKAM Commissioners. The discussion is summarised as follows:

⁸ The list of participants of the Meeting in Sungai Asap District Office is attached as Annexure 3

DISCUSSION ON THE PENANS CLAIM TO LAND WITHIN THE LICENCED AREA

Determining Land Status of the Penans

A representative from the Forestry Department clarified that the land licensed to Shin Yang was gazetted as a protected forest and can be licensed for harvesting.

He explained that the Forestry Department had no jurisdiction to matters involving land claims. However, to his knowledge, that the task of ascertaining whether the land is subject to any claim, in the case of LPF/0018 lies with Shin Yang. Information on land claims could be obtained from the Land and Survey Department.

He clarified that before a forest plantation licence is awarded to a company, the company is required to submit a planting plan. This plan would reflect any plots of land which would be excluded from development, including reserved and protected forest and Native Customary Land (NCR). This information will then be included in the Environmental Impact Assessment (EIA) Report which is prepared by a consultant approved by the Government. This consultant will also be responsible to conduct survey on the proposed area for the purpose of the EIA report.

Establishing the Existence of Penan Settlements in the Licensed Area

A representative from the Natural Resources and Environment Board (NREB) said that based on the relevant EIA report, there was no legal claim to NCR land over the area licensed to the Company. She further added that the NREB had not seen Penan settlements in the licensed area.

Nevertheless, settlements would usually be established by the locals within bumper zones. She explained that bumper zones of near rivers are usually excluded from development he clarified that areas usually excluded from development.

Procedures to Claim for NCR Land

The representative from the Forestry Department clarified that when forest land is proposed for conversion to agriculture, communities living within the affected area are notified and are given three months to submit, to the relevant authority, on any claim to NCR land. The notification is usually done through the District Office and through inquiries with local communities before any final gazetting is done. According to the Department's procedure, failing to submit their claims would mean that they have forfeited their claim to NCR land.

Access to Foraging Area

A representative from the Forestry Department said that local communities, such as the Penans, who might not have claim to NCR land, still have 'usufructuary^{9A} right' which allows indigenous communities such as the Penan, to enter protected forest areas to collect jungle produce specifically for domestic use.⁹ This was affirmed by a participant from the Land and Survey Department.

It was further explained that in certain areas, members of the Penan community are allowed to enter without permission, while some other areas can only be entered with permission from the Forest Department.

⁹ Section 65 of the Forest Ordinance 1958 states the following:

Subject to section 57, and to any rules made under section 95, and to any order made under section 96, any inhabitant of Sarawak may, without licence or permit, cut and remove from State land which is not a forest reserve any timber or other forest produce required by him exclusively for his own domestic use and not for sale, barter or profit.

^{9A} The right to use property - or income from property - that is owned by another.



With respect to the area under LPF/0018, a representative from Shin Yang explained that the Company's decision to restrict access to forest within the licensed area was for security reasons. This was done to avoid illegal activities such as selling of drugs.

Compensation Claimed by the Penans

A representative from Shin Yang Forestry Sdn. Bhd. explained that whenever the Company cleared land, members of the Penan community will seek for compensation from the Company. Although he was not familiar with the legalities of customary land matters, he said that claims made by members of the Penan community were usually resolved by paying compensation to Penan members.

He said that the common approach taken by the Company begins with discussions with affected members. However, more serious matters would be resolved through the district office in the presence of the head of the longhouse making the claims.

He added that the Company had tried, as far possible, to meet the Penan's demands. However, the Company faced difficulties when claims made by the Penans were too excessive.

Monitoring of Company's Activities

A representative from the NREB informed SUHAKAM that there is a committee chaired by NREB which is responsible for monitoring the company's activities, in this case, Shin Yang, vis-à-vis the Licence and EIA requirements. The last Committee Meeting to review the company's activities was held in August 2006.

FEEDBACK ON SOCIO-ECONOMIC ISSUES

Issues on Documentation

Non-Documentation of Penans

A representative from the Belaga District Office agreed with SUHAKAM's finding that a significant number of Penan members were undocumented. Non-registration of newborn babies, in particular, was due to various factors including the lack of registration services in these areas, inability to pay the fees imposed, cost of transportation and requirement for marriage certificates and parents' ICs.

A representative from the State Planning Unit (SPU) said that SPU had engaged in a meeting with the National Registration Department (NRD) with the aim of requesting the NRD to waive any fee requirements given the socio-economic condition of the Penan community. However, SPU was informed by NRD that as required by NRD's procedure, those fees could not be waived. Additionally, marriage certificates and parents' ICs will have to be produced by the Penans to apply for their children's birth certificates.

Assistance of FDS in Registration of Birth Certificates

A representative from the Miri Health Office firstly affirmed that access to registration services was limited in the said area. For this reason, the Health Department had agreed to assist the NRD in the distribution of registration forms for the application of birth certificates to members of the Penan community during their FDS visits in Ulu Belaga.

Nevertheless, a representative from the District Office emphasised that the task of registering members of the Penan community was the responsibility of NRD. Although the NRD could seek assistance from

the FDS to distribute registration forms, NRD should not rely on FDS visits since, the FDS visits were not regular.

Issues on Education

Education for Undocumented Penan Children

Among the problems arising from non-documentation was the inability for Penan children to obtain adequate access to education and financial assistance. Without proper documentation, Penan children were not allowed to sit for the PMR exam and were unable to secure welfare assistance and scholarships.

However, a representative from Sekolah Kebangsaan (S.K.) Long Gang, Ulu Belaga, explained that undocumented Penan children were usually asked to sit for a special exam at form three as an alternative to *Penilaian Menengah Rendah* (PMR).

Absenteeism amongst Penan Students

The representative from S.K. Long Gang, Ulu Belaga, informed SUHAKAM that one of the contributing factors to absenteeism amongst Penan students was that Penan students refuse to attend school if their parents were not around.

To address this problem, a committee was established in S.K. Long Gang to look into the issue.

Another step that has been taken was through the provision of guardians at schools. He explained that this guardian is usually a person whom the Penan children are familiar with. He believed that this step could be effective in reducing absenteeism amongst Penan students.

Provision of Transportation

A representative from the SPU that allocation for transportation is provided and given to the relevant district office for implementation.

However, a representative from the District Education Office said that although there is provision, the actual implementation was fraught with difficulties especially after the increase of fuel price. Additionally, transportation cost in Belaga is quite expensive.

She added that there were companies employed to provide transportation but, at times, had failed to honour their contracts.

On the other hand, some participants said that Penan children often fail to turn up at the pick-up points.

Culture Based Education

A representative from the District Education Office said that there were plans to implement a form of culture based education which would take into account the unique needs of the Penan Community. However, she emphasised that this was still at the planning stage.



Issues on Health

Access to Health Care Services

A representative from the Miri Health Office said that the FDS visited several areas in the Belaga District including Long Urun, Long Tangai, Long Singu, Long Malim, Long Jaik and Long Ridem. However, these visits were done irregularly since they were short staffed. In addition, inadequate number of aircrafts had also added to the problem.

He further explained that the Sungai Asap Health Centre only had four medical assistants (MA), one staff nurse and six community nurses to cover a vast area in Belaga. Although there was an additional position for an MA, this position had yet to be filled. He also said that the Health Centre does not have a radiographer and lab technician to perform x-rays and lab tests. Therefore, those who require these services have to travel to the Bintulu Hospital.

He further explained that community nurses were required to assist only patients residing within 12 kilometres of the main office. Therefore, Penans living in areas outside of the 12 kilometres radius would not have access to the service.

Nonetheless, they have established a programme known as the Village Health Representative or *Wakil Kesihatan Kampung* (WKK) who covers some of the areas inhabited by members of the Penan community. About 100 Penan members have been trained as WKK to serve the Penan community in Belaga. However, only 46% were active while the rest had either resigned or moved away.

Access to Health Care Services for Undocumented Members

The representative from the Miri Health Office explained that Penan members who are undocumented could visit government clinics and hospitals. However, fees would be charged. Exemption could be given upon the patients declaring themselves as destitute.

Immunisation Programme

With regard to immunisation, the representative from the Miri Health Office explained that there was no specific immunisation programme for the Penan Community. He explained that when the Penan makes a visit to Government clinics and hospitals, the hospitals would take this opportunity to immunise them.

Emergency Services

Another representative from the Miri Health Office said that emergency services were also limited with only one ambulance driver to cover a large area in Belaga. Currently, any emergency cases in Belaga will be referred to the Bintulu Hospital, which is approximately three hours away. As a result, when there are two emergency calls, only one can be attended to.

The other representative from the Miri Health Office added that under the Ninth Malaysia Plan, no provision for additional emergency service for the Belaga district was made. However, this could be proposed to the relevant authority.

Environmental Issues

A representative from the Forest Department opined that in any sort of development, pollution is inevitable. However, to control this problem, the company, in this case Shin Yang, was asked to submit

a management plan. This plan would anticipate the environmental impact of forest plantation and would explore solutions such as 'low impact logging' or 'reduced impact logging' to minimise the negative impact of development towards the environment.

Water Supply Project

The representative from the Miri Health Office added that currently, sources of water catchments were not protected and this would create problems in the future.

He informed SUHAKAM that despite having submitted proposals to relevant authorities, the State Health Department has not received any allocation for water supply projects which they had received previously. However, he clarified that a new proposal for allocation under the Ninth Malaysia Plan will be submitted and hoped that it would be considered by relevant authorities.

Development Programmes for the Penan Community

Permanent Settlement for the Penan

The representative from the SPU explained that development activities channeled to the Penan community began in the 1980s. However, these development activities at that time were classified as welfare.

The SPU had engaged volunteers drawn from amongst Penan youths. These volunteers would assist the Government in helping the Penan community to establish permanent settlements, which was important to facilitate the delivery of other support services such as electricity and water supply.

The representative from Shin Yang said that as part of its commitment to help the Penan community, the Company had made plans to establish permanent settlements for the affected community members. This includes giving plots of land and building longhouses for the Penans.

Poverty Eradication Programmes

The representative from SPU informed SUHAKAM that SPU had also proposed to the EPU for special provision specifically for the Penans under the provision for poverty eradication programme. However, as informed by EPU, the current provision was specific for economic development that focuses on income generation activities which would be accorded based on the *Skim Pembangunan Kesejahteraan Rakyat* (SPKR).

EPU had requested SPU to submit another proposal for special provisions to address poverty amongst the Penan community.

Other Assistance and Programmes for the Penans

The representative from Shin Yang explained that the Company had been providing assistance to the Penan community. However, these were all done on an ad hoc basis. Among the assistance given includes transportation, employment opportunities and honorarium (saguhati) especially during festive seasons. He also said that the Company, at times, would send members of the Penan community to the registration office in Sungai Asap to apply or collect their ICs.

In addition to this, the Company has also set up a company clinic which can be utilised by the local community, including the Penans.



III. DIALOGUE WITH REPRESENTATIVES FROM RELEVANT STATE GOVERNMENT AGENCIES, KUCHING, SARAWAK

The dialogue with relevant State Government agencies was held in Kuching, Sarawak on 13 October 2006.

The Meeting was attended by, among others, representatives from the State Planning Unit (SPU), State Education Department, National Registration Department (NRD), Land and Survey Department (LSD), Natural Resource and Environment Board (NREB) and Forest Department, Sarawak.¹⁰

SUHAKAM was encouraged with the presence of Datu Wilson Baya Dandot, the Deputy State Secretary, Sarawak, and Datuk J.C. Fong, the Sarawak State Attorney-General at the dialogue.

The Meeting began with a welcoming note by Datuk Dr. Denison Jayasooria, followed by a briefing by Dr. Mohammad Hirman Ritom Abdullah on the findings of SUHAKAM's visits and dialogues in Long Singu and Long Jaik, Belaga on 18 September 2006.

The issues discussed between SUHAKAM and the Sarawak State Government representatives were as follows:

DETERMINING THE EXISTENCE OF PENAN SETTLEMENTS IN THE AFFECTED AREA

A representative from the Forest Department said that the area licenced to Shin Yang is under the Licence for Planted Forest LPF/0018. Clause 22 (1) of the Licence provides:

Nothing in this Licence shall be deemed to affect rights which any native has, prior to the issue of this Licence, lawfully acquired over the said land under the Sarawak Land Code. Such rights shall be referred to in this Licence as "native customary land"

He further added that based on the relevant gazette notification for the Licenced area, there was no indication that any part of the land was subject to NCR claims as provided in the Sarawak Land Code 1958.¹¹

Nevertheless, he clarified the Penans who had resided in the area had their 'usufructuary right', whereby they are allowed to fish, hunt and collect jungle produce without the need to obtain permission. However, this is limited to domestic consumption. On the other hand, timber extraction requires permission from the Forestry Department.

A representative from NREB added that before the said Licence was approved, the Company, through a consultant, was required to prepare an Environmental Impact Assessment (EIA) Report which, among others, must determine whether there were human settlements or activities in the said area. If there were claims during the assessment, the relevant agencies are to undertake efforts to investigate the claims. However, based on the EIA report, no human settlements or activities were found. He added that the Report was available to the public.

The Sarawak Attorney-General said that the Government recognises the existence of the nomadic Penans. As explained by the representative from the Forest Department, it was clear that the

¹⁰ The list of participants of the dialogue between SUHAKAM and representatives from relevant State Government agencies is attached as Annexure3.

¹¹ SUHAKAM was informed during the Meeting with Government agencies at the District Level on 19 September 2006 that when any forest area is proposed for development, communities living within the affected area are notified and are given three months to submit to the relevant authority on any claim to NCR land before any NCR title is issued. Failing to submit their claims means that they have forfeited their claim to NCR land.

Government respected the rights of the Penans, in particular, to roam the forest area. He then referred to Gunung Mulu National Park which was maintained as a permanent forest and the indigenous communities were allowed to roam in the Park.

He reminded all those present that before the said Licence was approved, a thorough investigation had been carried out to establish whether there were settlements and claims to NCR in the said area. Based on the findings of the appointed consultant, there was no evidence that active settlements existed or claims to NCR at that material time.

Nevertheless, he said that based on SUHAKAM's presentation, there were Penans who had settled, who were, however, without NCR land. He agreed that action must be taken to investigate whether the Penans had settled before or after 1958. From this investigation, other assistance could be accorded to the affected Penans.

He added that a decision must also be taken on whether to allow the Penan families to remain in their current location or relocate them elsewhere in proper settlements where assistance and opportunities could be easily provided to them.

The Deputy State Secretary concurred and said that there was the need to come up with solutions to address this problem. He, however, emphasised that relevant Government agencies would need to verify on the claims made by the Penans. Immediate solutions could not be promised as the process would take time.

He then thanked SUHAKAM for raising this issue and assured that the State was willing to look into the matter. However, he pointed out that the success of programmes required the Penans to be receptive and ready for change.

FEEDBACK ON SOCIO-ECONOMIC ISSUES

Issues on Documentation

A representative from the NRD stated that given the socio-economic status and location of the Penan families, the normal requirement to produce parents' ICs and marriage certificates for application of birth certificates are not imposed.¹² However, Penan families were required to provide certification from the heads of their longhouses.

The NRD has mobile units to visit Penan settlements for registration with the recent visit held from 17 until 20 September 2006 to Long Tanyit along the Linau River, Baram, Sarawak.

With regard to the communities in Long Singu and Long Jaik, he said that these areas could be proposed as locations for their next visit. However, the NRD would need the list of residents residing in both Longhouses.

This proposal was welcomed by SUHAKAM and was agreed by the Deputy State Secretary. However, he said that the NRD would need to ascertain whether persons residing in both areas were actually Penans as some foreigners may be living amongst them.

A representative from the State Health Department then highlighted the need to ensure that the names of members of the Penan community be spelled suitably to ensure it reflects the true pronunciation of

¹² However, based on SUHAKAM's dialogues with the affected Penan members, that their application for ICs and BCs, were often denied as they had no marriage certificates and their parents do not have ICs to support application of ICs and BCs. In addition, given their economic status, they could not afford to pay the fees imposed.



their names. He then referred his experience whereby his father's name was spelled in four different ways when his three siblings and he applied for registration.

Issues on Education

The representative from the State Education Department expressed his concern on the Penan children who did not attend school as highlighted by SUHAKAM. He then explained that given the Penan's socio-economic background, documents such as certification from the heads of longhouses and clinic cards were sufficient to enroll their children in schools.

Nevertheless, based on his experience, a significant number of Penan children who were enrolled in schools dropped out. He then exemplified some:

- In 2006, there were a total of 126 Penan children who enrolled in Sekolah Kebangsaan (SK) Long Gang, of which 106 dropped out. Among the factors identified were lack of support from parents and lack of transportation to school;
- During the same year, 195 Penan children were enrolled in SK Lusong Laku, out of which 24 dropped out. Among the factors identified include poverty and no interest in education amongst the children;
- There were 160 Penan children enrolled in S.K. Long Urun in 2006 and 26 of them dropped out. The main cause was poverty.

In addition, in 2006, some Penan children who were without documentation were allowed to enroll in school, 18 children in SK Long Gang, 20 children in SK Long Urun and 34 children in S.K. Lusong Laku.

He further said that they had proposed to the Ministry of Education for a special curriculum for the indigenous children which would allow them to stay in primary school for more than the usual 6 years, given their educational needs. This would also include *perguruan khas*, whereby teachers amongst locals are employed, and the *program waris*, whereby a community house would be established to allow parents to stay while waiting for their children in school. Other programmes include textbook schemes and *Kumpulan Amanah Pelajar Miskin* (KUAM). The last two programmes mentioned would only be available for children with proper documentation. However, the Department had already made a proposal for special consideration for the Penan children.

On the issue of over-aged Penan children enrolled in primary levels based on their respective age, he clarified that those children would be provided with multi-grade education whereby children will also be taught on subjects that they have missed out on.¹³

The Deputy State Secretary added that for Penans who had missed school, they could be trained on other skills, for instance, training on blacksmithing and agriculture which requires little academic knowledge.

Issues on Health

The representative from the Sarawak State Health Department firstly agreed with the findings of SUHAKAM in relation to healthcare services in the concerned area. He expressed his frustration on the fact that there is limited access to health care services amongst this community.

¹³ During the Dialogue at the Matu Tugang Longhouse in Long Jaik on 18 September 2006 SUHAKAM was informed by a Penan member from Long Urun that some Penan children in his village, could only be enrolled to primary school at a later age. However, the relevant schools had enrolled these students to primary levels based on their age. For instance, a child, who had never been to school, had been enrolled to primary school at the age of 10 years old. The school would then place that child to primary four, regardless of the fact that that child had no knowledge of education usually taught in pre-school and from primary one to three. As a result, some Penan children found it hard to cope, hence, dropped out from school.

Nonetheless, he emphasised that limited access to healthcare amongst the Penans was caused by their isolated location and not because of any form of deliberate discrimination towards the Penans.

He then informed participants on some of the programmes implemented by the State Health Department in its effort to enhance access to healthcare for the indigenous, including the Penans. They include:

Static Clinics – this is the most ideal way to ensure health care services are available to the community. The prerequisite to the setting up of this clinic would be to have a minimum of between 1,000 to 1,500 people in the area;

Traveling Dispensary – when the population size stated above is unmet, the traveling dispensary would be the next option. This could be done through various traveling modes including travel by boat;

Flying Doctor Service (FDS) – If the Traveling Dispensary could not be implemented, the FDS would then be the next option;

Village Health Promoter – health promoters are placed in the villages to assist in providing healthcare services.

The FDS, in particular, is more expensive compared to the other modes. This service is deployed once in every two months. However, this too depends on various factors such as the weather and haze, which may force the FDS to skip the cycle. However, the representative from the State Health Department said that given the difficulties, the FDS had managed to provide good coverage.

As for emergency services, the representative affirmed to this need. However it would be difficult to ensure accessibility of this service amongst the Penans, given their scattered and remote locations. For instance, the Medical Evacuation (MEDEVAC) Service is available for the Penans. However, the problem lies on the calling for this service by the Penans given the lack of communication facilities in their villages. In addition, emergency services through the FDS may not be implemented effectively as Penan villages are located in the deep jungle and helicopter landing areas might not be available.

Similarly, the number of ambulance available is very limited in number. There is only one ambulance which is based in Sungai Asap, Belaga. This ambulance is frequently sent to Bintulu for emergency cases and takes about 6 hours traveling time. If a second emergency call from the interior of Belaga is received during the first trip, the ambulance is unable to serve the second emergency call on time.

Finally, he highlighted that health is related to cleanliness and the Penans need to be self reliant on this. He highlighted a previous experience whereby the Department had gone to a Penan village and had planned for a *gotong royong* which would involve the Penans. However, the Penans had responded by saying that since the Government had paid the civil servants, they were then responsible to clean the Penan longhouse.

Issues on Security

A representative from the Royal Malaysian Police (PDRM) affirmed that they were operating with limited manpower in Belaga. The problem is accentuated by poor logistics with only 3 vehicles available – a land cruiser, a land rover and a Pajero. These vehicles are being used by both police posts in Bakun and Sungai Asap. He said that they were assisted by the General Order Force. The cases handled by the PDRM in the area were mostly logging and land disputes.



Poverty Eradication Programmes for the Penans

Allocation for Poverty Eradication Programmes for the Penans

The representative from the Sarawak State Planning Unit (SPU) clarified that she was only made aware of the existence of Alung Ju Longhouse in Long Singu and Matu Tugang Longhouse in Long Jaik, at the dialogue with SUHAKAM on 13 October 2006. Therefore, she was not able to make any specific comment on the two longhouses.

She clarified that the Penans had been identified as hardcore poor. She then briefed SUHAKAM on some of the efforts by SPU to address issue of poverty amongst the Penans as a whole. She explained that under the Ninth Malaysia Plan, the Economic Planning Unit (EPU) was provided with special funding for poverty eradication programmes. The SPU had proposed to the EPU at a meeting on 14 September 2006, that such programmes be made available to the Penans. However, EPU had informed them that the funding given to EPU was strictly for economic or income generating programmes with the aim of eradicating hardcore poverty by the year 2010. She explained that if the Penans were included under the current funding, the target would not be met as EPU had anticipated that eradication of hardcore poverty amongst the Penans might take more than five years.

SPU was told to prepare a special paper for special funding to address issues of poverty amongst the Penans. The SPU is currently working on this paper, assisted by the Ministry of Rural and Territory Development and the State Development Office.

In general, there were three programmes implemented by the State for the Penans which include education related assistance, grants and aids and Penan volunteers to introduce change.

Agricultural Related Programmes for the Penans

The representative from the Sarawak State Agricultural Department (SAD) agreed that it was every person's socio-economic right to have the means to earn his/her livelihood.

The SAD had dealt with the Penans residing in the Belaga area in the past, namely, those living along the Belaga River, Murum River and Linau River. He said that there was a total of 19 settlements recorded in the said area.

The SAD had given minor assistance to the Penans in the form of seeds and fertilizers for planting as well as technical devices. Each Penan longhouse would be given between RM2,000 to RM5,000 worth of assistance. This was provided for under the Eighth Malaysia Plan.

In terms of employment, he stated that the SAD is amongst the agencies able to provide agricultural related employment opportunities for the Penans. However, given that the Penans are in transition from shifting to permanent agriculture, this process would be slow.

The Penans have relied on the jungle to sustain them. However, access to jungle produce is becoming less available to them. He believes that plantations would be ideal for the Penans. It could be possible to establish plantations such as FELDA and SELCRA for the Penans. However, this would need a big area.

The Penans could opt for small holding agriculture for farming that requires smaller areas compared to plantation. However, this would be difficult to succeed in remote areas.

Agricultural related packages could be introduced to the Penans, however, this would take time to develop. He added that there should also be a system of agriculture that could address the Penans minimum basic food security which utilizes the natural environment surrounding them without having to import fertilizers and pesticides.

With regard to hill paddy cultivation, he said that this is not sustainable as this is done by the Penan on small plots of land and done within insufficient fallow time. He explained that land used for hill paddy farming would need sufficient period of time before the following hill paddy farming is done on the same plot of land. This is to ensure adequate fertility for farming on that land. At the moment, the Government allowed the Penans style of hill paddy farming, since it was noted that the community depends on this for food.

Role of the Sarawak Timber Association (STA)

The representative from the Sarawak Timber Association (STA) stated that he was aware of the issues of the Penans highlighted by SUHAKAM, namely on the NCR issue. At the time of the dialogue, he was not able to give feedback on the specific issues highlighted. However, he assured that this would be given to SUHAKAM in writing later.

He then informed representatives of the dialogue on the general efforts by the STA which includes the following:

Code of Practice – the STA's rule of thumb is that when they carry out logging activities in an area, they would employ the locals of that area. However, one problem on this is that as informed by the locals, they were not familiar with the discipline of economic ventures such as being paid for their work;

Social Corporate Responsibility – budgets of GLC corporate social responsibility were set aside to provide social and welfare assistance to the locals.

Among the problems confronted by the STA when dealing with issues pertaining to the locals include the following:

- Logging members would not have the skill and knowledge on how to communicate, negotiate and deal with the local community. This issue was recognised by the STA and was thus highlighted to their expert advisory group. The representative from the STA welcomed any assistance from those present at the SUHAKAM dialogue;
- Since logging members do not have such skills, companies like Shin Yang ended up spoiling the locals by giving money and other hand outs instead of assisting in self reliance projects and programmes;
- The provision of budgets for social corporate responsibility was done 'under the radar' to avoid locals from relying on handouts without having the sense of self reliance. He then said that self-reliance programmes would be most ideal. However, logging members did not have the necessary knowledge to implement this.

Conclusion of Dialogue with Representatives of State Government Agencies

The Meeting with representatives of State Government agencies concluded with representatives agreeing to give their feedback on the specific issues highlighted by SUHAKAM based on the claims made by the affected Penans.¹⁴

¹⁴ The State Government Responses on the issues of the affected Penans is attached as Annexure 7.



The representatives from the National Registration Department also agreed and were further supported by the Deputy State Secretary that a delegation be sent to Long Jaik to investigate on the issue of non-documentation amongst affected Penan members. The tentative date for this is on 17-18 November 2006.

IV. DIALOGUE WITH DATO' SRI ABANG HAJI ABDUL RAHMAN ZOHARI, MINISTER IN CHARGE OF THE PENAN COMMUNITY'S WELFARE

The Meeting with Dato' Sri Abang Haji Abdul Rahman Zohari, the Minister in charge of the Penan Community's welfare, who was also the Minister of Housing, Sarawak, was at the Ministers Office in Kuching, Sarawak. The Meeting with the Minister was aimed at ascertaining the Government's role in protecting the rights of the Penan Community in Sarawak.

Tuan Haji Fatihi and Puan Mareia Hassan from the State Planning Unit were also present at the Meeting.

The Dialogue began with a short introduction by the Team Leader of SUHAKAM's delegation and a briefing on the issues raised by members of the Penan community during SUHAKAM's visits and dialogues in Long Singu and Long Jaik, Belaga, Sarawak. A discussion session followed there after.

DISCUSSION SESSION

The discussion with the Minister is summarised as follows:

Penan's Right to Development

The Minister recognised that the Penan community, like other communities, had the right to development. The development of the Penan Community was being monitored by the Sarawak State Planning Unit and the State Secretary's Office at the state level and by the resident or district office at the Division level.

With regard to activities carried out by the relevant Company, which raised several issues, particularly on its effect towards the Penan community, he explained that it was the responsibility of the relevant State and Local Government agencies to monitor the implementation of activities by the Company.

He added that the Government had no intention of taking all the land and was sensitive about the problems faced by the Penan but that the Government had to carry out development activities.

However, he acknowledged that the Penan might consider the land where they were residing as theirs and said that the Penans view of land ownership was not similar to that of the Government's.

Programmes to Encourage Change

A majority of programmes planned and implemented by the Government were aimed to encourage change amongst members of the Penan community, specifically in terms of their way of life. Among the programmes is the establishment of 'communities' in charge of the well-being of the Penan community and service centres.

The establishment of the 'communities' and service centres in a number of areas in Sarawak were aimed to encourage members of the Penan community to reside in a permanent and centralised settlement. Hence, services can be easily delivered to members of the Penan community. In addition,

these communities and service centres are also responsible for instilling the modern way of life amongst members of the Penan community.

However, some of these efforts had encountered problems, specifically when the efforts conflicted with the Penan culture. For instance, the Government had established a service centre in Lusong Laku, Belaga. Among the tasks of the centre was to teach members of the Penan community to rear chicken for domestic consumption. However, because of the Penan's view towards chicken, they refused to eat poultry.¹⁵ This effort went to waste when all the chicken died.

Provision of Basic Facilities and Amenities

The Minister believed that with the provision of adequate facilities and basic amenities, members of the Penan community would be able to accept changes to their way of life. Hence, the Government had also resorted to making agreements with the Penan community to encourage permanent settlements. For instance, members of the Penan community in Suai, Sarawak, agreed to the Government's proposal that they lived in a permanent and centralised settlement. In return, the Government provided them with land and other basic amenities and facilities – such as electricity and water supply and construction of roads – that could encourage their development.

With regard to the land licensed to Shin Yang Forestry Sdn. Bhd., the Minister explained that since the development of the area was recent, facilities and amenities had yet to be perfected. However, he believed that more development efforts would be brought to this area in the future.

Nonetheless, the Minister reminded that members of the Penan community too, have the responsibility to maintain facilities and amenities provided for them. He referred to an incident in Mulu, when the late Tun Ghafar Baba was scheduled to officiate a programme there. Organisers of the programme advised the residents of a longhouse to clean the longhouse. They responded by saying that since the longhouse was provided by the Government, it is then the Government's responsibility to ensure that the longhouse is clean. The Minister emphasised that there was a need for awareness programmes to educate members of the Penan community on their social responsibilities.

Awareness Programmes

The Minister acknowledged that change would take time. Therefore, the best target group to educate the benefits of change would be the younger generation. Awareness programmes amongst younger generations was another effort taken by the Government to encourage change amongst members of the Penan community.

Provision of Schools

The Government acknowledges that the Penan community had close family relationship, which sometimes resulted in their refusal to send their children to school. Therefore, houses were built near school areas so that parent could be close with their children. This was done for a school in Lusong Laku.

In addition, assistance, such as transportation for Penan children was also accorded to encourage them to attend school. However, Penan children often did not show up when the pick-up transport arrived.

¹⁵ SUHAKAM was informed that the Penans have close relationship and treated chickens as part of their family.



In addition, early marriages also contributed to drop out amongst Penan children. It was said that Penan children would be married between the ages of 9 – 13 years.

Despite this, the Minister highlighted that there were members of the Penan community who had reached and completed secondary and tertiary education. This indicated progress made by the community.

Documentation of Members of the Penan Community

Documenting members of the Penan community had its obstacles. The Minister explained that the Registration Department had organised late registration programmes. However, members of the Penan community often did not show up.

In addition, ICs ready to be collected were never claimed by members of the Penan community. However, the Minister recognises the financial burden of fees and transportation costs.

Another problem faced by the National Registration Department was to ensure that those who had registered were indeed Malaysian citizens and not indigenous communities from Kalimantan, Indonesia.

PARTICIPANTS OF THE DIALOGUE WITH REPRESENTATIVES FROM RELEVANT GOVERNMENT AGENCIES

Dialogue with Representatives from Government Agencies, District Level, Belaga District Office, 19 September 2006

- | | |
|--|---|
| • Tom Hem Mijod, Belaga District Officer | • Hawing Yah – S.K. Long Gang, Belaga |
| • Nasir Bin Salam – Jabatan Pelajaran Negeri Sarawak | • Ismawi Hj. Bujang – Pejabat Pelajaran Gabungan Bahagian Bintulu |
| • Shirini Masture Mohd. Zulkifli – Pejabat Pelajaran Daerah Kecil Belaga | • Wendy Martin – Natural Resources and Environmental Board, Bintulu |
| • Abu Hanifah B. Ismail – Natural Resources and Environmental Board, Bintulu | • Danel Empun – Natural Resources and Environmental Board, Bintulu |
| • Maties Matios – Natural Resources and Environmental Board, Bintulu | • Kain Ding – Pejabat Pelajaran Gabungan Kapit |
| • Janong Begelia – SK. Lusong Laku, Belaga | • Dawit Ibang – penghulu, Uma Bakali, Sungai Asap, Belaga |
| • David Yong – Shin Yang Forestry Sdn. Bhd. | • Andy Wong – Shin Yang Forestry Sdn. Bhd. |
| • Wong King Hing – Shin Yang Forestry Sdn. Bhd. | • Wong Tho Ang – Shin Yang Forestry Sdn. Bhd. |
| • Ting Khai Sik – Shin Yang Forestry Sdn. Bhd. | • Anthony Edes – Shin Yang Forestry Sdn. Bhd. |
| • Joseph Wong – Shin Yang Forestry Sdn. Bhd. | • Bobby Wu – Shin Yang Forestry Sdn. Bhd. |
| • Langit Bir – Guru Besar, SK. Batu Keling | |

Dialogue with Representatives from Government Agencies, State Level, Kuching, Sarawak, 13 October 2006

- Dato Wilson Baya Dandot, Deputy State Secretary
- Mr. Tom Hem Mijod, Belaga District Officer
- ASP Julaihi Tahir, Royal Malaysian Police
- Mr. Danny Chua, Sarawak State Forestry Department
- Mr. Justine Jok Jau, Natural Resources and Environment Board, Sarawak
- Ms. Ruth Bully, Sarawak Timber Association
- Mr. Hardi B. Fadillah Hamzah, Land and Survey Department, Sarawak
- Dr. Andrew Kiyu, Sarawak State Health Department
- Mr. Christopher R. Unting, Chief Minister's Department
- En. Sopian Tarmizi, Sarawak SAGs Chamber
- Ms. Mareia Hasan, Sarawak State Planning Unit
- Ms. Rodziah Haji Mushidi, Sarawak State Planning Unit
- Ms. Shirini Mastura Mohd. Zulkifli, National Registration Department, Sarawak
- Ms. Haminah Lek, National Registration Department, Sarawak
- Mr. Abu Bakar, National Registration Department, Sarawak
- Datuk J.C. Fong, Sarawak State Attorney-General (SAG)
- SACII Khairi Jaafar, Royal Malaysian Police
- Tuan Haji Ali Yusop, Sarawak State Forestry Department
- Dr. Yao Sik King, Sarawak State Forestry Department
- Mr. Barney Chan, Sarawak Timber Association
- Ms. Celina Yong, Sarawak Timber Association
- Mr. Mohd Omar, Land and Survey Department, Sarawak
- Mr. Hassan Yusof, Ministry of Planning and Resource Management, Sarawak
- Mr. Paul Vincent Ritom, Sarawak State Agricultural Department
- Ms. Dewi Rahmaz Majidi, SAG's Chamber
- Mr. Fredrick John a/I George, Sarawak State Planning Unit
- Dr. Haji Julaihi Haji Buang, National Registration Department, Sarawak
- Ms. Sakeran Osman, National Registration Department, Sarawak
- Ms. Ruth Sigar, National Registration Department, Sarawak
- Mr. Yahya Bin Hassan, National Registration Department, Sarawak

Dialogue with the Minister in charge Of Penan Affairs, Minister's Office, 13 October 2006

- Dato' Sri Abang Haji Abdul Rahman Zohari, Minister in charge of Penan Affairs
- Tuan Haji Fatihi, Sarawak State Planning Unit
- Puan Mareia Hassan, Sarawak State Planning Unit



7. DIALOGUE WITH NGOS, ACADEMICIANS AND CONCERNED INDIVIDUALS AND OTHER BRIEFINGS AND SUBMISSION

I. INTRODUCTION

The Dialogue with representatives of NGOs, academicians and concerned individuals was organised on 14 October 2006 in Kuching, Sarawak. The aim of the Dialogue was to obtain views on the plight of the Penans.

Besides the Dialogue with NGOs, academicians and concerned individuals, SUHAKAM was also briefed by researchers who were familiar with the background and plight of the Penan, namely Dr. Khoo Kay Jin, Mr. Jayl Langub, and Dr. Peter Brosius.

II. DIALOGUE WITH REPRESENTATIVES FROM NGOS, ACADEMICIANS AND CONCERNED INDIVIDUALS

The Dialogue on 14 October 2006 was attended by representatives from the Orang Ulu National Association (OUNA), Angkatan Zaman Mansang (AZAM), University Malaysia Sarawak (UNIMAS) and other concerned individuals, including the Assemblyman of N57 Belaga Y.B. En. Liwan Lagang.¹⁶

The Dialogue began with a welcoming note by Datuk Dr. Denison Jayasooria, followed by a presentation on the findings of SUHAKAM's visits and dialogues in Long Singu and Long Jaik, Belaga on 18 September 2006 by Dr. Mohammad Hirman Ritom Abdullah. An open dialogue session followed thereafter.

At the, Mr. Jayl Langub, a researcher from UNIMAS, briefed participants on the historical background of the Penans which highlighted their existence within the Usun Apau Plateau as well as on the issues raised by the Penan of Seping and Danum Rivers and the 5 villages of the Penan in upper Belaga River.

VIEWS ON PENAN'S CLAIM TO LAND

Traditional Claim on Land

A representative from UNIMAS said that based on the Penan culture, ownership of land is established by way of managing and harvesting forest produce instead of clearing land for cultivation as provided in the Sarawak Land Code 1958.

Therefore, the current method used by the Government to define the eligibility of NCR land claims is inadequate as it fails to recognise the traditional culture of ownership and stewardship of land amongst the Penan community. As a result, members of the Penan community had lost their claim to ancestral land.

Therefore, it is imperative for laws determining NCR land to take into account the different cultures of different ethnic groups of land ownership.

¹⁶ The list of participants between SUHAKAM's dialogue with NGOs, academicians and concerned individuals is attached as Annexure 3

Additionally, a mere aerial view of land to determine whether land has been cultivated may be insufficient since this method may fail to see activities done by members of the Penan community under trees in the forest.

A concerned Penan member agreed to this and exemplified with the community in his village in Long Lamai, Baram. He explained that the Penan community in Long Lamai, were amongst the first communities that settled. However, the settlement was only established after 1958. Small scale cultivations such as rice farming only began in the 1960s. Therefore, based on the Sarawak Land Code 1958, the villagers have no claim on their ancestral land under the NCR, despite being one of Malaysia's original inhabitants.

Identification of NCR in the EIA Report

Participants of the Dialogue agreed that the responsibility to ascertain land claims in the area licenced to Shin Yang is of the Government's. The Government should not have transferred this task to the Company as the Government is obligated to protect the rights of its citizens.

With regard to the EIA Report on LPF/0018, participants felt that it was necessary for the Government to scrutinise and verify the information given by the Consultant appointed.

In addition, participants agreed that any EIA report should be open for public scrutiny. Not only does this enable participation of affected members and the public as a whole, it would also ensure transparency of the Government and the private companies involved. Another participant highlighted the High Court of Sabah & Sarawak, Kuching case of *Nor Anak Nyawai & Ors. v. Borneo Pulp Plantation Sdn. Bhd. & Ors.* whereby Justice Ian HC Chin raised doubts on the quality of provisional licences when the responsibility to sort out NCR issues was left to the Company and not the Government.

The participant felt that provisional licence should be reviewed since allowing private companies to sort out NCR issue might prejudice members of the indigenous community since these private companies are profit oriented and the rights of the community might not be prioritised.

Land Claims by the Penans from Shin Yang

The Assemblyman of N57 Belaga said that he was aware of the issue between Shin Yang and members of the Penan Community in Belaga and had highlighted this during the last State Assembly seating. However, no feedback was given at that time. The issue would be brought up again at the next seating.

He had also arranged a meeting with representatives from Shin Yang in Miri to discuss the issues of land claims by affected Penans. In addition, the meeting would also attempt to ask for allocation of land for the affected Penans.

VIEWS ON OTHER SOCIO-ECONOMIC ISSUES

Issues on Documentation

Undocumented Penan Members

A concerned Penan participant pointed out that about 40% of the Penans in his village in Long Lamai were undocumented. He also believed that there were more in the interior parts of Sarawak that face the same problem. The participant said that a contributing factor which led to non-documentation was the unavailability of registration office near Penan villages. They depended on visit from the



National Registration Department Officer to the villages. However, he pointed out that the last visit from the Registration Department to Long Lamai, Baram, was in 2001.

Unaffordable Travel Costs

Since there is no registration office near Penan village and visits from Officers of the Registration Department is seldom, some Penan villagers in his village had to travel to Miri to apply for ICs and BCs. However, most of the Penan could not afford the cost associated with travelling to Miri which would take up to nine hours drive at a cost of up to RM800.

Application for Birth Certificates (BCs)

A Penan representative said that Penan families also face problems when applying for their children's BCs. For application of BCs, the Registration Department requires parents to produce their ICs and marriage certificates. However, he emphasised that most of Penan parents' themselves do not have ICs due to various reasons. Additionally, marriages amongst Penan members are merely solemnised by respective heads of longhouses with no marriage certificates given.

Impact of Non-Documentation to Data on Poverty

A representative from UNIMAS pointed out that the major implication of not having valid ICs and BCs is that they might be excluded from the Country's data on poverty which is important to ensure poverty eradication programmes reach disadvantaged groups.

Documentation assists Government and Company

The UNIMAS representative then highlighted the importance of ICs and how this could assist the Government and Company in identifying and track the penans and their location of settlements. This would then verify the claims that some Penans would move and set up new settlements in logging areas and claim then for compensation.

Documentation of the Orang Asli in Peninsular

The representative from UNIMAS pointed out the attention and efforts by the Government to ensure members of the Orang Asli Community in Peninsular Malaysia are documented. He felt that the same should be accorded to the Penans as well as other indigenous communities in Sarawak.

Issues on Education

School Fees

According to the Penan representative, during his time in primary and secondary school, Penan children had easier access to education since they were able to attend school even when they were unable to pay for school fees. However, during his last visit to his village in Long Lamai, many Penan parents complained that they received letters from the school administration asking them to pay fees which they could not afford.

Cost of Transportation

In addition to school fees, the Penan representative also highlighted that parents from Penan villages could not afford the cost of transportation to send their children to school. Although some children would stay in boarding schools, they would need transportation back to their villages during holidays.

Since this was not available, Penan children, as young as 10 years old, were forced to walk through the forest by themselves to return home.

Financial Assistance for Penan Students

The Penan representative also said that financial assistance should be easily accessed by the disadvantaged Penan children. He hoped that the relevant Government agency ensures that this facility reaches the Penan children.

The Assemblyman of N57 Belaga responded by assuring that financial assistance could be easily obtained for Penan children at the primary and secondary school, as long as the respective school headmasters apply for this facility. He explained that during his time as a teacher in Long Tangai, Belaga, all children, including Penan children were provided with scholarships. The problem was that after receiving the scholarship, some Penan children left school.

Reluctance of Penan Parents to Leave Their Children in School

The Assemblyman of N57 Belaga highlighted that during his service as a teacher, Penan parents were reluctant to part with their children. He would often see Penan parents taking their children from school before school time was over. They would do this because their children cried and refused to stay in schools. At times, he would argue with parents just to ensure that children are not taken away during school period.

A Penan representative agreed to this. However he believed that this attitude has gradually shifted as was the case in his village in Long Lamai. He felt that Penan parents were more willing to part with their children these days.

Stigma amongst Penan Children

Another Penan representative said that other factors that led to the reluctance of Penans to attend school were as follows:

- Stigma amongst penan children who are treated discriminately by children from other ethnic groups. Penan children were shamed and called by rude names;
- Penan children were often victims of threats and bullies.

The Penan representative, now a student in UNIMAS, said that he was grateful that he knew the Kayan dialect and used this dialect during primary and secondary school. His schoolmates assumed that he was Kayan.

Commitment of Teachers

The Penan representative questioned the commitment of teachers posted in schools located in the interior of Sarawak. He said that during his recent visit in Long Lamai, Baram, many Penan parents complained and said that their children did not learn anything from school. Parents were further informed by their children that some teachers would instruct students to stay in class and do their own work while the teachers went back to their office.

He also claimed that during his recent visit to his village, he saw teachers playing table tennis outside a classroom while children were inside the classroom unattended.



The Assemblyman of N57 Belaga agreed that commitment amongst educators is important for the development of Penan students. He illustrated this by referring to his previous experience as a headmaster at S.K. Lusong Laku, Belaga. He said that the teachers were committed in helping the Penan children by providing extra teaching lessons for them, especially for students who were enrolled at primary levels according to their age. For instance, a Penan child aged 9 years old, and was enrolled to primary three without having knowledge on the lessons learnt in primary one and two, would be given extra school sessions to ensure that he/she could catch up with other children of his age.

Misconception on Employment after School

The Penan representative said that some Penan parents had the wrong perception that their children were guaranteed employment upon completion of their studies.

Survival of the Penan Community

Limited Access to Forest Area

The Penan representative said that the knowledge of cultivation amongst members of the Penan community was limited to small scale farming. Penan families still relied on jungle produce especially when harvest yield is poor.

Participants of the dialogue then agreed that denied access to forest area by Shin Yang may bring negative impact towards the survival and livelihood of the Penan community, since they depended heavily on jungle produce for their food supply.

The representative from UNIMAS added that limited food source results in malnutrition. He referred to the recent measles epidemic that killed 13 Penan children and an adult. He emphasised that measles could only cause fatality when a person is malnourished.

The Assemblyman of N57 Belaga said that apart from members of the Penan community, Government officials were also not permitted to enter the area. He related his firsthand experience on this.

Rearing of Livestock

To the claim that Penans do not eat poultry, the Penan representative said that this has changed and poultry has become part of the Penan's diet.

Penan Volunteer Corp (PVC)

A representative from UNIMAS explained that the PVC programme was implemented in 1987 and was active with the support of committed staff who made regular visits to Penan villages and was closely monitored by the relevant authority. However, he opined that the programme had lost its effectiveness when monitoring became inconsistent and volunteers were left without the necessary assistance. For instance, previously, the PVC members were given TNT allowances for traveling purposes. However, the provision of this allowance was stopped. Without this allowance, the PVC members were either unable or unwilling to travel since the cost of traveling to the interior parts of areas such as Baram and Belaga is very expensive.

Another representative from UNIMAS added that the Government should not use scarce resources as a reason for the ineffectiveness of the PVC. He reminded participants that in previous years, when both financial and human resource was much lesser, efforts to ensure assistance and services reach

the indigenous communities in Sarawak were successful. Therefore, more could be done with a bigger population and richer economy than before.

The Assemblyman of N57 Belaga agreed to this. However, he believed that there were other causes for the PVC's ineffectiveness such as the Penan's resistance to change. He explained that he had joined several meeting sessions of the said PVC. For the first two years, members seemed enthusiastic of the programmes they had carried out. However, after the second year, it seemed that members of the PVC had given up as they felt that they were unable to instill change amongst the Penans, despite various assistance and encouragement given to the community.

RECOMMENDATIONS BY PARTICIPANTS

Access to Information

The Penan representative said that most Penan students who had completed secondary school were not aware of after school options and the procedures involved in applying these options.

He, therefore, recommended that the relevant District Office organise a programme for information dissemination on options after secondary school, including tertiary education and employment. This should include information on where to obtain application forms.

Technical Training for Penans

The Penan representative felt that Penan youths should be given access to skill and technical training since only a handful were successful in their studies.

Revival of the PVC

The Penan representative highlighted that the PVC introduced by the Government was a good programme which encouraged change in the Community. However, this programme was not as active as before. He recommended that this programme be revived.

Government and Company to Provide Amenities

The Penan representative recommended that the Government, with the help of the Company, ensures the availability of schools, roads and transportation facilities.

Need for Effective Communication

A representative from UNIMAS said that to ensure efforts carried out are successful, it is crucial to ensure two-way communication. Information, views and concerns from both sides of the parties must be heard and deliberated. There is the need for more dialogues between authorities and the communities involved.

Role of the Media

The role of the media is crucial to ensure issues of marginalized and disadvantaged groups such as the Penans are highlighted particularly to the relevant authorities to enable them to address the issues.



Need for a Balanced Development Approach

The current model of development in Malaysia is urban - biased which focuses on urban infrastructure and other development which had, unfortunately, lost sight of the rural needs.

There is, therefore, a need for the Government to ensure that there is balanced development as the quality of the Country's civilization will be judged based on the improvement of disadvantaged communities/groups and not merely on what the Country has achieved economically.

III. BRIEFINGS AND SUBMISSIONS TO SUHAKAM

SUMMARY OF THE BRIEFING TO SUHAKAM ON VARIOUS ISSUES RAISED BY THE PENAN OF SEPING, PLEIRAN AND DANUM RIVERS, AND ALSO THE 5 VILLAGES OF PENAN IN UPPER BELAGA RIVER BY MR. JAYL LANGUB, LOCAL RESEARCHER, UNIMAS.¹⁷

Mr. Jayl Langub began by highlighting his prior conversations with Penan members who were affected with the conversion of a large area of land in the Seping and Pleiran Rivers into oil palm plantation, namely its effects on their livelihood, land, and security. The Penans also highlighted issues on their citizenship, education, and health as citizens of this country.

He explained that a total of 8 longhouses with 1,160 Penan members were affected by the conversion of land. He continued by highlighting the name of the 8 longhouses, door of longhouses and the population of each longhouses.

He then narrated the historical background of the affected area which was also known as the Usun Apau¹⁸ and the previous communities, including the Kenyah sub groups and Kenyah related peoples. He explained that the Oxford Expedition in 1995 had identified 6 old longhouse sites in the Usun Apau area, including Long Jaik. These occupants, however, moved away in the late 19th and early 20th century to escape Iban raids.

After the fleeing of the Kenyah community from the main river system, the Penans moved down river and occupied the places left by the Kenyah. He said that the 8 settlements of Penans in the area had never moved away from the Usun Apau. However, as nomads, they would move from one river system to another as far as Dapoi in the Tinjar, but had always returned to the Seping, Pleiran and Danum area. He then referred to the Oxford Expedition in 1955, where members of the expedition met with 5 groups of Penans within the Usun Apau. He further explained the division of the initial 4 groups of Penans who are today distributed among existing 8 settlements, while the fifth group moved to the Silat in Baram District.

Mr. Jayl Langub then presented a genealogical chart that among others, showed the ancestors of Chief Matu Tugang up to eight generations.

He moved on to explain the human activities in the area which was first cultivated by shifting cultivators, and how it was left to the nomadic Penans to manage and nurture. The Penans had exercised stewardship rights over the area and they had harvested and preserved resources. The stewardship rights were passed down through generations. Although most of the Penans are settled now, they still rely on jungle produce for domestic use and trade. The jungle also provides the Penans with medicine.

¹⁷ The full version on the briefing by Mr. Jayl Langub is attached as Annexure 4.

¹⁸ The Usun Apau is an old volcanic plateau at the head-waters of the Rajang, Sarawak's largest river. See definition by Guy Arnold at [http://links.jstor.org/sici?sici=0016-7398\(195706\)123%3A2%3C167%3ATUAP%3E2.0.CO%3B2-O](http://links.jstor.org/sici?sici=0016-7398(195706)123%3A2%3C167%3ATUAP%3E2.0.CO%3B2-O)

As the Penans only settled after, and did not clear land prior to 1985, they were not entitled to Native Customary Land Rights as provided by the Sarawak Land Code 1985. Nonetheless, the Penans have established concepts, such as *molong*, *pemakai menua* and *tana' mengurip* similar to those of the Ibans, which in view of the case of *Nor Nyawai & Ors vs. Borneo Pulp Plantation Sdn. Bhd. & Ors* (2001) is considered customary land rights. Further, the Sarawak Land Code (Cap. 81) section 5(2)(f) stipulates that customary land rights can be established by "any other lawful method". The concepts and practice of the Penans could be considered as "any other lawful method".

Mr. Jayl Langub moved on to highlight other issues faced by the Penans. They include the following:

Citizenship

Although the Penans have been living in the Seping, Pleiran and Danum for generations, only a handful have identification cards (ICs), despite the fact that during the Brooke's regime and the colonial times, the Penans paid head tax. It is believed that they paid with rattan mats and baskets.

In addition, the Penans, during early elections for Parliament and State Legislative Assembly, exercised their rights to cast votes despite not having ICs.

Many of those who applied for ICs were rejected for lack of supporting documents. Consequently, Penan babies born could not be registered since their parents did not have ICs and marriage certificates.

Education, Agriculture and Health

Mr. Jayl Langub explained that during his tenure with the State Planning Unit, he had proposed for a service centre in Long Luar – including a primary school, rural clinic and agricultural station – to serve 8 Penan settlements. Years later, he was asked to find alternative sites for the service centre since Long Luar was considered remote. Although he had done this in the 1990s, there has been no development since.

SUMMARY OF THE BRIEFING PAPER ON THE PENAN AND THE EIA FOR THE SHIN YANG FOREST PLANTATION BY DR. KHOO KAY JIN, INDEPENDENT RESEARCHER.¹⁹

Dr. Khoo Khay Jin's briefing focused on the social component of the EIA report for the Proposed Shin Yang Forest Plantation located between Batang Belaga and Sg. Murum, Belaga, Kapit and the provisions of the Licence for Planted Forest (LPF/0018).

The aim of his briefing was to show that the Licencee and /or his appointees failed to conduct a comprehensive EIA, specifically on the social component. This led to their failure to observe the native customary rights of the people, specifically the Penans in that area, and had effectively dispossessed the Penans of their basic rights – in particular their social and economic rights.

The briefing began with a brief description of the location and tenure of the plantation under the said Licence.

Dr. Khoo moved on to highlight several conditions of the Licence, of which condition 8(2)(e) of the Licence provides that the Company takes on the task of obtaining written evidence of Native Customary Rights from the claimant to be furnished to the relevant authority. In other words, the Licence had placed the onus of responsibility to determine Native Customary Rights on the Licencee

¹⁹ The full briefing by Dr. Khoo Kay Jin is attached as Annexure 5



rather than identifying this as the responsibility of the Government. He then referred to the Court of Appeal's judgment in the case of *Kerajaan Negeri Selangor & 3 Ors v. Sagong Bin Tasi & 6 Ors* (2005) which raised the question of whether such transfer of responsibility represents an appropriate discharge of the fiduciary duty of the Government.

He continued by referring to the contents of the relevant EIA report and highlighted the possibility that the EIA report may have been approved as submitted since there is no revised version or subsequent submission. Further there was no indication of date of approval and information on the composition of the evaluating panel nor was there any indication of the conditions imposed.

He then asserted that the relevant EIA report had major flaws as its findings on the social component contradicts with facts on the ground that at the time of the EIA and for at least fifty years prior to that. This, he said, has led to the non-consideration of the impact on the community in the area.²⁰

He then proceeded to highlight several observations he made on the relevant EIA report which includes the following:

- By 1999/2000, there is no excuse for confusing the term Penan and Punan;
- That the statement 'there were no villages or longhouses within or near the project boundary' was false as 7 longhouses already existed within the area previous to the EIA;²¹
- The EIA report considered the Asap Settlement to fall within their purview of assessment. However, they had omitted native villages including the villages of the Seping, the Bemali people at Long Koyan and Long Bala, and the villages of the Kenyah Uma Sambop on the Belaga River and Kenyah Baking settlement opposite Long Koyan. These villages/longhouses were located closer to the project boundary compared to the Asap Settlement;
- The information on 'illegal 15-door Kenyah longhouse at lower Sungai Belepeh' is false. This longhouse was a Kayan longhouse built by the people from Uma Bawang in order to be close to their farms. They were resettled at the Asap Resettlement in 1997.

He then highlighted that information on the existence of settlements, villages and longhouses in the area could have easily been validated by a simple query at the Belaga District Office as some Penan headmen were officially appointed as Penghulu by the District Office. Therefore, it is questionable that the consultant was not able to identify human settlements in the area despite listing the Belaga District Office as one of the authorities consulted.

It is also questionable that the company had not detected the Penan settlement within the area despite the fact that the Company, either in its own name or through subsidiaries, had operated and cited payment of allowance and other claims to headmen in the area prior to LPF/0018.

The existence of Penan settlements in the area could be easily validated by the following means:

Oral testimony – Other indigenous community groups including the Kayan, Kenyah, Kajang, who had either traded with the Penans or neighboured the Penan settlements could validate the existence of the Penans in the area. In addition, former and existing community leaders including, among others, Talik Lisut, the former Temenggong of Belaga; current Temenggong, Datuk Nyipa Batok; State Assemblyman and State Minister, Datuk Tajang Laing; State Assemblyman Y.B. Encik Liwan Lagang, could have validated the existence of the Penans;

²⁰ Dr. Khoo Kay Jin referred to several sections of the relevant EIA report, namely paragraph 21 of the Executive Summary and Sections 2.2 and 4.5 of the main report of the EIA Report, all of which stated that no human inhabitants existed within the licenced area during the survey carried out by the consultant.

²¹ The longhouses referred to by Dr. Khoo Khay Jin here include Long Jaik and Long Peran on the Seping River; Long Luar, Long Tangau, Long Singu and Long Pelutan on the Pleiran River and its tributaries; and Long Wat on the Danum River.

Documentary evidence – Among the documentary evidence that validates the existence of the Penans in the area include the Sarawak Gazette published in 1951, the Oxford Expedition 1955, Longhouse and Jungle 1959, Borneo Research Bulletin and the Sarawak Museum Journal.

With regards to native customary land rights, it is noted that following the Sarawak Land Code 1958, the Penans do not have claim to land. However, there are various court cases that have progressively viewed the issue of customary land rights of the indigenous community in a broader perspective.²²

By way of conclusion, Dr. Khoo Khay Jin reiterated that as a result of a flawed EIA report, work had been commenced without giving regard to the Penans in the area. Additionally, there is no provision to protect the rights of this community. As the situation of the Penans in the area worsened, the Government had made no intervention to protect them. In this light, Dr. Khoo Kay Jin made the following recommendations to SUHAKAM:

- To urge the Government to suspend any further forest clearing and plantation until the issue of the Penans is resolved;²³
- That SUHAKAM consider the possibility of assisting the Penans to seek clarification of their rights in court, or otherwise, hold a public inquiry to look into the matter.

SUMMARY OF THE BRIEFING ON THE PENANS IN ULU BELAGA, SARAWAK BY PROF. DR. J. PETER BROSIUS, PROFESSOR OF ANTHROPOLOGY, UNIVERSITY OF GEORGIA, ATHENS, US.

On 23 March 2007, SUHAKAM had invited Prof. Dr. J. Peter Brosius to the SUHAKAM Office in Kuala Lumpur, to give a briefing on the Penans in Ulu Belaga, Sarawak.

Prof. Dr. J. Peter Brosius, is a Professor of Anthropology, University of Georgia, Athens, US and is also a visiting Professor to University Malaya and University Malaysia Sarawak UNIMAS.²⁴

The Professor's briefing focused on his field research on ethnographic of the Penans of the Belaga District, Sarawak from October 1984 and October 1987. He also briefed on evidence of prior occupation, the nature of Penan historical knowledge, documentary evidence on Penan occupation within the Usun Apau and the history of Penan settlements.

During the course of his field research, he had stayed with the Penans in Long Jaik. At that time, the Penan settlement in Long Jaik was headed by Chief Tugang Sugun, the father of the present headman, Chief Matu Tugang.

In his research on the Penans he found that there were 1,561 Penan members residing in the Belaga District at the time of his research. This group is the third largest ethnic group in the district.

Dr. J. Peter Brosius highlighted that the Penans inhabited the Seping, Pleiran and Danum Rivers since the 1900 or even earlier, filling the vacuum that was left by other longhouse peoples.

22 The cases that Dr. Khoo Khay Jin referred to here include Adong Kuwau (1996; upheld on appeal), Nor Nyawai Case (2001; principle upheld on appeal, 2005), Madeli Salleh (Court of Appeal, 2005) and Sagong Tasi (2002; enlarged on appeal, 2005 and currently being considered for appeal to Federal Court).

23 Dr. Khoo Khay Jin highlighted two possible solutions to the problem. They include (i) reservation of a sufficient area of forest and land for the Penans as experience shows that a vast majority could not survive on or hold employment and wage-rate are usually below the Poverty Line Income for Sarawak; and (ii) adequate compensation for such of their rights as are extinguished, their resource base that is destroyed or damaged and their land that is taken for plantation. This is especially important as substantial areas have already been cleared. Compensation should be primarily be in the form of land rather than cash as cash could not serve their medium and long term needs and interest.

24 Dr. J. Peter Brosius was on his visit to University Malaysia in March 2007. SUHAKAM took this opportunity to invite the professor for the briefing.



He documented different Penan settlements, population of settlements, number of household and average household size in the Belaga District. Among the groups identified include those that had attended SUHAKAM's dialogue at the Alung Ju and Matu Tugang Longhouses.

TABLE 2 : PENAN POPULATION, NUMBER OF HOUSEHOLD AND AVERAGE HOUSEHOLD SIZE, BETWEEN OCTOBER 1984 – OCTOBER 1987

NO.	COMMUNITY	POPULATION	NO. OF HOUSEHOLD	AVERAGE HOUSEHOLD SIZE
1.	Lg. Kupang	250	17	14.7
2.	Lg. Urun	73	9	8.1
3.	Lg. Panan	55	5	11.0
4.	Lg. Jek	84	9	9.3
5.	Lg. Peran	66	7	9.4
6.	Lg. Tangau	160	15	10.6
7.	Lg. Luar	184	13	14.2
8.	Lg. Wat	167	21	8.0
9.	Lg. Malim	76	12	6.3
10.	Lusong Laku	218	27	8.1
11.	Lg. Kajang	63	11	5.7
12.	Lg. Tanyit	86	10	8.6
13.	Lg. Belangan	79	11	7.2
	Total	1,561	167	(Average) 9.3

Source: Extracts from Dr. J. Peter Brosius' Research on *The Penan of the Belaga District: Considerations for Development*

Logging activities in the Belaga District had already affected the Penans in Belaga at the time of his research, since most of them relied on jungle for food. During his visits to other Penan settlements, they had constantly asked him to convey their feeling about logging to the Government. They understood that logging would mean destruction of forest and consequently results in hunger and impoverishment. As requested by the Penans, Dr. J. Peter Brosius had highlighted this to the Government for consideration.

He understood that the laws of Malaysia do not recognise the Penan's method of ownership and stewardship to land. Hence, their claims were without legal basis. Nevertheless, he emphasised that the Penans had presented a distinctive pattern of land use which sets them apart from other longhouse communities. Hence, there should be an alternate set of principles which explicitly recognise the Penans method of ownership and stewardship of land. He also emphasised that the Penans were conscientious resource managers, fully aware of sustained-yield principles. They exploit their environment in ways that preserve its long-term ecological integrity.

In addition, recognition of ancestral burial sites, which is one of the basis for the creation of customary rights as provided in the Sarawak Land Code 1958, exists in the Licenced area. Some of the Penans maintained knowledge of burial sites which goes back to generations.

Dr. Brosius concluded by saying that there was the need for the relevant authority to ensure participation of the Penans in development as development should not be something that is imposed from the

outside, rather, it is something they bring to pass. It is important to recognise that the Penans are capable of deciding their own future and other should stop assuming that they know better.

PARTICIPANTS OF THE DIALOGUES WITH REPRESENTATIVES FROM NGOS, ACADEMICIANS AND CONCERNED INDIVIDUALS KUCHING, SARAWAK, 14 OCTOBER 2006

- Y.B. Mr. Liwan Lagang, Wakil Rakyat, .57, Belaga
- Mr. Jayl Langub, UNIMAS;
- Dr. Andrew Aeria, Faculty of Social Science, UNIMAS
- Ms. Ann Appleton, IEAS, UNIMAS
- Mr. Ding Seling, Member, Orang Ulu National Association (OUNA)
- Ms. Dora Jok, Angkatan Zaman Mansang (AZAM)
- Mr. Awi Abang, Penan member, UNIMAS Student
- Mr. Ezra Uda Penan Member, long Lamai, Ulu Baram
- Mr. Edwin Tawi, AZAM

PART 3
ANNEXURES



ANNEXURE 1

**Written Complaint by Chief Matu Tugang
from Long Jaik, Ulu Belaga, Sarawak**

Th.

22-6-2008

Tuan Rumah: Matu Tugang No. KP (560807)-136239

Rumah panjang penan Long Jak

Belaga - 96900 Belaga.

DR. Mohd Hirman Ratom (Commissioner)

SuHAKAM (Human Rights Commission of Malaysia)

194J Lot 456 & 457, 3rd floor

At 100 Commercial Centre, Jalan Satok

93400 Kuching

Sarawak.

Tuan

Hutan Simpan Rumah panjang Long Jak.



Saya Tuan Rumah Matu Tugang mewakili penduduk kampung memaklumkan bahawa kawasan kami seperti tersebut adalah satu-satunya warisan sejak turun-temurun. Kawasan ini telah kami terokai sejak dulu lagi sebelum wujudnya Malaysia.

Dengan tegasnya kami mohon kerja sama kepada Tuan supaya kawasan yang kami simpan akan di larang. Company yang membuka skim ladang kelapa sawit di tempat kami ialah - Sitingang Forestry Sdn. Bhd.

Kawasan yang kami larang ialah dari arah Camp Sebelah bawah jalan Sy. danum Sampai ulu Sungai-jak. kira 1.km. dari tebing Sungai Seping dan jak.

luas kawasan tanah yang kami takan adalah semua di dalam mpp yang kami beri ken pada-tuan.

Kami harap pertimbangan dari Tuan supaya dapat membantu kami perteng tanah yang kami simpan. Kawasan tanah dalam mpp sudah kami warna tanda ken.

warna merah tanda hutan simpan untuk kami membuat ladang padi tanam dan yang lain. warna biru tanda masuk hutan simpan untuk simpan upak mutung-Buah-Rotan dan berbagai-bagai nya. Semua kawasan yang kami tuntut.

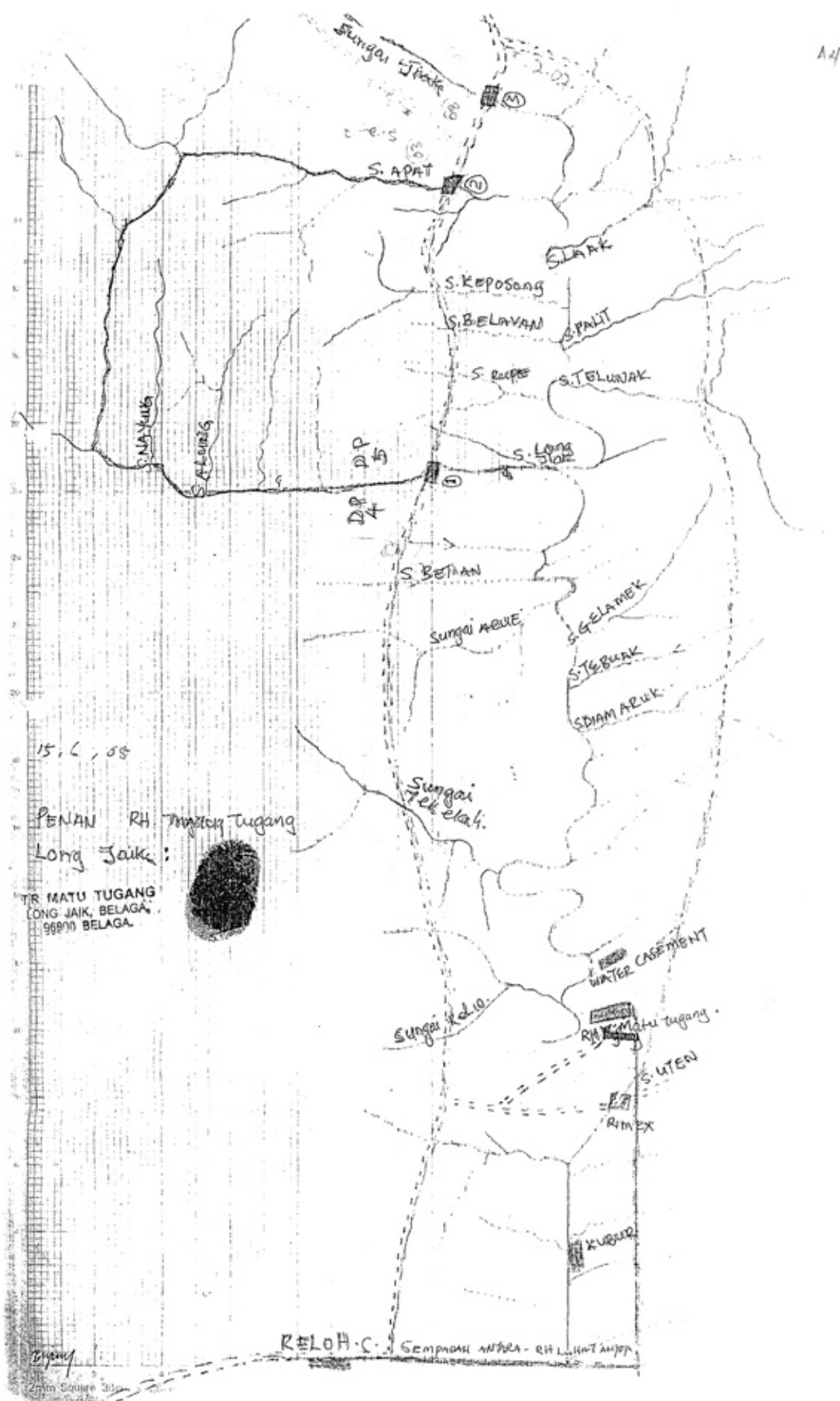
Semua kawasan yang kami tereng ken di dalam mpp, kami harap semua pihak Syarikat.

Tidak-Sama Sekali memaseki membuat atau membuka skim kelapa sawit di tempat se tersebut.

Kami Sangat minta bantuan dari Tuan yang menguasai, Supaya permohonan kami akan terima. Walau pun permohonan kami tak begitu lengkap harap di terima.

Sekian Terima kasih. yang benar - T.R MATU TUGANG
LONG JAIK, BELAGA,
96900 BELAGA.







ANNEXURE 2

PROGRAMME OF SUHAKAM'S VISIT & DIALOGUES

PROGRAMME

Date	Time	Programme
18 September 2006	0930	Field Visit and Dialogue at the Alung Ju Longhouse in Long Singu, Belaga.
	1400	Meeting with Mr. Ting Khai Sik, the General Manager of Shin Yang Company's oil palm plantation, Metannik Camp, Long Jaik, Ulu Belaga, Sarawak
	1700	Field Visit and Dialogue in Long Jaik, Ulu Belaga, Sarawak
19 September 2006	1030	Dialogue with Government Agencies in Sungai Asap, Belaga
12 October 2006	1115	Discussion with Shin Yang Sdn. Bhd., Headquarters, Miri, Sarawak
13 October 2006	0830	Dialogue with Relevant State Government Agencies, Kuching, Sarawak
	1515	Meeting Dato' Sri Abang Haji Abdul Rahman Zohari, Minister in charge of Penan Welfare, Kuching, Sarawak.
14 October 2006	0900	Dialogue with Representatives from NGOs and Academicians, Kuching, Sarawak.
23 March 2007	1500	Briefing by Dr. J. Peter Brosuis, Professor of Anthropology, University of Georgia, Athens, US, at SUHAKAM Office, Kuala Lumpur



ANNEXURE 3

**Briefing to Human Rights Commission of Malaysia
on Various Issues Raised by the Penan of
Seping, Plieran and Danum Rivers, and also the
5 villages of Penan in Upper Belaga River**

By Jayl Langub, Researcher, UNIMAS

**Briefing to Human Rights Commission of Malaysia
on Various Issues Raised by the Penan of Seping, Plieran and Danum Rivers, and also the 5
Villages of Penan in Upper Belaga River
By Jayl Langub, Researcher, UNIMAS**

Introduction

The paragraphs that follow comprise my oral presentation to the Human Rights Commission of Malaysia on various issues raised by the Penan of Seping, Plieran and Danum Rivers, and also the 5 Villages of Penan in Upper Belaga River at Hilton Hotel, Kuching on Saturday, October 14, 2006.

Two Penan headmen – Along Joo of Long Singu and Matu Tugang of Long Jek (or Jaik) – brought to Suhakam's attention that a Timber Company, Shin Yang had converted a large area of land in the Seping and Plieran rivers into oil palm plantation. Conversion of the area into oil palm has affected the livelihood of the Penan in the area. Specific river systems already converted to oil palm include the Seping, Jek, Menapun, Menavan (or Menawan) and Luar. From my conversations with the people of Lg Singu and Lg Jek, the following are issues they want to convey to Suhakam: livelihood, land, citizenship, education, security of health, and opportunities open to all citizens of this country.

[Khoo Kay Jin (KKJ): their area has been licensed for forest plantation for 60 years, with oil palm on part of it as a first cycle crop. It was previously subject to logging.]

The number of longhouses affected by the oil palm plantation is as follow:

Longhouse	Door / Apartment	Population
Lg Peran	21	103
Lg Jek	25	122
Lg Luar	56	159
Lg Tangau	21	97
Lg Singu	46	194
Lg Pelutan	22	99
Lg Wat	48	233
Lg Malim	27	153
8 Longhouses	260	1,160

Source: District Office, Belaga 2000

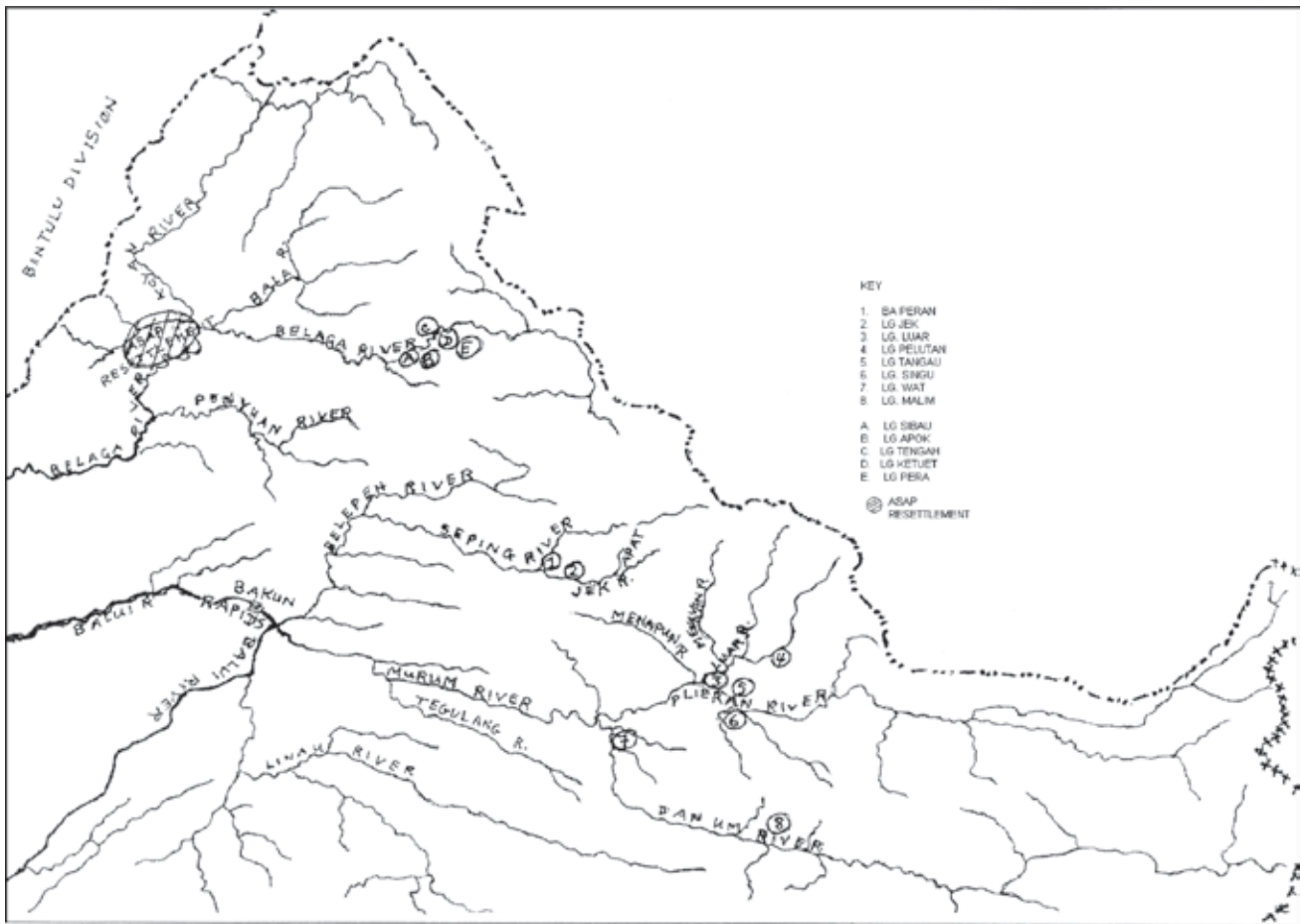
Locations of these longhouses are as in map 1.

Historical background of the area

The Seping, Jek, Menapun, Menavan and Luar form part a large area between Belaga and Baram district known as Usun Apau. Usun Apau is the historical homeland of various Kenyah subgroups, Lepo Tau, Lepo Aga, Badeng etc, and Kenyah related peoples such as the Sebop, Lirong Berawan etc (see Arnold 1958, 1959; Brosius 1992; Gau Jau 1957; Metcalf 1982).



LOCATION OF LONGHOUSES AFFECTED BY OIL PALM PLANTATION



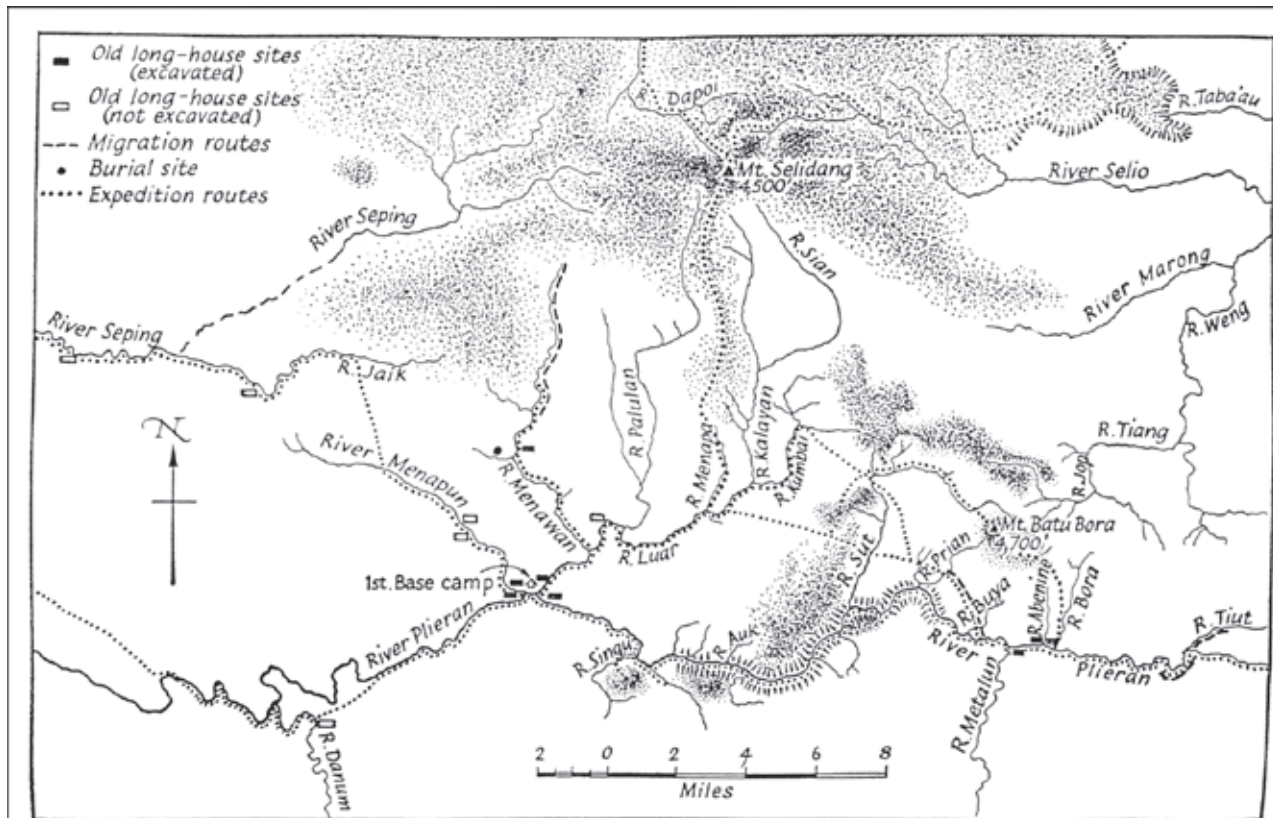
Source: Mr. Jayl Langub, Researcher from UNIMAS

MAP 1

The Oxford Expedition to Usun Apau in 1955 identified 13 old longhouse sites in the Usun Apau: one in the Seping, one in the Jek, two in the middle of Menapun, four on the confluences of the Plieran, Luar and Menapun, one in the middle of the Luar, one in the Menavan (Menawan), and three in the upper Plieran, ([Map 2], Arnold's map in Arnold, 1959:22). Occupants of these longhouse sites had moved out of the area into the Baram and Tinjar rivers in the late 19th century and early 20th century to escape Iban raids. These Kenyah and related peoples were shifting cultivators and left large tract of temuda land (native customary land or NCR land). This temuda forest (or secondary forest) is now about 100 years old. A 50-year old secondary forest is difficult to distinguish from primary forest. It is not surprising that they are people who think that there is no secondary forest or temuda land in the area.

The Penan have also been living in the Usun Apau area (Needham, 1972). While the Kenyah and related peoples occupied the main river systems, the Penan roamed around these settlements and in the headwaters of the Seping, Menapun, Menavan Luar etc. When the Kenyah nad related peoples left the Usun Apau for the Baram, Tinjar and Balui, the Penan moved downriver to occupy the vacuum. Some of the Penan also moved out of the area the Tinjar, Jelalong, and Suai-Niah. In fact, Datuk Asan Sui, the most successful Penan who now lives in Jambatan Suai, traces his ancestry to the upper Seping where the river at this point is called Keruan. This group of Penan still identify themselves as Penan Keruan.

THE PLEIRAN RIVER: LONGHOUSE SITES DURING THE OXFORD EXPEDITION 1955



4. The Plieran River : longhouse sites.

Source: 'Longhouse and Jungle. An Expedition to Sarawak' (1959), by Guy Arnold, page 122

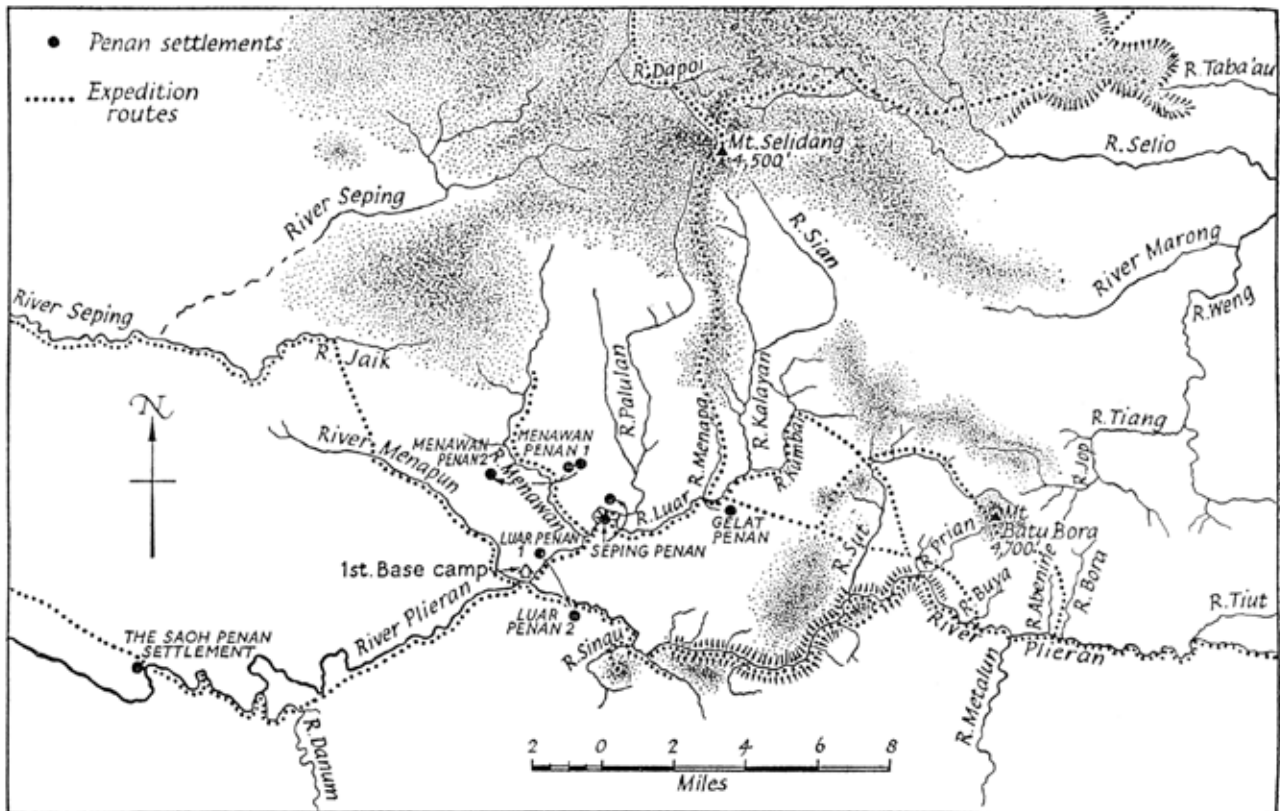
MAP 2

The 8 settlements of Penan in the area have never moved out. They, as nomads, however, moved locations from one river system to another as far as the Dapoi, in the Tinjar, but came back to the Seping, Plieran and Danum area. When members of the 1955 Oxford Expedition were carrying out geological survey, excavating old, deserted longhouse sites, and collecting folk stories, they met five groups of the Penan in the following locations: one group in the Saoh, tributary of the Murum which they identified as "Saoh Penan"; one group in the Luar, "Luar Penan"; one in group in the Menavan, "Menawan Penan"; one group in the Seping, "Seping Penan"; and one group on the Plieran, "Silat Penan" (see Arnold 1958:40-82). A census of the Penan was made, and some of the people named in the census can be found in the 8 settlements. Locations of their nomadic camps at the time of the survey are indicated in map 3 (Arnold's map in Arnold 1959:96). Members as well as descendants of the first four groups are today distributed among existing 8 settlements in the Seping, Plieran and Danum rivers. The fifth group had moved to the Silat in Baram district.

[KKJ: Re the 1955 Census by the Oxford Expedition, the Penan in the area could identify most of the names listed when I showed it to them in 1994. many of those listed as men/women had died, but many of those listed as boys/girls were still living.]



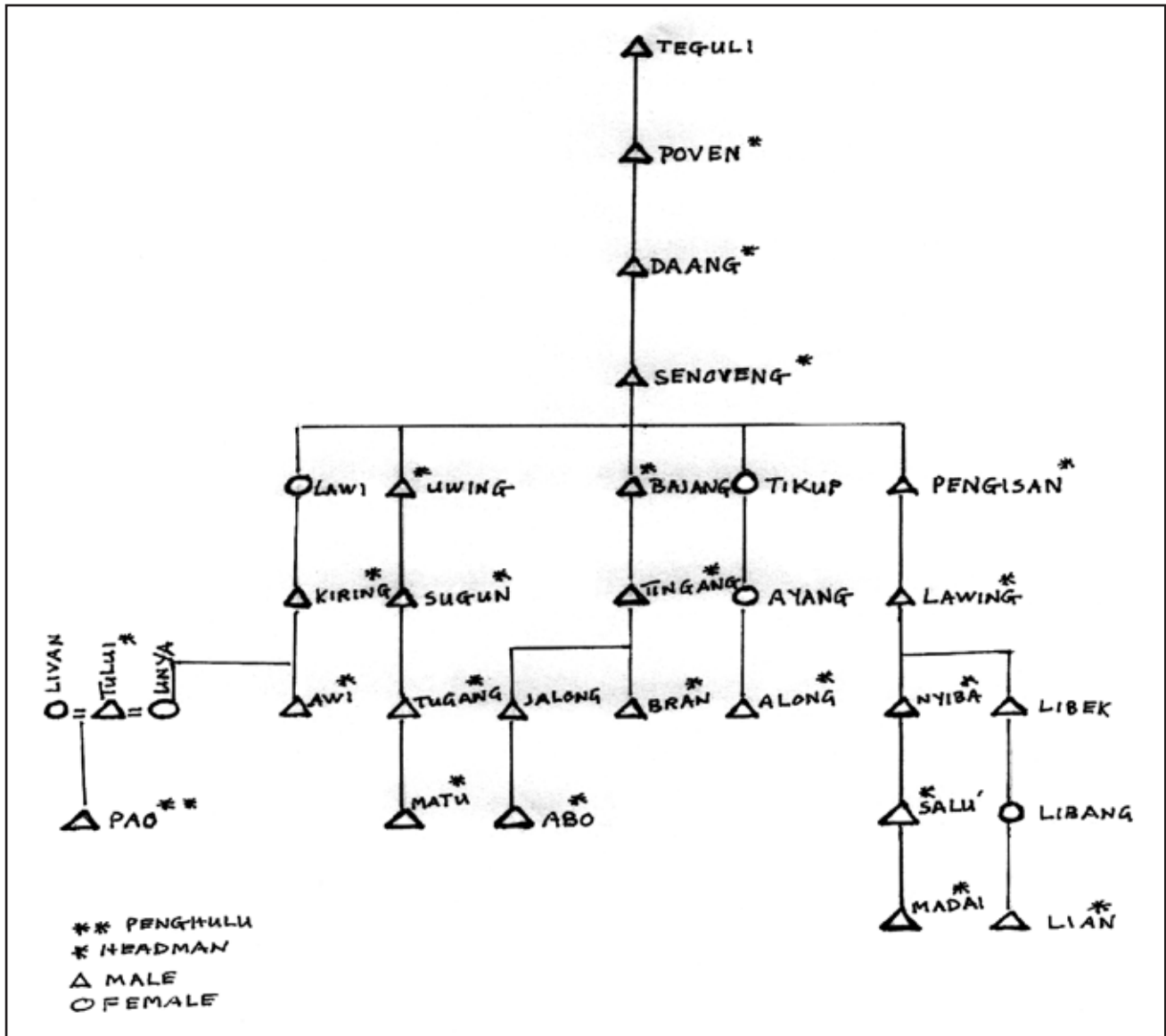
PENAN SETTLEMENTS FOUND DURING THE OXFORD EXPEDITION 1955



Source: 'Longhouse and Jungle. An Expedition to Sarawak' (1959), by Guy Arnold, page 96

MAP 3

Genealogical accounts suggest that they have been in the area, no less than seven to nine generations (see genealogy on the next page). Their apical ancestor Poven was born in the Apat, tributary of the Jek. He was buried in the Apat. If we take Matu, the headman of Long Jaik, he can trace his genealogy up to eight generations in depth, from Teguli to Poven, to Dang, to Senaveng, to Uwing, to Sugun, to Tugang down to Matu.



PENAN GANG GENEALOGY

Penan and their surroundings

As mentioned earlier the Seping, Jek, Menapun, Menavan, Luar and Plieran area is not an untouched forest. The whole area is, for lack of better term, a “heritage landscape”, a forest landscape shaped by human activities. The area was first cultivated by shifting cultivator for farming activities. When they migrated, the area was left to nomadic groups of Penan to manage and nurture.

The Penan have since exercised stewardship rights over area. Their mode of resource harvesting strategy is known as molong, a harvesting strategy based on the concept of sustainability, long before the word “sustainable” became fashionable in development literature. The word molong can be roughly explained as preservation of forest resources for harvest wild sago for food, they cut one or two mature trunks and leave the young plants to mature for future harvest. Similarly, when they harvest rattan, they cut the mature rattan and leave the young ones to grow for future harvest. Molong is a form of resource tenure. An individual who first lays claim to a particular resource establishes tenure rights to it. Such rights are passed down the generations of the individual who established tenure on the resource. A resource has its own genealogy. It resides in the individual who first claimed it and passed it down the line of succeeding generations, from father to son to children and children's children.



The forest has provided the Penan their staple foods: the starchy pith of a type of wild sago (*Eugeissona utilis*), uvud (young sago plants), lekak (an edible palm-bud), meat of bearded pig (*Sus barbitus*) and other animals, a variety of fruits and many other fruits plants. The forest has, for centuries, provided them with necessary trade items such as camphor, jelutong (a wild rubber), dammar (a resin), gaharu (incense wood), and rattan for making mats and baskets that are in popular demand. From the forest they get wood for construction of huts, boats and blowpipes, an important hunting weapon for the Penan. The forest also provides certain species of plants used by the Penan as medicines.



The forest has provided the Penans with necessary trade items such as the rattan to make mats and baskets

Although the Penan have settled down in longhouse and cultivate hill rice, the forest remains an important source of food (sago, wild vegetables, fruits and game) and trade items, especially rattan. For the Penan of Lg Jek, the Seping, Jek, and their tributaries are an important source of food, trade items, and raw materials necessary for cultural expression. A large part of the area where they exercised stewardship rights has been bulldozed to oil palm plantation. [and for forest plantation-KKJ]



A large part of the area where they exercised stewardship rights has been bulldozed to oil palm and forest plantation

As the Penan settled only in the late 1960s and early 1970s, they did not cut the forest prior to 1958 as required in the Land Code to establish customary rights to land. However, the Penan have a concept

of tana' pengurip similar to the Iban concept of pemakai menua which under a court decision in a case of *Nor Nyalai & Ors Vs Borneo Pulp Plantation Sdn Bhd & Ors* (2001) is considered a customary rights land. Moreover, the Land Code (Cap.81) section 5(2)(f) stipulates that customary rights to land can be established by "any other lawful method"; therefore, we can argue that the Penan concept of molong is in fact "any other lawful method".

[KKJ – further, by the court decision, in line with other court decisions, customary rights pre-date statute and are not created by statute. Statute/legislation can only extinguish customary rights, but in that event, there must be adequate compensation. This has been the position affirmed by the Malaysian court]

Citizenship

The Penan have been living in the Seping, Plieran and Danum for nine or more generations, yet only a handful of them have the national identity card (IC), as a mark of citizenship. During the Brooke and colonial periods, the Penan, like any other groups in Sarawak paid their tax. Oral narratives across ethnic boundaries in Belaga suggest that the Penan paid their tax in kind, in rattan mats and baskets. These items were collected by an agent, usually a neighboring Kayan or Kenyah who then settled the Penan head tax at Fort Brooke which housed the District Office in Belaga Town.

In the early elections for Parliament and State Legislative Assembly, the Penan exercised their rights to cast their votes, although they did not have Identity Cards. In those days, citizens living in very remote areas who did not have Identity Card were allowed to vote. The Penan were among some of these groups who were given the privilege to vote without Identity Card. In the 1974 general elections, I personally witnessed the Penan in Seping, Plieran and Danum rivers cast their votes (see Photos #1 and #2).



The Penan in Seping River being issued with ballot papers in 1974 Parliamentary and State Assembly elections



The Penan in Seping River marking his ballot papers

Many Penan applied for Identity Card, but the majority of the applications were rejected for lack of supporting documents.

Similarly, when a new baby is born, their parents would apply for birth certificates. In most cases, applications were not entertained as parents did not have the marriage certificate and/ birth certificates.

Education, Agriculture and Health

We are now in the 21st century, and almost 50 years as an independent country, yet we have groups of Penan who do not have access to education. In 1988 when I was in the State Planning Unit, I proposed a Service Centre to serve the 8 Penan settlements. The Centre was to comprise a Primary School, a Rural Clinic and an Agricultural Station. The location proposed was Lg Luar. Some years later I was approached to look for an alternative location, as Long Luar was considered remote. In the early 1990s I made two visits to the Seping, Plieran and Danum to identify an alternative location. A location between Ba Peran and Lg Jek was identified. A plan was submitted to SPU. Since then, there has been no news.

Environmental Impact Assessment (EIA)

Given that I had no access to the EIA on the oil palm plantation in the Seping, Jek, Menapun, Menavan and Luar area, I do not wish to say anything on this topic, except that I am surprised the Penan were not consulted on their views as to how the plantation might affect them, and the kind of alternatives that might have planned for their livelihood.

[KKJ – The EIA reported that there are no human settlements in the relevant area, the nearest human settlement being the Sg Asap Resettlement. This is of course false. As a consequence, there was neither consultation with nor consideration of social and economic impacts upon the Penan. Indeed, the EIA states that there used to be a Penan settlement, but the Penan had moved away long ago!]

Summation

The Penan state that their livelihood has deteriorated when land in the surrounding area was cleared for oil palm plantation. Farming and foraging area for collection of food items and rattan necessary for making mats and baskets has been cleared for oil palm plantation.

[KKJ – It is not simply that their livelihood has deteriorated, but their rights and interests have been denied. They have been told that they have no rights to the area as the government has granted a lease to the whole area to the company. In at least the case of one community, their attempt to retain some land for their own use and cultivation has been met with veiled threats.]

The area covering the Seping, Jek, Menapun, Menavan and Luar is not entirely primary forest; a large part of it is temuda land left by Kenyah shifting cultivators and related peoples a hundred years ago. Since then the penan has exercised stewardship over the area. Utilization and management of resources in the area suggests creation of rights to the land.

Penan have occupied the area as far back as 9 or more generations. Government officials and researchers who visited the area prior to 1958 confirmed that the Penan have always been in the area.

There is an urgent need to provide the Penan with identity card, an important proof of citizenship.

The Penan need readily available access to educational, health and agricultural facilities provided by government departments.

Penan in Upper Belaga facing hard times

On September 15, a Penan headmen, Balan Utung, of Lg Pera, Belaga came over to Lg Jek with the intention of meeting Suhakam. He came with a few fellow villagers. They heard of Suhakam's visit and took the trouble to come all the way from the upper Belaga to Lg Jek to tell Suhakam their difficulties.

There are five villages in upper Belaga River:

Longhouse	Door / Apartment	Population
Lg Apok	13	116
Lg Sivau	25	116
Lg Ketuet	22	72
Lg Pera	50	206
Lg Tengah	40	117
5 Longhouses	150	617

Source: District Office, Belaga

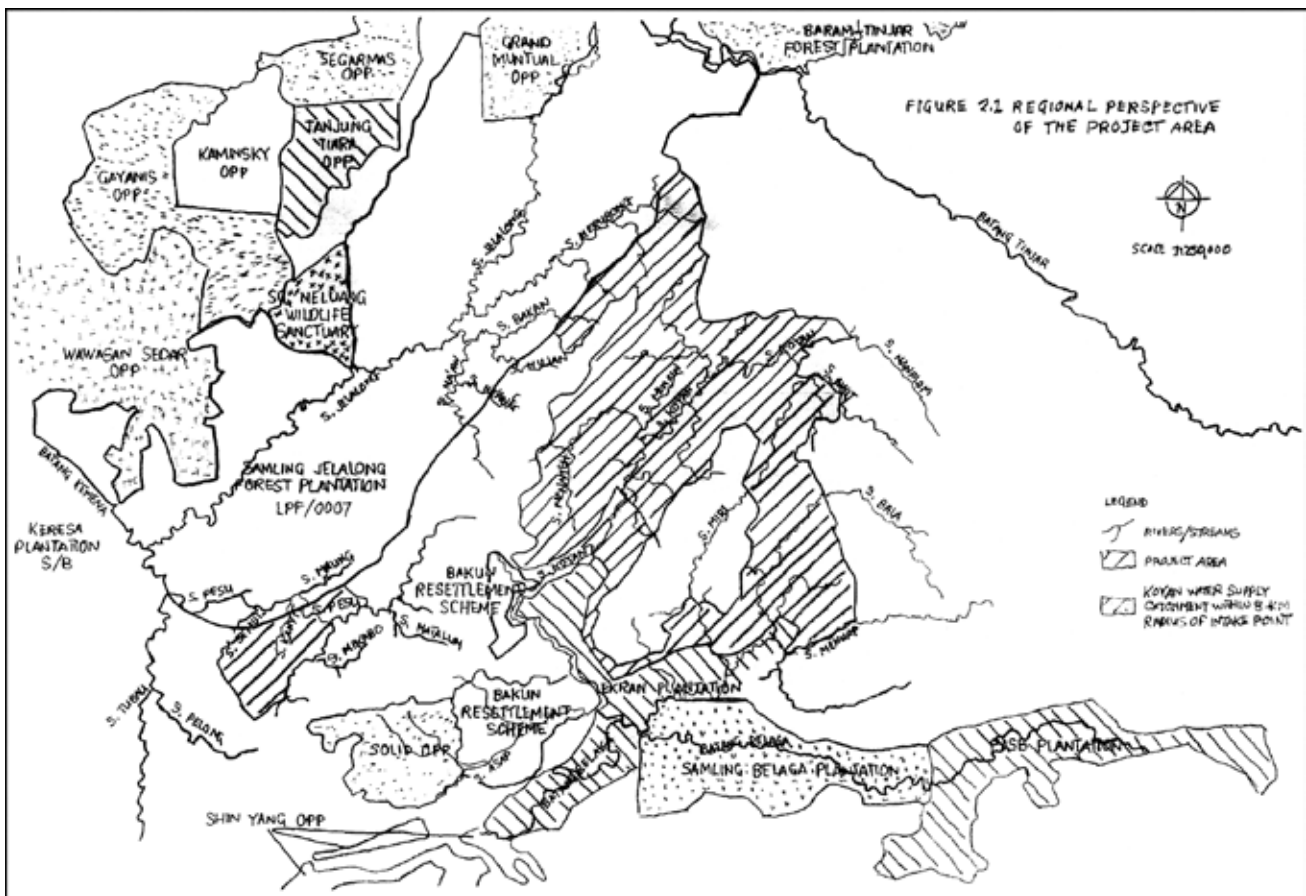
I met Balan Utung at Lg Jek on September 15. The issues he raised are similar to those submitted to Suhakam by the Penan in the Seping, Plieran and Danum rivers.

The five Penan villages are surrounded by oil palm plantation, thus depriving the Penan of forest area in which to look for food and other necessities such as rattan for making mats and baskets (see map 4). Rattan mats and baskets have been one of the main sources of income for the Penan in the Belaga River.



[KKJ – The plantation development – on about 10,000 hectares – was carried out by a different company, Amanah Saham Sarawak (ASSAR), a unit trust agency established by the state government. They have been left with inadequate land for swidden cultivation of hill rice; this will result in very rapid degradation of soil quality and yields. They have been promised a 30 per cent share of that part of the plantation area recognized as belonging to them; the Penan are not clear about the size of that area, but report a figure of about 1,000 hectares. If this is so, then a 30 per cent share would represent the net yield of 300 hectares. An inadequate level of income given the number of families in the area. The Penan in this area are seeking to retain part of the remaining forest and land which has been licensed to Shin Yang for forest plantation. It is part of their ancestral area.]

FIVE PENAN SETTLEMENTS IN THE UPPER BELAGA RIVER SURROUNDED BY OIL PALM PLANTATION



MAP 4

Beginning of this year, 13 have died within short interval between each death. No such tragedy has ever happened to the community within living memory. The Penan of the upper Belaga River want to know from the Medical Department the cause of the many deaths within a short period of time.

[KKJ – The measles epidemic occurred in Dec 2004/Jan 2005, not this year (2006).]

Since the introduction of oil palm plantation in their area, the Penan have not found a viable alternative to their former activities of collecting rattan to make mats and baskets, hunting and gathering. In Balan's own words "when the company people came to tell us about the oil palm project, they said there will be word for us. But it is not the kind of word we are used to; besides the pay is very low RM15.00 a day. Our quality of life has gone down: we are in the process of losing traditional skills, such as weaving of fine mats and baskets and other handicrafts. there is a need for the government to sit down with us and chart a viable alternative."

[KKJ – RM15 a day is on the high end of the wage rates for plantation labour.]

References cited

Arnold, Guy (1958) "Nomadic Penan of the upper Rejang (Plieran)", *Sarawak, Journal of the Malayan/Malaysian Branch Royan Asiatic Society* 31/I:40-82.

Arnold, Guy (1959) *Longhouse and Jungle : An Expedition to Sarawak*. London : Chatto and Windus.

Brosius, J.P. (1992) *The Axiological Presence of Death : Penan Geng Death-Names*. Ph. D. dissertataion, Department of Anthropology, University of Michigan.

Gau Jau (1957) "The relations of Kenyah and Kayan (and notes on Kenyah marriage)", *Sarawak Museum Journal*, 8:108-112.

Metcalf, Peter (1982) *A Borneo Journey into Death : Berawan Eschatology from its Rituals*. Philadelphia, Pennsylvania : University of Pennsylvania Press.



ANNEXURE 4

Briefing on the Penan and the EIA for the Shin Yang Forest Plantation
by Khoo Khay Jin, Independent Researcher

The Penan and the EIA for the Shin Yang Forest Plantation by Khoo Khay Jin, Independent Researcher

Introduction

Shin Yang Sdn Bhd was granted a Licence for Planted Forest LPF/0018 for a period of 60 years from 19 November 1999 for an area (hereafter, the Licence area) of almost 156,000 hectares stretching from the Sg Belaga in the north to the Sg Murum in the south (see, Map 1).

One of the conditions of the licence was:

5. The Licensee shall, as soon as reasonably practicable after the issue of this Licence, submit to the Natural Resources and Environment Board, Sarawak, an Environmental Impact Assessment ("EIA") Report in accordance with the Natural Resources and Environment Ordinance, in relation to the establishment of the planted forest under this Licence (Licence for Planted Forest (LPF/0018), hereafter, "the Licence"; as found in Appendix B of the EIA).

Work on the establishment of the planted forests was to commence within three months of the approval of the Licencee's EIA Report, or within any extended period as may be agreed to in writing by the Director of Forests (s.6(1) of the Licence).

Thus, approval of the EIA, together with any conditions imposed during approval, was a pre-condition of the commencement of work including removal of timber. Standard EIA practice includes a social and economic component.



THE LICENCE AREA

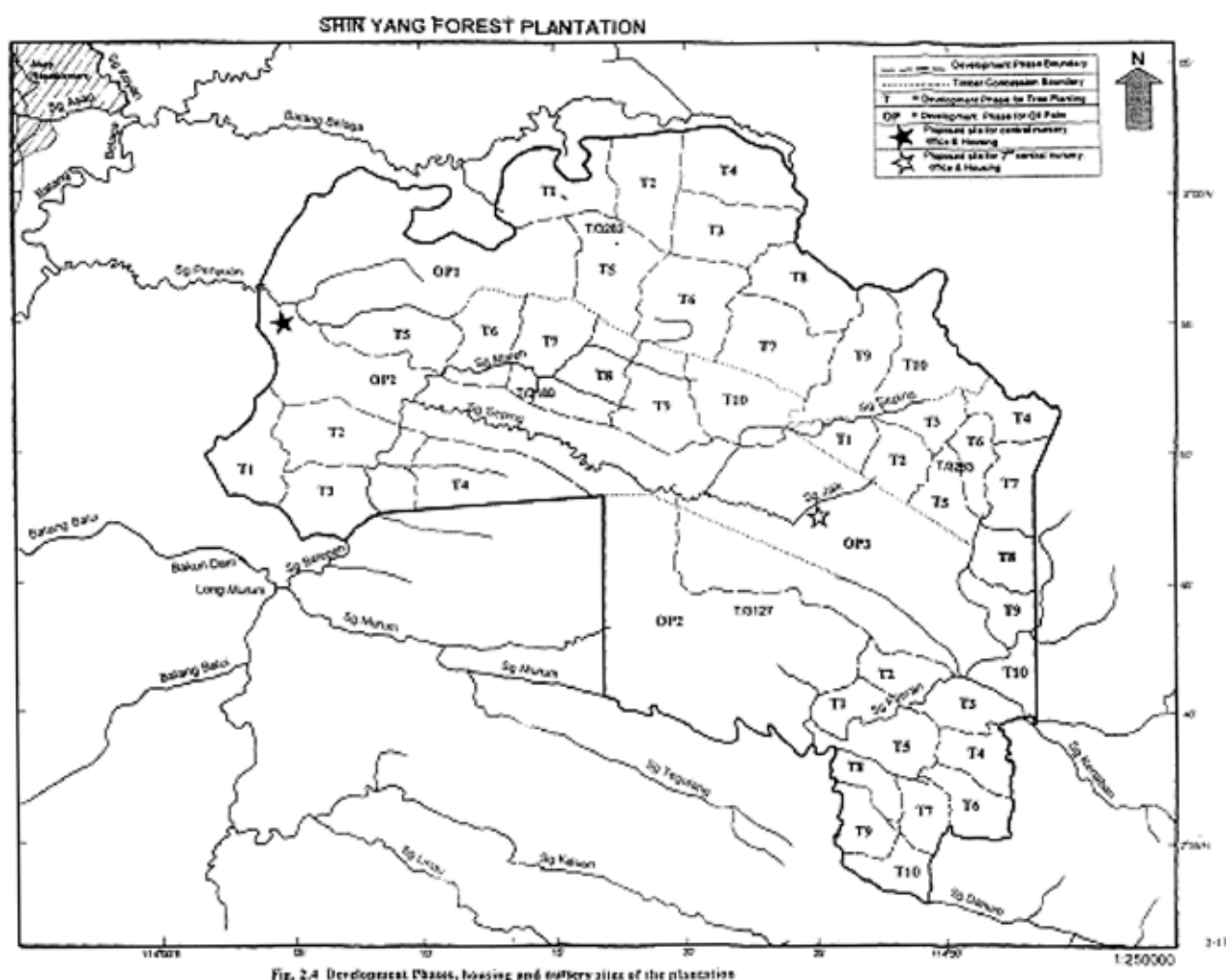


Fig. 2.4 Development Phases, housing and nursery sites of the plantation

MAP 1

Further, the Licence required:

8(2)(e) if any part of the said land is held under and subject to native customary rights, the written consent of the claimant of such rights has to be obtained or written evidence is furnished to the Director to show that such rights have been extinguished under any written law.

In other words, the Licence placed the onus of responsibility for the determination of Native Customary Rights in the area on the Licensee, not on the governmental authorities. In view of the judgment of the Court of Appeal in the Sagong Tasi case (*Kerajaan Negeri Selangor & 3 Ors v Sagong Bin Tasi & 6 Ors* (2005)¹), a question may be raised whether such a transfer of responsibility represents an appropriate discharge of the fiduciary duty of the government.

Nevertheless, the Licence did specify:

22(1) Nothing in this Licence shall be deemed to affect rights which any native has, prior to the issue of this Licence, lawfully acquired over the said land under the Land Code or the Ordinance. Such rights shall be referred to in this Licence as "native customary rights"

¹ The full judgment is carried on the official website of the Malaysian Bar Council; <http://www.malaysianbar.org.my/content/view/1835/27/>

22(2) It shall be the duty of the Licensee, at his own costs and expense, to comply with the provisions of the Rules relating to the establishment of planted forests over lands subject to native customary rights claim.

This briefing note shows that the Licencee and/or his appointees:

1. failed to conduct a competent EIA, specifically on the social component, hence
2. failed to observe the native customary rights of the people, specifically the Penan, in the area, and
3. effectively dispossessed the Penan of their basic human, social and economic rights

Further, considering that the Penan are amongst the most disadvantaged communities in the country, the question arises whether the government failed in its fiduciary duty when it transferred the onus of responsibility for the determination of the native customary rights in the area to the Licencee.

The EIA Report: allegations of fact in the social component

The EIA Report was submitted to the Natural Resources and Environment Board (NREB) on 5 January 2000, that is, less than two months after the issuance of the Licence. JB Agriculture Management Services in association with GT & Associate Consultancy, two Sarawak-based firms, conducted the EIA; the names of the relevant consultants are included in the EIA report.

As of this writing, neither the date of approval of the EIA Report, nor the composition of the panel that evaluated the EIA Report, nor the conditions, if any, that were imposed, is known. However, it may be concluded that the EIA Report was approved as submitted as there is no revised version or subsequent submission.

For the purposes of this brief, the focus is the social component of the EIA. No consideration is given to any inadequacies with the strictly environmental components of the EIA. Suffice to mention that there is insufficient consideration of the potentially negative impact of the project on the RM9 billion Bakun Hydroelectric Project whose dam site is a short distance from where the Murum joins the main Balui river. One of the principal catchments affected by this project is that of the Murum river, a major tributary of the Balui, and the first above the dam site.

The social component of the EIA Report contained a major and fatal flaw. It made assertions that are contrary to the facts on the ground at the time of the EIA and for at least fifty years prior to it. Thus, its conclusions pertaining to the social component are invalid, leading to a total absence of any consideration of the impact upon the communities within and in the vicinity of the Licence area.

The EIA Report contains the following false allegations of fact:

1. One of the two paragraphs numbered 21 in the Executive Summary reads: "In terms of local settlement within the site, there was an illegal 15-door Kenyah longhouse at lower Sg Belepeh which had already been abandoned. It was built earlier probably taking advantage of the logging activities then. At lower Sg Jaik, there were some remnants of a small former Punan (sic!) settlement. The Punan (sic!) people had already migrated to other place long ago. There were no villages or longhouses within or near the project site. The nearest community was the Asap Resettlement about 30km northwest from the site"



2. Section 2.2 of the main report, covering the Project Description, states inter alia: "Evidence of previous shifting cultivation could be seen along the logging roads giving rise to patches of 'temuda'. These 'temuda' are believed to be left by logging workers during their logging operation within the licensed area. Some remnants of a small Punan (sic!) settlement are seen near lower Sg Jaik, but this nomadic Punan (sic!) 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 Resettlement. No permanent local settlements are found within the site. There is (sic!) no legal claims of NCR within the land."
3. Section 4.5 of the main report is specifically entitled "Socio-Economic and Population Characteristic (sic!)". Section 4.5.1 entitled "Local Settlement and Population" reads: "In terms of local settlement within the site, there was an illegal 15-door Kenyah longhouse at lower Sg Belepeh (near to water sampling point F5) which had already been abandoned. It was built earlier probably taking advantage of the logging activities then. The people were believe (sic!) to have moved to Sg Asap. At lower Sg Jaik, there were some remnants of a small former Punan (sic!) settlement. The Punan (sic!) people had already migrated to other place long ago. There were no villages or longhouses within or near the project boundary. Other than the nearby developing Samling plantation in the north, the nearest human settlement would be the Asap Resettlement which is about 30km from the northwest point of the project site. The Asap Resettlement is located between lower Sg Koyan and Sg Asap." Section 4.5.2 then proceeds to provide a brief outline of the Asap Resettlement.

Major Errors in the Social Component of the EIA Report Identified

Leaving aside matters of language and expression, some of which suggests uncertainty, e.g., "it is believed", "probably", etc., the major points of note are the following:

1. By 1999/2000 there was absolutely no excuse for getting the name of the Penan community wrong. It is true that local Kayan do use the term Punan to apply to Penan, but it is well-established that the proper name for the community is Penan.
2. The statement "there were no villages or longhouses within or near the project boundary" is just plain false. At the time of the EIA, previous to the EIA and since the EIA, there are seven (7) villages/longhouses within the project boundary. These are all Penan villages. They are:
 - a. Lg² Jaik and Lg Peran on the Seping river
 - b. Lg Luar, Lg Tangau, Lg Singu and Lg Pelutan on the Plieran river and its tributaries
 - c. Lg Wat on the Danum river.
3. The same statement is also false with regards to villages or longhouses "near the project boundary". There are the Penan villages of Lg Sibau, Lg Apok, Lg Tengah, Lg Pera and Lg Ketuet, and their off-shoots, at and around Lg Urun, a tributary of the Belaga river, at the northern end of the Licence area. Additionally, there are the Kenyah Uma Pawa and Kenyah Badeng longhouses, also at Lg Urun. These villages are barely beyond the project boundary and the Penan of these villages, some of whom are very closely related to the

² Lg = Long. This is a Kayan term with cognates in the various Orang Ulu languages. It carries the same meaning the same as the Malay word, kuala, i.e., the confluence of two rivers, with the confluence named after the smaller river. Thus, for example, Lg Jaik is the confluence of the Jaik with the Seping.

Penan of Lg Jaik, have traditionally used territory within the project boundary. To the east of the boundary, in the upper Danum, is the Penan village of Lg Malim.

4. Secondly, if the EIA considered the Asap Resettlement to fall within their purview of assessment, it is not clear why other native villages which are as close, or even closer, to the project boundary were omitted. Thus, there are the villages of the Seping and Bemali people at Lg Koyan and at Lg Bala, and the village of the Kenyah Uma Sambop on the

Belaga river downstream of the confluence with the Penyuan river. Additionally, there is also the Kenyah Bakong settlement opposite Lg Koyan.

5. Parenthetically, it should be pointed out that the identification of the so-called "illegal longhouse at lower Sg Belepeh" as Kenyah is wrong. It was a Kayan longhouse, built by people from Uma Bawang when they were still at Lg Murum, for their use in order to be close to their farms. It was not illegal as this area is part of their native customary rights area. The Sg Belepeh joins the Murum river at a point just opposite to their former longhouse at Lg Murum, and the land up the Belepeh was one of their farming areas. The people of Uma Bawang were resettled at the Asap Resettlement in 1997.

Even without considering native customary rights claims, all of these matters pertaining to settlements, villages and longhouses could have been validated with little effort by a simple query at the Belaga District Office in Belaga or the Belaga Sub-District Office in Asap Resettlement. The officially appointed Penghulu for the Penan is from Lg Wat, all the headmen of the Penan villages named in (2) above, with the exception of Lg Pelutan, a relatively recent off-shoot of Lg Luar, have certificates of appointment from the government. The headmen of the Penan villages listed in (3) are either officially recognised by the Belaga District Office or have certificates of appointment, the difference being a function of possession or non-possession of Identity Cards. Those without ICs are officially recognised by the District Office since everyone knows their provenance and history but they cannot be issued with certificates of appointment for procedural reasons. It is thus a complete mystery that although the District Office Belaga is listed as one of the authorities consulted for the EIA, the EIA could still conclude that "there were no villages or longhouses within or near the project boundary".

Even more astounding is the fact that the EIA was conducted on behalf of the project proponent and Licencee, Shin Yang, a company which has operated in the area carrying out logging operations either in its own name or through one or another of its subsidiary or associate companies. Thus, a consultation with Shin Yang should have revealed the existence of all these villages and settlements as, on other occasions, Shin Yang has cited payment of allowances to headmen, or payment of a ritual propitiation (pemali) at the beginning of logging operations, or assistance with construction of longhouses or supply of building materials as evidence of its recognition of the rights of these communities! Indeed, such payments are tantamount to evidence of not only recognition of their existence but of their rightful claims to the territory.

The Facts relating to the Licence Area

This section provides some of the evidence base for the major errors identified above, specifically with reference to the Penan. The same evidence base also supports their native customary rights in the area not only as recognised by the relevant state laws, but as extended by court decisions relating to native customary rights. The most important of these decisions states that native customary rights are not created by statute, indeed pre-date statute, and while the government can extinguish native customary rights, it can only do so after adequate compensation, adequate to safeguarding their right to livelihood.



As noted, the licence area covers almost 156,000 hectares stretching from the Belaga River to the Murum River (see, Map 1).

This area encompasses the traditional territory of the Penan of the Belaga, Seping, Plieran and Danum rivers.

The existence of the Penan villages in the Licence area and that the Licence area is part of the traditional territory of the Penan in question is not in doubt. It is not only their claim, but can be validated by the following means:

1. **Oral testimony** of others, a sample of which could include the testimony of the following:
 - a. the Kayan, Kajang and Kenyah communities of Belaga who live downstream of the Penan, and engage or have engaged in trade in jungle produce and handicrafts with the Penan. For example, a check with the Kayan of Uma Bawang who used to be at the mouth of the Murum river, the main river into which the Seping, Plieran and Danum rivers flow, will prove this point; the same is true of the Kayan of Uma Nyaving who used to be at the mouth of the Linau river
 - b. the Kenyah Uma Sambop and Kenyah Lg Bangan on the Belaga river, which will validate the long existence of the Penan communities in the upper Belaga river
 - c. the former Temenggong of Belaga, Talik Lisut, of the Kayan longhouse of Uma Dupah, now re-settled in the Asap Resettlement, and of the current Temenggong, Datuk Nyipa Batok, a former State Assemblyman and State Minister as well as the owner of a piece of land on the western edge of the Licence Area. As State Assemblyman, Datuk Nyipa used to visit the Penan villages in the Licence Area
 - d. former State Assemblyman and State Minister, Datuk Tajang Laing, former State Assemblyman Stanley Ajang Batok, as well as the current State Assemblyman, Liwan Lagang, and the current Member of Parliament for the area, Billy Abit Joo
 - e. former Sarawak Administrative Officer for Belaga in the late 1960s, Peter Sibburat, as well as former Sarawak Administrative Officer for Belaga in the early 1970s, Jayl Langub, who was also until his retirement the Secretary of the Majlis Adat Istiadat Sarawak
2. **Documentary evidence:** While such documentary evidence stretches back over a century, for the purposes of this brief it is only necessary to cite a sample of such evidence from the early 1950s, including
 - a. former Sarawak Museum Curator Tom Harrison's accounts of his expedition to the area in 1951, published in the Sarawak Gazette and in the Sarawak Museum Journal. This account establishes the presence of the Penan in what is now the Licence area, specifically in the Seping and Plieran
 - b. the accounts of the Oxford Expedition to the area in 1955, led by Guy Arnold, published in various places including the Journal of the Malaysian Branch of the Royal Asiatic Society with a census, with names, of the Penan, as well as a book, Longhouse and Jungle, published in 1959. The census with names is invaluable as many of the named boys and girls from 1955 are now in their 50s and 60s, still living in the same area. For example, the census included the current Penghulu of the Penan, Pau Tului, listed in the boys column as Tubit Tuloi; the current headman of Lg Luar, Madai Salok, listed

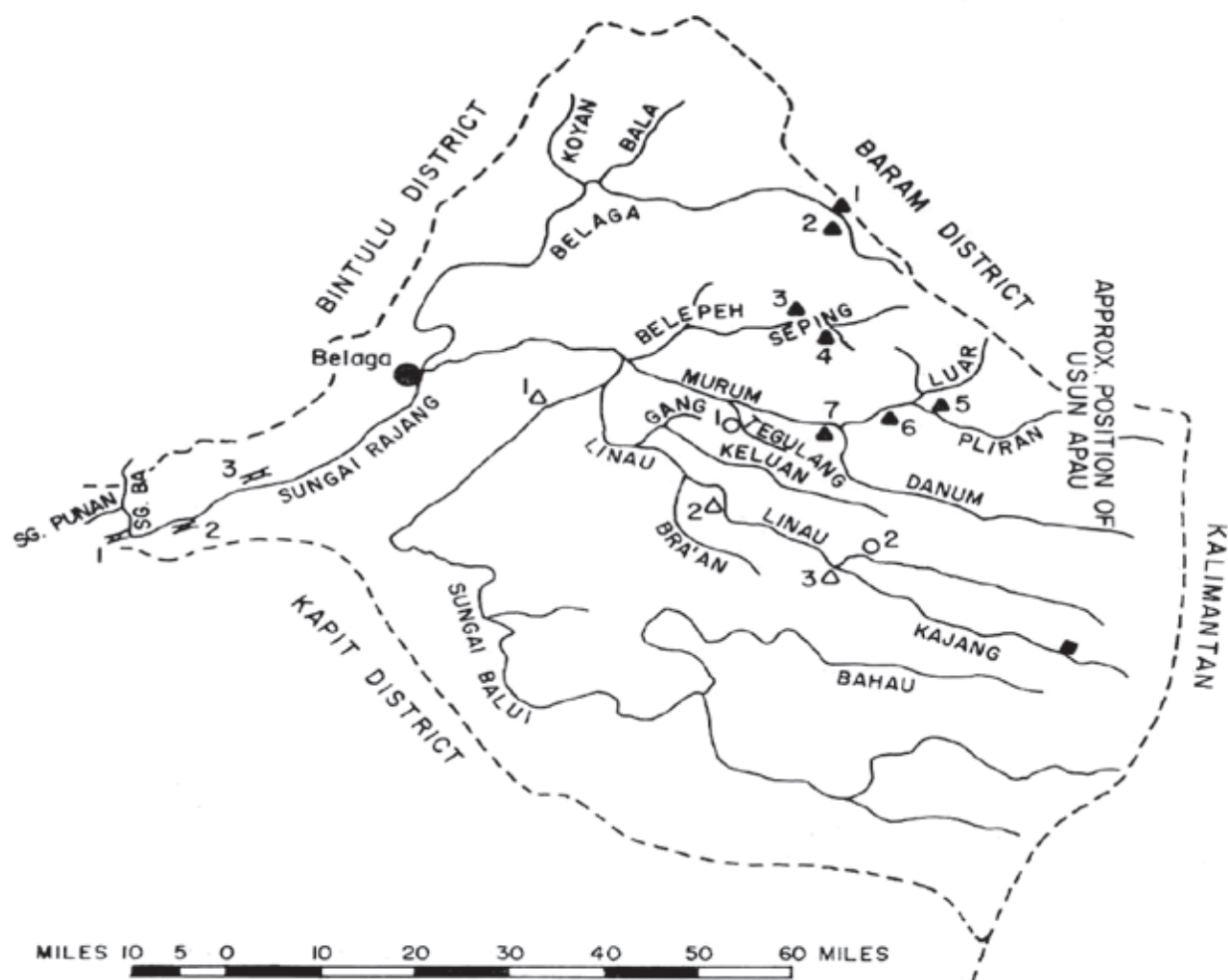
in the boys column as Medai Saloh; the recently deceased headman of Lg Tangau, Beran Tinggang – and uncle of the current headman, Abok Jalong – listed then also as Beran Tinggang, and the current headman of Lg Singu, Along Ju, listed then in the boys column as Along Jau.

- c. the accounts of Rodney Needham in the mid-1950s in numerous publications resulting from his field research for his D Phil dissertation. It was Needham's work which, amongst other more important matters, established (a) the people call themselves Penan, not Punan, and (b) the distinction between the "Eastern" (broadly the Baram basin) Penan and the "Western" (broadly the Rejang and Belaga basin) Penan
- d. the reports of Jayl Langub of his work with the Penan while State Administrative Officer in Belaga in the early 1970s and subsequently, published in the Sarawak Gazette, the Sarawak Museum Journal, the Borneo Research Bulletin and elsewhere. Map 2 shows his identification of Penan and Punan villages in Belaga in the early 1970s.
- e. the accounts of Jerome Rousseau from the early to mid-1970s when he was doing his dissertation fieldwork at the Kayan longhouse of Uma Bawang at Lg Murum. His map of the various settlements from an article in the Sarawak Museum Journal of 1974 is attached here as Map 3. It clearly shows the Penan settlements, marked P in his map.
- f. the numerous publications of Peter Brosius since the mid-1980s. Brosius spent three years with the Penan of Lg Jaik doing his dissertation fieldwork and travelled extensively to all the Penan communities in Belaga. Amongst the most important, from the point of view of the territory of the Penan, is his careful documentation of the settlement history of the Penan of Lg Jaik, covering the period 1921-1981 described in Chapter 2 of his PhD dissertation.³

³ He has recently returned to this and, using technology not available when he did his fieldwork and dissertation, has begun mapping that settlement history using GIS software. This is the source of Map 3, which is much clearer than the detailed account in Chapter 2 of the dissertation.



Penan and Punan Settlements in Belaga, c. 1974



MAP SHOWING DISTRIBUTION OF PENAN AND PUNAN

KEY :-

- II 1 PUNAN BA
- II 2 PUNAN BIAU
- II 3 PUNAN TEPALING

- ▲ 1 PENAN GANG, LONG URUN
- ▲ 2 PENAN GANG, LONG KUPANG
- ▲ 3 PENAN GANG, LONG DIAN
- ▲ 4 PENAN GANG, LONG JAIK
- ▲ 5 PENAN GANG, LONG LUAR
- ▲ 6 PENAN GANG, LONG PANGAH
- ▲ 7 PENAN GANG, LONG WAT

- 1 PENAN APO, LONG LAWAN
- 2 PENAN APO, LONG TANYIT

- △ 1 PENAN TALUN, LONG BELANGAN
- △ 2 PENAN LUSONG, LONG LUSONG LAKU
- △ 3 PENAN KAJANG, LONG KAJANG

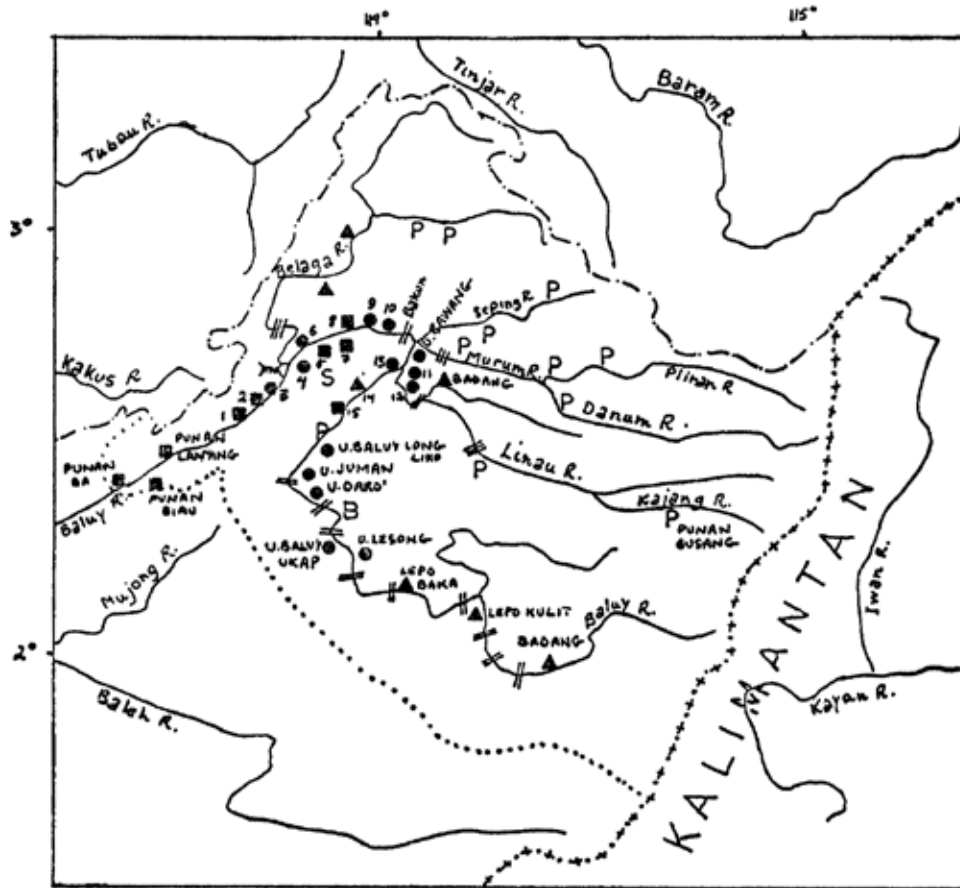
- PUNAN BUSANG

MAP 2

Penan settlements in Belaga, 1974

JÉRÔME ROUSSEAU

19



MAP 4: THE BALUY AREA

LEGEND

1 inch = 27 mi.

- | | |
|----------------------------|--------------------------------|
| Belaga bazaar | 1 — Levou Sekapan Puso |
| ○ Kayan | 2 — Levou Sekapan Pi'it |
| △ Kenyah and Badang | 3 — Uma Balo' Kasing |
| □ Kajang | 4 — Uma Aging |
| B Bukat | 5 — Levou Kejaman Neh |
| P Penan and Punan (Busang) | 6 — Uma Kahe |
| S Sihan | 7 — Levou Kejaman Lasah |
| ⚡ Rapid | 8 — Levou La'anan |
| ⚡ Impassable rapid | 9 — Uma Apan |
| | 10 — Uma Nyaving Long Mejawa |
| | 11 — Uma Nyaving Long Linau |
| | 12 — Uma Lesong Long Linau |
| | 13 — Uma Belor |
| | 14 — Uma Kelap |
| | 15 — Levou La'anan Long Pangai |

N.B. The localization of Penan settlements is approximate.

Jerome Rousseau, 1974 "The Baluy Area", Sarawak Museum Journal Vol.XXII No. 43.

MAP 3

When the Licence area is overlaid on his map of their settlement history, it is very clear that much of the Licence area is indeed their traditional territory. This is shown in Map 4. In addition, Brosius also submitted a 1986 report on Penan development to the Sarawak Electricity Supply Corporation (SESCo) and the state government, and published an important article on Penan ideas and emotions relating to territory and landscape in the Sarawak Museum Journal in 1986.

- g. an EIA Report from 1994 for the proposed Murum HEP, submitted to SESCO and the state government, documenting the Penan villages in the Plieran and Danum.



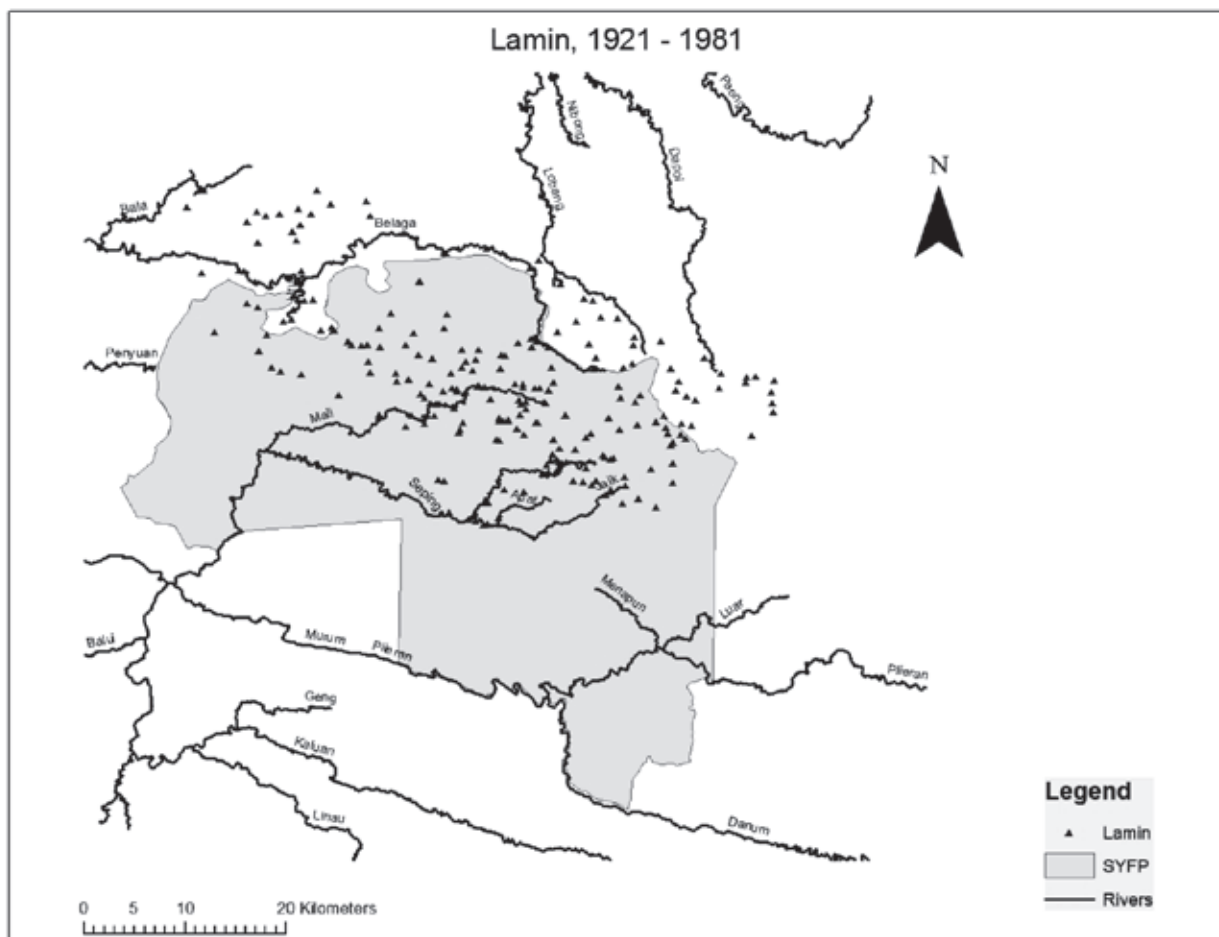
It should be noted that much of the items mentioned above are available locally in Sarawak, not in exotic foreign journals. Not one of them was cited in the References list of the EIA Report.

With regards to native customary rights to land, it is often alleged that Penan have no such rights since state law only recognises rights to land cleared for cultivation before 1 January 1958 whereas a majority of Penan were still largely nomadic and did little or no cultivation prior to that date.

However, Malaysian courts have since the 1990s taken a progressively more expansive view of customary rights, as seen in a number of cases, specifically the Adong Kuwau case (1996; upheld on appeal), the Nor Nyawai case (2001; principles upheld on appeal, 2005), the Madeli Salleh case (Court of Appeals, 2005) and the Sagong Tasi case (2002; enlarged on appeal, 2005; currently being considered for appeal to Federal Court).

While none of these cases are a direct analogue of the Penan situation, the Adong Kuwau case makes it clear that, as with the Orang Asli, Penan do have customary rights in the forest, a right to livelihood, and, by the Nor Nyawai and Sagong Tasi cases, the Malaysian court may well rule that Penan customary rights extend to the land itself when such a case is brought before it.

Settlement history of Penan Lg Jaik, 1921-81, with overlay of the Licence Area



MAP 4

The Nor Nyawai case is especially pertinent, in particular its recognition of the right to pemakai menoa (the territorial domain of a longhouse) inclusive of rivers and forest.⁴ Pemakai menoa is an Iban term; the Penan have an analogous term, tana pengurip.

As for lands cleared by Penan after 1958, it should be noted that in many instances, Penan took to cultivation at the behest of government, and since cultivation would be impossible without clearing land, the implication is that such land clearing was with the implicit, if not explicit, permission of government, thus satisfying the conditions of the 1958 Land Code.

Conclusion and Recommendations

Consequential upon the fatal flaw in the EIA, work has proceeded as if there were no communities with rightful claims in the area. No provision has been made to safeguard the rights and interests of the communities. Indeed, the obverse has been the case, namely, the Licencee has declared to these communities that they have no rightful claims and interests, even if the Licencee is prepared to dispense what it considers to be largesse. Neither has the government intervened on behalf of these communities, ensuring to them adequate compensation for destroyed and damaged resources, loss of livelihood and loss of lands and property, not even to reserve to them an adequate size of territory to ensure to them an adequate livelihood.

In view of this, it is strongly recommended that SUHAKAM urge the suspension of any further forest clearing and plantation development until this issue is resolved in a just and equitable manner in line with the New National Agenda and in accordance with the bumiputera rights of the Penan. While apparently drastic, this recommendation is advanced for three simple reasons: (i) of all the bumiputera of Sarawak, the Penan are the most forest-dependent and marginalised, (ii) forest clearance is an irreversible act, and (iii) substantial areas affecting the Penan have already been cleared, leaving only a relatively small uncleared area. This is therefore an urgent situation.

As matters now stand, the bulk of the forest and territory of the Penan of Lg Jaik and Lg Pera have already been cleared and planted to oil palm, while some of the forest and territory of Lg Wat has also been cleared and planted to acacia; clearance work in the forest and territory of the Plieran Penan is already beginning.

The basic parameters of a just and equitable solution should include the following:

1. reservation of a sufficient area of forest and land for the Penan as experience shows that the vast majority will not be able to survive on or hold employment in either the tree plantation or oil palm plantation; the wage-rates are such that even with two employees per household, total earnings would likely fall below the current Poverty Line Income for Sarawak reported in the 9th Malaysia Plan.
2. adequate compensation for such of their rights as are extinguished, their resource base that is destroyed or damaged and their land that is taken for plantation development. This is especially important as substantial areas have already been cleared. Further, in light of experience, such compensation should primarily be in land, as cash compensation will not serve their medium and long-term needs and interests. This could take the form of a

⁴ In his High Court judgment, Justice Ian Chin quoted a 1994 paper by the late head of the Majlis Adat Istiadat Sarawak, Tan Sri Gerunsin Lembat: "Pemakai menoa is an area of land held by a distinct longhouse or village community, and includes farms, gardens, fruit groves, cemetery, water and forest within a defined boundary (garis menoa). The purpose of creating a pemakai menoa involves the ritual ceremony of punggul menoa. After the ceremony has been performed, the first cutting of virgin jungle for settlement and farming can commence. From then onward, the community can establish its rights to the felled area, boundaries (garis menoa) are drawn between villages. These boundaries normally follow streams, watersheds, ridges and permanent landmarks. Pemakai menoa includes cultivated land (tanah umai), old longhouse site (tembawai), cemetery (pendam) and forest area (pulau)"



percentage of the developed land with a medium- to long-term view of engaging the Penan in self-management of such resources, an important means towards achieving the officially stated objective of bringing the Penan into the mainstream of development. Current modes of development further marginalise rather than incorporate them.

Finally, if it should be within the purview of SUHAKAM, it is urged that SUHAKAM seriously consider the possibility of assisting the Penan to seek a clarification of their rights in court.

Should the previous suggestion be outside the purview of SUHAKAM, it is recommended that SUHAKAM hold a public inquiry into the case before SUHAKAM of the rights of the Penan of Belaga in the face of plantation development, of the reasons for the approval of such a defective EIA Report, and of the proper division of duties and functions between Licencee and government. It is a sad commentary on the state of affairs that the most disadvantaged and marginalised should think of their past as better than the present and now dread the future.



ANNEXURE 5

**Briefing on the Penans in Ulu Belaga by Dr. J. Peter Brosius,
Professor of Anthropology, University of Georgia, Athens, Georgia, US**

SUHAKAM's Briefing on the Penans in Ulu Belaga
Dr. J. Peter Brosius, Professor of Anthropology
University of Georgia, Athens, US

INTRODUCTION

Before I start my presentation, I would firstly like to brief you on the background of my research on the Western Penans which I conducted in the 1980s. I recognise the importance of credibility of information presented today, hence, it is also necessary for me to highlight the methods I used for my research.

Later, I will speak on some general aspects of the Penans and their nature, as well as their history and connection to the places in the interior of Sarawak. The Penans were, of course, previously nomadic, in a sense that they moved around a great deal. Nevertheless, they have strong connection to places and have very long history in those places.

My presentation is a combination of several things. Firstly, I feel that it would be useful to give participants a sort of visual sense of the area. I know some of you have visited the Penans in Long Jaik. Nevertheless, I want to give you a visual sense of how the place was during my stay there in the 1980s.

Although I am not very familiar with the Laws of Malaysia, I know that the Sarawak Land Code 1958 specifies that a person has to have demonstrated to clear land prior to 1958 to establish native customary land claim. Most of the Penans, however, only settled around 1960 and 1970. However, because of their way of life, most Penans lack 'temuda'. Thus, here is a whole class of Sarawakians, or Malaysians, who, essentially, have no basis for establishing claim to land. They are dispossessed because of their traditional way of life.

In addition, one of the flaws of the Environmental Impact Assessment (EIA) Report on the LPF/0018 is that it failed to identify human inhabitants in the area. So what I have done is I have put together photographs of people who resided in the said area back in the 1980s and some other photos which I took during my recent visit to Long Jaik in 2006.

My presentation will present information on, among others, evidence of prior occupation, the nature of Penan historical knowledge, documentary evidence on Penan occupation within the Usun Apau and the history of Penan settlements.

Background on Research

I lived with the community of Long Jaik, located along the Seping River in Ulu Belaga, which is the area that we are mainly talking about today. I lived there for three year from October 1984 until October 1987, while conducting my dissertation research in anthropology for the University of Michigan, US. I have worked in Sarawak, on and off, since that time. Apart from my stay in Sarawak from 1984 – 1987, I returned to Sarawak for brief visits in 1992, 1993 and 2006.

As an anthropologist, my stay with the Penan community in the 1980s was for my ethnographic research. For a person to be accepted and recognised as an anthropologist, he or she must conduct a research which requires her/him to live in a place for a minimum of one year. During the time of stay, he/she must learn the language and participate in the way of life of the community residing there. It is necessary to live with a couple of different families during that time. During my stay with the community of Long Jaik, I participated in their everyday life. I learned to make sago, I went hunting and fishing and collected rattans with them.



Although my dissertation focus was not on hunting, I followed them as the Penans hunt every day. The places where they hunt also mark the names of rivers. I went to several hundred hunts over the three years. Additionally, when the Penans return to from their hunting, I would weigh what they caught and took note of it.

I also worked extensively with the elders on genealogy. The western Penans are very proud of their knowledge on history and genealogy. It could be said that some specialize in it. One of them even traveled throughout his life to different communities to learn the genealogy of his own community. His genealogical knowledge is not limited to the Penans but also on aristocrats of the neighbouring Orang Ulu.

In my report to the State Planning Unit entitled "The Penan of the Belaga District: Considerations for Development" is a documentation of my research on the Penans. This report fully describes my stay with the Penans and on their way of life for development consideration by the State government. I give my consent to SUHAKAM to quote any information in the report.

Currently, I am involved in several researches and projects in Sarawak. All these researches are done with the approval of the Sarawak State Government. Currently, I am working on some researches which sponsored by, among others, the Sarawak Museum and University Malaysia Sarawak (UNIMAS). I am also involved in a project with the Sarawak Forest Department and the Sarawak Museum.

Background on the Penans

The Eastern and Western Penan

I have visited every Western Penan community in Sarawak with the exception of Lg. Bo Purau in the Silat.

Before I continue, I should mention that there are two primary penan populations in Sarawak. They are called the Eastern Penan and Western Penans. However, they are actually at the north and south of each other, with those residing in the north in the Baram District are the Eastern Penans, and those in the south, in the Belaga District, which we are discussing today, are the western Penans.

The Western Penans live across a broad swath of the interior of Belaga District, spilling over into the Baram District on the north. Most of the north and east of the big curve is in the Balui where Bakun Dam is being built. They have moved across this area over time due to several reasons including food. However, their migration was often their reaction to historical events such as the Iban raids.

There are a number of differences between the two groups. The primary difference is that the Western Penans have a very clear sense of community, while the Eastern penans are more mobile and typical hunter gatherers. The later have very fragmentary groups. They break up and later join back again. The Western Penans, on the other hand, have a very strong sense of community that can trace back its history. There are splits and fusions. The Western Penan community is very insolent. Hence, it was much easier to collect data about them. There are a lot of people to talk to.¹

The composition of historical groups is also documented. For instance in the Sarawak Gazette mentioned the following groups the Penan Apat (including the Penan Apat Paong); Penan Geng

¹ At the Briefing Dr. Brosuis said that the names of Penan groups are a bit difficult to get a handle on as a Penan might say that he is a Penan Geng and Penan Apat and Penan Benalui. What he is actually trying to show is a historical relationship, that is, one of their ancestors belongs to one of the Penan groups which he named. It is also a way for the Penan show segmentary lineage. The names of the groups, however, is recognised and documented in historical materials. The names of the Penan groups usually refer to a particular river. For instance the Apat and Benalui a names of rivers in Sarawak.

(including the Penan Geng Pleiran and Penan Geng Belaga); Penan Benalui; Penan Apau; Penan Keluan; Penan Bunut; Penan Bunut; Penan Dipe (Dipah); Penan Seping; and Penan Batu Koyat.

The Penan groups in the Pleiran and Jaik are Penan Geng.

Penans as Tax Payers and Voters

From the late 19th century, the Penans were visited on occasion by the District Officers, Native Officers/SAOs and other government agents. Although the Penans were nomadic and seemed to be backwards when compared to other mainstream community, the Penans regularly paid taxes to the government at that time from as early as 1898. This is documented in District Reports.

The Penans also voted. I know that they voted in the 1970s which probably started in the early 1960s.

Penan Historical Knowledge

The Penans are serious when giving information about their history and genealogical information. One of the aspects that I learned when doing this research was to identify the persons who really speaks the truth and who is reliable. Nonetheless, there are those who seem to be knowledgeable but mix up people in generations, mixes cousins with siblings. The information I gathered from them are all mental recollection.

There are two persons in particular who I have worked with, Sugun Uwing and Tingang Bajang. Sugun Uwing was born around the 1900 and died on 17 May 1987, while Tingang Bajang was born around 1908 and passed away around March or April 1987. The Penans do not have dates for their birth. So, I had to extrapolate their ages based on migration history and other documentation like the Sarawak Gazette and District Office reports. For instance, how tall and big they were when the last visit from the District Officer was made.

Tingang Bajang, in particular is a remarkable person with an astounding memory in a sense that his memory is vivid and accurate. His knowledge on the Penan genealogy is deep and I spent a solid three weeks with him to obtain his knowledge on the Penan genealogy.

Besides the Penan in Belaga, I also collected some genealogy from the Penans in Suai and Jelalong, Sarawak. They did not have specific genealogical links to certain individuals but they did trace their origin back to the Seping and Pleiran in the Belaga District.

Concordance of Penan Oral Accounts with Published Accounts

The information obtained from him is corroborated by other Penans as well as finding by other researchers. For instance, during the same period of my research, another researcher, Mr. Raj Puri, was doing research on the Penan Lurah, which is a Penan group in Kalimantan, Indonesia. The Penan Lurah is actually a group of Western Penans who split off to Kalimantan in about 1905 after they had a serious argument. Mr. Raj Puri collected genealogy of the Penan Lurah and some from those in Belaga. We met in Hawaii and compared notes and found consistency in the information given to us by the Penans, including information on those who moved to the Baram District.

I also spent a great deal of time doing archival research in the Sarawak Museum and several other places. One of the richest sources of information on researches conducted in Sarawak is the Sarawak Gazette. The Sarawak Gazette had begun publication in 1970. I also referred to files from the District Office which includes information on traveling reports and annual reports. Other published articles and books include those authored by, among others, Hose, Arnold, Needham, Urquhart, Harrison,



Nicholaisen and Langub.

The Sarawak Museum has a lot of Penan file. I spent a lot of time looking through those files in the District Office which included more detailed traveling reports which is not available in the Sarawak Gazette. They also have development reports which documents the time when the Penans began to settle and their location and the names of officials who visited them.

There are also consensuses of people. I have a number of consensuses going back to the 1930s.

Based on the information obtain from the Penans and documents from archives and consensuses, you would see the continuity of occupation through the years. I also found that the genealogical accounts obtained from the Penans often match events that were reported in publications. For instance, I was told by the Penans that around 1875, there was a dispute between the Penans and Kayans which resulted to some deaths. They told me that someone tried to take some of the Penans to make them slaves. The Penans resisted and killed them. The Penans then fled. The feud continued. Although late, this story made it to the Sarawak Gazette around 1982-1984. Information on some names given to me by the Penans, for instance a Penan they called Lake' Balat, a Penan leader involved in the feud, was also mentioned in the Sarawak Gazette.

However, I need to point out that the killings by the Penans were very unusual as the Penans are perhaps one of the most non-violent people on earth. They perceived the killings as an act to defend themselves.

Other information obtained from the Penans which are corroborated by the Sarawak Gazette and other sources include the following:

Lake' Baya' and Kayan Uma Daro – 1975
 Koh's attack on the Pleiran – 1896
 First Bunut Raid
 Second Bunut Raid – 1916

Evidence of Prior Occupation

Evidence of Penan occupation in the Usun Apau can be traced back to the 1800s. The Sarawak Gazette is rich source of information which documents the existence Penan groups in Sarawak. Groups mentioned in the Sarawak Gazette include the following:

Penan Geng – 1919, 1950 and 1955
 Penan Geng in Ulu Seping – 1951
 Penan Dipa – 1882 (for incident occurring in 1875)
 Penan Bunut – 1882, 1955
 Penan Apat – 1928
 Penan Apau – 1955
 Penan Silat – 1955
 Penan Talun – 1955

The Sarawak Gazette also mentioned several individuals who also appear in contemporary Penan genealogies and oral histories. They include:

Lake' Baia (Penan Dipa) – 1882, 1884
 Luja Baia (Penan Bunut) – 1882
 Tama Luyong – 1887
 Tama Keling Gau – 1892, 1902

Tama Sok, Tama Dinigan, Tama Lawai – 1898

Aban Selong – 1906

Tama Kumang (Penan Geng) – 1919

Akam Japi – 1950

Juk Ulei (Taman Bintang), Oyan Juk, Maja Juk, Kapun Maja, Juk – 1955.

In addition to the Sarawak Gazette, individual Penans are also mentioned in publications by, among others, Guy Arnold and Ian Urquhart, Rodney Needham and Johannes Nicolaisen.

History of Settlement

Though traditionally nomadic, the Penan in the Belaga District began to settle as early as 1906 (Penan Bunut, Linau River). They abandoned agriculture after being raided by the Iban. Before World War II, the Penan in the Linau River again began to take up agriculture, again returning to a nomadic way of life during the war and after. Several Penans in Belaga District began experimenting with agriculture from the late 1950s to early 1960s.

The years 1960 and 1970 were a period of massive settlement. In 1960, there were about 70%-80% nomadic Penans. However, by 1970, there were only about 10% Penans who remained nomadic. They were never forced to settle and never taken out from their ancestral land. They chose to settle as they saw it as an opportunity to settle in places where they have been.

All Penans in the Belaga District were settled by 1970. The Penan community in Long Jaik was one of the last to settle in about 1970. They settled in the Jek River, and have gradually moved down the Jaik and Seping to their present location.

Relationship between the Penans and Places

The first time I arrived in Long Jaik, surely I couldn't make sense of anything if I didn't know something about the place as my research focuses on the history of the people, their way of life, including their movement, migration. Knowing the names of places for the case of the Penans is important as every discussion with them is with reference of names of places, specifically rivers. I learned that the Penans use the rivers as a kind of skeleton to map out their land.

When I ask my student in the University of Georgia on how many roads they can name, most could name about 25-30 names of roads. The Penans, on the other hand, could name about 500 names of rivers and streams. I collected thousands of rivers and streams names in the interior of Sarawak from the Penans.

The names of rivers and streams mark all kinds of things. Sometimes it is the name of a species of fruit tree that grows at the mouth of a river, or a rock formation like batu gajah, or how a river flows parallel to another river, or how the mouth of the river changes when it floods, or other events that happened there for instance when someone kills a rhino. The names of places are rich with each telling a story of people's lives and history.

When a person dies, there is propitiation against saying their names. Hence, when a person passes away, he/she would be referred to the name of river or place near to where they are buried. For instance, if a person passes away and buried near the Klang River, they would refer to person as lake' Klang. It gives a kind of marker for them to remember where people are buried. The Penans do mark the graves. However, Penan graves are usually visible for only a few years. Nonetheless, the point is there is an association of people's lives and the rivers, even when they have passed on.

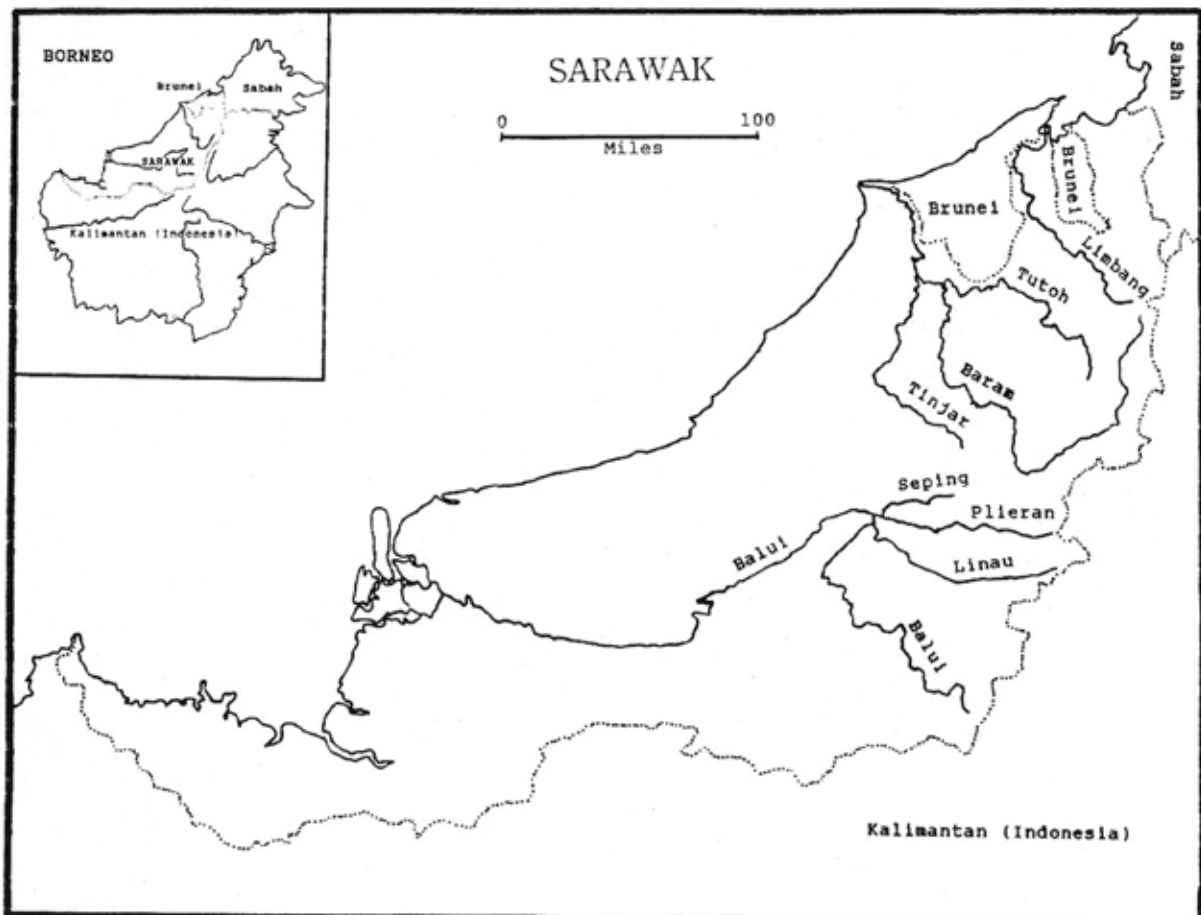


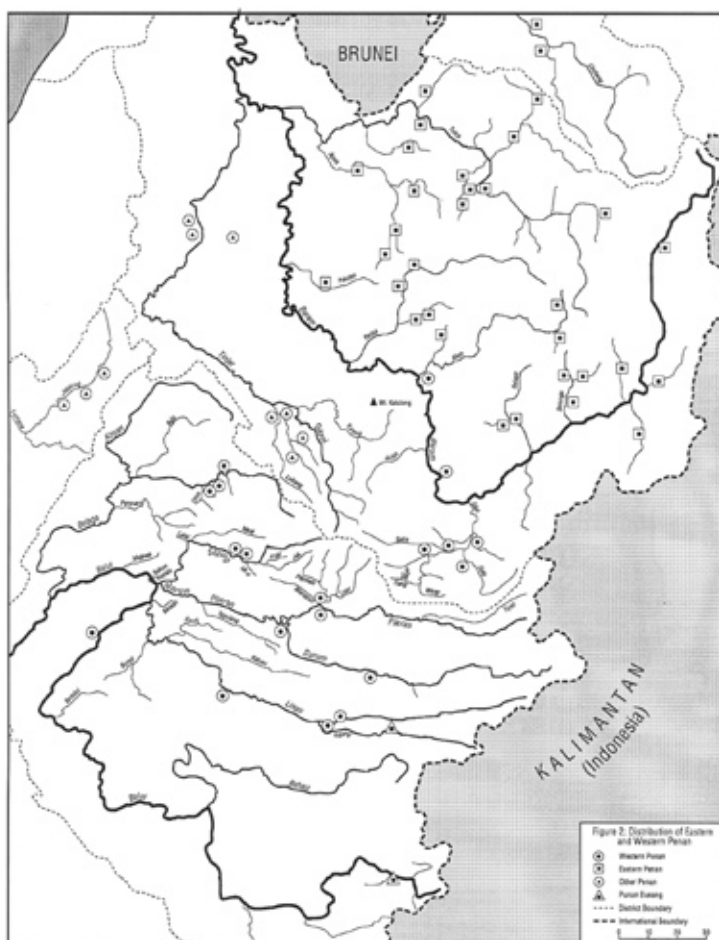
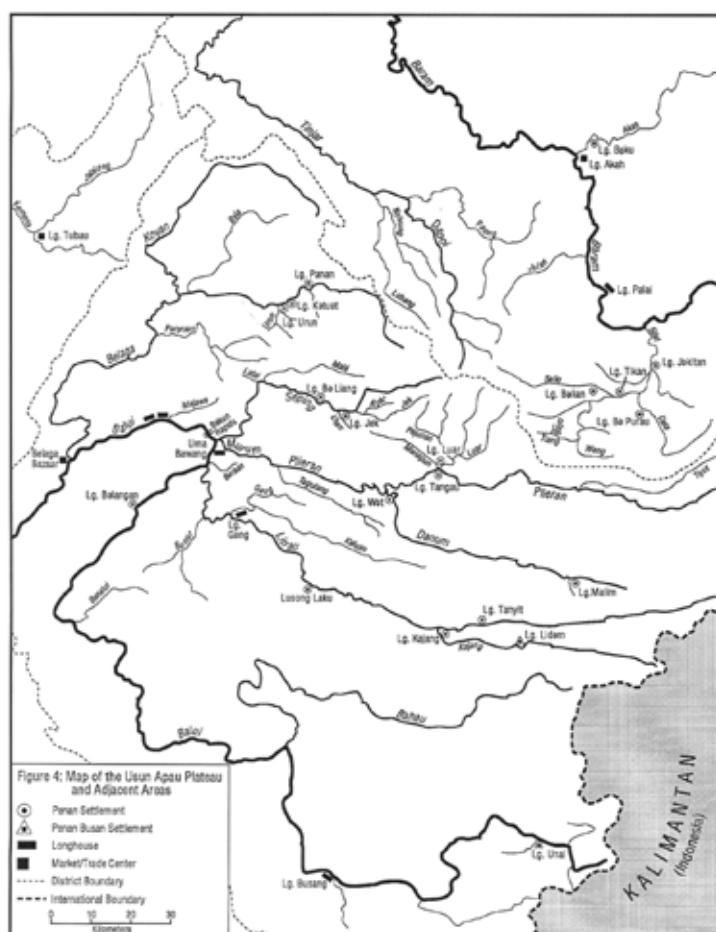
During my research, I also used about 150,000 maps provided by the State Government and I have marked those places in accordance to information given by the Penans. I managed to collect more than 2,000 river names.

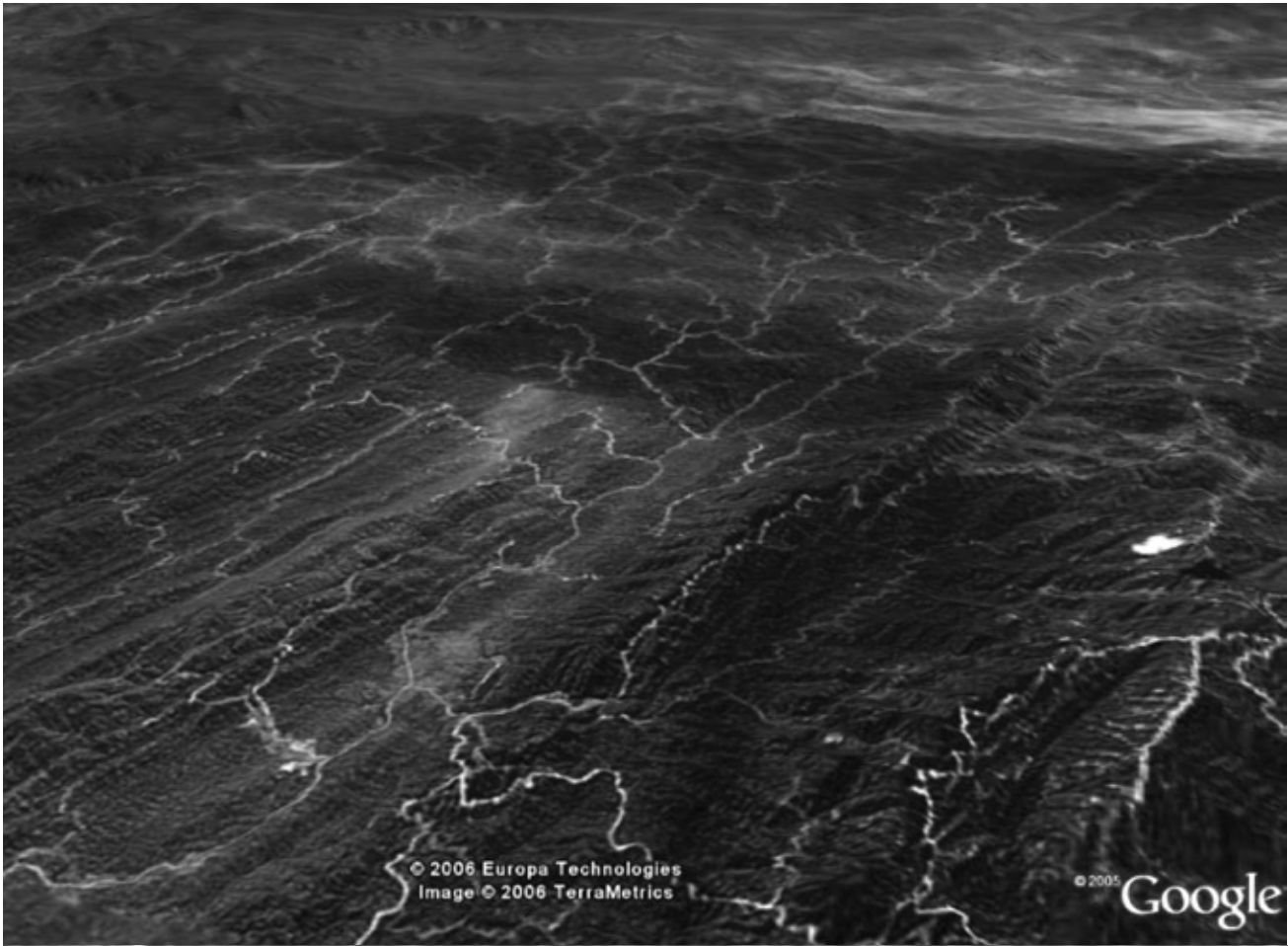
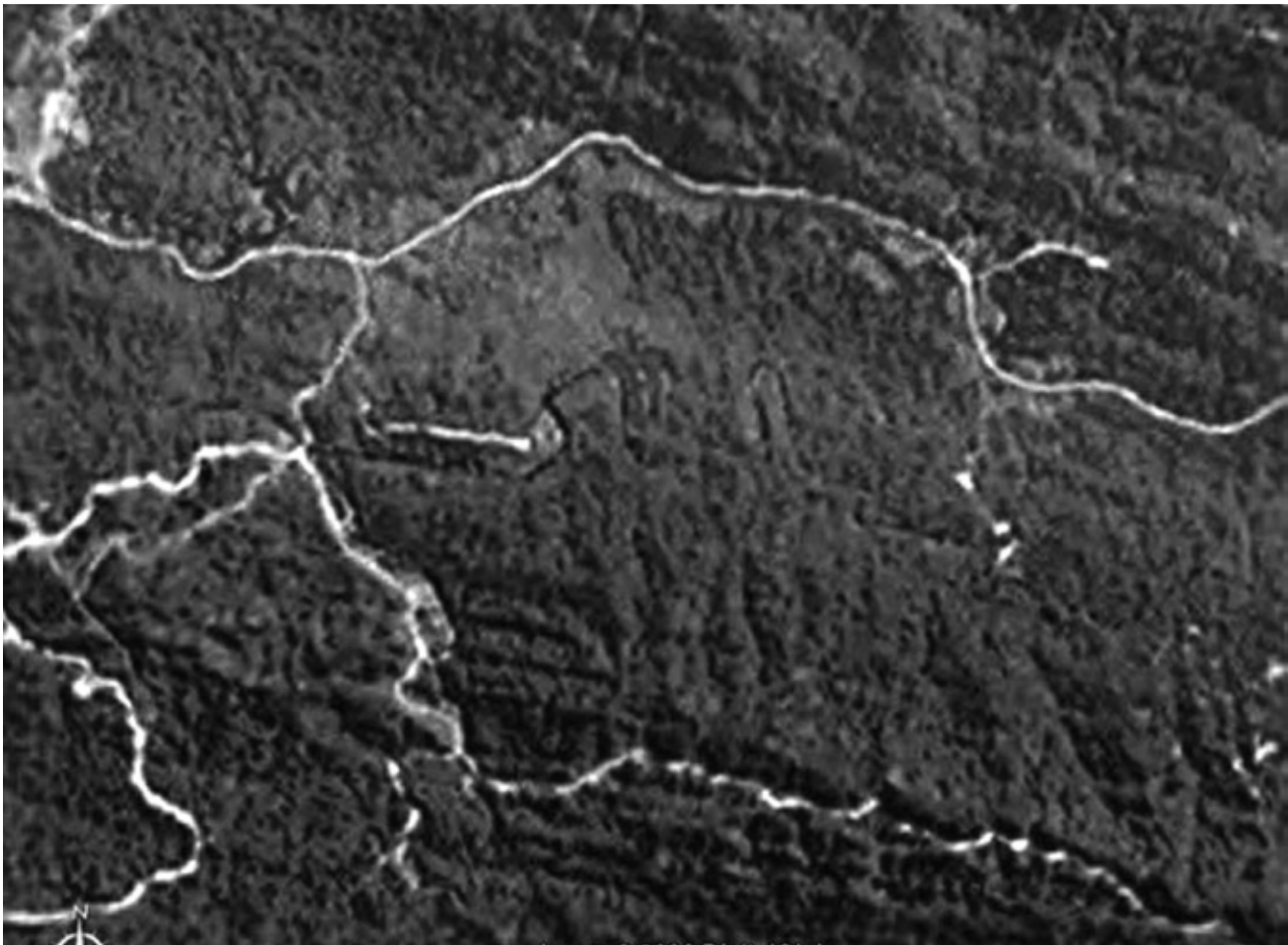
The Penan language is rich. Similar to the phrase that Eskimos have 30 words for snow; the Penans have different words for different types of landscape features. For instance, rivers that flow parallel to each other, rivers that meet at the end of the headwaters and rivers that are deep, each are identified differently.

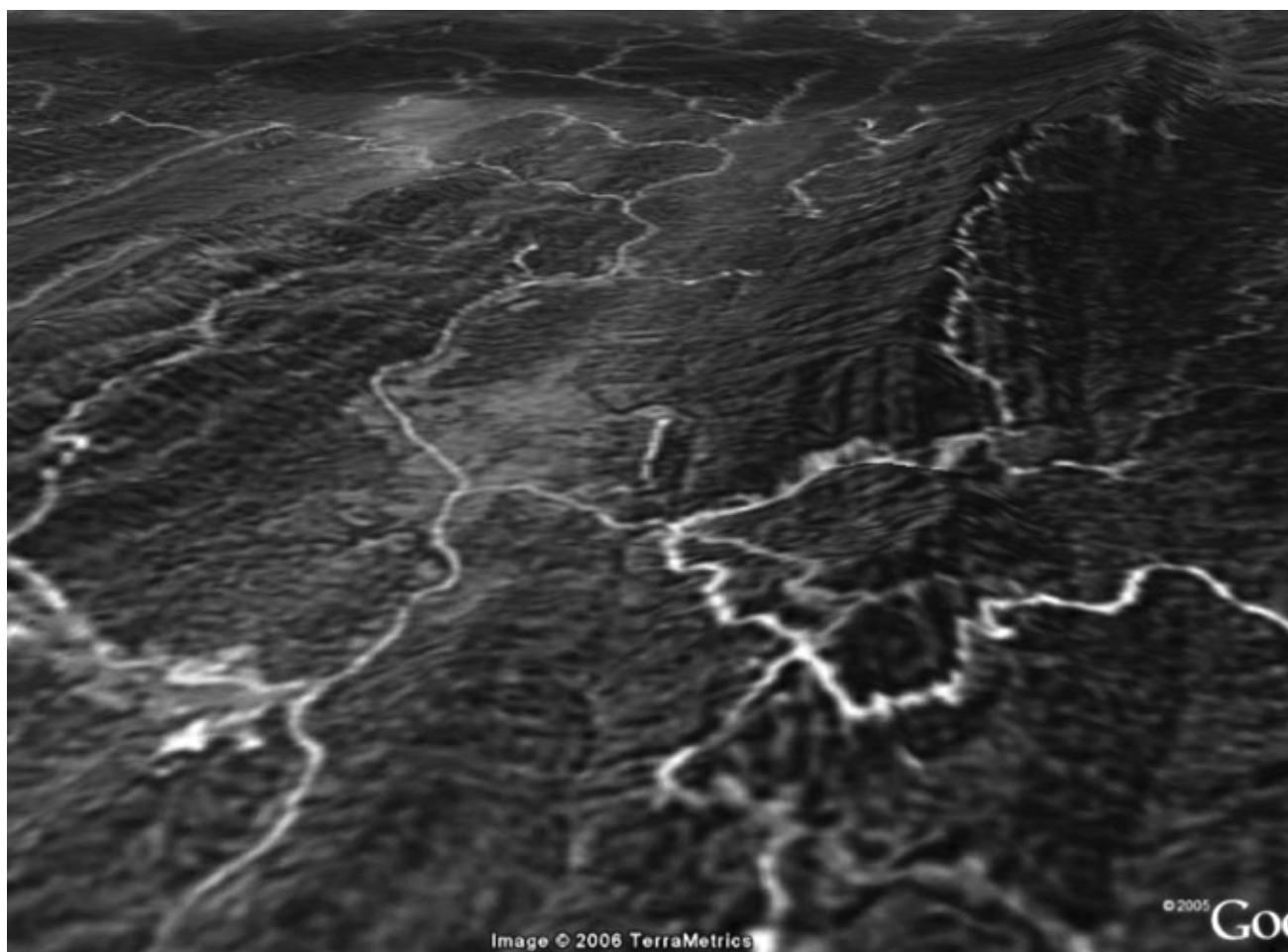
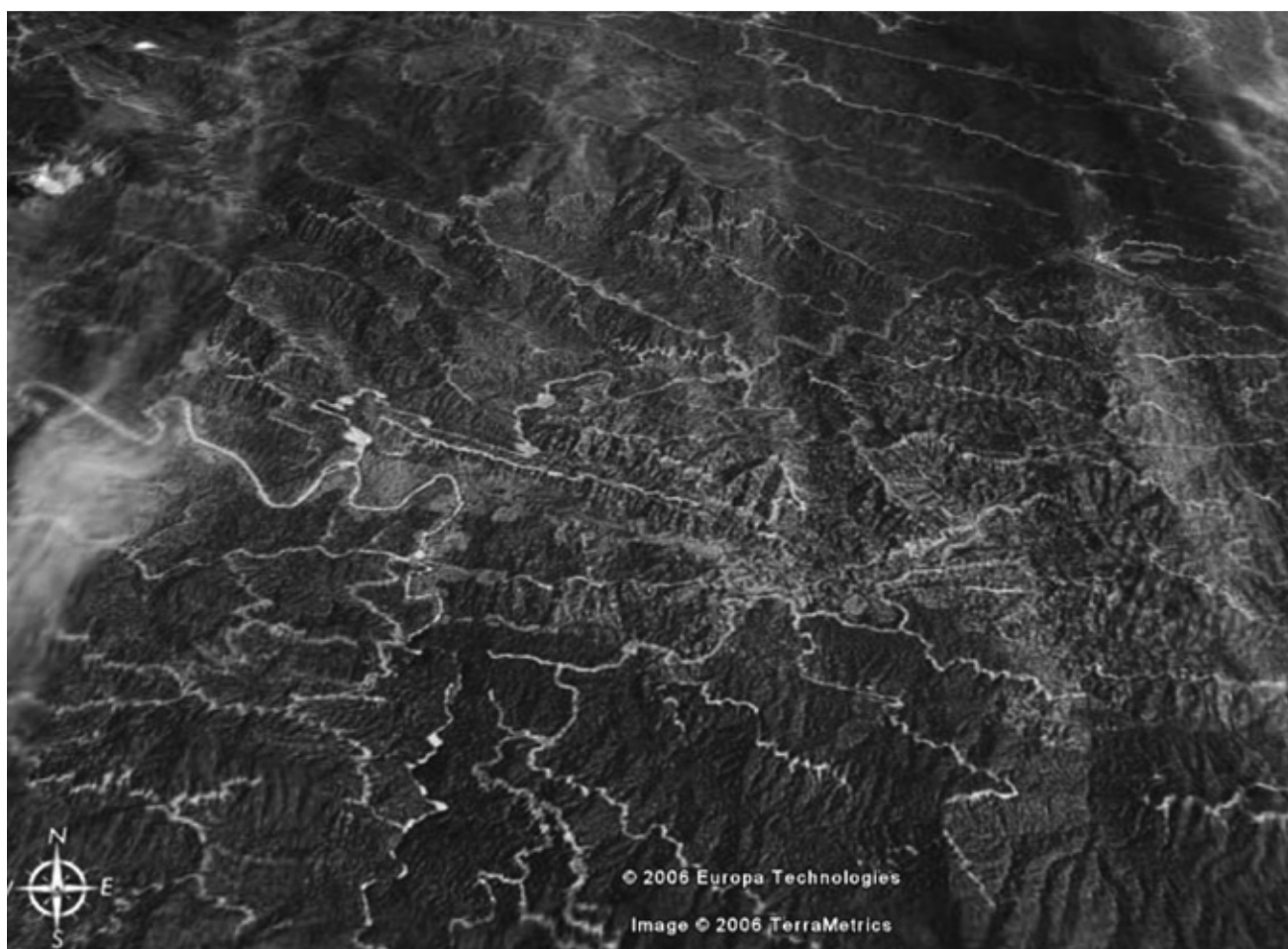
Documenting Penan Geng History and Genealogy

Dr. J. Peter Brosius
Professor of Anthropology
Director, Center for Integrative Conservation Research
University of Georgia
23 March, 2007









Seping and Jek Rivers

1984-1987





Upper Jek and Apat Rivers



Uten River



Seping River Valley ca. 1985





Luar watershed



Lg. Tekelah, Seping, 1984



Heli pad, Lg. Tekelah, 1984



Lg. Uten, Ca. 1985





Lg. Kelio, Seping, Ca. 1985



Lg. Kelio, Ca. 1985



Lg. Kelio, Ca. 1985



Farm, Lg. Uten, Ca. 1985





Lamin along Jek River



Lamin, Upper Jek watershed



Camp along Jek, Ca. 1985





Moving from Uten to Menapun, Ca. 1985



Lamin, Ulu Menapun



TK Tuqana, Iut Uten (Camp C)





Making sago, Ca. 1985



Lg. Tekelah, Seping



Lake' Lisang, Jek River



Kelotang River, Uten





Nyurang, Upper Jek



Collecting rattan, upper Jek, Ca. 1985



Suti dividing sago, Upper Jek





Iut Menapun. Ca. 1985



Lisim, Uten River



Sayen, Uten River



Terai and Bennet, Uten River





Bennet, 2006



Tugang and Ujok, Uten River, 1986



Gak, Ca. 1985



Gak, 2006





Boyen, Ca. 1985



Boyen, 2006



Bujang, Hunting in Apat River, Jek Ca. 1985



Bujang, 2006





Lake' Lumut, Ca. 1985



Lake' Lumut, 2006



Semoi, Ca. 1985



Semoi, 2006





Kejin, Ca. 1985



Ujok and Huan, Ca. 1985



Huan, 2006



Kejin & Arup, Ca. 1985





Kejin, 2006



Arup, 2006



Suti, 1984 (Photo published in
Sarawak Gazette)



Suti, 2006



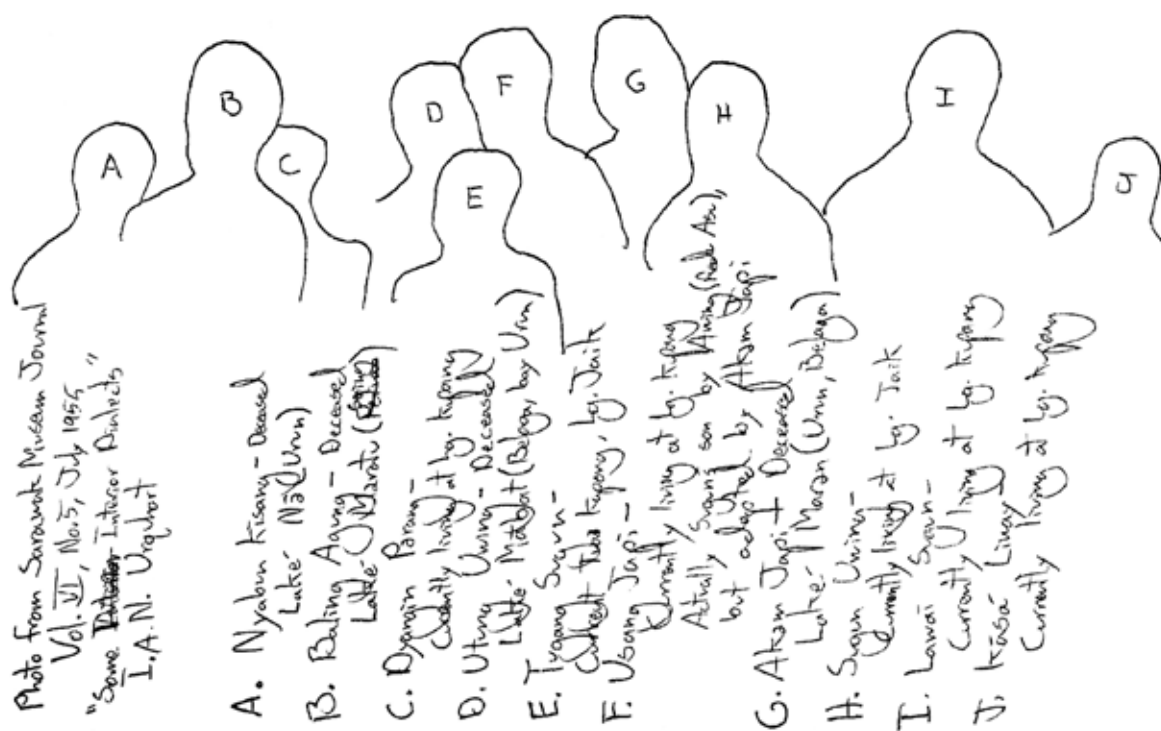


Photo taken at Lg. Tanayga, Dapoi, ca. 1950.

Rivers, Forests & Mountains

Working with Maps





History and Genealogy

Working with Elders

Tingang Bajang, 1986



Sugun Uwing, Ca. 1986



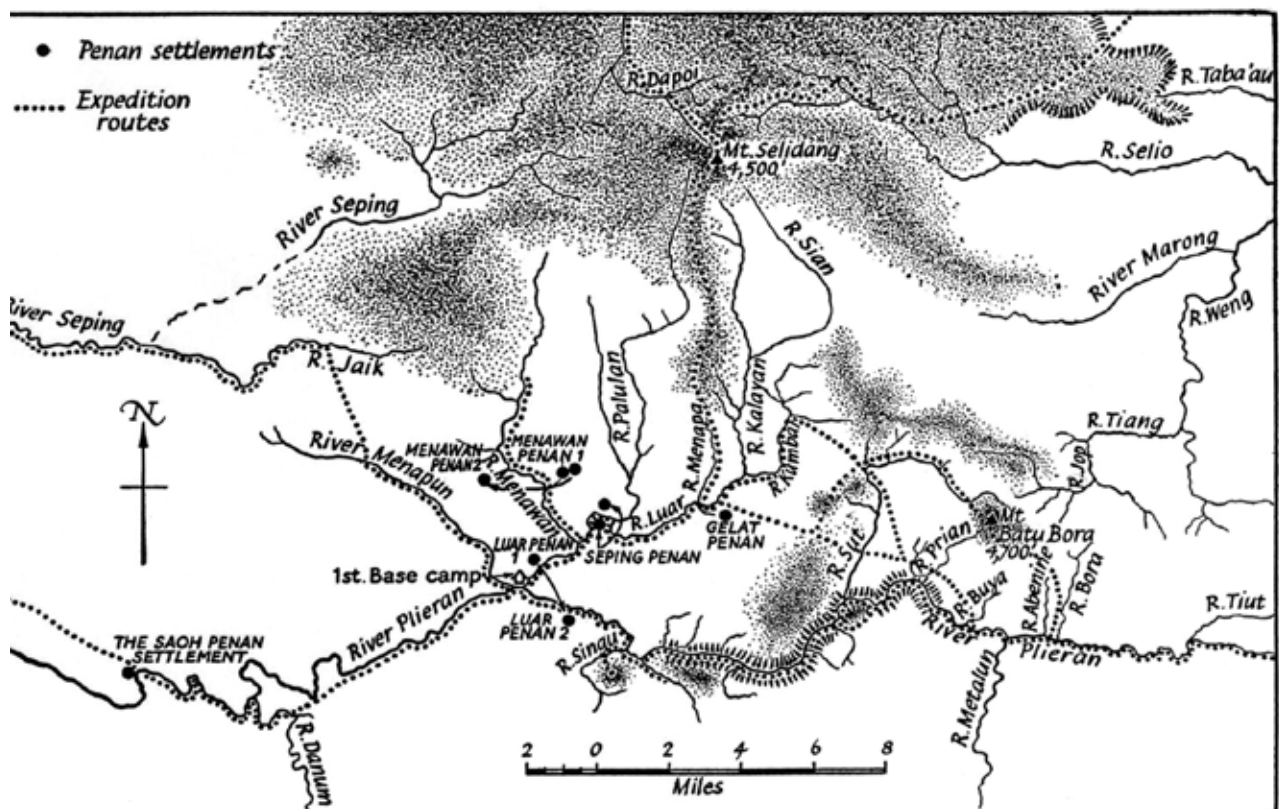
(M) Sugun Uwing	----- (M) Salu' Sukan	
(F) Rwing Koleh	-- (M) Lawal Sugun	
(F) Kungang Koleh	-- (F) Rua' Japi	
(F) Rwing Koleh	-- (M) Usang Japi	
(F) Tokom Liban	-- (F) Sudal Sugun	
	-- (F) Bungun Sugun	-- (F) Ech (Upu)
	-- (F) Long Sugun	-- (F) Uyang
	----- (M) Atik	-- (F) Utai
	----- (F) Teling	
	(M) Havi Ajang	-- (F) Pidang
		-- (M) Nyaban
		-- (M) Saang
	-- (M) Tugun Sugun	-- (M) Kete
	----- (M) Buju'	-- (F) Sayen
	(F) Ujuk Balan	-- (M) Buhu'
	(F) Lfing Ajo'	-- (M) Zahan
		-- (M) Leing
		----- (F) Liban
	----- (F) Kftuhung (Upu)	
	-- (F) Beon Sugun	-- (F) Kaleb
	(M) Parin Kiang	-- (M) Nyipa'
	(M) Engun Ajang	-- (F) T'fai
	(M) Ta' Ajang	
	----- (M) Tugl	
	-- (F) Betea'-Sugun	-- (M) Kon
		-- (F) Lilem
	-- (F) Bua'Sugun	-- (M) Abit
	(M) Sayang Abit	-- (F) Nio
		-- (M) Atong
		-- (F) Laltog
		-- (M) Nikha
	-- (F) B'runi Sugun	-- (M) T'kula'
		-- (M) Aran
	-- (M) Afun Sugun	----- (F) M'ek
	(F) Geli Nyai	-- (M) Balioq
	(F) Rua' Fono	
		-- (M) Tach
	-- (F) Uye Sugun	----- (F) G'dang
	(M) Sanao Tayang	-- (M) Koleh



Tuloi Ngau, Ca. 1986

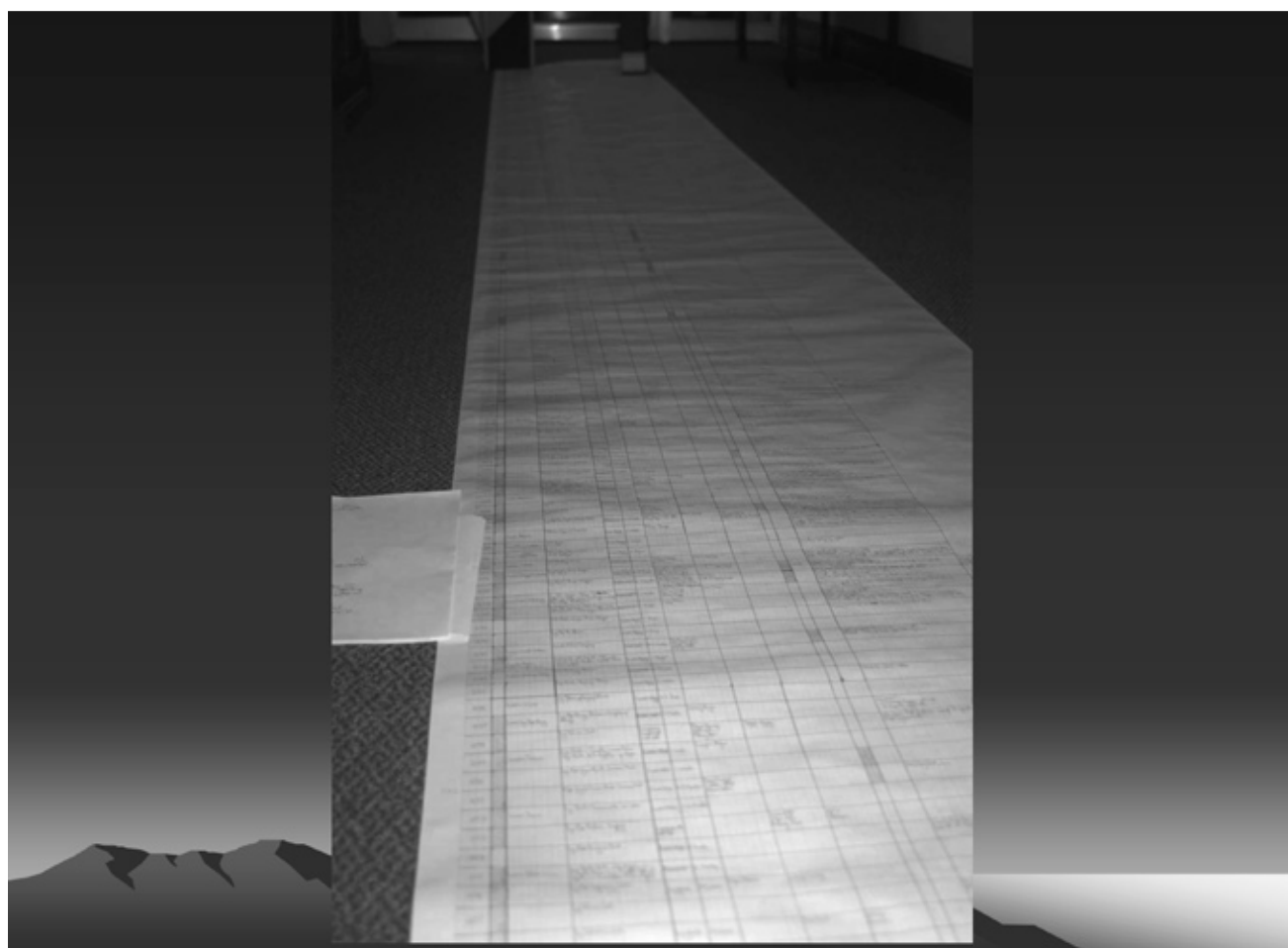


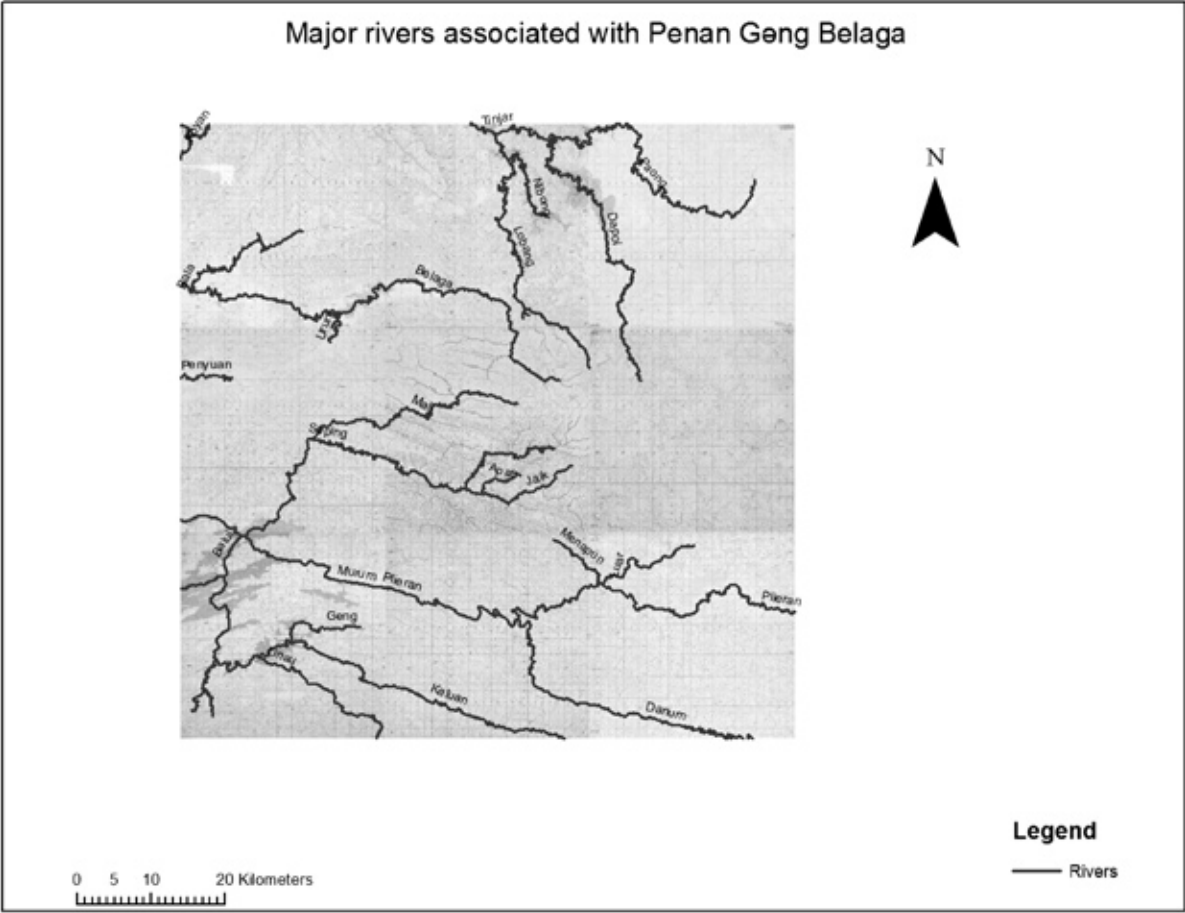
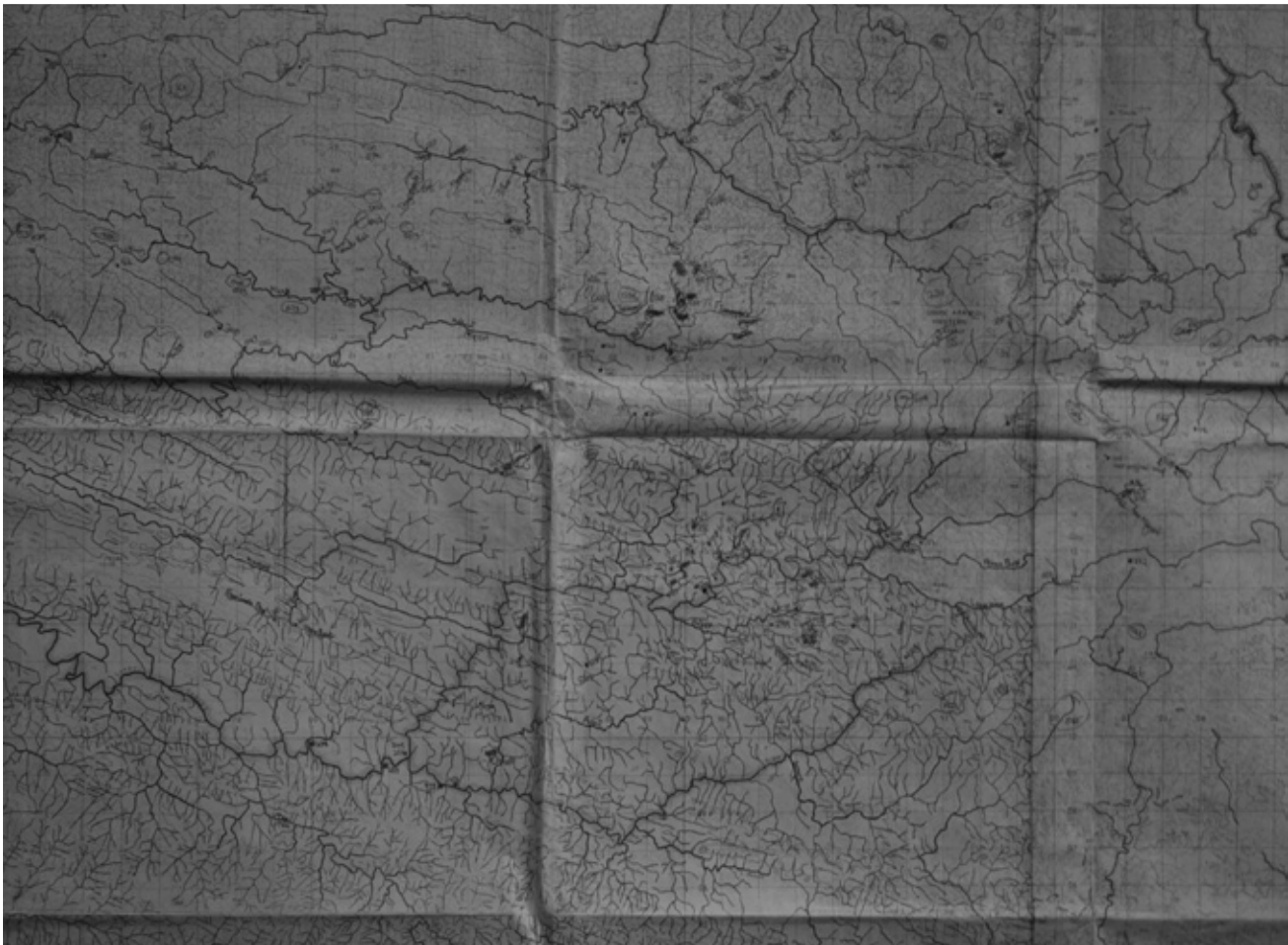
Unya, Ca. 1986



3. The Plieran River: Penan settlements

Penan Geng Belaga Settlement Sequence: 1928-1987







Penan Genealogy : Reconstructing Time

- Penan genealogy includes information on:
 - Parentage (patronymic system)
 - Marriage (serial monogamy)
 - Birth order
 - Occasionally birth location

Genealogical difficulties

- Adopted children may not be identified as such
- Cousins may be identified as siblings
- Weighted slightly toward males and elites
- Few fixed date points

Reconstructing Movements in the Landscape

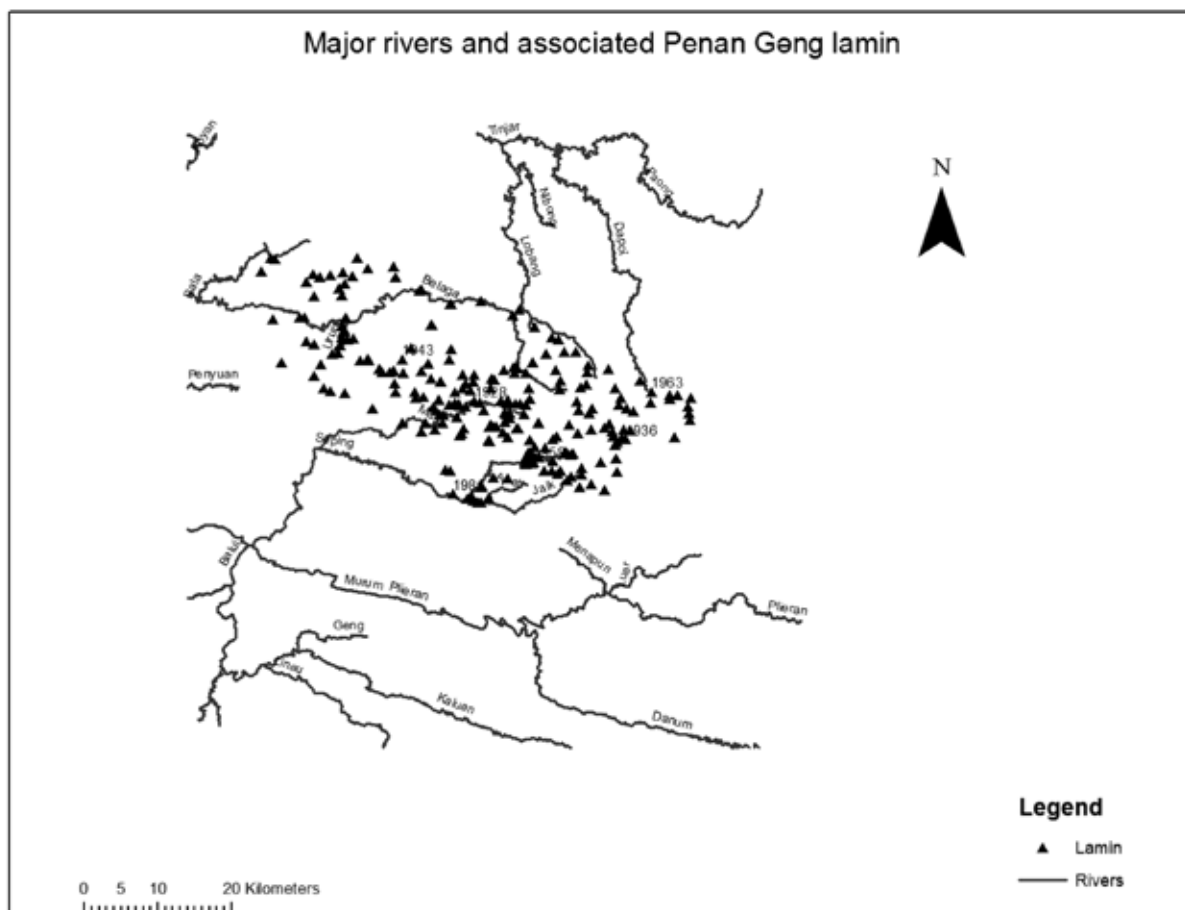
- *Genealogical data*, to assign dates to individuals (n=191)
- *Oral history*, to locate individuals in the landscape
(Both must be present for a significant number of individuals)
- Settlement sequence, 1928 - 1987

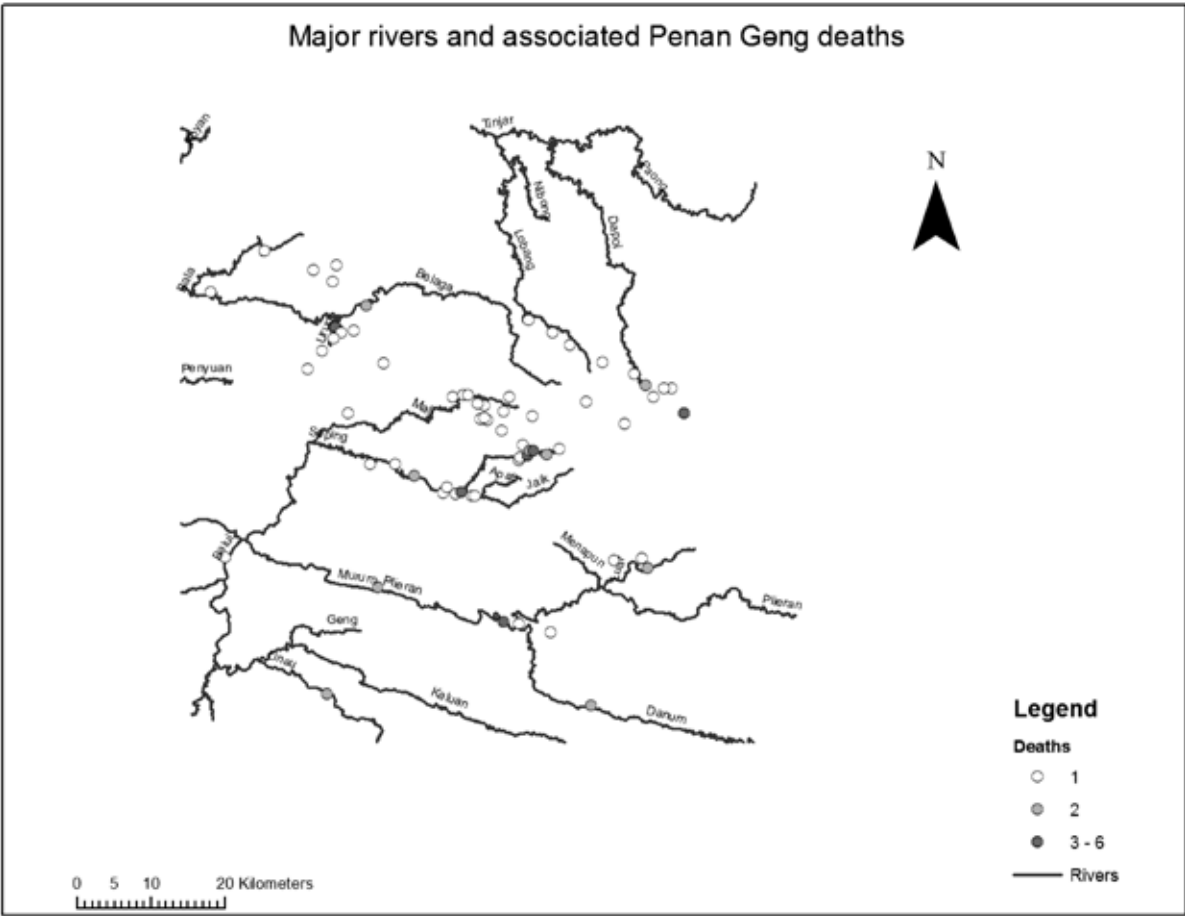
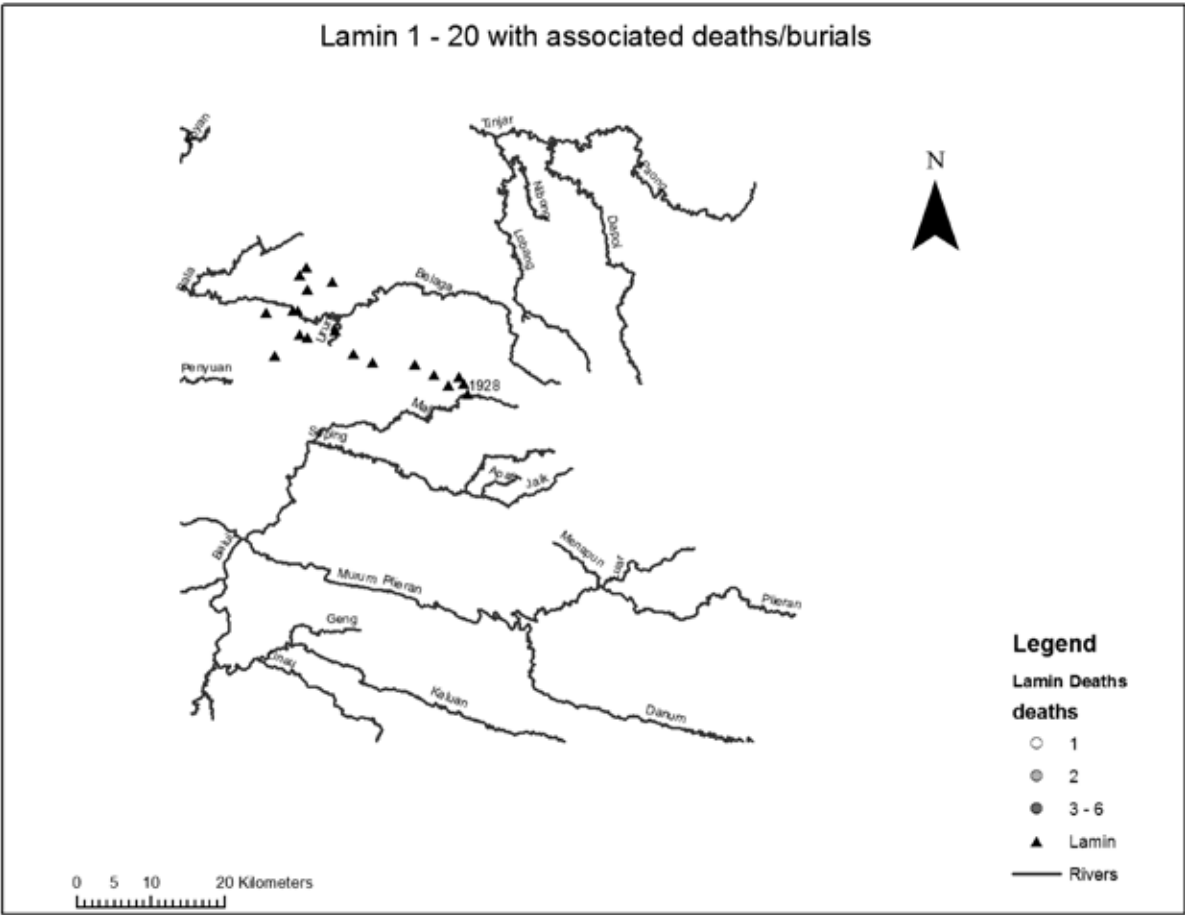


Settlement Sequence Data

- 1928 – 1987
- Lamin locations (258)
- Births (126)
- Deaths (61)(17 also in genealogy)
- Events (Marriages, visits, diseases)
- Fixed dates : 1928, c.1936, c. 1943, 1958, 1963, 1975, 1987

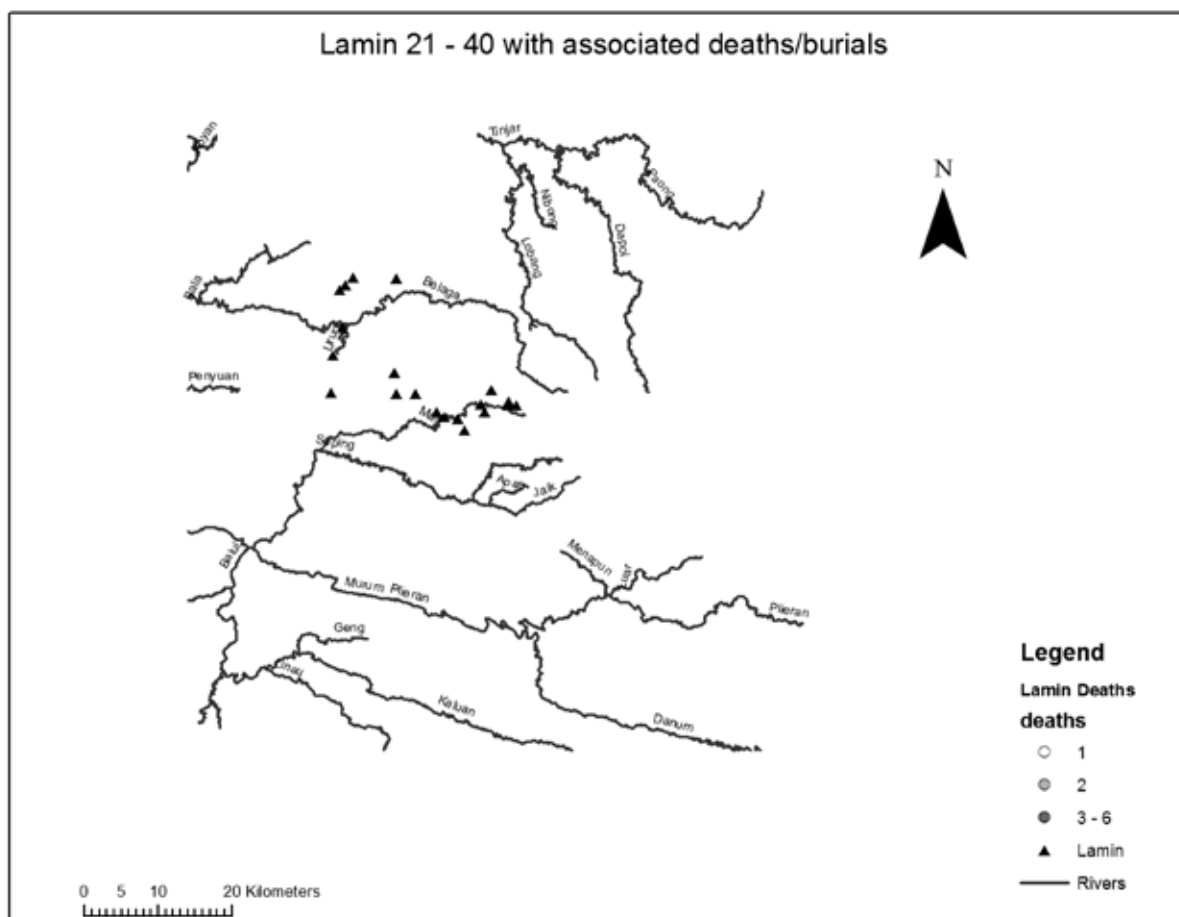
Major rivers and associated Penan Geng lamin



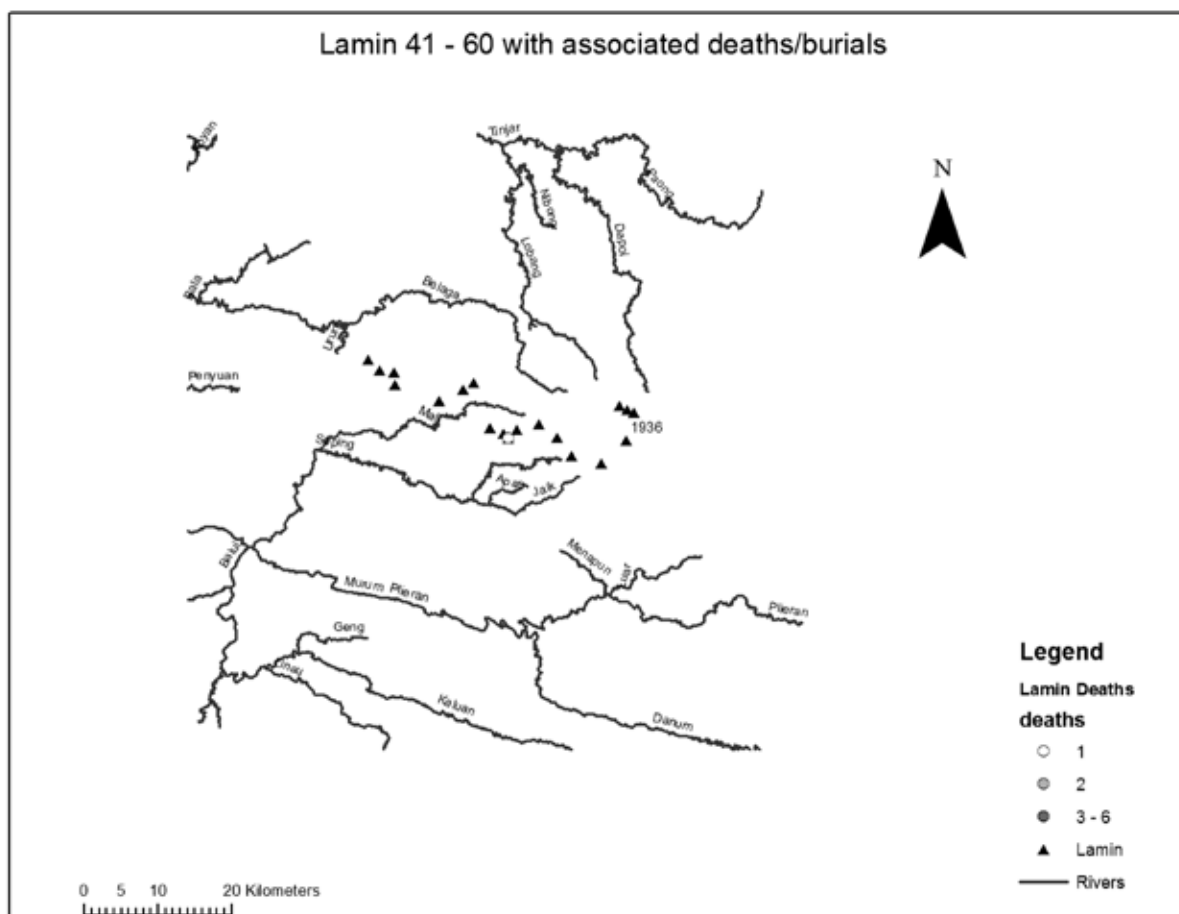


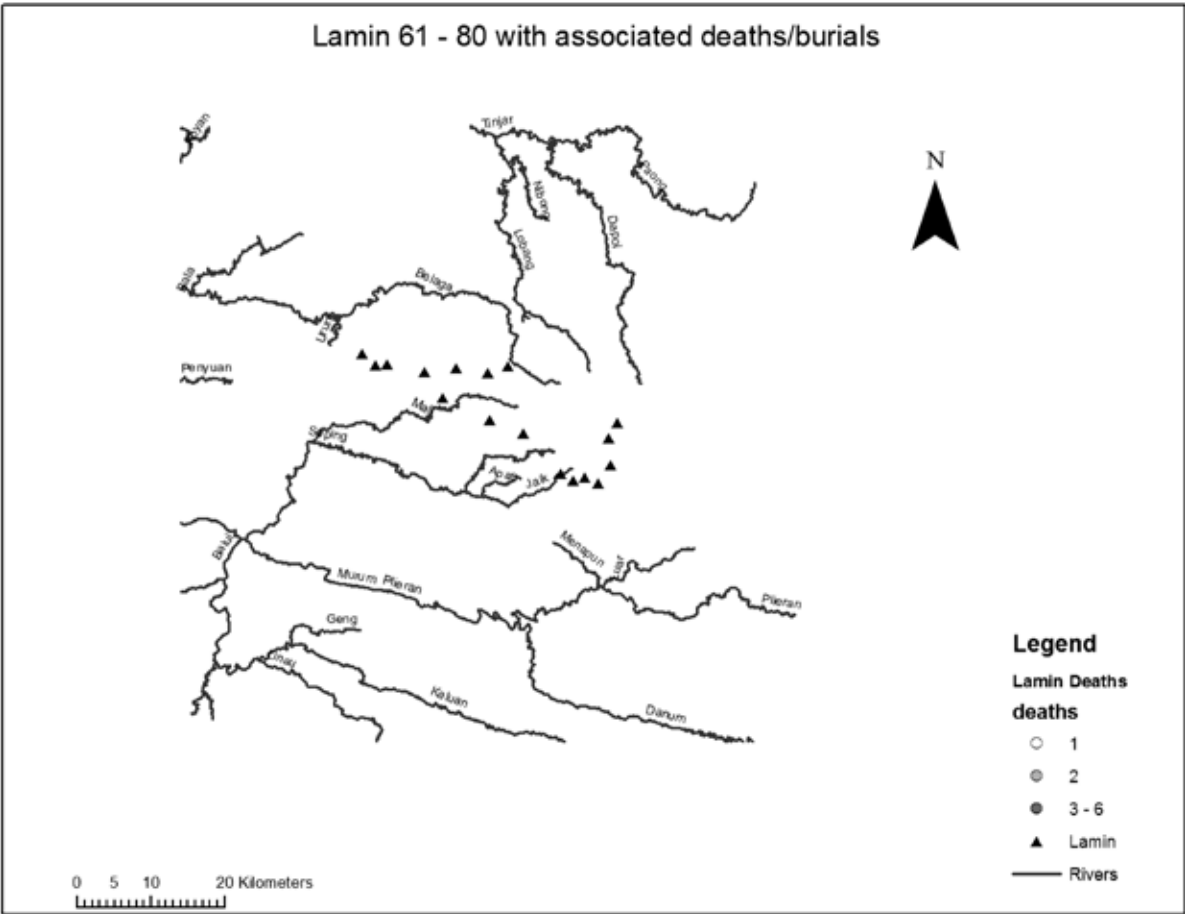
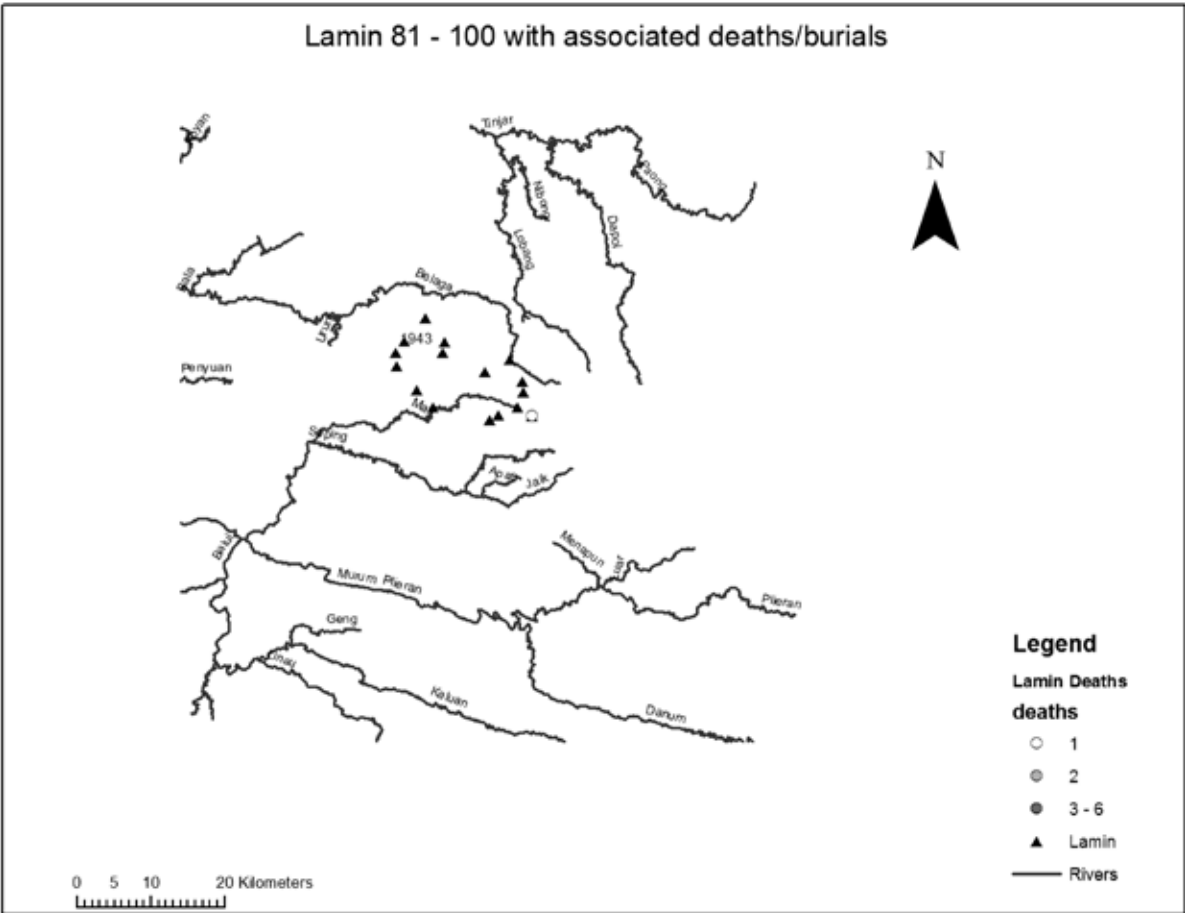


Lamin 21 - 40 with associated deaths/burials



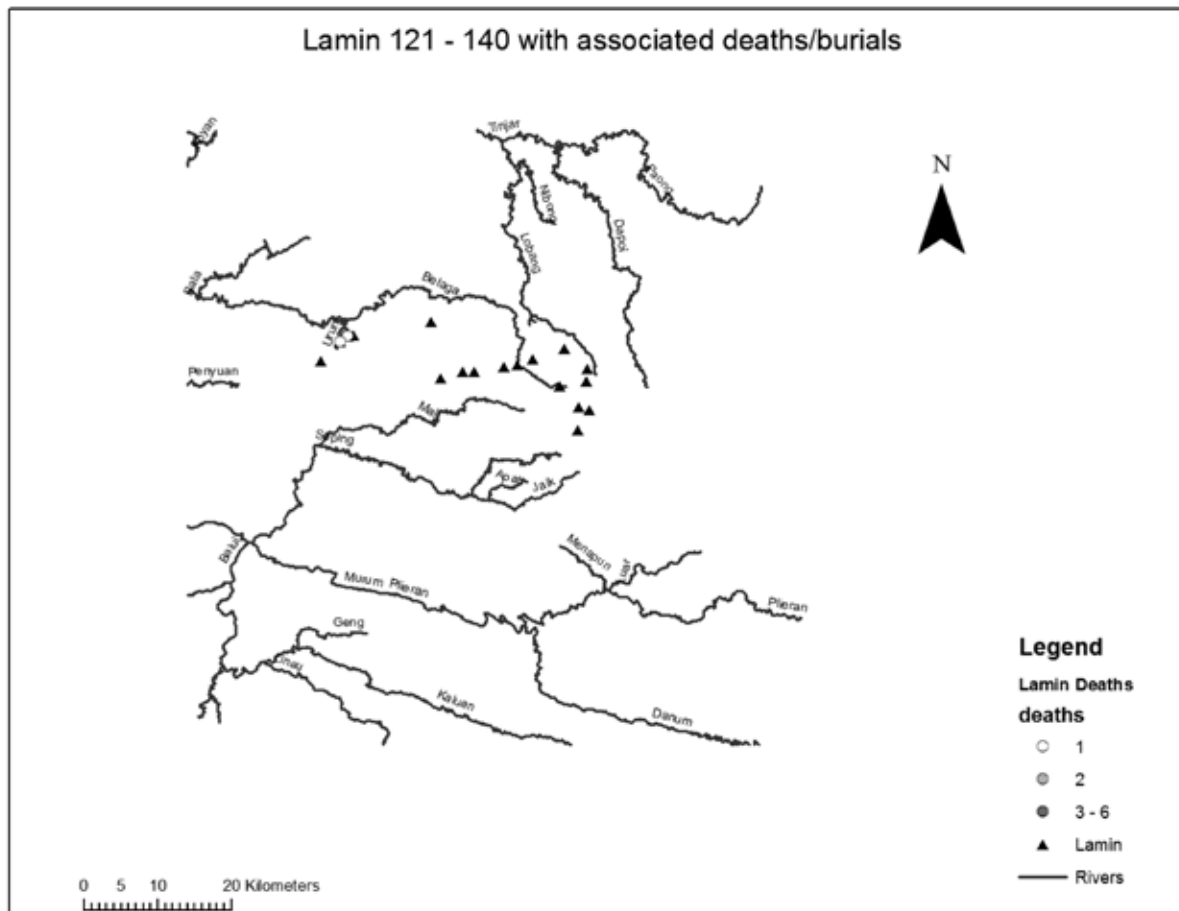
Lamin 41 - 60 with associated deaths/burials



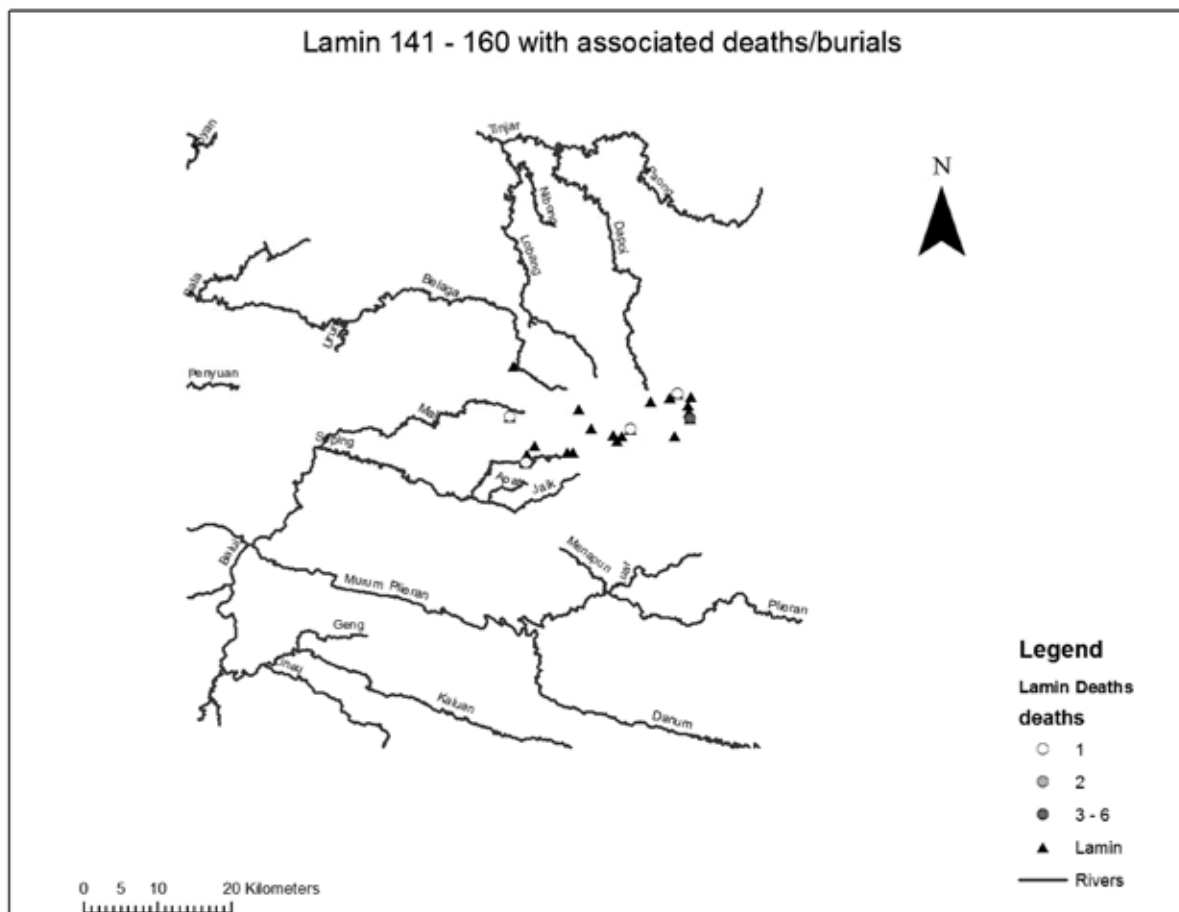


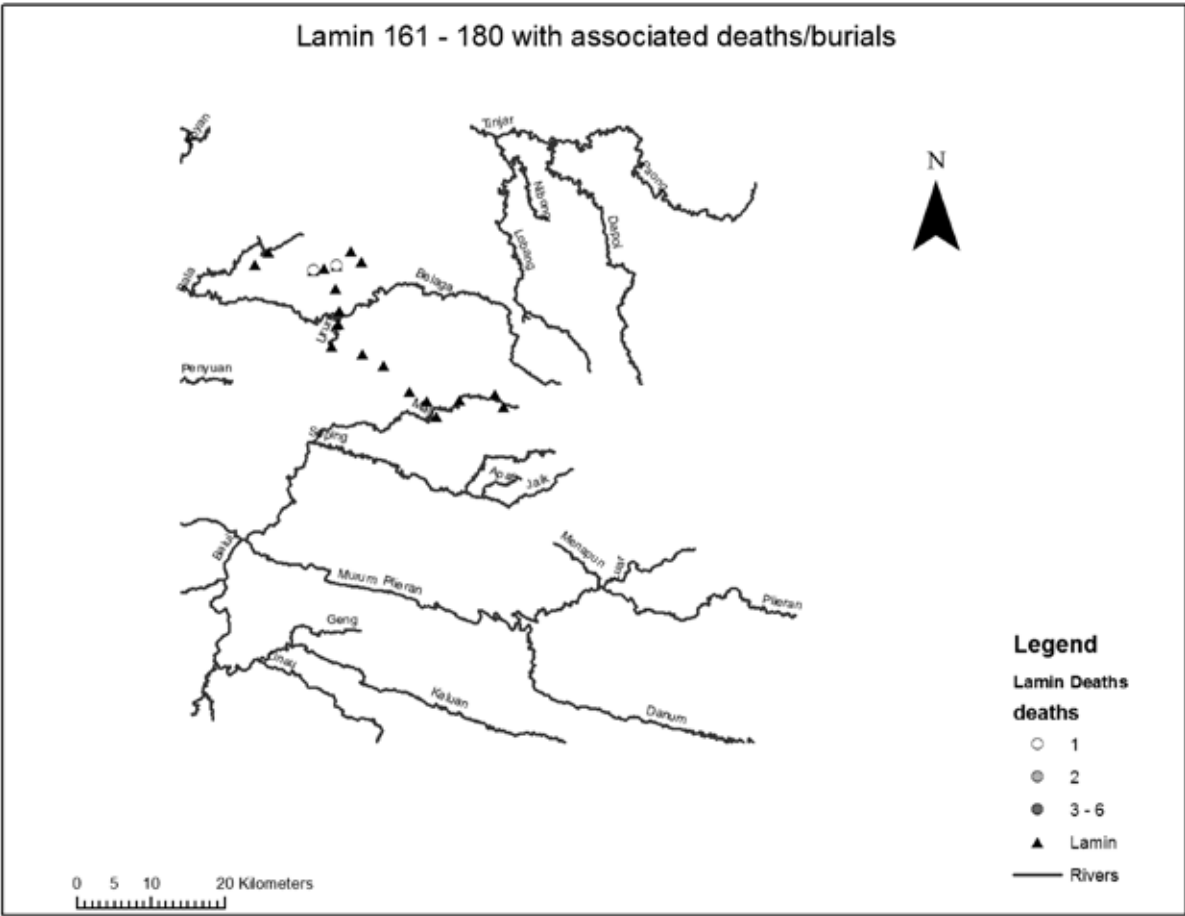
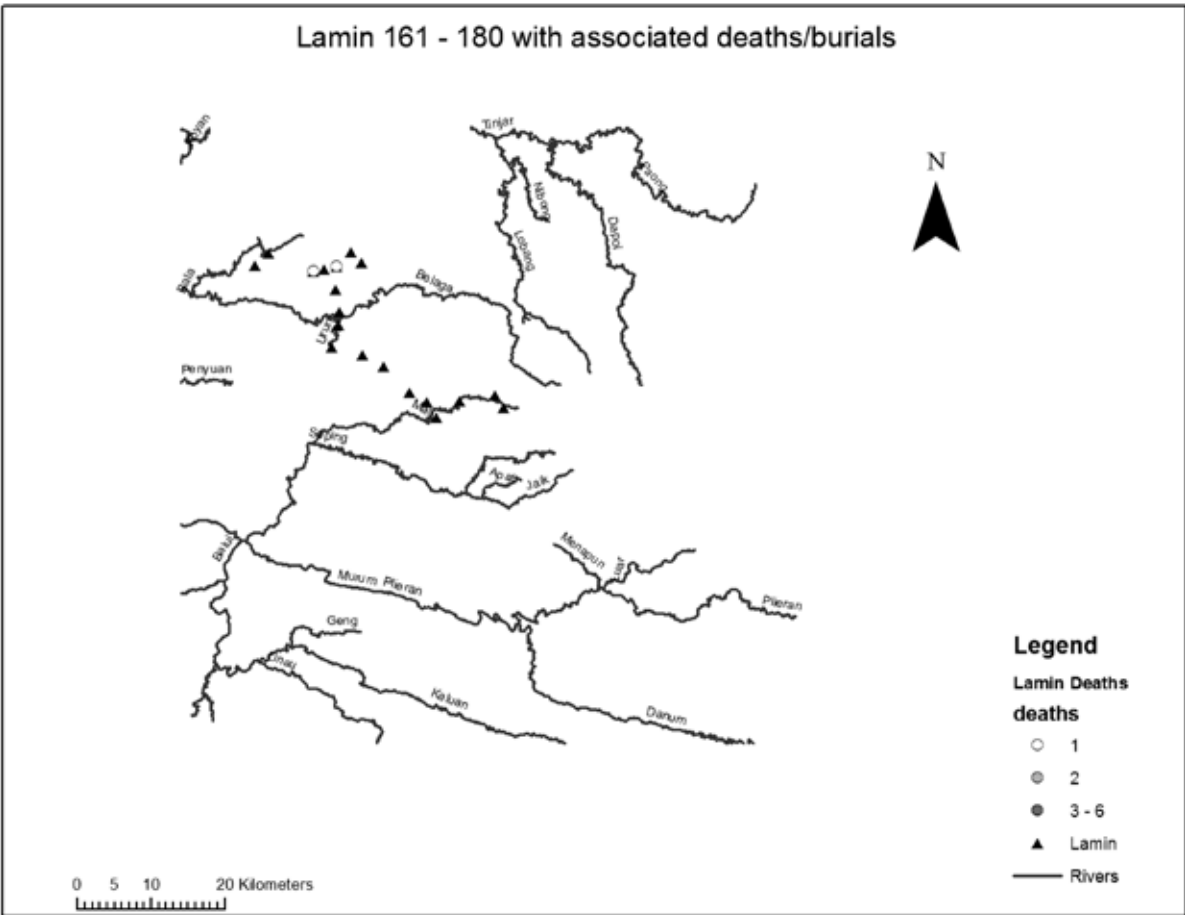


Lamin 121 - 140 with associated deaths/burials



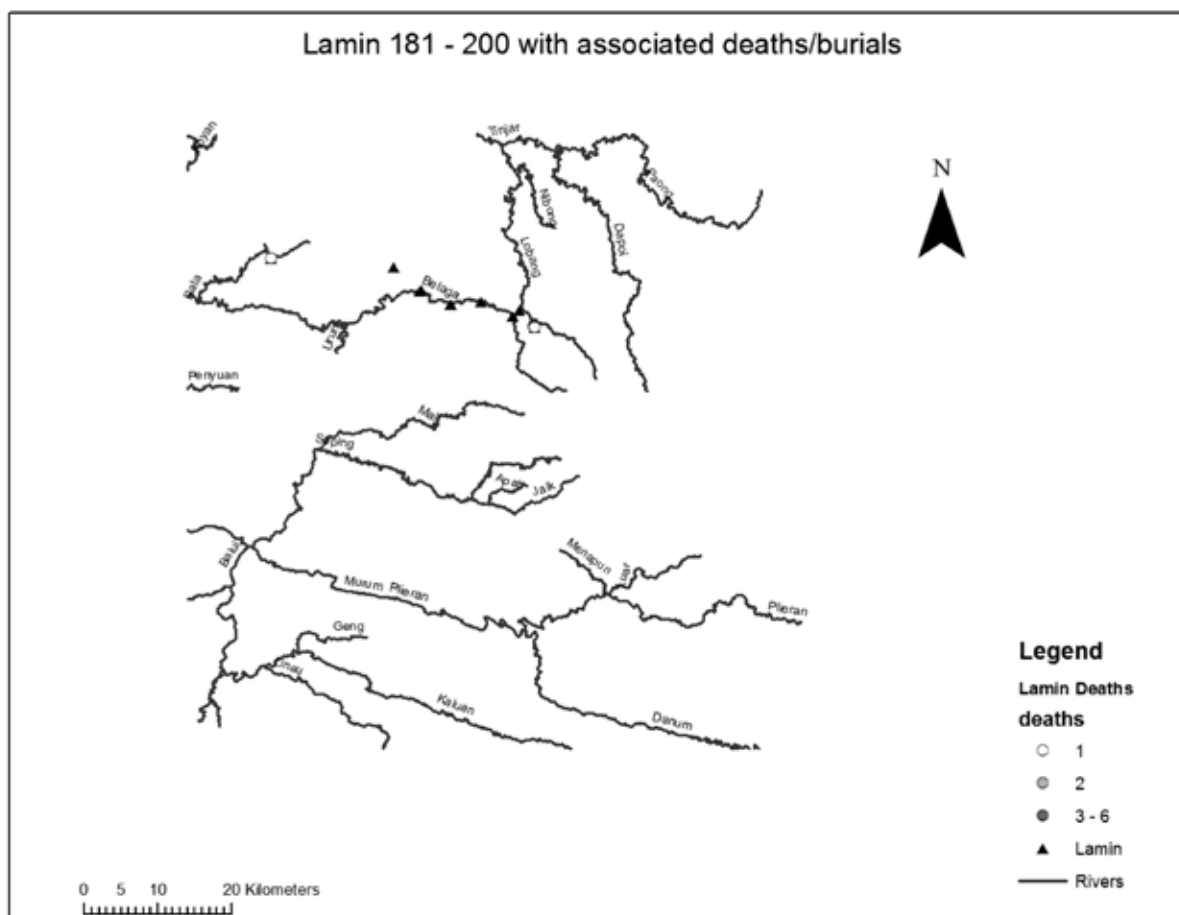
Lamin 141 - 160 with associated deaths/burials



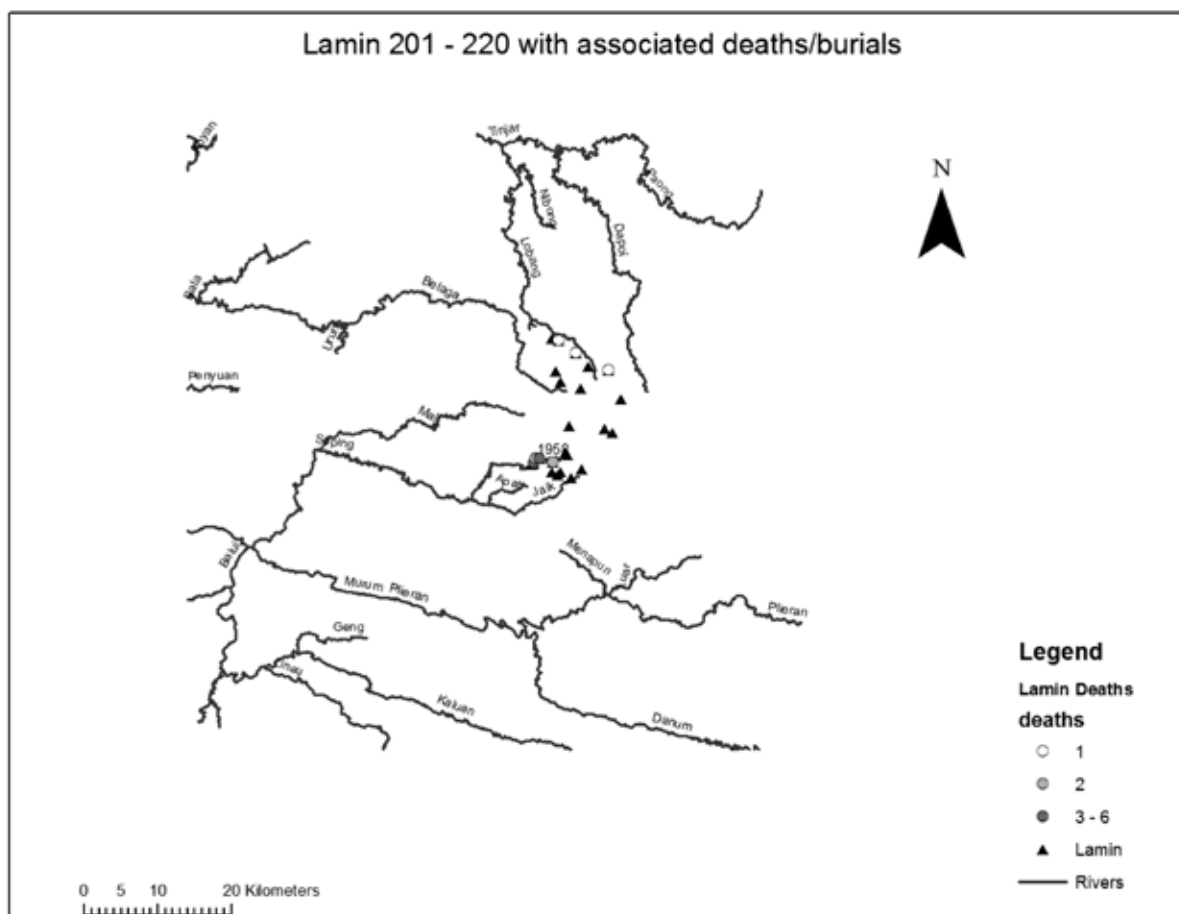


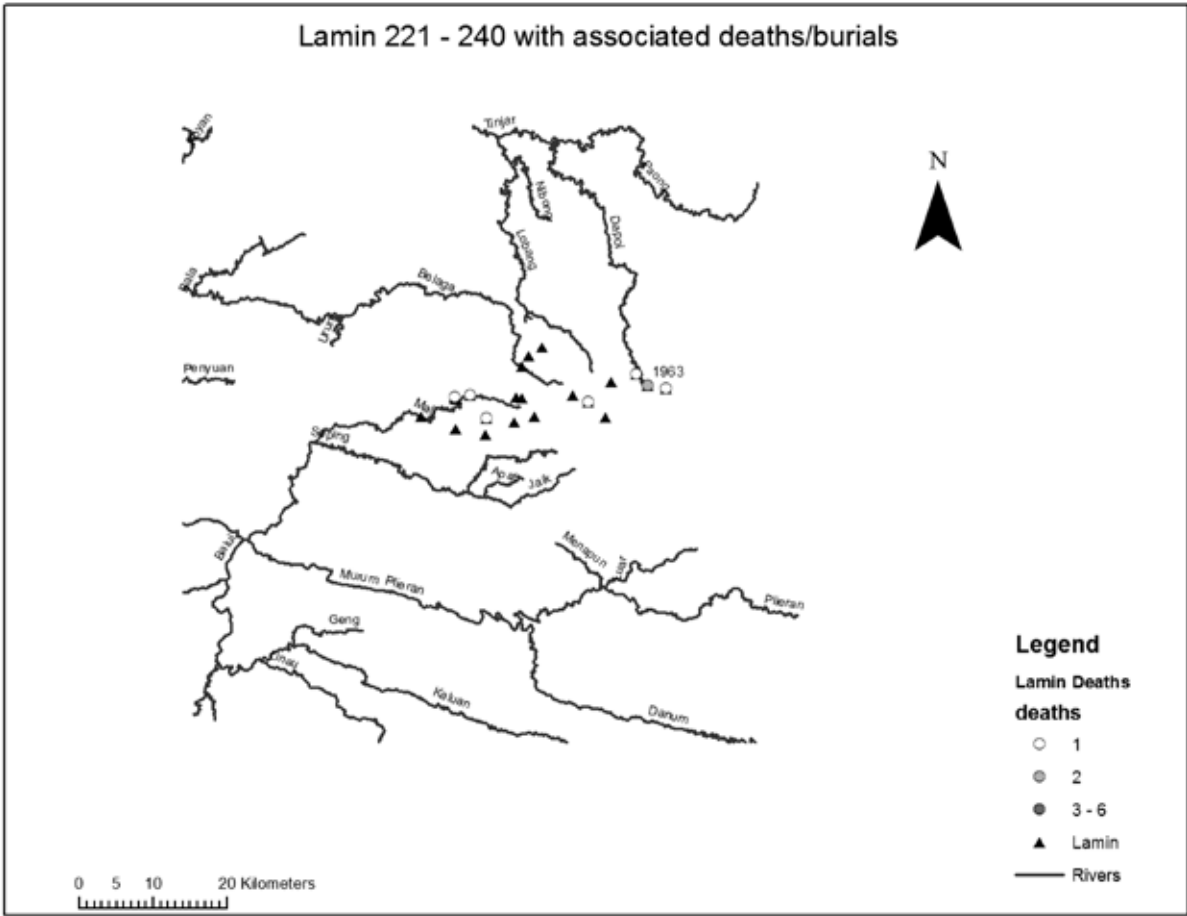
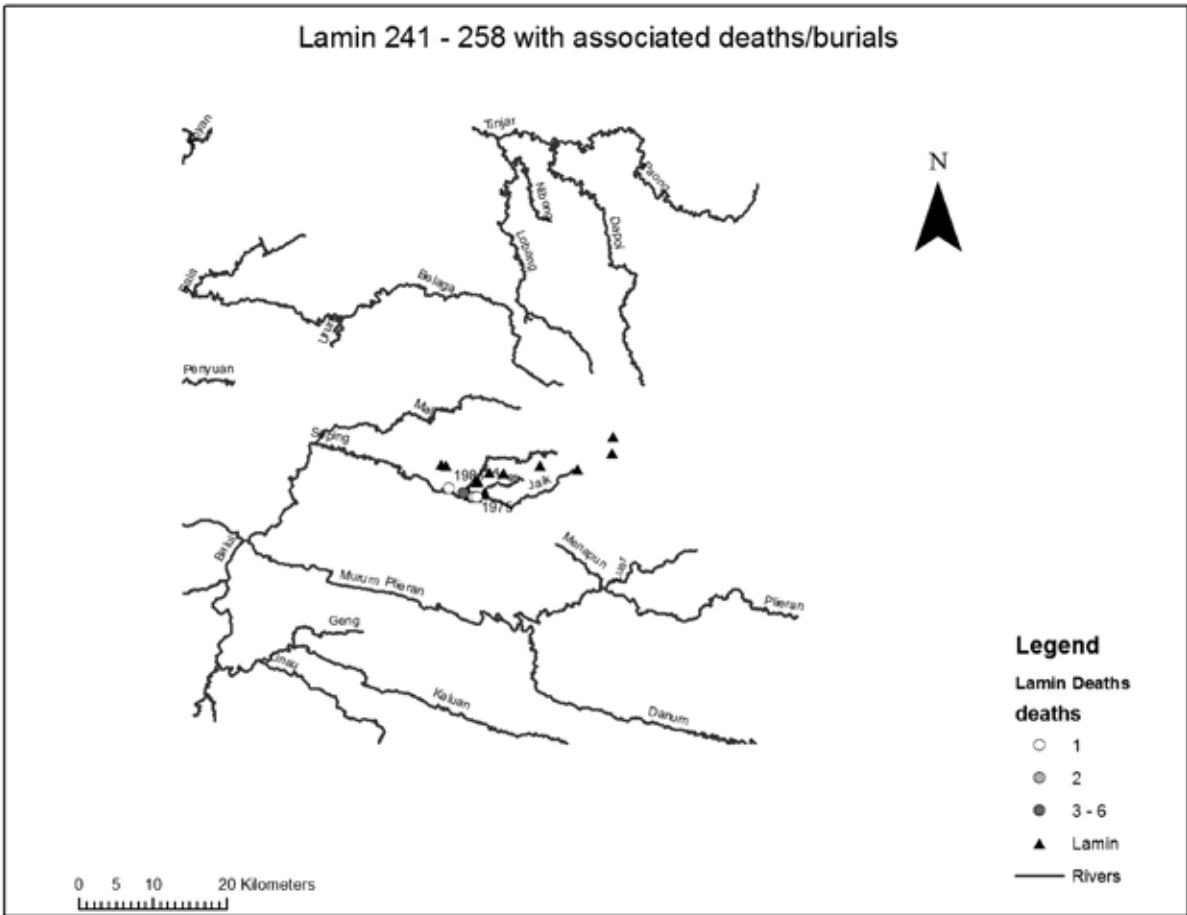


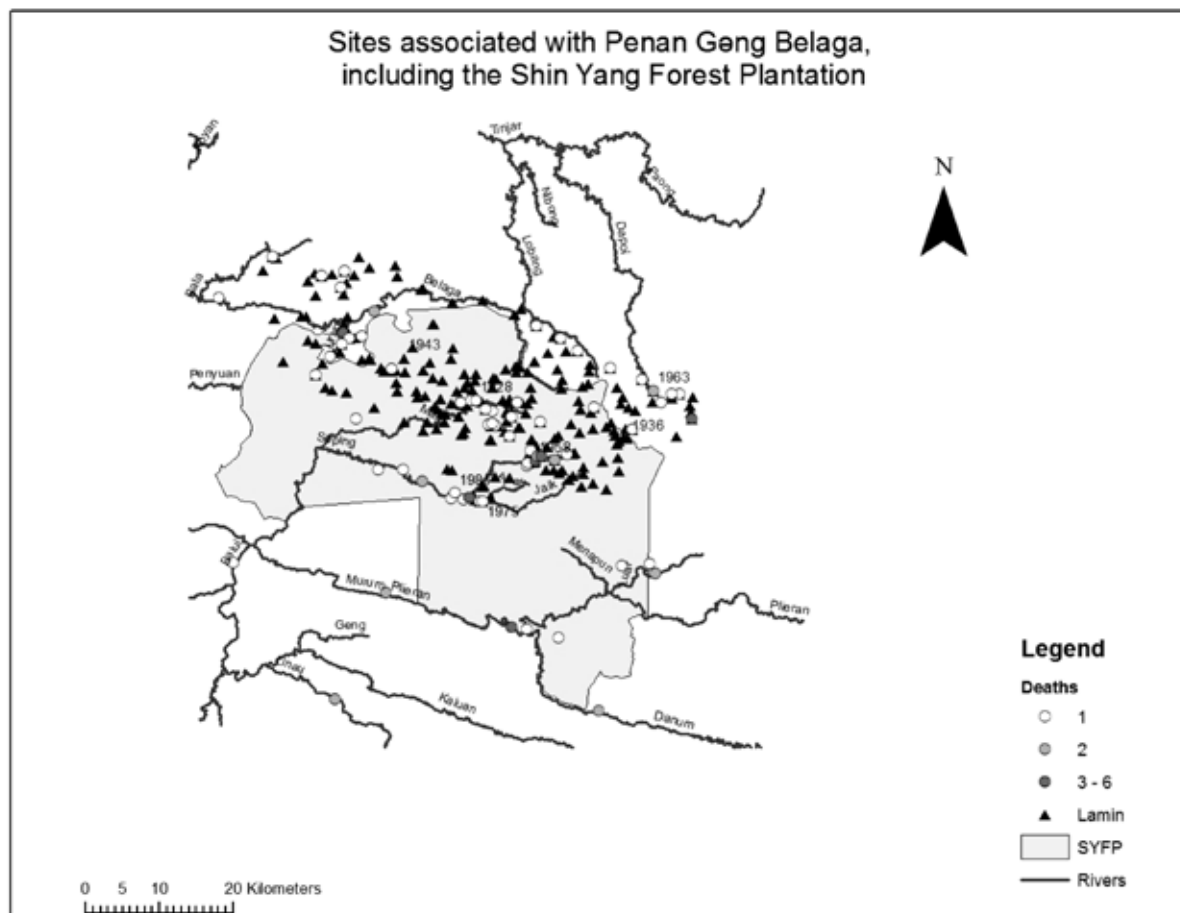
Lamin 181 - 200 with associated deaths/burials



Lamin 201 - 220 with associated deaths/burials







Lg. Uten, 1992



Maleh River



Seping River





Be Tawek, Jek



Jek River



Middle Jek



Apat, Jek





Apat, Jek





ANNEXURE 6

Presentation Paper on Native Customary Laws and Native Rights over Land in Sarawak by the Sarawak Attorney General's Office

NATIVE CUSTOMARY LAWS AND NATIVE RIGHTS OVER LAND IN SARAWAK

1. PREAMBLE

- 1.1 Native Customary law system prevailing in Sarawak is peculiar to our State. What is "native customary law" must be determined with reference to the laws of the State, and what constitutes "native customary rights" over land must also be determined with reference to the relevant State laws.
- 1.2 Native Customary Rights to land is also a system which recognizes the rights of the native community to occupy and use land which by law belongs in the old days to the Crown, but nowadays by reason of Section 12 of the Land Code, belongs to the State.
- 1.3 The system of native customary rights over land had evolved over near one and half centuries; since 1841 when the Rajah James Brooke decided to make his first pronouncement pertaining to Land. Through this process of evolution, native rights to land were recognized, under certain conditions spelt out in the various Proclamations and Orders made by the Rajahs and subsequently, in various legislations passed by the Council Negeri (now Dewan Undangan Negeri of Sarawak).
- 1.4 As such, land occupied by natives under native customary tenure, are untitled i.e. there is no document of title to show ownership. Whether a native has rights to such land would depend on whether he or his forefathers fulfilled certain requirements under the laws prevailing at the time which rights to the land were said to have been created.
- 1.5 Native customs which could create rights over land had been modified in Sarawak by laws made by the Rajahs and subsequently by the Council Negeri. At this juncture, it ought to be pointed out that in all legal systems, indigenous rights may be modified or extinguished by legislative or executive action. Professor Douglas Sanders in his Paper on "Indigenous And Tribal Peoples: The Right to Live On Their Own Land" (presented at the 12th Commonwealth Law Conference held in Kuala Lumpur in September, 1999) stated:

"A leading Australian constitutional text summarizes the basic rule from the Mabo decision as follows:

The indigenous population had a pre-existing system of law, which along with the rights subsisting thereunder, would remain in force under the new sovereign except where specifically modified or extinguished by legislative or executive action."

- 1.6 It must be emphasized that the evolution of our laws on native customary rights over land over more than 1½ centuries was a peaceful and orderly process, without any serious discord amongst the various communities in Sarawak or between them and the Government, and has enabled the Government of the day to improve the social and economic position of these communities and bring about overall development and progress to the rural areas.

2. NATIVE CUSTOMS AND NATIVE CUSTOMARY LAW

- 2.1 It is pertinent to observe there is a significant difference between native customs (Adat) and native customary law.
- 2.2 AJN Richards (a former Resident and acknowledged authority on this subject) in his book Land Law and Adat at page 9, stated:

"As was pointed out by Mooney, as Crown Counsel and Hickling, the law does not, in fact, gives effect to any customs whatsoever except the codified law of delicts, ..."
- 2.3 The Land Code and its predecessor defines "customary law" to mean "a custom or body of customs to which the law of Sarawak gives effect".



- 2.4 The natives of Sarawak may have and in fact do have many customs, but for these customs to have effect as "customary laws" they must have the sanction of the Law. This is what characterized the difference between native customs and the customary laws; and this differentiation is acknowledged by the definition of "Adat" in the Majlis Adat Istiadat Sarawak Ordinance, Ord. No. 5 of 1977 where "Adat" is defined as "native custom or body of native customs to which lawful effect has not been given thereto".
- 2.5 Thus, in relation to land, the practice of native custom does not necessarily give rise to rights over land. It is only the practice 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 of Section 5(1) of the Land Code which provides, inter alia, that native customary rights over land may be created "in accordance with native customary law". "Native customary rights" to land, however, received its first statutory definition in the Land Settlement Ordinance (also known as Rajah Order L-7 of 1933), enacted on 22.6.1933. It is defined by Section 66 of that Ordinance as follows:

"Native customary rights shall be recognized in respect of –

- (a) land planted with fruit trees, when the number of fruit trees amounts to twenty and upwards to each acre;
 - (b) land that is in continuous occupation or has been cultivated or built on within three years;
 - (c) burial grounds or shrines;
 - (d) usual rights of way for men and animals from rivers, roads, or houses to any or all of the above." (emphasis added)
- 2.6 However, the Government has always respected the Adat of the natives in Sarawak and established the Majlis Adat Istiadat to codify the Adats of the various communities and established a Native Courts System to see that native customs are enforced. So far the following Adats have been codified.
- (i) Adat Iban Order, 1993 (Swk. L.N. 18/93)
 - (ii) Adat Bidayuh Order, 1994 (Swk. L.N. 27/94); and
 - (iii) Adat Kayan-Kenyah Order, 1994 (Swk. L.N. 28/94)

Those Adats which have been codified would constitute the native customary law of the State. The unmodified customs and traditions can be practiced by the native communities but they do not form part of the native customary law of the State.

3. PRE-1933 LEGAL POSITION ON NATIVE RIGHTS TO LAND

- 3.1 Although the Land Settlement Ordinance provides the first statutory recognition to native customary rights over land, the exercise of rights by natives over land were regulated by various pronouncements and orders made by the Rajahs prior to 1933.
- 3.2 In fact, the exercise by the natives of customary rights over land had been recognized since the days of the first Rajah. Writing in his journal in 1840, the first Rajah stated:
- "The fruit trees about the Kampong, and as far as the jungle round, are private property, and all other trees which are in any way useful, such as bamboo, various kinds for marking bark-cloth, the bitter kony.... and many of hers. Land, likewise, is individual property, and descends from father to son; so, likewise, is the fishing or particular rivers, and indeed most other things..."
- 3.3 Legislation was subsequently introduced to deal with specific aspect of customary law. In 1899, the second Rajah issued the Fruit Trees Order.

Section 1 reads:

"Such fruit trees which have chiefly spring up from seeds thrown out of and about houses, and have become common property of the inhabitants of a long houses or village, are in no cases to be sold or in any way transferred or claimed by individuals leaving such houses or villages."

And section 2 reads:

"Any Dyak removing from a river or district may not claim, sell, or transfer any farming ground in such river or district, nor may be prevent others farming thereon, unless he holds such land under a grant."

3.4 The significance of this Order is that it sets out the manner in which claims to native customary tenure may be made by a native community through the cultivation of fruit trees on land which was deemed to belong to the State. Another important characteristic of native customary tenure was apparent, i.e. rights so created through native customary tenure may be lost if a native moved from one river system to another.

3.5 The next development occurred in 1920 when the Rajah's Order No.VIII, 1920 was published on 21.10.1922, the relevant parts of which reads as follows:

- "22. (i) Under this part lands may be occupied by Natives free of all charges for the cultivation of fruit trees, padi, vegetables, pineapples, sugar cane, bananas, yams and similar cultures in accordance with the customary laws provided that where possible claims to fruit groves and farming lands shall be registered. Records of such claims shall be kept by all Native Headmen and also in the Land Office in each district.
- (ii) A certificate in the form of Schedule A of Notification No..... of 1920 may be issued to registered land holders under this part." (emphasis added).

A supplement to the Order reads:

- "2. (i) Native land reserves shall be made in suitable situations and these shall be divided into lots of three acres and any native born subject of His Highness the Rajah shall be permitted to occupy one such lot free of all charges (excepting fees for demarcation) provided that no person not being a native of the Country shall occupy land in such reserves and further that no one person shall occupy more than one lot at one and the same time.
- (ii) A record of the names of those occupying land under this section shall be kept by all Tuah Kampong and also in the Land Office in each district.
- (iii) A certificate in the form of Schedule A may be granted to each native land holder on application." (emphasis added).

3.6 From these Orders and the Land Settlement Ordinance (formerly known as Rajah Order L-7 of 1933), it is obvious that the only recognition, given by written laws as pronounced by the Rajah, requires physical occupation of an area before a native can establish his rights over the same. As AJN Richards noted in *Land Law and Adat* at page 8 – "Occupation under custom appears to have been generally regarded as 'lawful occupation' and 'lawful ownership'". The 1920 Order and the 1933 Ordinance even required some form of registration of such rights to accord natives protection of their claims over land. Additionally, it is to be observed that the Rajah did place a limitation on the amount of land that a native could occupy by the exercise of rights under his Adat. At that point in time, the Rajah only allowed each native to occupy one lot of three (3) acres. Also, under the 1933 Ordinance, land claimed on the basis of cultivation by a native must be in continuous occupation or had been cultivated on "within three years".



- 3.7 In 1939, the Rajah realized a need to prevent some communities from moving into territories occupied by other native communities. Hence, the Prohibited Areas Ordinance was passed to prevent some communities from moving into areas already occupied by others. In other words, native communities do not have absolute licence to move into any area, clear virgin jungles and settle thereon. The Restricted Areas Notification (see: Vol. VII of the Revised Edition of the Laws of Sarawak page 153) prohibits Sea Dayaks (Ibans) from remaining in the then Baram Administrative District for an aggregate period of more than 60 days in any calendar day without the permission in writing of the District Officer, Baram or District Officer, Limbang.
- 3.8 After the 1933 Land Settlement Ordinance, rules and administrative circulars were introduced to reinforce the requirement for natives to occupy and clear their land before they could have rights over the same. This is illustrated by the Appendix made to the Tusun Tunggu (Third Division) Order, published in Vol. VII of the Revised Edition of the Laws of Sarawak 1958, as a "guide to Judges, Magistrates and others on adoption, divorce, the acquisition and disposition of property as practiced amongst Sea Dayaks of the Third Division, ratified at the Penghulus' Conference, held at Sibu on 15 July 1952'. The relevant portions thereof read :-
- "7. Theoretically all untitled land whether jungle or cleared for padi farming (Temuda) is the property of the Crown. The fact that Dayaks do clear a portion of virgin land for the site of the ir padi farms confers on them a restricted right of proprietorship over the land thus cleared. Once the jungle has been cleared it becomes temuda. It is a recognized custom that temuda is for the use of the original worker, his heirs and descendants. This is the only way Dayaks can acquire land other than by gift or inheritance.

In former days there were no restrictions on anyone felling jungle provided that he did not destroy valuable commercial trees such as gutta, jelutong and engkabang. But it is not so now. Since the introduction of the Forest and Erosion Ordinance no one is allowed to fell jungle without permission from the proper authority.

No Dayak is allowed to sell, purchase or lease (by way of demanding rent either in kind or in cash) untitled land. It would be an infringement of the right of the Crown if they did so, and they may be prosecuted in view of the fact that selling of untitled land is prevalent in this division, and Dayaks seem to forget this custom.

There are no other ways in which Dayaks can part with possession of untitled land other than by gift or on death. When a Dayak abandons his land temuda and moves to another district he loses all his rights to it. The land that has been farmed by him reverts to the Crown (as legally it is Crown land) and it is usually set aside for the benefit of the general community or to help those who are otherwise lacking in land. In such a case the original owner has no right to prevent others from making use of the land and the user acquires the right." (emphasis added).

- 3.9 It ought to be pointed out that what is set out above has been made an Appendix to the Tusun Tunggu (Third Division) Order and was also adopted by the Tusun Tunggu (Fourth Division) Order and Tusun Tunggu (Fifth Division) Order. It therefore has the effect and authority and constitutes the customary laws of the Sea Dayak (Iban) in Sarawak.
- 3.10 What is contained in this Appendix is also consistent with what was contained in Secretariat Circular No. 12/1939 which briefly outlined the creating of rights over land through native customary tenure as follows:-
- (i) The right to cultivate cleared land vests in the community with priority to the heirs of the original faller of the big jungle. The right must be exercised in accordance with a cycle compatible with the preservation of the maximum fertility of the land (and no longer) by methods of cultivation within the reach of the community. The cycle is, in their eyes, not a matter for rule of thumb but for expert native opinion.
 - (ii) Where not inconsistent with the above, the existence of permanent cultivation of a reasonable density is evidence of customary ownership as opposed to customary rights of user.

- (iii) Individual ownership is limited by the customary right of the community to a say in the matter of disposal to anyone outside the community.
- (iv) No community or individual may hold up land in excess of requirements and, the extreme case, removal to another district automatically extinguished all rights of user. The old Order (a) dated 10.8.89 is an excellent exposition of this principle.

3.11 In summary, the creation and exercise of native rights over land, prior to the present Land Code which came into force on 1st January 1958, were regulated by laws or Orders made by the Rajah or Council Negeri and not just by the customs and traditions of the natives. These laws or Orders have the effect of modifying or overriding customs or traditions practiced by the natives, and they set out the customary laws for creation or exercise of rights to land. They laid down the conditions and restrictions for the creation of native rights to land and limited the size of the land, without title, which natives may occupy and claim "ownership".

3.12 Subsequent to 1958, native customary rights may be cleared over Interior Area Land upon these 2 conditions, viz:

- (a) a permit is obtained under section 10(3) of the Land Code from the Superintendent; and
- (b) by deploying any of these methods -
 - (a) felling of virgin jungle and occupation of land thereby cleared;
 - (b) planting of land with fruit trees;
 - (c) occupation or cultivation of land;
 - (d) use of land for burial ground or shrine;
 - (e) use of land of any class for rights or way; or
 - (f) any other lawful method.

3.13 Other lawful methods must refer to the Appendix to the Tusun Tunggu – see paragraph 3.8 above i.e. by gift or inheritance. It is necessary to note that fishing or collection of jungle produce do not create rights over land.

4. RELATIONSHIP BETWEEN NATIVE CUSTOMARY LAW AND OTHER STATE LAWS

4.1 As the definition of customary law implies, the written laws of the State must take precedence over native customs. This is because for native customs to have the status of customary laws, they must be those which the laws of Sarawak gives effect. This is further reinforced by the provisions of Section 9 of the Native Customs (Declaration) Ordinance 1996, which reads: -

"If any provision of a code is found to be repugnant too is inconsistent with a provision of any written law, the latter shall prevail."

4.2. This is further reinforced by Section 10(4) of the Land Code which re-enacted Section 8(4) of the Land (Classification) Ordinance 1948. Section 10(4) reads:-

"The occupation of Interior Area Land by a native or native community without a permit in writing from a Superintendent shall not, notwithstanding any law or custom to the contrary, confer any right or privilege on such native or native community and, in any such case, such native or native community shall be deemed to be unlawful occupation of State land and section 209 shall apply thereto." (emphasis added).

4.3. The legal position taken by the State with regard to the relationship between customs and written law is no different from that adopted in any other common law jurisdiction; that is, customs may be overridden by statutes.



5. COLLECTION OF FOREST PRODUCE, FISHING AND HUNTING BY NATIVES.

5.1 Although natives have been collecting timber and other jungle produce from forests for their domestic or personal use, such as for firewood, building of houses and boats, the exercise of such rights by natives have been regulated by law since the end of the 19th century. The following are the relevant legislations governing the taking of timber or forest produce: -

- (a) The Rajah's Order dated 22.6.1899 states, inter alia, that "any person wishing to work and collect timber for whatever purpose shall first obtain permit at the Resident's office.

...

Any person working timber without a license on and after the 1st day of August, 1899 will render himself liable to a fine not exceeding \$25."

- (b) Order No. 1, 1912 states that, inter alia, "it is hereby ordered that the felling of Enkabang and Keito trees is strictly forbidden".

- (c) Order No. IX, 1912 provides, inter alia, that –

"Whenever any person or persons are desirous of planting plots of marsh land which have been cleared within three years previously or hill land which has been cleared within seven years previously, such person or persons will be permitted to destroy all kinds of Enkabang, Keito and Jelutong trees found on such lands when necessary without penalty, but when a person or persons desire to clear marsh land covered with jungle of a growth of more than three years old or hill land covered with a growth of more than seven years old where such trees are growing, permission must be first obtained of the Officer in Charge of the district; otherwise the penalty will be enforced." (emphasis added).

- (d) Similarly, Order XIV, 1921 provides, inter alia, as follows:

"2. (i) Except as provided in rules 9 and 10 below no person shall –

- (a) cut, saw, convert or remove any tree, timber or firewood on or from State land; or

...

- (c) cut, collect or remove on or from State land any of the kinds of forest produce mentioned in Schedule I, except under and in accordance with the conditions of a license in Form 1 under the hand of a Forest Officer or other Officer duly authorized in that behalf.

9 (i) With the written permission of the Conservator permits in Form 17 may be issued under the hand of a Forest Officer to cut, collect and remove on or from State land any forest produce therein specified.

11 (i) Notwithstanding anything in this Order contained it shall be lawful for any subject of H.H. the Rajah of Sarawak to cut and remove from State land any timber or forest produce required by him for his own use and not for sale, exchange or profit." (emphasis added).

- (e) Section 108 of the Land Ordinance (Cap. 27) provides inter alia, that any person who shall be found unlawfully occupying any Crown land either by cultivating any part thereof or cutting timber or produce thereon shall be guilty of an offence against the Ordinance.

- (f) The Forests Ordinance (Cap. 31) of 1934 and Forests Rules, 1947.

Collection of forest produce from State land forests or communal forests were also regulated by the Forests Ordinance of 1934, which has been superseded by the Forests Ordinance

(Cap. 126) of 1953, which came into force on 1.1. 1954. Section 37 of the Forests Ordinance of 1934 provides that when the Resident is satisfied that it is the desire of a majority of the members of a community that a communal forest shall be constituted he shall, with the approval of the Chief Secretary, publish a proclamation in the requisite form.

Once a communal forest has been duly gazetted, section 43(1) of the Forests Ordinance of 1934 provides that subject to any conditions imposed in writing by the District Officer under section 42, any member of the community may remove free of royalty or fee any forest produce for his own use and not for sale, exchange or direct profit. Section 43 (2) provides that no other person shall remove forest produce for whatever purposes.

(g) The Forests Ordinance (Cap. 126) of 1953

This Ordinance came into force on 1.1.1954 and further regulates the taking of timber or forest produce, even by natives. For instance, section 65 follows any inhabitant of Sarawak to remove, from State land, which is not a forest reserve, timber produce exclusively for his own use and not for trade or barter or profit.

- 5.2. (a) It is to be noted that under both the Forests Ordinance 1934 and the current Forests Ordinance 1953, the Government has the right to constitute Protected Forests, Forest Reserves and Communal Forests. In constituting Protected Forests, the Government would acknowledge and concede certain rights or privileges to the affected native communities. For instance, when the Lemiting Protected Forest (216,800 acres) was constituted on 15 September 1951, the Government acknowledged the rights of the communities expressly named therein "to farm their secondary forest (temuda) but it shall be an offence to clear high forest except with the authority of the Conservator of Forests. The persons named shall have the right to cultivate the rubber and fruit gardens named with the provisos that no tree may be felled and no more trees may be planted" (emphasis added).

- (b) Thus the rights of the natives within a particular protected forest are strictly regulated by the Notification constituting the same e.g. G.N.S. 881/1951 constituting the Lemiting Protected Forest.

- 5.3. (a) In the case of forest reserves, the amount of jungle produce that could be taken therefrom are controlled. For instance, in constituting the Binatang Forest Reserve (vide L.N. 791 dated 3.7.1951), it is stated, inter alia, that:

"The Forest Reserve is constituted for the benefit of the following longhouses and kampongs who shall have the right to take jungle produce for their own use and not for sale or barter. Provided that the quantity that may be taken annually shall be subject to the control of the Conservator of Forests."

- (b) Not only the taking of jungle produce but also fishing and hunting would be regulated when, for instance, National Parks are constituted. A typical example is the Gunong Mulu National Park Proclamations (G.N 2852 and 2853 of 3.10.1974) which confined fishing and hunting by the communities named therein to certain specified areas of the Gunong Mulu National Park.

- 5.4 Where there is a need to maintain a forest area for the benefit of a local community, the Government could declare an area as Communal Forest, see for instance, the Kabong Communal Forest (2,500 acres) (G.N.S. 96/61) which is for the benefit of the inhabitants of Kampongs Kabong and Palog.

- 5.5 All these show that the right of the natives to take timber and jungle produce have been regulated, even before Malaysia Day, by laws and are controlled by the Conservator (now Director) of Forests. Although the natives may have their own customs, such as, pemakai menoa and pulau galau, these customs are not part of the Tusun Tunggu or the Adat Iban or any other Codes produced by the Majlis Adat Istiadat Sarawak. Hunting, fishing and collection of jungle produce,



therefore, do not create rights over land (see: Appendix to the Tusun Tunggu and Section 5 of the Land Code and Section 66 of the Land Settlement Ordinance). The natives unfortunately have a wrong perception that it is their customs, though not part of native customary law, which gives them rights to land, the jungles and in some cases, the streams and rivers near their longhouses. But, the written laws which have evolved over 160 years do not recognize certain of their customs as customary laws upon which they could create rights over untitled State land.

6. GOVERNMENT POLICIES AND PRACTICES REGARDING RECOGNITION OF NATIVE RIGHTS TO LAND

- 6.1 When the Government introduced the Land Code (Amendment) Bill 2000, the Government's firm intention is to recognize native rights lawfully created over land. That is still the objective of the Government.
- 6.2 This means that the Government can only recognize those rights of natives which have been lawfully created. In other words, these rights must have been created in accordance with the native customary law i.e. law that gives force to native customs.
- 6.3 All land belongs to the State. In the case of native customary land, with no titles, natives with legitimate customary rights to the land, (i.e. created in accordance with the law), occupy the land as licencees of the Government.
- 6.4 The Government intends to survey the land, settle or confirm their rights to the land and have their interests or rights registered and ultimately, grant titles to the land. This process is bound to take time. Additionally, in the meantime, the Government wants the NCR land to be developed into plantation estates. In this regard, the Government has started the NCR land bank concept whereby the native NCR claimant can "pool" their land together into a large estate and enter into joint ventures with established plantation companies for the development thereof into oil palm plantations or the large scale cultivation of other cash crops. Under this scheme, the natives will have shares in the joint venture companies which would be granted leases over the NCR land for a term of 60 years. Upon expiry thereof, the land will either be reverted back to the natives or their heirs or if the natives agree, the lease to the joint venture companies can be extended. In this manner, the Government intends to facilitate the development of the NCR land and to bring better economic returns or value for such land to the natives. Up to October 2001, 43,975.5 hectares of NCR land has been constituted as "land bank", with 27,505 hectares cleared and 19,755 hectares planted.
- 6.5 The objective mentioned in paragraph 6.4 is difficult to achieve if the native communities make claims which are not consistent with the laws governing the creation of native customary rights over land or where there are disputes between the natives themselves as to the size or boundaries of their respective holding.
- 6.6 As regards claims to forests (pulus), the Government will maintain the stand that the pulaus are not "temuda" (farming land) as they are never brought under cultivation. The natives have no legitimate right to the pulaus and no legal rights to the land therein. If there is a need by any community for jungle produce etc. from a forest area for their own subsistence or use, the Government could declare such a forest area as a communal forest. The native community ought not to claim jungle which they have never brought under cultivation as their NCR land.
- 6.7 The Government maintains that what a native could claim as his NCR land must be for his own farming requirement and must be limited to what he needs or is capable of cultivating based upon traditional farming methods. In other words, the size of his NCR land must not exceed what he needs for himself and his family, and using the conventional or traditional method of farming, able to bring cultivation.
- 6.8 What a native claims as rights under native customary law must be restricted to what the laws over the last 1 ½ centuries permit. If he required more land than what he could obtain through the native customary law system, he may apply, like any other Sarawakian, to the Government to alienate him land. He should not attempt to increase the size or area of his land by pleading that he is entitled to have more land because of certain customs which are not recognized as,

or not part of, the customary law of the State. The law on NCR which has evolved more than a century must be respected. For instance, the principle that NCR land is temuda land (i.e. land cleared of virgin jungles for cultivation) and occupied by the natives or used as burial ground or right of way, has been part of the native customary law since 1933 and reinforced by the Secretariat Circular of 1939 and declared as part of the Tusun Tunggu of the Ibans and restated in Section 5 of the Land Code. The Government cannot agree to any change in this fundamental concept which has governed land utilization, planning and development for nearly a century.

- 6.9 NCR land like titled or alienated land may be required for public purpose. Under the Land Code, if NCR land is needed for public purposes, the lawful holder of such land will be paid compensation. NCR land claimants will not be treated differently from registered proprietors of land; consistent with the relevant provision in the Federal Constitution for the protection of property and against discrimination.

7. CONCLUSION

- 7.1 The Government will always respect all native rights to land, lawfully acquired in accordance with the native customary laws of the State. Likewise, the Government expects the natives to respect such laws evolved in a peaceful and orderly manner over more than 1½ centuries.
- 7.2 The Government will continue to facilitate the development of NCR land with a view to enabling the natives who lawfully have rights over such land, to enjoy better economic returns and value for the land; and in the process, also to enhance development of the rural areas and to improve the living standards of the rural communities.
- 7.3 The Government will respect and honour the constitutional protections accorded to the natives by awarding recognition of their legitimate rights to their NCR land and if such land are required for public purposes, to pay the due compensation.
- 7.4 The Government recognizes the need of the natives to maintain their traditional way of life and farming and the need to take timber and jungle produce from, and to hunt and fishing, in our forests. Where there is a need for the natives to take timber or timber products from a forest area, the Government will declare that area as a communal forest. In cases where a particular native community needs to be settled in a specified area which suit their traditional way of life and farming, the Government would, pursuant to Section 6 of the Land Code, declare that area as a Native Communal Reserve. Examples of Native Communal Reserves declared recently are:
- (a) The Native Communal (Agriculture) Reserve Order, 2001 (Swk.L.N. 77/2001);
 - (b) The Native Communal (Kampung) Reserve Order, 2001 (Swk.L.N. 65/2001);
 - (b) The Native Communal (Community Hall) Reserve Order, 2001 (Swk.L.N. 28/2001);
 - (d) The Native Communal (Surau) Reserve Order, 2001 (Swk.L.N. 93/2001);
- 7.5 But the natives must at the same time understand and respect the rights of the Government to realize, for the benefit of the country, the full economic potentials of the resources of our forests which are not part of our national parks, natural reserves and wildlife sanctuaries.
- 7.6 In a democratic society where the Rule of Law must be upheld, the interests and rights of any individual should be exercised or advanced without any disregard for the Law and the interest of the State and Nation. The native people should not take the law into their own hands by setting up blockades or intimidating those undertaking development projects in their areas. Their rights, if any, to land can always be enforced by proceedings either before the Civil Court or the Native Courts which are set up, amongst other reasons, to adjudicate on disputes or claims to NCR land. SUHAKAM, as an institution, should encourage the people to uphold and respect the Law and help to explain the Law to those who are supposed to observe and abide by the Law.



ANNEXURE 7

State Government Responses on the issues on the affected Penans in Long Singu and Long Jaik, Belaga

**MAKLUMBALAS-
MAKLUMBALAS DARIPADA
AGENCI-AGENCI (PERSEKUTUAN
DAN NEGERI) MENGENAI ISU-ISU
PENAN DI BELAGA DAN LONG
JAIK DAN LONG SINGU PADA
13 SEPTEMBER 2006**



**DISEDIAKAN OLEH:
UNIT PERANCANG NEGERI
07.11.2006**



JABATAN PELAJARAN NEGERI SARAWAK

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JABATAN PELAJARAN NEGERI SARAWAK
BANGUNAN TUN DATUK PATINGGI
TUANKU HAJI BUJANG
JALAN SIMPANG TIGA
93604 KUCHING
SARAWAK

Telefon : 082-243201
Fax : 082-252907

Ruj. Kami: JPS(W)/SPS(Ren)/153/02/12/05(21)

Tarikh : 19 Oktober 2006

Setiausaha
Suruhanjaya Hak Asasi Manusia Malaysia
Cawangan Sarawak
194, Lot 456 – 457, 3rd Floor,
Al-Idrus Commercial Centre,
Jalan Satok,
93400 Kuching.
(u.p. Encik Sophian bin Osman).

Tuan,

**Maklumbalas Berkenaan Permasalahan Kaum Penan Di Sungai Asap,
Long Jaik dan Long Singu, Belaga.**

Dengan segala hormatnya perjumpaan dan perbincangan perkara di atas yang telah diadakan pada 13 Oktober 2006 di Hotel Hilton, Kuching adalah dirujuk.

2. Sehubungan itu bersama ini dikeipikan maklumbalas mengenai isu-isu yang berkaitan dengan Jabatan kami untuk perhatian pihak tuan.

Sekian. Terima kasih.

"BERKHIDAMT UNTUK NEGARA"

Saya yang menurut perintah,

[Dr. HJ. JULAIHI BIN HJ. BUJANG]
Timbalan Pengarah Pelajaran
Sarawak

HH/bm





Maklumbalas JPN Sarawak Untuk SUHAKAM Berkenaan Permasalahan Kaum Penan Di Sungai Asap, Long Jaik dan Long Singu, Belaga.

1. ISU 1: Kewujudan Sekolah Menengah

Setakat 30 Jun 2006 terdapat 2 buah sekolah menengah di Daerah Belaga, iaitu SMK Bakun dan SMK Belaga. Kedua-dua sekolah tersebut menampung 1559 orang pelajar dari Tingkatan 1 hingga Tingkatan 5. Daripada jumlah tersebut hanya 57 orang sahaja pelajar terdiri daripada kaum Penan. SMK Belaga sebagai sekolah berasrama boleh menampung seramai 800 orang pelajar asrama. Murid Penan daripada kawasan Long Jaik, Long Singu dan Sungai Asap yang bersekolah di SK Batu Keling dan SK Long Gang ditempatkan ke SMK Belaga sebagai murid asrama. Sementara itu SMK Bakun setakat ini menumpang di SK Batu Keling, tapak kekal sudah dikenalpasti dan bangunan lengkap dengan kemudahan asrama akan dibina dalam Rancangan Malaysia Ke-9 nanti.

Sekolah	Tingkatan								Penan			Kapasiti Asrama		
	1	2	3	4	5	6B	6A	Jum	L	P	Jum	L	P	Jum
SMK Bakun	171							171	1	0	1	0	0	0
SMK Belaga	203	327	311	199	184	77	87	1388	48	8	56	400	400	800
Jumlah	374	327	311	199	184	77	87	1559	49	8	57	400	400	800

2. ISU 2: Kumpulan Wang Amanah Pelajar Miskin (KWAPM)

Kumpulan Wang Amanah Pelajar Miskin (KWAPM) adalah pemberian berupa wang kepada pelajar miskin oleh kerajaan. Dasar kelayakan dan kategori murid/pelajar yang layak diberi bantuan KWAPM adalah seperti pada Lampiran 1.

Seluruh Sarawak terdapat seramai 1653 orang pelajar Penan di sekolah rendah dan seramai 662 orang (40%) daripada mereka menerima KWAMP. Dalam pada itu daripada 9 orang pelajar Penan di SK Batu Keling hanya 7 orang (77%) yang menerima KWAMP dan 55 orang (40%) daripada 136 pelajar Penan dari SK Long Gang menerima KWAMP. Kebanyakan pelajar yang tidak menerima bantuan adalah kerana mereka tidak mempunyai dokumen pengenalan diri seperti Sijil Lahir dan Kad Pengenalan. Sila lihat Lampiran 2 dan Lampiran 3 untuk maklumat lanjut.

3. ISU 3: Kecapaian Fizikal – Jarak Sekolah dari Rumah Kecapaian Ekonomi – Kos Pengangkutan Menghantar Anak Ke Sekolah

Jabatan Pelajaran menyedari wujud masalah jarak sekolah dari rumah-rumah panjang/penempatan kaum Penan. Lantaran sekolah tidak mungkin dapat diwujudkan di setiap penempatan kaum Penan maka Jabatan mengadakan sekolah-sekolah berasrama untuk menempatkan mereka yang tinggal jauh dari sekolah. Setakat ini kanak-kanak kaum Penan sentiasa diberi keutamaan untuk tinggal di asrama (Lampiran 4). Menurut rekod seperti pada Lampiran 5 daripada 864 orang murid SK Batu Keling seramai 713 orang (82.52%) tinggal di asrama dan 519 orang (83.57%) daripada 621 orang murid di SK Long Gang juga tinggal di asrama. Agihan tahunan peruntukan dibawah aktiviti asrama bagi kedua-dua sekolah adalah RM689,000.00 bagi SK Batu Keling dan RM543,280.00 untuk SK Long Gang.

LAMPIRAN 1

KUMPULAN WANG AMANAH PELAJAR MISKIN (KWAPM)Dasar kelayakan

1. Murid/pelajar warganegara Malaysia di semua sekolah rendah/menengah kerajaan dan bantuan kerajaan.
2. Murid/pelajar miskin yang pendapatan keluarganya tidak dapat menampung keperluan pendidikan dan berada di bawah paras kemiskinan di mana pendapatan keluarga tidak melebihi kadar yang ditetapkan iaitu RM585.00 atau per kapita RM117.00 (untuk Sarawak).
3. Pendapatan keluarga bermaksud semua bentuk pendapatan terkini yang diperoleh oleh ibu bapa / penjaga murid pelajar miskin yang memohon bantuan. Ini termasuk gaji pokok, elaun-elaun tetap (Contoh : Elaun Khidmat Awam, Imbuan Tetap Perumahan, Elaun Wilayah) di samping sumbangan tetap dari Agensi Kerajaan atau pihak swasta seperti Jabatan Kebajikan Masyarakat dan Pusat Zakat, sumbangan daripada anak-anak yang bekerja, hasil jualan pertanian dan lain-lain pendapatan tetap.
4. Murid / pelajar yang tidak mendapat bantuan persekolahan yang sama dari mana-mana pihak sama ada bantuan-bantuan lain kerajaan mahupun bantuan dari pihak luar. Ini untuk memastikan tidak berlaku pertindihan pemberian bantuan. Ini termasuk murid/pelajar istimewa atau murid/pelajar orang asli yang tidak menerima jenis bantuan yang sama.

Kategori murid/pelajar yang layak diberi bantuan KWAPM

- Kategori 1 : Murid miskin Tahun 1 yang tercicir dari sistem persekolahan di bawah Dasar Pendidikan Wajib 2003.
- Kategori 2 : (A) Murid miskin Tahun 2 – 6 yang pernah bersekolah tetapi tercicir pada tahun seterusnya / di tengah-tengah persekolahan atau kanak-kanak yang berumur 8 – 12 tahun yang tidak pernah bersekolah langsung.
- (B) Pelajar sekolah menengah yang tercicir di tengah-tengah persekolahan akibat kemiskinan.
- Kategori 3 : Murid miskin Tahun 1 – 6 yang masih bersekolah (bukan tercicir) tapi memerlukan bantuan dan sekiranya tidak diberi bantuan akan menyebabkan tidak dapat meneruskan persekolahan. Ini termasuk murid Tahun 6 yang akan memasuki Tingkatan 1 pada tahun berikutnya.



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LAMPIRAN 1

Kategori 4 : Murid miskin sekolah rendah / pelajar sekolah menengah yang terlibat dalam kes-kes kecemasan seperti bencana alam, kebakaran dan lain-lain yang menyebabkan punca pencarian keuarga terjejas.

LAMPIRAN 2

KUMPULAN WANG AMANAH PELAJAR MISKIN (KWAPM)

BILANGAN MURID PENAN YANG MENERIMA BANTUAN MENGIKUT SEKOLAH
BAGI TAHUN 2006

BIL.	NAMA SEKOLAH	BIL. MURID PENAN	BILANGAN PENERIMA MENGIKUT JENIS BANTUAN				
			BKP	KWAPM	Y.S	TAB	SPBT
1.	SMK BAKUN	1	-	-	-	-	1

• Pelajar Tingkatan 1. Ada memohon bantuan KWAPM dan Biasiswa Kecil Persekutuan.

BIL.	NAMA SEKOLAH	BIL. MURID PENAN	BILANGAN PENERIMA MENGIKUT JENIS BANTUAN				
			KWAPM	Y.S	RMT	SBT	SPBT
1.	SK BATU KELING	9	7	-	1	4	9
2.	SK LONG GANG	124 136	55	-	-	55	121



LAMPIRAN 3

BILANGAN MURID PENAN SEKOLAH RENDAH YANG MENERIMA BANTUAN DI BAWAH KUMPULAN WANG AMANAH PELAJAR MISKIN 2006

KOD SEKOLAH	NAMA SEKOLAH	BIL. MURID PENAN	BIL. MENERIMA KWAPM
YBA1311	SK MATANG	4	1
YBA1312	SK ENCIK BUYONG	1	0
YBA1332	SK ASTANA	1	0
YCB1105	SK ST JOHN, BAU	1	0
YCB1205	SK ST. THERESA, PADUNGAN	1	0
YBH1202	SK SONG KHENG HAI	3	2
YBB2201	SK SG KLAMPAI, SARATOK	1	1
YBB2321	SK NANGA MENYEBAT	2	1
YBB2402	SK NANGA AJAU	1	0
YBA3105	SK SENTOSA	2	0
YBA3201	SK BATU 10, SIBU	3	0
YBA3205	SK SIBU JAYA	3	0
YBB3317	SK NANGA TADA, KANOWIT	1	1
YBB3412	SK KUALA PELUGAU, KANOWIT	2	2
YBE3408	SK NANGA SELANGAU	2	0
YBE3409	SK KAMPONG SEBERANG	3	2
YBH3102	SJK PERBANDARAN SIBU NO. 4	1	0
YCB3103	SK ST. MARY, SIBU	2	0
YCC3201	SJK THIAN CHIN	1	0
YCH3101	SJK METHODIST(M), SIBU	1	0
YBA4101	SK JALAN BINTANG, MIRI	2	0
YBA4103	SK ANCHI	4	0
YBA4104	SK KUALA BARAM	2	2
YBA4106	SK PUJUT CORNER	4	0
YBA4107	SK KAMPUNG LUAK	1	0
YBA4108	SK PULAU MELAYU	1	0
YBA4110	SK TEMENGGONG DATUK MUIP	3	0
YBA4111	SK TUDAN	1	0
YBA4113	SK MERBAU	4	0
YBA4114	SK KUALA BARAM II	2	0
YBA4115	SK SENADIN	4	0
YBA4301	SK LONG SAIT	68	14
YBA4304	SK LONG PELUTAN	47	5
YBA4308	SK LONG KEVOK	78	15
YBA4310	SK BATU BUNGAN	38	0
YBA4311	SK LONG JEKITAN	90	9
YBA4410	SK ULU SATAP, SUBIS	2	2
YBA4414	SK SUAI SATU	4	1
YBA4416	SK TANJUNG BELIPAT	49	38
YBB4302	SK BELURU CENTRAL, MIRI	7	0
YBB4306	SK LONG TERU	1	0
YBB4308	SK LONG ATON	78	8
YBB4313	SK LONG BEDIAN	145	109

LAMPIRAN 3

KOD SEKOLAH	NAMA SEKOLAH	BIL. MURID PENAN	BIL. MENERIMA KWAPM
YBB4316	SK LONG BEMANG	36	0
YBB4317	SK LONG JEGAN	3	0
YBB4326	SK LONG LOYANG	5	2
YBB4327	SK LONG LAMEI	12	0
YBB4328	SK LONG SERIDAN	47	32
YBB4338	SK LONG BANGA	21	3
YBB4364	SK KUALA BOK	14	2
YBB4403	SK KAMPUNG IRAN	2	0
YBB4408	SK BATU TELLINGAI	54	50
YBB4412	SK BATU NIAH	1	0
YBB4420	SK KAMPUNG NYALAU	2	0
YBB4422	SK KG TEGAGENG	1	1
YBA4402	SK KELAPA SAWIT NO. 4	5	4
YBB4429	SK KELAPA SAWIT NO. 5	2	2
YBC4101	SJK NORTH MIRI	1	0
YBC4103	SJK TUKAU	2	0
YBC4303	SJK HUA KWONG	1	0
YBE4105	SK LUTONG	5	0
YBE4301	SK DATO SHARIF HAMID, BARAM	5	0
YCB4101	SK ST. JOSEPH, MIRI	2	0
YCB4102	SK ST. COLUMBA	2	0
YCB4302	SK ST. PIUS	26	0
YCB4303	SK GOOD SHEPHERD	10	0
YCC4103	SJK CHUNG HUA LUTONG	4	1
YCC4302	SJK CHUNG HUA MARUDI	3	0
YBA5106	SK MELAYU PUSAT, LIMBANG	2	2
YBA5202	SK MERAPOK	1	1
YBB5103	SK MEDAMIT	3	1
YBB5106	SK LONG NAPIR	84	35
YBB5202	SK LONG TUMA	1	0
YBB5210	SK LONG SEBANGANG	4	3
YCB5102	SK RC KUBONG	1	0
YBC6401	SK CAMPORAN, DARO	1	0
YBA7110	SK KAPIT	1	0
YBA7203	SK LONG URUN, BELAGA	160 ✓	158 ✓
YBA7204	SK LUSONG LAKU, BELAGA	204 ✓	63 ✓
YBB7123	SK KAMPONG BARU, KAPIT	1	1
YBB7203	SK UMA SAMPOB	2 ✓	2 ✓
YBB7207	SK LONG GANG	136 ✓	55 ✓
YBB7209	SK BATU KELING	9 ✓	7 ✓
YBB7212	SK LONG BUSANG	20 ✓	2 ✓
YBB8257	SK PLAMAN BAKI/MENAU	1	0
YBA9101	SK ORANG KAYA MOHAMMAD	2	0
YBA9104	SK KAMPONG BARU, BINTULU	3	0



LAMPIRAN 3

KOD SEKOLAH	NAMA SEKOLAH	BIL. MURID PENAN	BIL. MENERIMA KWAPM
YBA9105	SK PANDAN	1	1
YBA9106	SK SEBAUH	2	1
YBA9110	SK BINTULU	3	1
YBA9111	SK KIDURONG	3	0
YBA9113	SK ASYAKIRIN	1	0
YBA9114	SK TANJUNG BATU	1	0
YBA9204	SK KELAWIT	1	0
YBB9101	SK LABANG	3	0
YBB9106	SK SUNGAI SENGIAN	19	15
YBB9108	SK KUALA KEBULU	28	4
YBB9110	SK SUNGAI TISANG	8	0
YBC9101	SJK SEBIEW CHINESE	5	0
YBE9108	SK SG BUKIT BALAI	3	0
YCC9103	SJK SIONG BOON	2	0
JUMLAH		1,653	662

LAMPIRAN 4

II BANTUAN MAKANAN ASRAMA**Dasar kelayakan**

1. Murid-murid yang diberi tempat tinggal di asrama adalah tergolong dalam kumpulan yang miskin.
2. Ibu bapa atau penjaga murid bekerja di kawasan berjauhan dari tempat di mana sekolah itu terletak.
3. Keluarga murid yang berpindah-randah. Murid-murid suku kaum Penan perlu diberi keutamaan.
4. Murid yang merempuh rintangan dalam perjalanan ke sekolah dan balik seperti berjalan merintang semak-samun, hutan belukar, jeram/riam, sungai yang arusnya deras dan sebagainya.
5. Tidak ada saudara mara terdekat tinggal berdekatan dengan sekolah.
6. Pelajar warganegara asing tidak layak untuk dipertimbangkan menjadi penghuni asrama.
7. Murid-murid sekolah rendah dan menengah.
8. Murid-murid yang mungkin tercicir jika tidak diberi tempat di asrama.
9. Kes Khas (Arahan-arahan khas daripada Kementerian Pelajaran / Pengarah Pelajaran Negeri).



LAMPIRAN 5

ASRAMA

BILANGAN PENGHUNI DI SK BATU KELING & SK LONG GANG

Kod Negeri	Negeri	Daerah	Kod Sek	Sekolah	ML	MP	Jumlah	Enrolmen
13	SARAWAK	BELAGA	YB87209	SK BATU KELING	378	335	713	713
13	SARAWAK	BELAGA	YB87207	SK LONG GANG	279	240	519	531

LAMPIRAN 6

IV SKIM BAUCER TUISYEN (SBT)**Dasar kelayakan**

1. Murid warganegara Malaysia yang belajar di Tahun 4, 5 dan 6 di sekolah rendah kerajaan atau sekolah rendah bantuan kerajaan.
2. Pendapatan bulanan keluarga adalah RM530.00 dan ke bawah bagi Semenanjung Malaysia, RM585.00 dan ke bawah bagi Sarawak, RM685.00 dan ke bawah bagi Sabah dan Labuan.
3. Diperakukan oleh guru mata pelajaran Bahasa Melayu, Bahasa Inggeris, Matematik dan Sains sebagai lemah dan memerlukan bimbingan tambahan dalam mana-mana bahagian, subtopik atau topik dalam mana-mana atau kesemua mata pelajaran yang dinyatakan.



LAMPIRAN 7

SKIM BAUCER TUISYEN

Bil.	Nama Sekolah	Bil. Murid Layak	Bil. Murid Tahun			Jumlah Baucer					Murid SBT	Kewangan (RM)
			T.4	T.5	T.6	BM	BI	MT	SC	Jum		
1	SK Punan Bah	41	13	16	12	41	41	41	41	164	41	14,760.00
2	SK Nanga Telawan	35	8	17	10	35	35	35	35	140	35	12,600.00
3	SK Airport	50	17	17	16	50	50	50	50	200	50	18,000.00
4	SK Abun Matu	165	54	59	52	165	165	165	165	660	165	59,400.00
5	SK Uma Sambop	94	31	32	31	94	94	94	94	376	94	33,840.00
6	SK Long Urun	72	25	25	22	72	72	72	72	288	72	25,920.00
7	SK Lusong Laku	113	34	40	39	113	113	113	113	452	113	40,680.00
8	SK Long Busang	93	30	23	40	93	93	93	93	372	93	33,480.00
9	SK Batu Keling	328	109	129	90	328	328	328	328	1312	328	118,080.00
10	SK Long Gang	277	101	81	95	277	277	277	277	1108	277	99,720.00
11	SK Long Segahan	55	18	23	14	55	55	55	55	220	55	19,800.00
	Jumlah	1323	440	462	421	1323	1323	1323	1323	5292	1323	476,280.00



PEJABAT KETUA PENGARAH PENDIDIKAN MALAYSIA
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Level 7 Block J Damansara Town Centre
50604 KUALA LUMPUR

LAMPIRAN 8

Tel: 03-2586900
Fax: 03-2535150

KP(BS)8591/JKd.XIV/(10)
7 Mei 1998

Semua Pengarah Pendidikan Negeri

-Y.Bhg./Datn./Datin/Tuan/Puan,

SURAT PEKELILING IKHTISAS BIL.10/1998:
Panduan Tentang Umur Masuk Sekolah Rendah dan Sekolah Menengah
Serta Umur Menduduki Peperiksaan Bagi Sekolah Kerajaan,
Sekolah Bantuan Kerajaan dan Sekolah Swasta

Dengan berkuatkuasanya Akta Pendidikan 1996 pada 31 Disember 1997, semua Guru Besar dan Pengetua Sekolah Kerajaan, Sekolah Bantuan Kerajaan dan Sekolah Swasta dikehendaki mematuhi peruntukan-peruntukan akta tersebut. Antara perkara yang perlu dipatuhi oleh Guru Besar dan Pengetua ialah tentang umur-masuk sekolah rendah dan sekolah menengah serta umur menduduki Peperiksaan Kebangsaan (PTS/UPSR/PMR/SPM(V)/SPM) bagi Sekolah Kerajaan, Sekolah Bantuan Kerajaan dan Sekolah Swasta.

2. Mulai dari tahun 1998, Sekolah Kerajaan, Sekolah Bantuan Kerajaan dan Sekolah Swasta dilarang menerima murid baru di bawah umur, sama ada didaftar atau menumpang, tanpa didaftarkan. Murid yang diterima belajar di sekolah rendah hendaklah dari umur 6 tahun ke atas. Pengiraan umur hendaklah dikira dari 1 Januari tahun persekolahan semasa. Sebagai contoh, murid tahun 1 pada tahun 1998 hendaklah dilahirkan di antara 2.1.1991 hingga 1.1.1992. Ini bermakna bahawa murid yang genap berumur 6 tahun pada 1 Januari tahun yang berkenaan tidak perlu menohon kebenaran daripada Kementerian Pendidikan.

3. Murid sekolah rendah dan menengah swasta atau murid persendirian yang memohon masuk belajar ke Sekolah Kerajaan atau Sekolah Bantuan Kerajaan hendaklah ditempatkan di tahun atau tingkatan mengikut umur yang bersesuaian seperti yang dinyatakan di Jadual I dan Jadual II berlampir.

4. **Menduduki Peperiksaan Kebangsaan di Sekolah Rendah**

4.1 Murid sekolah rendah yang ingin mengambil peperiksaan Penilaian Tahap Satu (PTS) mestilah terdiri daripada murid yang telah mengikuti 3 tahun pelajaran dalam KBSR dan berada di Tahun 3 di sekolah rendah.

4.2 Bagi murid yang ingin mengambil peperiksaan Ujian Penilaian Sekolah Rendah (UPSR), mereka hendaklah telah berada di tahun enam di sekolah rendah dan mengikuti KBSR serta berumur tidak kurang daripada 11 tahun, bagi murid biasa dan berumur tidak kurang daripada 10 tahun, bagi murid yang dibenarkan melangkau kelas pada 1 Januari tahun persekolahan berkenaan.

5. Murid yang telah tamat pendidikan rendah boleh diterima belajar di sekolah menengah. Walaupun begitu murid-murid yang menamatkan pelajaran di Sekolah Jenis Kebangsaan Cina dan Sekolah Jenis Kebangsaan Tamil tetapi tidak mencapai tahap minimum yang ditetapkan oleh Kementerian Pendidikan hendaklah ditempatkan di Kelas Peralihan selama satu tahun di sekolah menengah yang ditetankan oleh Kementerian Pendidikan. (Sila



LAMPIRAN 8

rujuk surat siaran Kementerian Pendidikan, KP(BS/MEN)8510/03/005/(14) bertarikh 9 Disember 1997).

6. Murid-murid yang telah belajar selama 3 tahun dalam KBSM di sekolah menengah rendah dibenarkan menduduki Peperiksaan Penilaian Menengah Rendah (PMR). (Sila rujuk peraturan dan panduan Penilaian Menengah Rendah dan pekeliling berkaitan dari Lembaga Peperiksaan Kementerian Pendidikan Malaysia). Murid-murid dibenarkan menyambung pelajaran ke sekolah menengah atas selepas menamatkan pendidikan di peringkat menengah rendah dan mencapai tahap minimum dalam Peperiksaan Penilaian Menengah Rendah (PMR) yang ditetapkan oleh Kementerian Pendidikan. (Sila rujuk surat siaran Kementerian Pendidikan, KP(BS/MEN)8510/03/005/Jld.II (1) bertarikh 2 Januari 1998). Murid-murid dibenarkan menduduki Peperiksaan Sijil Pelajaran Malaysia atau Sijil Pelajaran Malaysia (Vokasional) selepas belajar selama 2 tahun di sekolah menengah atas.

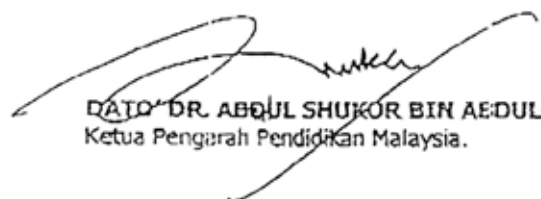
7. Murid-murid yang tidak mencapai tahap minimum dalam Peperiksaan PMR dibenarkan mengulang sekali sahaja di Tingkatan 3 di Sekolah Kerajaan atau Sekolah Bantuan Kerajaan. Murid di Sekolah Kerajaan atau Sekolah Bantuan Kerajaan yang gagal dalam peperiksaan SPM atau SPM (V) dibenarkan mengulang sekali sahaja di Tingkatan 5 dengan syarat tidak pernah mengulang di Tingkatan 3 sekolah menengah rendah.

8. Murid-murid di bawah umur di Sekolah Kerajaan dan Sekolah Bantuan Kerajaan yang telah dibenarkan naik ke tahun/tingkatan seterusnya pada tahun 1998 berdasarkan surat siaran Kementerian Pendidikan, KP(BS/PSR)8502/03/007 (65) bertarikh 23 Disember 1997 adalah dikecualikan daripada perenggan 4 dan perenggan 6 surat ini.

9. Pekeliling ini adalah bertujuan untuk memastikan Sistem Pendidikan Kebangsaan dinikmati secara adil serta memenuhi hasrat Falsafah Pendidikan Negara. Kerana itu, Y.Bhg. Dato'/Datin/Tuan/Puan adalah bertanggungjawab memastikan bahawa semua Guru Besar dan Pengetua menerima serta melaksanakan kandungan pekeliling ini.

10. Surat Pekeliling Ikhtisas ini berkuatkuasa dengan serta merta, mulai pada tarikh ianya dikeluarkan.

" BERKHIDMAT UNTUK NEGARA "


DATO' DR. ABDUL SHUKOR BIN ABDULLAH
Ketua Pengarah Pendidikan Malaysia.

JADUAL 1

KOHORT UMUR SEKOLAH RENDAH

Tahun	Umur (pada 1 Januari tahun persekolahan)	
	Murid Mengikut Kelas Biasa	Murid Dibenarkan Mengikut Kelas Melelangkau (PIS)
1	6 Tahun	6 Tahun
2	7 Tahun	7 Tahun
3	8 Tahun	8 Tahun
4	9 Tahun	
5	10 Tahun	9 Tahun
6	11 Tahun	10 Tahun



LAMPIRAN 8

JADUAL II

KOHORT UMUR SEKOLAH MENENGAH

Tingkatan	Umur (pada Januari (tahun persekolahan))				
	Melangka Kelas D Sekolah Rendah	Mengikut Kelas Biasa	Mengikut Kelas Peralihan/P Tingkatan 1	Mengulang tingkatan 3 (Biasa)	Mengulang tingkatan 3 Melalui Kelas Peralihan
Peralihan	-	-	12 Tahun		
1	11 Tahun	12 Tahun	13 Tahun		
2	12 Tahun	13 Tahun	14 Tahun		
3	13 Tahun	14 Tahun	15 Tahun	15 Tahun	16 Tahun
4	14 Tahun	15 Tahun	16 Tahun	16 Tahun	17 Tahun
5	15 Tahun	16 Tahun	17 Tahun	17 Tahun	18 Tahun



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50604 KUALA LUMPUR

R. 15/12/1998

LAMPIRAN 8

Tel: 03-2586900
Fax: 03-2535150

Ruj. Kami: KP(JPS)5181/15/23(23)

Ruj. Tuan:

Tarikh: 9 Disember 1998

Semua Pengarah Pendidikan Negeri.

Y.Bhg. Dato'/Datuk/Datin/Tuan/Puan,

**SURAT PENJELASAN KEPADA SURAT PEKELILING IKHTISAS BIL.10/1998 –
Panduan Tentang Umur Masuk Sekolah Rendah dan Sekolah Menengah Serta
Umur Menduduki Peperiksaan bagi Sekolah Kerajaan, Sekolah Bantuan
Kerajaan dan Sekolah Swasta**

Surat ini bertujuan dibaca bersama surat Pekeliling Ikhtisas Bil.10/1998 yang bertarikh 7 Mei 1998 untuk memberi penjelasan tentang umur masuk sekolah rendah dan sekolah menengah serta umur menduduki peperiksaan kebangsaan (PTS/UPSR/PMR/SPM(V)/SPM) bagi sekolah Kerajaan, sekolah Bantuan Penuh Kerajaan dan Sekolah Swasta.

2. Kementerian Pendidikan mengambil keputusan tidak mempertimbangkan sebarang permohonan untuk membenarkan murid Tahun Satu yang berumur kurang daripada 6 tahun (5+ tahun) pada permulaan sesi persekolahan.

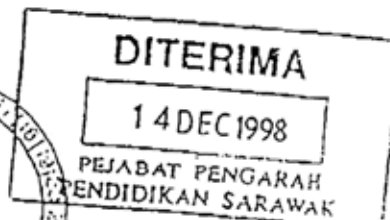
3. Kementerian Pendidikan menetapkan semua sekolah sama ada sekolah Kerajaan atau sekolah swasta hendaklah patuh kepada Akta Pendidikan 1996 yang menjadi asas kepada sistem persekolahan di negara ini. Selain daripada itu Lembaga Peperiksaan juga telah menetapkan bahawa "umur bagi murid yang menduduki UPSR hendaklah selaras dengan kemasukan ke tahun satu sekolah rendah seperti yang diperuntukkan dalam Akta Pendidikan 1996".

4. Kementerian Pendidikan tidak akan bertolak ansur dalam perkara ini dan akan membatalkan pendaftaran mana-mana institusi pendidikan swasta yang melanggar peraturan ini.

Sekian, terima kasih.

" BERKHIDMAT UNTUK NEGARA "

(DATO' DR. ABUL SHUKOR BIN ABDULLAH)
Ketua Pengarah Pendidikan Malaysia
Kementerian Pendidikan.





BAHAGIAN SEKOLAH-SEKOLAH
KEMENTERIAN PENDIDIKAN MALAYSIA
PARAS 5, BLOK J SELATAN
PUSAT BANDAR DAMANSARA
50604 KUALA LUMPUR

Telefon : 03-2556900
Kawat : 03-2562389

LAMPIRAN 9

→ KP(BS)8542/01/5/ (23)

18 April 1990

Semua Pengarah Pendidikan
Negeri Malaysia

Y. Bhg. Dato'/Tuan/Puan,

Penempatan Kanak-Kanak Yang Lebih
Umur Di Sekolah Rendah Dan Menengah

Sebagaimana Y. Bhg. Dato'/Tuan/Puan sedia maklum ada terdapat sebilangan murid-murid di sekolah rendah dan menengah yang tidak dapat mengikuti pelajaran disebabkan kelewatan mendaftar untuk bersekolah, keuzuran yang berpanjangan dan oleh kerana mengidap penyakit-penyakit yang tertentu.

2. Apabila murid-murid tersebut masuk ke sekolah, mereka ditempatkan di kelas mengikut umur mereka sebagaimana dikehendaki oleh peraturan. Penempatan yang sedemikian kadangkala menimbulkan kesulitan kepada murid-murid berkenaan kerana mereka tidak dapat mengikuti pelajaran mereka.

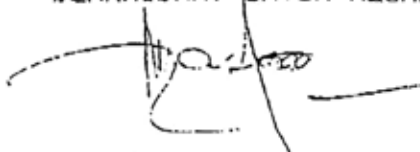
3. Sehubungan dengan ini, Y. Bhg. Dato'/Tuan/Puan diberi kebenaran untuk membuat pertimbangan menempatkan murid-murid yang lebih umur mengikuti pelajaran di kelas-kelas yang lebih rendah supaya mereka dapat menyesuaikan diri untuk mengikuti pelajaran berdasarkan kebolehan mereka buat seketika waktu. Selepas itu mereka boleh ditempatkan semula di kelas yang setaraf dengan umur mereka sebagaimana yang dikehendaki oleh peraturan.

4. Pihak sekolah hendaklah memastikan bahawa murid-murid tersebut menduduki peperiksaan awam bersama-sama dengan murid-murid lain yang sama peringkat umur dengan mereka.

LAMPIRAN 9

Sekian, terima kasih.

BERKHIDMAT UNTUK NEGARA



(TAN SRI DATUK WIRA ABDUL RAHMAN ARSHAD)
Ketua Pengarah Pendidikan Malaysia

s.k.

1. YB Sdr. Anwar Ibrahim
Menteri Pendidikan Malaysia
2. YB. Dr. Leo Michael Toyad
Timbalan Menteri Pendidikan Malaysia
3. YB. Encik Woon See Chin
Timbalan Menteri Pendidikan Malaysia
4. Ketua Setiausaha
Kementerian Pendidikan Malaysia
5. Timbalan Ketua Pengarah Pendidikan I
Kementerian Pendidikan Malaysia
6. Timbalan Ketua Setiausaha I
Kementerian Pendidikan Malaysia
7. Timbalan Ketua Pengarah Pendidikan II
Kementerian Pendidikan Malaysia
8. Timbalan Ketua Setiausaha II
Kementerian Pendidikan Malaysia
9. Ketua-Ketua Bahagian
Kementerian Pendidikan Malaysia
10. Ketua Jemaah Nazir Sekolah
Kementerian Pendidikan Malaysia
11. Pegawai Perhubungan Awam
Kementerian Pendidikan Malaysia

UMUR d.d. Rendah II



JABATAN PENDAFTARAN NEGARA

7/10/2006 15:23 082236494

BHG KHAS JPNM SWAK

PAGE 02



JABATAN PENDAFTARAN NEGARA,
NEGERI SARAWAK,
BANGUNAN TUN DATUK PATINGGI
TUANKU HAJI BUJANG,
JALAN SIMPANG TIGA,
93551 KUCHING, SARAWAK.

Telefon Pejabat: 242221
242223
248120
255951
416194

dengan sambungan

Kawat: NATREG, KUCHING
Fax: 082-242446



"JPN ERA BARU"

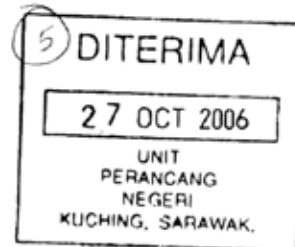
Ruj. Tuan:

Ruj. Kami: JPN.W.UDL.163/790/2(56)

Tarikh: 27.10.2006

Pengarah Unit Perancang Negeri
Jabatan Ketua Menteri
Tingkat 6 & 7, Wisma Bapa Malaysia
93502 Kuching.
(u/p: Puan Rodziah Haji Morshidi)

Tuan,



PERTEMUAN DAN PERBINCANGAN MENGENAI PERMASALAHAN KAUM PENAN DI SUNGAI ASAP, SERIA LONG JAIK DAN LONG SINGU, BELAGA DENGAN SUKSES

Dengan hormatnya saya diarah merujuk kepada surat tuan bilangan (62)UPN/S/MI/I/10.2 bertarikh 19 Oktober 2006 dan difax pada hari yang sama mengenai perkara di atas.

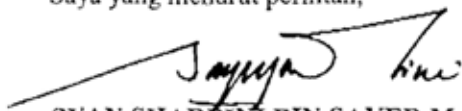
2. Seperti yang dimaklumkan semasa perbincangan pada 13 Oktober 2006, pihak Jabatan Pendaftaran Negara, Negeri Sarawak sentiasa sedia membantu penduduk negeri ini yang memerlukan perkhidmatan untuk pendaftaran kelahiran dan kematian dan memohon untuk Kad Pengenalan. Aktiviti ini adalah berterusan. Untuk tujuan ini Pengurusan Jabatan Pendaftaran Negara Malaysia telah menubuhkan Unit Khas Bergerak yang dipertanggungjawab untuk memberi perkhidmatan kepada penduduk di pendalaman seperti kaum Penan di Long Jaik dan Long Singu dan kawasan persisiran yang jauh dari Pejabat Pendaftaran.

3. Untuk makluman tuan, pihak Jabatan Pendaftaran Negara, Negeri Sarawak memerlukan bantuan pihak tuan supaya mendapatkan senarai nama penduduk dari kedua-dua tempat iaitu Long Jaik dan Long Singu untuk memudahkan persiapan logistic.

Sekian, terima kasih.

"BERKHIDMAT UNTUK NEGARA"

Saya yang menurut perintah,


(WAN SHARBINI BIN SAYED MAHDILI)
Timbalan Pengarah (Operasi)
b.p. Pengarah Pendaftaran Negara
Negeri Sarawak.



JABATAN PERHUTANAN SARAWAK

3

G. 4
(Pind. 1/86)MEMORANDUM RASMI

DARIPADA	Pengarah Hutan, Sarawak	KEPADA	Pengarah, Unit Perancang Negeri Sarawak (U/P: Puan Rodziah Hj. Morshidi)
PERKARA	Response to SUHAKAM on Penan issues at Sungei Asap, Long Jaik & Long Singu	SALINAN KPD.	
RUJ. KAMI	DF.921.01(VIII) - 57	TARIKH	31.10.2006
		RUJ. TUAN	TARIKH

The information requested by SAG Chambers is as follows:

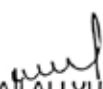
- a) Based on the locality map of the Penan settlements provided by Suhakam during the meeting on 13 October 2006, Long Jaik is within Belaga Protected Forest 1st Extension (East) while Long Singu is on the fringe of Danum Protected Forest (see map attached).

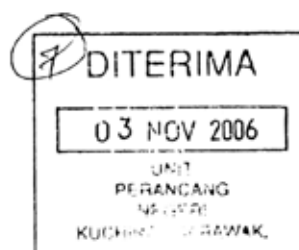
Belaga Protected Forest 1st Extension (East) came into effect from 1 December 2000. A copy of the gazette notification is in Appendix 1. Long Jaik is not in the list under the second schedule of this gazette notification.

Danum Protected Forest came into effect on 31 January 1985. Part of the PF was excised in 2004 to make way for the issuance of a provisional lease to Danum Sinar under Lot 1 of Danum Land District. The gazette notification and 1st excision notification are in Appendices 2 and 3. There was no right admitted in the gazette of the PF.

- b) Forest Department has no information to determine whether the Penans there were previously nomadic.
- c) Forest Department has never given any permission in writing to the Penans for them to establish their longhouses within Belaga PF.
- d) The areas surrounding these settlements are all within:
1. Licence for Planted Forests LPF/0018 issued to Shin Yang Forestry Sdn. Bhd. on 19 November 1999
 2. Forest Timber Licence No. T/3180, STIDC issued on 13 March 1987
 3. Forest Timber Licence No. T/3112, Syarikat Reloh issued on 18 June 1984
 4. Forest Timber Licence No. T/3127, Kedasa Sdn. Bhd. issued on 4 July 1984
 5. Forest Timber Licence No. T/3283, Samling Plywood (Bintulu) Sdn. Bhd. issued on 15 May 1993
 6. Forest Timber Licence No. T/3195, Bornion Timber (Sarawak) Sdn. Bhd. issued on 23 June 1987
 7. Provisional Lease under Lot 1 Danum Land District issued to Danum Sinar Sdn. Bhd. (Shin Yang Group)

'BERSATU BERUSAHA BERBAKTI'


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





Appendix I

SARAWAK GOVERNMENT GAZETTE

18th July, 2002]

2051

No. 2303

THE FORESTS ORDINANCE

BELAGA PROTECTED FOREST 1ST EXTENSION (EAST) NOTIFICATION, 2002

(Made under section 33)

In exercise of the powers conferred on him by section 33 of the Forests Ordinance [Cap. 126], the Minister hereby declares that the land enclosed within the boundaries described in the *First Schedule* hereto a Protected Forest with effect from 1st December, 2000, subject to the rights admitted and specified in the *Second Schedule*.

FIRST SCHEDULE

Name : Belaga Protected Forest 1st Extension (East)
 Division : Kapit
 District : Belaga
 Area : 146,176 hectares (approximately)
 Boundaries : Commencing from the river confluence of Sungai Belepah and Sungai Semalong at (N02° 49' 21.2"; E114° 07' 40.8"); the boundary follows a

SARAWAK GOVERNMENT GAZETTE

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[18th July, 2002]

series of cut lines bearing 207° 45' for 5,520 metres to (N02° 46' 41.4"; E114° 06' 24.0"); 256° 15' for 3,360 metres to (N02° 46' 17.6"; E114° 04' 36.7"); 338° 45' for 7,930 metres to (N02° 50' 20"; E114° 03' 09.7"); 48° 45' for 7,850 metres to (N02° 53' 07.7"; E114° 06' 24.7"); 333° 45' for 7,100 metres to (N02° 56' 37.3"; E114° 04' 46.0"); 271° 45' for 8,640 metres to (N02° 56' 48.9"; E114° 00' 05.6"); 260° 45' for 1,320 metres; 338° 00' for 1,100 metres; 292° 45' for 1,478 metres to (N02° 57' 34.9"; E113° 58' 26.0"); 261° 15' for 1,760 metres; 316° 41' for 1,916 metres to (N02° 58' 13.0"; E113° 56' 48"); 05° 45' for 2,040 metres; 76° 00' for 5,480 metres to (N02° 59' 44"; E113° 59' 47"); 87° 00' for 12,540 metres to (N02° 59' 57"; E114° 06' 31"); 44° 30' for 1,740 metres to (N03° 00' 37"; E114° 07' 16"); 91° 00' for 220 metres; 181° 00' for 60 metres; 91° 00' for 60 metres; 91° 00' for 900 metres; 181° 00' for 280 metres; 81° 00' for 800 metres to (N03° 00' 34"; E114° 08' 21"); 156° 30' for 5,540 metres to (N02° 57' 33"; E114° 09' 35"); 87° 30' for 6,360 metres; 177° 30' for 90 metres; 87° 30' for 1,340 metres; 06° 30' for 960 metres; 96° 30' for 280 metres; 06° 30' for 580 metres; 278° 30' for 240 metres; 06° 30' for 4,740 metres to (N03° 00' 49"; E114° 14' 10"); 108° 00' for 5,050 metres to (N02° 59' 44.2"; E114° 16' 48.0"); 359° 00' for 3,700 metres to (N03° 01' 58"; E114° 16' 53"); 96° 30' for 2,440 metres to (N03° 01' 53.8"; E114° 17' 58"); 82° 30' for 5,200 metres to (N03° 02' 17.0"; E114° 02' 47.0"); 110° 00' for 5,300 metres to (N03° 01' 26"; E114° 23' 24.8"); 173° 00' for 1,140 metres to (N03° 00' 48.8"; E114° 23' 40.5"); 89° 00' for 1,280 metres to (N03° 00' 45.6"; E114° 24' 21.3"); 22° 00' for 1,000 metres to (N03° 01' 11.2"; E114° 24' 31.8"); 356° 00' for 980 metres to (N03° 01' 43.7"; E114° 24' 34.2"); thence follows logging roads for 11,180 metres to reach (N002° 58' 22"; E114° 26' 40.2"); 178° 30' for 2,425 metres to (N002° 57' 03.2"; E114° 26' 44.1"); 68° 00' for 1,660 metres; 100° 00' for 980 metres; 105° 00' for 3,880 metres; 200° 00' for 620 metres; 196° 00' for 220 metres; 150° 00' for 140 metres; 196° 00' for 1,640 metres; 136° 30' for 43,460 metres; 225° 00' for 220 metres; 136° 30' for 2,760 metres; 136° 00' for 1,260 metres; 103° 00' for 2,780 metres to (N02° 51' 59.0"; E114° 33' 53.0"); 88° 00' for 1,820 metres to (N02° 52' 02.4"; E114° 34' 52.7"); 165° 00' for 100 metres; 128° 00' for 4,680 metres; 122° 00' for 1,180 metres; 130° 00' for 120 metres to (N02° 50' 04.0"; E114° 37' 29.3"); 106° 00' for 1,400 metres to (N02° 49' 55.3"; E114° 38' 20.5"); 110° 00' for 2,820 metres; thence follows the ridge for 3,720 metres to (N002° 48' 16.8"; E114° 40' 33.6"); thence follows two cut lines bearing 230° 00' for 540 metres; 320° 00' for 40 metres to meet the source of stream; thence the boundary follows this stream toward Westerly direction (downstream) for 6,723 metres to its confluence with Sungai Sian; thence follows Sungai Sian downstream for 2,315 metres to its confluence with Sungai Kalayan; thence follows Sungai Kalayan downstream for 3,008 metres to (N02° 45' 34.4"; E114° 36' 32.2"); thence follows a series of cut lines bearing 208° 00' for 4,280 metres to meet Sungai Menapa at (N02° 43' 37"; E114° 35' 25"); 269° 30' for 2,960 metres to meet Sungai Palutan at (N02° 43' 36"; E114° 33' 47"); 251° 35' for 1,700 metres to (N02° 43' 48"; E114° 32' 48"); 307° 00' for 5,500 metres to meet Sungai Menawan at (N02° 45' 09"; E114° 30' 35"); 245° 00' for 3,750 metres to (N02° 44' 01"; E114° 28' 54"); 306° 45' for 1,000 metres to (N02° 44' 20"; E114° 28' 38"); 231° 00' for 1,320 metres to (N02° 44' 00"; E114° 27' 57"); 137° 45' for 440 metres to (N02° 42' 16"; E114° 29' 29"); 219°



SARAWAK GOVERNMENT GAZETTE

18th July, 2002]

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00' for 4,640 metres to meet Sungai Likat at (N02° 40' 22"; E114° 27' 58"); 250° 45' for 3,260 metres to (N02° 39' 47"; E114° 26' 58"); 236° 00' for 1,280 metres to (N02° 39' 50"; E114° 26' 28"); 281° 00' for 2,160 metres to (N02° 39' 41"; E114° 24' 46"); 266° 00' for 2,816 metres to meet Sungai Sunan at (N02° 39' 36"; E114° 23' 09"); 283° 15' for 3,058 metres to (N02° 39' 56"; E114° 21' 34"); 195° 00' for 1,730 metres to (N02° 39' 05"; E114° 21' 17"); 297° 00' for 4,868 metres to (N02° 40' 15.8"; E114° 19' 01.2"); 286° 45' for 2,706 metres to meet Sungai Ngyroh at (N02° 40' 41.5"; E114° 17' 36"); 283° 00' for 2,635 metres to (N02° 41' 36.6"; E114° 13' 42.1"); 280° 00' for 3,437 metres to (N02° 41' 52.7"; E114° 11' 49.9"); 343° 00' for 1,340 metres to meet Sungai Majoh at (N02° 42' 32.5"; E114° 11' 33.1"); 290° 00' for 3,460 metres to (N02° 43' 12.8"; E114° 09' 43.9"); 350° 00' for 2,840 metres to (N02° 44' 47.8"; E114° 09' 26.9"); 359° 45' for 1,600 metres to (N02° 45' 38.1"; E114° 09' 30.5"); 03° 00' for 4,370 metres; 09° 00' for 160 metres; 03° 00' for 180 metres; 270° 00' for 160 metres; 03° 00' for 1,580 metres to (N02° 48' 49.6"; E114° 09' 44.8"); and 283° 00' for 3,080 metres to come back to the point of commencement.

Name : Belaga Protected Forest 1st Extension (West)

Division : Kapit

District : Belaga

Area : 27,964 hectares (approximately)

Boundaries : Commencing from a point at (N02° 48' 03"; E113° 47' 18.5") on the river bank of Sungai Pliring (tributary of Batang Belaga), the boundary follows a series of cut lines bearing 249° 00' for 1,450 metres to (N02° 47' 47.6"; E113° 46' 35.3"); 269° 15' for 3,668 metres to (N02° 47' 44.5"; E113° 44' 41.3"); 42° 45' for 4,530 metres to (N02° 49' 33.3"; E113° 46' 19.4"); 347° 30' for 1,530 metres to (N02° 50' 20.6"; E113° 46' 09.9"); 33° 00' for 6,315 metres; 52° 30' for 1,080 metres to (N02° 53' 31.9"; E113° 48' 26.4"); 96° 45' for 2,800 metres to (N02° 53' 21.7"; E113° 49' 55.2"); 133° 00' for 1,520 metres to (N02° 52' 51.2"; E113° 50' 24.2"); 78° 30' for 9,213 metres; 61° 45' for 1,971 metres; 47° 30' for 2,700 metres; 105° 00' for 2,950 metres; 61° 30' for 2,700 metres to (N02° 55' 43.3"; E114° 00' 05.6"); 89° 00' for 5,300 metres to (N02° 55' 41.8"; E114° 03' 03.3"); 160° 00' for 4,200 metres to (N02° 53' 25"; E114° 03' 53.1"); 222° 30' for 10,350 metres to (N02° 49' 22.1"; E114° 00' 06.5"); 305° 00' for 4,500 metres meeting Sungai Pih at (N02° 50' 14"; E113° 58' 07.4"); thence the boundary follows this Sungai Pih downstream for 1,508 metres to (N02° 50' 14"; E113° 57' 20"); thence follows a series of cut lines bearing 230° 45' for 2,977 metres to (N02° 49' 18"; E113° 56' 05"); 270° 00' for 2,400 metres to (N02° 49' 17.7"; E113° 54' 46.8"); and 262° 30' for 14,000 metres to come back to the point of commencement.

Area A is excluded from the Proposed Belaga Protected Forest 1st Extension (East)

Area A : 260 hectares

Boundary : Commencing from a point (N02° 49' 48.5"; E114° 16' 0.2"); the boundary follows a series of cut lines bearing 01° 00' for 1,300 metres; 83° 00'

SARAWAK GOVERNMENT GAZETTE

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[18th July, 2002]

for 1,860 metres; 183° 00' for 1,200 metres, 92° 00' for 1,840 metres to come back to the point of commencement.

N.B. Bearings, distances and GPS readings are approximate only. The demarcated boundaries shall be considered correct. The above area does not include any Alienated Land and Native Customary Rights Land within the meaning of the Land Code [Cap. 81].

SECOND SCHEDULE

The permanent inhabitants of the following longhouses shall have the rights to continue the traditional activities of fishing, hunting and collecting of jungle produce within the area for personal and domestic use only, but it shall be an offence to clear high forest except with the authority of the Director of Forests.

Rh. Sambop, Long Semutut, Belaga	Rh. Badang Menjawah
Uma Kunyah	Long Mabut
Long Urun, Belaga	Long Balo
Rh. Kolap, Long Sek	Long Dunin Tinjar Baram
Rh. Nyaving	Rh. Apan, Menjawah
Rh. Pg. Surat Kuja Long Bagan	Rh. Lahanan
Rh. Dougious Ding Jangan	Long Pangai
Rh. Kahei, Long Mekero	Rh. Beur, Long Sah
Rh. Bawang, Long Murum	Rh. Lesong Batu Keling
Rh. Kejaman Lasak, Segahan	Long Mitik
Rh. Badang, Long Aie	Rh. Juman, Long Dupah
Long Koyan	Rh. Dikan, Long Urun
Long Sivau, Urun	Long Apoh, Belaga
Rh. Sihan Ulu Sg. Amang	Long Ketuat Urun
Long Liko	Rh. Daro
Uma Nyaleng Pawah	

Made this 1st day of April, 2002.

DATUK PATINGGI TAN SRI (DR) HAJI ABDUL TAIB MAHMUD,
Chief Minister and Minister of Planning and Resource Management

Ref: 13/KPS/H/4-15/30(1)



Appendix 2

SARAWAK GOVERNMENT GAZETTE

21st March, 1985]

523

No. 1120

THE FORESTS ORDINANCE

THE DANUM PROTECTED FOREST NOTIFICATION, 1985

(Made under section 31)

In exercise of the powers conferred upon the Minister by section 31 of the Forests Ordinance (*Cap. 126*), the following Notification has been made:

1. This Notification may be cited as the Danum Protected Forest Notification, 1985.

2. The area of land described in the Schedule is hereby declared a protected forest with effect from 31st day of January, 1985 and shall be known as the Danum Protected Forest.

SCHEDULE

Name	: Danum Protected Forest.
Division	: Seventh.
District	: Belaga.
Area	: 180,820 hectares approximately.
Boundaries	: Commencing at a point on the left bank of the estuary of Sungai Plieran, the tributary of Sungai Murum, the boundary follows Sungai Plieran upstream for approximately 11,800 metres to Sungai Sulip; thence follows a series of cut lines bearing 78° 30' for 1,560 metres; 56° 15' for 1,280 metres; 17° 00' for 1,140 metres; 78° 00' for 1,680 metres; 111° 00' for 4,740 metres; and 16° 30' for 380 metres to Sungai Plieran; thence crosses Sungai Plieran to its right bank; thence the boundary follows Sungai Plieran downstream for approximately 5,000 metres, thence follows another series of cut lines bearing 33° 00' for 1,680 metres; 103° 15' for 1,680 metres; 21° 15' for 2,080 metres; 97° 00' for 1,080 metres to meet the left bank of Sungai Luar; thence follows Sungai Luar upstream for approximately 7,700 metres to its confluence with Sungai Kalayan; thence follows Sungai Kalayan to its source for approximately 15,088 metres; thence the boundary follows the divisional boundary between the Fourth and Seventh Divisions for approximately 67,391 metres to the Sarawak and Indonesia international boundary; thence follows the international boundary in the southerly direction for approximately 60,853 metres until it meets the source of the small tributary of Sungai Danum; thence follows the tributary and also Sungai Danum downstream for approximately 94,500 metres to its confluence with Sungai Lemujan; thence follows a series of cut lines bearing 278° 15' for 4,200 metres; 272° 15' for 960 metres; 284° 30' for 4,440 metres and 247° 15' for 1,100 metres to meet Sungai Danum; thence follows the right bank of Sungai Danum downstream for approximately 20,800 metres; thence follows two cut lines bearing 23° 15' for 900 metres and 306° 15' for 700 metres to meet Sungai Danum again; thence follows the right bank of Sungai

Danum downstream for approximately 6,500 metres until it meets its confluence with Sungai Ulu; thence follows a series of cut lines bearing 17° 45' for 2,220 metres; 315° 15' for 880 metres and 271° 00' for 1,700 metres back to the point of commencement.

NOTE: Bearings and distances are approximate only and the boundaries demarcated on the ground are considered correct.

Made this 31st day of January, 1985.

JAMES JIMBUN,
Pem. Setiausaha Tetap,
Kementerian Perhutanan

(MF/4-15/31)

THE FORESTS ORDINANCE

Appendix 3

THE DANUM PROTECTED FOREST (1ST EXCISION) NOTIFICATION, 2005

(Made under section 39)

In exercise of the powers conferred upon the Minister by section 39 of the Forests Ordinance [Cap. 126], the following Notification has been made:

1. This Notification may be cited as the Danum Protected Forest (1st Excision) Notification, 2005.

2. I am hereby directed that the area of land described in the Schedule below, being part of the Danum Protected Forest as constituted under *Gazette* Notification No. 11, dated 31st January, 1985, shall cease to be a Protected Forest with effect from 5th July, 2004.

Any person affected by the extinguishment of his rights or privileges in the area of land must submit his claim for compensation in respect thereof, together with evidence in the support of such claims to the Regional Forest Officer, within thirty (30) days from the date of publication of this Notification.

SCHEDULE

Location : Danum Protected Forest (1st Excision)

Division : Kapit

District : Belaga

Area : 30 028 hectares approximately

Boundaries : Commencing from the river confluence of Sungai Pileran and Sungai Kenaban at a point (N002° 39' 21"; E114° 33' 33"), the boundary follows a cut line bearing 358° 00' for 5791 metres to meet Sungai Luar; thence follows the true left bank of Sungai Luar upstream for 10 710 metres to its confluence with Sungai Kelayan; thence follows the true left bank of Sungai Kelayan upstream for 14 772 metres to its source; thence follows the ridge (divisional boundary) towards generally south-easterly direction for 6704 metres; thence turns away from the ridge to follow a stream Sungai Sut downstream for 6799 metres; thence follows a series of cut lines bearing 74° 00' for 2616 metres; 143° 00' for 1377 metres; 94° 00' for 840 metres; 163° 00' for 1012 metres to meet Sungai Prian; thence follows Sungai Prian upstream for 799 metres; thence follows a cut line bearing 119° 00' for 2784 metres to meet a small unnamed river; thence follows this unnamed river downstream for 1126 metres to a confluence; thence turns towards north-easterly direction upstream for 940 metres; thence follows a series of two cut lines bearing 101° 00' for 3776 metres; 84° 00' for 4720 metres to meet a small unnamed river; thence follows this unnamed river downstream for 2819 metres to a confluence; thence turns towards north-easterly direction upstream for 958 metres; thence follows a series of cut lines bearing 56° 30' for 3245 metres; 107° 30' for 2827 metres; 126° 00' for 1364 metres; 85° 00' for 1088 metres; 161° 00' for 1067 metres; 183° 00' for 1696 metres to meet Sungai Tiut; thence follows Sungai Tiut upstream for 8515 metres; thence follows a cut line bearing 180° 00' for 3805 metres to meet Sungai Pileran; thence follows Sungai Pileran downstream for 15 147 metres; thence follows a series of two cut lines bearing 245° 00' for 2439 metres; 282° 00' for 8254 metres to meet a tributary of Sungai Pileran; thence follows this tributary downstream for 2114 metres to its confluence with Sungai Pileran; thence follows Sungai Pileran downstream for 8074 metres; thence follows a series of cut lines bearing 202° 00' for 1714 metres; 262° 00' for 2438 metres; 274° 00' for 2819 metres; 299° 00' for 1605 metres; 267° 00' for 2845 metres to meet a unnamed tributary of Sungai Prian; thence follows this tributary downstream for 2484 metres to its confluence with Sungai Prian; thence follows Sungai Prian upstream for 8409 metres; thence follows a series of cut lines bearing 360° 00' for 1915 metres; 302° 30' for 1359 metres; 248° 00' for 2088 metres; 265° 00' for 2092 metres; 180° 00' for 2187 metres; 250° 00' for 1959 metres; 194° 30' for 2293 metres to meet Sungai Prian; thence follows Sungai Prian downstream for 5573 metres to come back to the point of commencement.

Note: Bearings, distances and GPS readings are approximate only and the demarcated boundaries shall be considered correct.

Dated this 23rd day of September, 2004.

LATU HAJI HAMZAH HAJI DRAHMAN,

Permanent Secretary,

Ministry of Planning and Economic Development



JABATAN PERKHIDMATAN PERUBATAN DAN KESIHATAN NEGERI SARAWAK



PEJABAT PENGARAH,
JABATAN KESIHATAN NEGERI, SARAWAK,
JALAN TUN ABANG HAJI OPENG,
93590, KUCHING, SARAWAK,
MALAYSIA.

Telephone : 60-82-256566

Fax : 60-82-424959

E-mel: andrew.kiyu@sarawak.health.gov.my

E-mel Pejabat: shd@sarawak.health.gov.my

Rujukan Tuan: (62) UPN/S/MI/I/10.2

Rujukan JKNSWK/PKN-31/Penan/21

Kami:

Tarikh: 27 October 2006

Timbalan Pengarah,
Unit Perancang Negeri
Jabatan Ketua Menteri,
Tingkat 6&7, Wisma Bapa Malaysia
93502 Kuching,
Sarawak, Malaysia
(Melalui e-mel marciah@sarawaknet.gov.my dan
rodziam1@sarawaknet.gov.my sahaja)

Tuan,

**Perjumpaan dan perbincangan mengenai permasalahan kaum Penan di
Sungai Asap serta Long Jaik dan Long Singu, Belaga, dengan SUHAKAM**

Attached herewith are the comments from Sarawak Health Department regarding the Draft Report of SUHAKAM's filed visit to the Penan settlements in Belaga.

We have suggested alterations to the section "Certification of newborn dependent on flying doctor services". With regards to the other sections on pages 17 and 23 of the draft report, it is not possible for us to suggest any alteration because while the situations described are generally correct, they are not peculiar to Penans but are also true for any other ethnic groups that stay in geographically remote and inaccessible places.

Yang benar,

Dr. Andrew Kiyu
Timbalan Pengarah (Kesihatan Awam)
Jabatan Kesihatan Negeri Sarawak



SECTIONS OF DRAFT REPORT
SUHAKAM'S FIELD VISITS AND DIALOGUES IN PENAN COMMUNITY
SETTLEMENTS IN LONG SINGU AND LONG JAIK, BELAGA, SARAWAK
18-19 SEPTEMBER 2006

Page 16

Certification of newborn dependent on flying doctors visit

SUHAKAM was informed that -since affected members do not have enough resources to travel to registration offices, registration of newborn babies are often dependent on Flying Doctors Services (FDS) that are scheduled to visit the areas once in a few months. However, there are months when a scheduled FDS visit may be cancelled due to bad weather, medical evacuation, and so on. This poses a problem if there are deliveries during months ~~where when~~ the FDS is unable to go to the Penan settlements and ~~there is no flying doctor visit and~~ those children have reached the age of three months by the time they are brought to attend an FDS clinic ~~next visit~~.

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III Health

Poor physical access

In both areas visited, SUHAKAM found that access to health care facilities are inadequate. Currently, the Penan community relies on the flying doctor service that visits the areas once in a few months. Apart from the flying doctor service, medical assistants are placed at the village. However, the number is inadequate. In addition SUHAKAM was made to understand that medical supplies is very limited, hence, ill members of the Penan community are often told to visit the hospital in Sungei Asap, Belaga, which takes hours to travel by vehicle. Again this poses a problem since the Penans do not have their own vehicle and often hitchhikes from one point to another. In addition, since they have limited amount of money to cover travel expenses, this could deter their intention to visit health care facilities.

Lack of emergency services and vaccination programmes

In both areas, SUHAKAM found that emergency services are not available. In addition, vaccination programmes rely on the flying doctor service. Since visits by the flying doctor service are not frequent, children who have not been given the required vaccination are exposed to various diseases.

COMMENTS FROM SARAWAK HEALTH DEPARTMENT

The backbone of health care in Sarawak is the Klinik Desa, which is designed to serve 1,500 to 2,000 people in its catchment area. Village health teams (by road, river or foot) serve villages which are one hour away from the clinic. For villages which are not accessible able by road or river, the Flying Doctor Service is used to provide primary health care to the people there. Based on this health care delivery system, about 60 % of the population have access to fixed clinics and another 20-30% are accessed by village health teams or FDS. In addition to the government services, Sarawak Health Department also train Village Health Promoters who are volunteers from participating remote villages.

They are trained in first aid and how to promote health in their villages. At the end of their training they are provide with a First Aid kit and common medicine like panadol, trisilox etc.

From the above scenario, it can be seen that it not possible to provide static clinics to all Penan villages, and the practical option based on resources available it the FDS. The Penan villages also have village health promoters.

It can also be seen that it is not possible, given the current resources, to have emergency services in remote villages. This applies not just to Penan villages but to all remote villages where we do not have static clinics.

The current system is able to provide good coverage of vaccination and maternal and chold care. A child's vaccination may not be given according to schedule, but by the delay is about three to six months. In the end, most of the cildren would have received the childhood immunizations.

We would like to emphasise that the difficulty in access to health care is not related to ethnic group but is related to remoteness of the settlements, difficulties of communication and the population density. Inadequate access is not limited to the Penans to any ethinc groups who stay in inaccessible places.

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7. Improve health care service in affected areas

SUHAKAM recommends that the Government ensure health care – which includes enhancing access to health care services, making emergency services available, increasing number of medical care personnel and intensifying vaccination programmes for the Penan community settlements.

COMMENTS FROM SARAWAK HEALTH DEPARTMENT

This goal is ideal and general enough to be applicable to all ethnic groups who stay in geographically remote areas and not just the Penans. The comments in the preceding section also apply to section.



JABATAN PERTANIAN SARAWAK

02/11/2006 09:08 FAX 082447639

PEJ PGH PERTANIAN KCH

2001

G. 4
(Pind. 1/86)MEMORANDUM

DARIPADA: Pemangku Pengarah Pertanian Sarawak	KEPADA: Pengarah Unit Perancangan Negeri
PERKARA: Sila lihat di bawah	SALINAN KPD:
RUJ. KAMI: DA. 2006/4/V-5/(30)	TARIKH: 1.11.2006
RUJ. TUAN:	TARIKH:

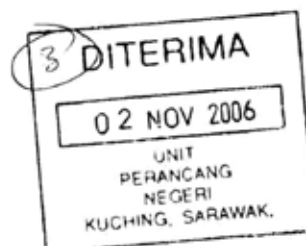
**LAPORAN BERTULIS MENGENAI ISU YANG DIDANONIKSIKAN DALAM
LAPORAN DRAF SUHAKAM BERTAJUK "DRAFT REPORT ON SUHAKAM'S
FIELD VISITS AND DIALOGUES IN PENAN COMMUNITY SETTLEMENTS IN LONG
SINGU AND LONG JAIK, BELAGA, SARAWAK ON 18-19 SEPTEMBER 2006"**

Dengan hormatnya merujuk kepada surat Suruhanjaya Hak Asasi Manusia Malaysia Cawangan Sarawak bil: SHM (SWK) 004/4/46 Jld 3 (8) bertarikh 16.10.2006 tentang perkara tersebut di atas.

2. Sebagai susulan kepada perbincangan dengan pihak SUHAKAM pada 13.10.2006, saya lampirkan bersama ini komen serta pandangan Jabatan Pertanian Sarawak mengenai isu berkaitan dengan peranan Jabatan yang terkandung dalam laporan draf SUHAKAM tersebut untuk tindakan Tuan/Puan selanjutnya.

"BERSATU BERUSAHA BERBAKTI"

(PAUL VINCENT RITOM)
Pemangku Pengarah Pertanian
Sarawak



Officer to contact: En. Paul Ritom;

Tel: 082-447632;

Fax: 082-447639



Maklumbalas Daripada

JABATAN PERTANIAN SARAWAK

**Mengenai "DRAFT REPORT ON SUHAKAM'S FIELD VISITS AND DIALOGUES IN
PENAN COMMUNITY SETTLEMENTS IN LONG SINGU AND LONG JAIK, BELAGA,
SARAWAK ON 18-19 SEPTEMBER 2006"**

1. PURPOSE

The purpose of this report is to present the views and comments of the Sarawak Agriculture Department on relevant issues and recommendations that are contained in the above mentioned SUHAKAM draft report that was distributed during the dialogue with government agencies held on 13th October 2006 in the Kuching Hilton Hotel.along Sg. Murum

2. ASSISTANCE BY AGRICULTURE DEPARTMENT TO PENAN SETTLEMENTS

Records available to the Agriculture Department indicate the existence of 19 Penan settlements along the sungei Belaga, sungei Murum, sungei Linau, sungei Asap, and Balui in Belaga District. The settlements include three that are of interest to SUHAKAM, namely Uma Penan Long Jaik and Uma Penan Long Singu along the sungei Murum, and Uma Penan Talun at Sungei Asap, Bakun Resettlement Area.

During the 8th Malaysia Plan, the Agriculture Department provided assistance to eleven Penan settlements to support their agricultural activities. In addition to technical advice, the assistance given took the form of free planting materials, fertilizers, pesticides and weedicides, and simple farm tools. The total value of scheme assistance to those settlements in the 8th Plan was about RM45,000.00. The Penans at Long Jaik and Long Singu however, were not among the beneficiaries of scheme assistance because of their lack of interest in farming.

3. ISSUES RELEVANT TO AGRICULTURE DEPARTMENT

3.1. Adequate Support to Assist in Transition

Among the recommendations contained in the SUHAKAM draft report is for the Government to ensure adequate support during the transition by the Penans from

hunter-gatherer existence to one that is characterized by a more permanent agriculture.

The Agriculture Department is ever ready to provide the necessary support to the Penans at Long Jaik and Long Singu to enable them to get involved in serious farming, either for the purpose of producing food to meet their sustenance needs, or as a source of cash income. The Department implements a wide range of agriculture schemes covering various types of crops, livestock, fishery and food processing enterprises for smallholders. The schemes provide assistance in the form of free farm inputs and equipment in the establishment of agriculture projects. In addition to material and financial assistance, farmers can have access to skills training and technical advice. Other Government agencies such as Farmers Organisation and Federal Agricultural Marketing Authority (FAMA) can help organize marketing of agricultural produce.

However, conventional farming requires suitable land of economic size with good access and communication to trading centres or towns. In more remote areas, economic viability becomes a major issue, restricting the choice of profitable enterprises. Until the Penans at Long Jaik and Long Singu have access to such land, it is difficult to envisage their involvement in farming in any meaningful way.

It should also be noted that the shift from hunter-gatherer life style to farming requires a major shift of attitude. The experience of the Department with the Penans at Batu Bungan in Mulu, Miri tells us that it is a slow and uncertain process.

3.2. Establishing Programmes such as FELDA and FELCRA

FELDA and FELCRA-type programmes require a level of dedication from the settlers that will also take time to develop among the Penans. Such programmes however offer a better chance of success compared to the smallholder approach. FELDA and FELCRA-type programmes however does not come under the purview of the Agriculture Department.



JABATAN TANAH DAN SURVEI SARAWAK

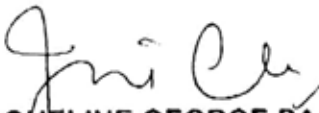
MEMORANDUM RASMI

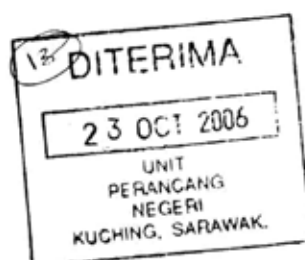
DARIPADA	Pengarah Tanah Dan Survei		KEPADA	Pengarah Unit Perancang Negeri	
PERKARA	Sila lihat di bawah		SALINAN	KPD.	
RUJ.KAMI	100/4-19/456 Vol. 2	TARIKH 23.10.2006	RUJ.TUAN	(62)UPN/S/MI/ I/10.2	TARIKH 19.10.2006

**Perjumpaan Dan Perbincangan Mengenai Permasalahan Kaum Penan Di
Sg. Asap Serta Long Jaik Dan Long Singu, Belaga Dengan
SUHAKAM**

..... Merujuk kepada kertas rasmi tuan yang tercatat di atas, bersama-sama ini saya kemukakan maklumbalas berhubung perkara tersebut di atas untuk makluman dan tindakan tuan (sila rujuk Lampiran A).

"BERSATU BERUSAHA BERBAKTI"


(JACQUELINE GEORGE PAOU)
 b/p Pengarah Tanah Dan Survei
 Sarawak





LAMPIRAN A

Perjumpaan dan Perbincangan Mengenai Permasalahan Kaum Penan di Sungai Asap serta Long Jaik dan Long Singu, Belaga dengan Suruhanjaya Hak Asasi Manusia Malaysia (SUHAKAM)

Perenggan 2.1. Dialog di Sungai Asap

(i) Issue on Compensation

- Delay in payment of compensation

Mengikut rekod Jabatan, kesemua pampasan yang perlu dibayar kepada penduduk Penan di kawasan Punan Talun yang terlibat dengan Projek Hidro Bakun telah dibayar sepenuhnya kecuali bayaran untuk bilik rumah panjang. Jumlah yang masih belum dibayar untuk pampasan bilik rumah panjang adalah sebanyak RM139,764.90.

- No compensation for areas outside of the perimeter of flood effect resulting from the construction of the Bakun HEP

Perkara ini telah diputuskan oleh Majlis Mesyuarat Kerajaan Negeri seperti yang dimaklumkan oleh Setiausaha Tetap, Kementerian Perancangan Sumber kepada Pengarah Tanah dan Survei melalui memorandum rasmi rujukan 43/KPS/T/2-3/22(I) bertarikh 18.8.1997. Keputusan MMKN adalah seperti berikut:-

- (d) *directed that no compensation or ex-gratia payment is to be made for crops, fruit trees and padi farm cultivated in the State Land within and above the flood line in the Reservoir area.*

Sesalinan memorandum rasmi dikepilkan sebagai Lampiran A1.

- Compensation given for the clearing of fruit trees planted by the community was less than what was promised by the Government.

MMKN dalam mesyuaratnya pada 28.3.96 telah membuat keputusan seperti berikut:-

'5% increase over the Land and Survey Schedule of Maximum Rates of compensation for Cultivation. Claim is subject to maximum allowable number of crops planted per hectare as recommended by the Agriculture Department.'

Walau bagaimanapun di dalam membuat penilaian untuk pampasan tanaman dan kebun, faktor-faktor seperti keadaan tanaman, umur, penjagaan, saiz kebun, berbuah ataupun tidak perlu juga diambil kira bagi memastikan jumlah pampasan yang dibayar adalah berpatutan.

(ii) Issue on Housing

No compensation for houses demolished by the Government during acquisition of land.

Seperti dinyatakan di atas, hanya pampasan bilik rumah panjang sahaja yang masih belum dibayar. Ini adalah kerana jumlah pampasan tersebut akan digunakan sebagai bayaran pendahuluan untuk rumah di penempatan baru. Ini selaras dengan keputusan MMKN pada mesyuaratnya seperti yang dimaklumkan oleh Setiausaha Tetap, Kementerian Perancangan Sumber kepada Pengarah Tanah dan Survei melalui memorandum rasmi 43/KPS/T/2-3/22(I) bertarikh 18.8.97.

- (b) *directed that the cost of new bilik, land premium for the 3 acre farm land and land title for the new bilik amounting to over RM51,000 per family/per door be deducted up front from the compensation money by the Land and Survey Department.*

Perenggan 2.2. Dialogue in Long Singu and Long Jaik

Mengikut rekod yang ada, tidak terdapat projek pengambilan tanah di Long Singu dan Long Jaik. Kemungkinan besar, isu-isu yang dibangkitkan adalah perkara-perkara yang berkaitan dengan "Licence Protected Forest (LPF)" yang dikeluarkan oleh Jabatan Hutan kepada Syarikat Shin Yang di kawasan tersebut.



SULIT

G.4
(Pind. 1/86)

MEMORANDUM RASMI

Lampiran A1

Setiausaha Tetap, Kementerian Perancangan Sumber	KEPADA Pengarah Tanah dan Survei
Compensation for the Communities affected by the Bakun HEP	SALINAN KPD.
MI: 43/KPS/T/2-3/22 (1)	TARIKH: 18.8.1997
	RUJ. TUAN: TARIKH:

Adalah saya dengan hormatnya merujuk kepada perkara di atas dan menyampaikan keputusan Majlis Mesyuarat Kerajaan Negeri mengenainya seperti di Lampiran yang dikepilkan untuk tindakan tuan selanjutnya.

"BERSATU BERUSAHA BERBAKTI"


(ABDULLAH UPANG)
b.p. Setiausaha Tetap,
Kementerian Perancangan Sumber

LAMPIRANISSUES IN RESPECT OF COMPENSATION FOR THE
COMMUNITIES AFFECTED BY THE BAKUN HEP.

Majlis-

- (a) approved an initial payment of 30 per cent of the total amount of compensation be paid after deducting any costs payable, to the resettlers commencing in August, 1997, and the balance of 70 per cent be released when the resettlers commence occupying the new longhouses in the Resettlement Area.
- (b) directed that the cost of new bilik, land premium for the 3-acre farm land and the land title for the new bilik amounting to over RM51,000.00 per family/per door be deducted up front from the compensation money by the Land & Survey Department.
- (c) directed that a loan be provided to those resettlers who cannot afford to pay for the new biliks and land premium for the 3-acre farm land and the titles for the new biliks. It was also agreed that the housing loan repayment should commence after five years from the date of signing of the purchase and loan agreements;
- (d) directed that no compensation or exgratia payment is to be made for crops, fruit trees and padi farm cultivated in the State land within and above the floodline in the Reservoir area;
- (e) agreed that information on the rates and quantum of compensation to the affected communities could be released to those concerned;
- (f) endorsed the recommendation of the Majlis Adat Istiadat that compensation on communal land be paid based on the consensus of the communities affected by the Bakun HEP using the Orang Ulu Adat as guidelines; and
- (g) directed that representatives of service/investment schemes such as ASSAR, ASB, etc. be available at Bakun during the payment of compensation and that political leaders be on the ground to actively encourage the resettlers to invest their compensation money in these schemes. Talks on social ills e.g. illegal cockfighting, should also be organised for these people.



KEMENTERIAN PERANCANGAN DAN PENGURUSAN SUMBER

G.4
(Pind. 1/86)

SEGERA

MEMORANDUM RASMI

DARIPADA: Setiausaha Tetap, Kementerian Perancangan dan Pengurusan Sumber	KEPADA: Pengarah Perancang Negeri (u/p:Pn. Rodziah Hj. Morshidi)
PERKARA: Sila lihat di bawah	SALINAN KPD:
BIL.KAMI: 76/KPPS/T/5-2/91	BIL.TUAN: (62)UPN/S/MI/I/10.2
TARIKH: 6.11.2006	TARIKH: 19.10.2006

Perjumpaan dan Perbincangan Mengenai Permasalahan Kaum Penan di Sungai Asap Serta Long Jaik dan Long Singu, Belaga Dengan SUHAKAM

Surat rasmi tuan seperti yang tersebut di atas dirujuk.

2. Sukacita dimaklumkan tiada isu yang dibangkitkan oleh SUHAKAM berkaitan secara langsung dengan Kementerian ini.

Sekian, Terima Kasih.

"BERSATU BERUSAHA BERBAKTI"


(DATU WAN ALWI DATO SRI WAN HASHIM)
Setiausaha Tetap
Kementerian Perancangan dan Pengurusan Sumber





LEMBAGA SUMBER ASLI DAN PERSEKITARAN (NREB)

27/10 2006 11:25 FAX 312800

NREB

001

**NATURAL RESOURCES AND ENVIRONMENT BOARD**

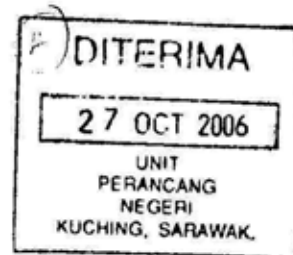
(Lembaga Sumber Asli dan Alam Sekitar)
 18th - 20th Floors, Menara Pelita
 Jalan Tunku Abdul Rahman Yaakub
 Petra Jaya, 93050 Kuching
 Locked Bag No. 2103, Sarawak
 MALAYSIA
 Tel: 082-440504/447488 Fax: 082-312800

319505

Ruj.: (23)NREB/5-1/3.7 (Vol. 1)

27 Oktober 2006

Pengarah
 Unit Perancangan Negeri
 Jabatan Ketua Negeri
 Tingkat 6 & 7, Wisma Bapa Malaysia
 93502 Kuching



Tuan,

**PERJUMPAAN DAN PERBINCANGAN MENGENAI PERMASALAHAN KAUM
 PENAN DI SUNGAI ASAP SERTA LONG JAIK DAN LONG SINGGU, BELAGA
 DENGAN SUHAKAM.**

Surat tuan ruj. (62)UPN/S/MI/I/10.2 bertarikh 19 Oktober 2006 mengenai perkara di atas adalah dirujuk.

2. Seperti yang dikehendaki oleh pihak SUHAKAM melalui surat ruj. SHM(SWK) 004/4/46 Jld 3 (76) bertarikh 16 Oktober 2006, kami majukan bersama ini maklumat mengenai Laporan Penilaian Impak Alam Sekitar bagi "The Proposed Shin Yang Forest Plantation Located Between Batang Belaga and Sg. Murum, Belaga Kapit". Untuk makluman, kebanyakan maklumat yang mereka kehendaki ada terkandung dalam laporan berkenaan yang mana salinan Laporan EIA tersebut telah diperolehi pihak SUHAKAM dari pejabat ini.

3. Sekian, harap maklum.

Terima kasih.

"BERSATU BERUSAHA BERBAKTI"

"Ke Arah Pengurusan Kauliti Alam Sekitar Bersepadu"

(JUSTINE JÖK JAU EMANG)
 b.p. Pem. Controller Kualiti Alam Sekitar
 Sarawak.



Maklumat seperti yang diminta oleh SUHAKAM

a) Syarat-syarat yang terkandung yang perlu menyediakan laporan EIA.

Penanaman hutan (planted forest) merupakan salah satu daripada aktiviti yang disenarai di bawah The Natural Resources and Environment (Prescribed Activities) Order, 1994. Oleh yang demikian, pihak pemaju perlu mengemukakan laporan EIA seperti yang dikehendaki pada Artikel 3 (1) peraturan yang sama di atas.

b) Intipati/kandungan yang perlu ada dalam laporan EIA

Mengikut Artikel 4 The Natural Resources and Environment (Prescribed Activities) Order, 1994, kandungan dan format laporan EIA yang disediakan perlu merangkumi dan mengikut "Second Schedule" seperti yang dilampirkan bersama (Lampiran A).

c) Siapa yang menyediakan laporan EIA bagi Syarikat Shin Yang?

Juruperunding yang menyediakan adalah seperti yang terkandung dalam laporan EIA bagi projek berkenaan.

d) Syarat-syarat untuk menentukan siapa yang boleh menyediakan laporan EIA.

Seperti yang terdapat pada Artikel 3 (1) The Natural Resources and Environment (Prescribed Activities) Order, 1994 kajian EIA hanya boleh dibuat oleh juruperunding-juruperunding yang berdaftar dengan Lembaga ini.

e) Tempoh penghantaran laporan EIA oleh Shin Yang

Antara 3 ke 6 minggu selepas Terms of Reference diluluskan oleh NREB seperti yang dinyatakan oleh juruperunding dalam TOR.

f) Semasa penyediaan laporan, siapa yang harus bertanggungjawab melakukan survei ke kawasan tersebut?

Juruperunding-juruperunding yang dilantik oleh pihak pemaju adalah seperti yang disenarai dalam laporan EIA.

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003

- g) Siapa yang terlibat dalam komuniti untuk meluluskan sesuatu laporan EIA untuk Shin Yang*

Tidak ada. Walau bagaimana pun laporan telah diulas oleh agensi-agensi berkenaan.

- h) Bila tarikh laporan EIA untuk Shin Yang diluluskan?*

28 Januari 2000.

- i) Rekomendasi rekomendasi oleh juruperunding semasa menyediakan laporan EIA untuk Shin Yang.*

Seperti yang terkandung dalam Bab 6 "Mitigation Measures" dalam laporan EIA.

Selain daripada rekomendasi rekomendasi yang disyorkan oleh juruperunding Lembaga ini juga mengenakan syarat-syarat social seperti yang dilampir (Lampiran B).



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NREB

002

Lampiran A

SECOND SCHEDULE

(Articles 2, 3 and 6)

FORM OF REPORT

(Note : Pursuant to Article 3 of the Natural Resources and Environment (Prescribed Activities) Order 1994, (Swk. L.N. 45/94) the report must be prepared by such expert or authority as may be approved by the Board).

I. Title Page

- Title of project which outlines the type of project covered by the study.
- Name and address of project proponent.
- Name and address of preparer of the report.

II. Table of Content

List of Tables
List of Figures
List of Plates
List Consultants
Dates, Sources and Consultation
Executive Summary

III. Main Report

Chapter 1 : Introduction

- 1.1. Title of Project
- 1.2. Project Initiator
- 1.3. Statement of Need
- 1.4. Objectives of Study

Chapter 2 : Project Description

- 2.1. Project Location
- 2.2. Project Size
- 2.3. Project Site Options
- 2.4. Project Concept
- 2.5. Project Schedule
- 2.6. Project Cost-Benefit Analysis

Chapter 3 : Existing Environment

- 3.1. Physical Characteristics of Project Area
 - Geology and Soil Condition
 - Topography and land-use
 - Meteorology
 - Hydrology

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- 3.2. Biological System
 - Flora and Fauna
 - Fishes
 - Habitat and Species
- 3.3. Socio-Economic and Population Characteristics
 - Settlement and Population
 - Economic Characteristics
 - Level of Education
 - Living Standards
 - Public Health
 - People Acceptance of Project

Chapter 4 : Environmental Impacts

- 4.1. Impacts During Preparation and Construction
- 4.2. Impacts During Operations and Maintenance

Chapter 5 : Mitigation and Monitoring

- 5.1. Mitigation Measures
- 5.2. Environmental Management Plan and Monitoring
- 5.3. Abandonment

Chapter 6 : Residual Impacts and Conclusion

- 6.1. Identification of Residual Impact
- 6.2. Recommendation for Management
- 6.3. Conclusion



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Lampiran B

3.2.9 Socio-economic Considerations

- (a) Any NCR land claims should be settled amicably between Shin Yang Forestry Sdn. Bhd. and the claimants.
- (b) Ground survey should be carried out to establish the boundary of each community's or each household's claims to avoid future disputes. Areas to be conceded to the plantation and areas to be preserved must be clearly defined and agreed upon by all the parties concerned.
- (c) Any burial grounds and other sites of significance to the local people found within the plantation site must be protected from disturbance by the plantation development activities.

PEJABAT DAERAH BELAGA

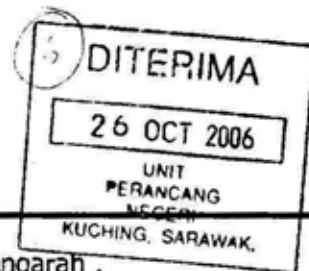


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PEJ-DAERAH BELAGA

001

MEMORANDUM RASMI



G.4
(Pind. 4/85)

DARIPADA: Pegawai Daerah, Belaga	KEPADA: Pengarah, Unit Perancang Negeri, Tingkat 6 & 7, Wisma Bapa Malaysia, Kuching, Sarawak.
SUBJEK: Sila Lihat Di Bawah	SALINAN KPD: Residen, Bahagian Kapit.
RUJ. KAMI: (13)/DOB/209D/vol.3	RUJ. TUAN:
TARIKH: 26 OCT 2006	TARIKH:

**PERJUMPAAN DAN PERBINCANGAN MENGENAI
PERMASALAHAN KAUM PENAN DI SUNGAI ASAP SERTA LONG
JAIK DAN LONG SINGU, BELAGA DENGAN SUHAKAM**

Surat tuan berujukan (62)UPN/S/MI/10.2 bertarikh 19 Oktober 2006 adalah dirujuk.

2. Susulan daripada perbincangan yang disebutkan diatas, pihak Pejabat Daerah Belaga ingin mengemukakan maklumbalas tentang bantuan yang kami beri kepada pelajar - pelajar Penan yang menuntut di beberapa sekolah rendah dan Sekolah Menengah di Daerah Belaga dan bantuan kepada Sukarelawan Desa Penan. Pihak pejabat kami telah mengamalkan pemberian tambang kepada murid murid ini melalui Pengetua atau Guru Besar sekolah - sekolah ini sejak tahun yang lepas. Pihak Pejabat Daerah Belaga juga memberi barang keperluan lain kepada pelajar - pelajar ini seperti pakaian seragam sekolah termasuk kasut, tilam, bantal, tuala, baju sukan, selipar dan sebagainya. Buku - buku latihan sekolah juga dibekalkan kepada pelajar - pelajar di SMK Belaga, Belaga melalui Koperasi sekolah berkenaan.

3. Untuk makluman tuan, peruntukkan untuk pelajar pelajar Penan ini kami terima daripada pihak Unit Perancang Negeri di bawah **Head 41101** berjumlah **RM 100,000.00 setiap tahun**. Kadar pemberian / pembiayaan tambang kepada pelajar - pelajar ini adalah menggunakan kadar yang berbeza mengikut jarak antara kampung dan sekolah. Jadual dibawah adalah kadar tambang yang diberikan kepada pelajar - pelajar sekolah di sekitar **Daerah Belaga**.

Bil	Nama Sekolah	Dari	Destinasi/ Alamat Kampung	Kadar Tambang	Catatan
1	SMK Belaga	SMK Belaga	Lusong Laku , Lg Lidem ,Lg Luar , Lg Wat , Lg Urun ,Lusong Laku ,Lg Tangau Penan Talun , Sg Asap.	RM 160.00 RM 60.00	Pergi dan balik. Jumlah Pelajar : 29 orang
2	SMK Kapit (1)	SMK Kapit (1)	Long Unai	RM 120.00	Pergi dan balik. 5 org pelajar
3	SMK Kapit (2)	SMK Kapit (2)	Long Unai	RM 120.00	Pergi dan balik. 2 org pelajar
4	SMK Bakun	SMK Bakun.	Penan Talun	RM 20.00	Pergi dan balik. Seorang pelajar.
5	SK Long Gang	SK Long Gang	Penan Talun	RM 20.00	Pergi dan balik. 14 org pelajar
6	SK Long Busang	SK Long Busang	Long Unai	RM 40.00	Pergi dan balik. 25 org pelajar.
7	SK Batu Keling	SK Batu Keling	Lg Wat, Uma Lahanan dll.	RM 20.00	Pergi dan balik. 9 orang pelajar

4. Bagi Sukarelawan Desa Penan pula , pihak Unit Perancang Negeri menyalurkan peruntukkan berjumlah **RM 38,000.00** setahun . Peruntukkan ini bertujuan untuk membiayai aktiviti - aktiviti bagi Sukarelawan Desa Penan di Daerah Belaga. Antara aktiviti - aktiviti yang dijalankan adalah Mesyuarat Sukarelawan Desa Penan , Khemah Kerja dan sebagainya. Peruntukkan ini disalurkan dibawah **Head 42699** (Grant and Aid) .

5. Selain daripada peruntukkan ini , 17 orang Sukarelawan Desa Penan juga diperuntukkan gaji berjumlah **RM 441.00** seorang setiap bulan. Untuk Tahun ini , peruntukkan untuk membayar gaji , elaun hidup susah , KWSP dan Bonus berjumlah **RM 124,822.00**. Peruntukkan ini disalurkan di bawah *Head 29301* berjumlah **RM 91,800.00** , *Head 29302* berjumlah **RM 9,180.00** , *Head 29302* berjumlah **RM 16,192.00** dan *Head 29399* berjumlah **RM 7650.00**.

6. Pendek katanya , pihak Unit Perancang Negeri menyalurkan peruntukkan berjumlah **RM 262,822.00** setahun kepada Pejabat Daerah Belaga bagi membantu pelajar - pelajar sekolah dan Sukarelawan Desa Penan di Daerah Belaga.

Sekian, terima kasih.

" BERSATU BERUSAHA BERBAKTI "



(TOM HEM MIJOD)
Pegawai Daerah,
BELAGA.



SARAWAK TIMBER ASSOCIATION (STA)

01/11 2006 09:34 FAX 082332222

S' WAKTIMBERASSOCIATION

001

10



Sarawak Timber Association

11 Floor, Wisma STA
26, Jalan Datuk Abang Abdul Rahim
Kuching 93450, Sarawak, Malaysia

Telephone: ++(60 82) 332 222
Fax: ++(60 82) 487 888, 487 999
E-mail: sta@sta.org.my

Fax Message

Our Ref: STA/07/01 - 5 &
STA/09/14 - 5

Date: 31 October 2006

Your Ref: (62)UPN/S/MI/1/10.2

Fax no: 082-449481

Total no. of Page(s): 1

To: State Planning Unit
Attention: Pn Mareia Hasan

Subject: Feedback: Meeting & Discussion with SUHAKAM regarding the Problems Facing the Penan in Sungai Asap, Long Jaik and Long Singu, Belaga

Dear Pn Mareia

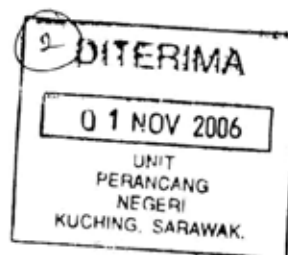
As expressed during the meeting with SUHAKAM on 13 September 2006 in Hilton Hotel, STA is willing to work with any government agencies for the betterment of the Penan communities in Sungai Asap, Long Jaik and Long Singu. Kindly let us know how we may be of assistance.

With regards to the employment of Penan workers, we can encourage our members to provide these employment opportunities if and when the Penans convey their interest to work in our members' operations.

Thank you.

Yours sincerely

DR LEE HUA SENG
Chief Executive Officer



End



UNIT PERANCANG NEGERI

PREVIEW OF PENAN IN SARAWAK



**PREPARED BY:
STATE PLANNING UNIT
17.10.2006**



1. INTRODUCTION

The population of the Penan in Sarawak is estimated 15,485 for the year 2006 and mostly found in the interiors of the Baram, Miri, Bintulu, Limbang, and Belaga Districts. **Table 1** and **Figure 1.1-1.3** show the distribution of Penan in Sarawak.

Table 1: Penan Population Distribution

1	Miri	Baram	69	9,223
		Miri (Suai-Niah)	5	1,637
2	Bintulu	Bintulu	8	1,187
3	Limbang	Limbang	10	397
4	Kapit	Belaga	20	3,041

Source: Miri, Kapit, Limbang and Bintulu Resident and District Office. 2006

Traditionally, the Penan were nomadic people, however a large majority of them have settled. The first few groups to settle were those in Suai and Niah area in Miri District, the Lower Tinjar in Baram District, and those in Bintulu District. The groups in Suai and Niah settled in the first quarter of the 19th century while the rest in the mid 19th century. Now they settled in five kampungs with the total population of 1,637. Many of them had converted to Muslim and adopted a Malay Kampung style of living while some converted to other faiths such as Christian. These early groups of settlers have a long history of cash crop cultivation and participation in the cash economy, especially oil palm plantation. While many of them joined the Native Customary Right Land Development Programme, there are also others developing oil palm smallholdings on their own.

In the 1950's and 1960's most of the Penan in Baram District adopted the settled life. Those in Belaga and Limbang Districts settled around the late 1960's and early 1970's. Being recent settlers, they are still in the process of learning how to grow their own food crops.

Only a small number of Penan remain nomadic. According to information by Miri Resident Office in 2006, a total of 9 small groups and estimated about 458 Penan are nomadic, scattered in the headwaters of Tutoh and Magoh river systems of the Baram District, Miri Division.

1.1 Sub-Grouping Of The Penan

The Penan are divided into what Needham (1972) identified as the Eastern Penan, who are confined to the Baram and Limbang watersheds, and the Western Penan, who are found in the Rejang watershed, and the Silat River in Baram District. The two divisions of Penan are closely related to each other and speak the same language with minor variations in dialect. There are some significant differences between the two divisions, but broadly speaking their ways of life are very similar.

Nonetheless, based on certain characteristics, the Penan could be further divided into about 26 sub-groups. **Table 2** indicates the distribution of these sub-grouping.

Table 2: Penan Sub-Grouping

Linau	Belaga	Linau	5	0	698	0
Danum	Belaga	Danum	2	0	286	0
Seping	Belaga	Seping	2	0	225	0
Plieran	Belaga	Peliran	4	0	682	0
Urun	Belaga	Belaga	5	0	602	0
Sg. Asap	Belaga	Sg. Asap	2	0	206	0
Lower Tinjar	Baram	Tinjar	5	0	755	0
Upper Tinjar	Baram	Tinjar	5	0	510	0
Pelutan	Baram	Pelutan	3	0	467	0
Lower Akah	Baram	Akah	2	0	419	0
Silat	Baram	Silat	4	0	676	0
Selaan	Baram	Selaan	1	1	150	234
Selungo	Baram	Selungo	3	0	471	0
Upper Baram	Baram	Baram	2	1	680	85
Upper Akah	Baram	Akah	2	4	205	621
Lower Akah	Baram	Akah	2	0	419	0
Patah	Baram	Patah	4	2	324	228
Apoh	Baram	Apoh	2	0	331	0
Lower Apoh	Baram	Apoh	2	0	456	0



Layun	Baram	Layun	5	0	706	0
Mulu	Baram	Melinau	2	0	449	0
Magoh	Baram	Magoh	3	5	229	273
Kebaan	Baram	Kebaan	1	2	45	181
Pa Kelapang	Baram	Kelapang	1	0	81	0
Medihit	Limbang	Limbang	0	5	0	222
Adang	Limbang	Adang	0	5	0	145

Source: R&DO Limbang, Miri and Kapit, 2002

Note: Classification based on Jayl Langup, MAIS, 2002

1.2 Neighbouring Communities

To a certain extent, the Penan are in contact with the other more advance native of Sarawak, particularly the other ethnic of the Orang Ulu communities. These contact while would help in providing the lead role for the assimilation of the Penan within the overall Sarawak socio-economic advancement, nonetheless it has also caused some socialization conflicts to the Penan, the most critical among them are:

- (a) Due to their backwardness in the farming system, their roaming and farming land had been subjected to encroachment and counter claim with the more advance communities. These had given rise to the semi-permanent nature of their settlements and farming system;
- (b) Socialization among these communities is constraint by the fact that the Penan are more in disadvantage position, thus the issue with relate to inferiority and superiority complex arise especially among the Penan school going students, which to some extent had caused serious school drop-out among them.

Table 3 provides the overall number of other native communities distribution found within 5-10 kilometre radius from the Penan settlements.

Table 3 : Major Penan Neighbourhood Communities

Linau	Belaga	5	698	0	0
Danum	Belaga	2	286	0	0
Seping	Belaga	2	225	0	0
Peliran	Belaga	4	682	0	0
Urun	Belaga	5	602	1	115
Sg. Asap	Belaga	2	206	13	8,976
Lower Tinjar	Baram	5	755	6	778
Upper Tinjar	Baram	5	510	2	226
Pelutan	Baram	3	467	2	394
Lower Akah	Baram	2	419	3	536
Silat	Baram	4	676	3	1,724
Selaan	Baram	2	384	6	1,770
Selungo	Baram	3	471	1	364
Upper Baram	Baram	3	765	4	955
Upper Akah	Baram	6	826	1	247
Lower Akah	Baram	2	419	3	536
Patah	Baram	6	552	0	0
Lower Apoh	Baram	2	456	5	5,064
Layun	Baram	5	706	0	0
Mulu	Baram	2	449	0	0
Apoh	Baram	2	331	0	0
Magoh	Baram	8	502	0	0
Kebaan	Baram	3	226	0	0
Pa Kelapang	Baram	1	81	0	0
Medihit	Limbang	5	222	3	769
Adang	Limbang	5	145	0	0

Source: R&DO Limbang, Miri and Kapit, 2002



2. SOCIO-ECONOMIC BACKGROUND

The overall socio-economic condition of the Community is considered far below average. Comparatively they are very much lagging in term of income, living standard, educational attainment, skill development, health, and leadership structure. The Community socio-economic well-being could be considered very basic and simple, as they are very much dependent on natural resources in their surroundings to support their livelihood. They are very poor in terms of material possession such as farming and carpentry tools, which are basic requirements for people living in the rural.

Nonetheless, through endless effort by the Medical & Health Department, the general health of the Penan has improved tremendously due to the existence of rural clinics in a few Penan settlements, regular visits of the flying doctor and mobile clinic services and other programs.

Communication between Penan settlements and the urban areas has been much improved, as a result of logging roads construction by the timber companies. The Penan are now much more familiar with life outside the boundary of their villages, and with the tremendous change in the modern world.

3. PENAN SPECIALTY

Being one of the many native tribes of Borneo and Sarawak in particular, the Penan are also inherit peculiarity in terms of culture, traditions and arts.

3.1 Handycraft Specialty

The Penan are also equally good in the production of rattan baskets, such as: *gaweng*, *serut*, *serut anya*; rattan mat (*mak*); rattan bracelets such as *jong*, *selungan* and *jong talem* (bracelet made from rattan and beads); *ameng* (bead necklace); *kivah* (rattan basket known as selabit in Iban which are popular with local visitors); *keleput* (miniature blowpipe); *tuang* (laddle); *atip* (Penan chop stick); musical instruments, e.g. nose flute, jaw's harp, bamboo zither etc; woven rattan coaster (*anak mak*); and rattan ring (*selegam wai*). At the moment the Penan of Batu Bungan and Long Iman are actively involved in selling handicrafts to tourists.

Blacksmithing is another source of income for some Penan groups and should be encouraged to continue and given further improvement.

3.2 Ethno-Botanical Significant

In view of their nature-based way of life, which basically very much dependent on the natural products of the rain forest, the Community understanding of the botanical significance of local bio-diversity is of great advantage both to the Community and the State. Their ethno-botanical skill could serve as the based-line knowledge for the advancement of the State bio-diversity and bio-technological development and exploration: the new economic frontier.

4. CURRENT PENAN DEVELOPMENT PLANS

The State of Sarawak has formed a **State Committee on Penan Affairs** in 1987 under the Chairmanship of a Cabinet Minister. The main objectives of the Committee are:

- ♦ *to formulate policies, prepare and implement development plans for the Penan Community; and*
- ♦ *to assist the newly settled Penan community in adjusting to settled lifestyle and to assimilate into the mainstream society so that they can participate meaningfully in the development process of the State.*

This committee is assisted by the **Divisional Committee on Penan Affairs at Miri, Limbang and Kapit**, respectively. These committees are headed by the respective Resident of that Division and their responsibilities are, among others:

- ♦ *To compile, study, screen and prioritise development proposals submitted by District Offices and make recommendations to the State Committee; and*
- ♦ *To supervise and monitor activities of District Committees and to work closely with the Divisional Development Committee.*

Under the **State Penan Affairs Committee**, various programs had been formulated and executed for the development of the Penan, among others, they are:

4.1 Penan Volunteer Corps

Penan Volunteer Corps was established primarily to assist the nomadic Penan to adopt the settled lifestyle, as well as to help them to adjust to socio-economic change and environment. The volunteers were recruited from the Penan youth and were given short training in basic knowledge and skills in agriculture, personal and community health care, and adult education. This is to instill the spirit of self-reliance and a sense of responsibility to their community and the country, which will help to speed up government efforts to bring them into the mainstream of development.



Table 4 below shows the number and distribution of the Penan Volunteers in the settlements.

Table 4: Penan Volunteer Distribution

Belaga	15	2	17
Baram	27	10	37
Limbang	0	1	1

4.2 Service Center

The purpose of the Penan Service Center Program is to provide a more effective basic services and facilities to the community such as education, medical and health services and agriculture extension service to groups of Penan longhouses located close to each other. At the same time these service centers will evolve as the nuclei or focal point for a bigger and holistic development of the community. At the moment, four service centers have been implemented. **Table 5** shows the status of facilities and services provided by the existing centers.

Table 5: Service Center Support Services and Utilities Development

Long Kevok, Baram	2	1	Pipe	School Only	None	1	1
Batu Bungan, Baram	1	1	Pipe	School Only	None	1	1
Long Jekitan, Baram	2	1	Pipe	School Only	None	0	1
Lusong Laku, Belaga	2	1	Gravity Feed	None	None	1	1

4.3 Educational Service and Performance

The government has continuously extended various forms of educational assistance to the Penan community like material assistance such as school uniforms, school bags, books, transportation etc. In 2005, there were about 2,682 Penan students in Sarawak (Primary and Secondary Schools) as shown. **Table 6** shows the Penan Students Population (Primary and Secondary) by Districts.

Table 6: Penan Students Population Distribution (By Districts)

Baram	6 schools	562	100% Penan students
	22 schools	715	Mixed
Miri	11 schools	201	Mixed
Limbang	3 schools	105	Mixed
Belaga	7 schools	565	Mixed
Bintulu	5 schools	54	Mixed

Source: Miri, Bintulu, Kapit and Limbang Education Department, 2005

In terms of higher education, twelve (12) Penan students had obtained their Bachelor degrees from overseas such as Drexel University in USA and local universities such as Universiti Malaya, Universiti Utara Malaysia, Universiti Kebangsaan Malaysia and UNIMAS. At present, five (5) Penan students are still pursuing their Bachelor degree in the local universities, while two (2) had obtained their Diplomas while another six (6) still pursuing their diplomas in local colleges.

4.4 Health and Medical Services

Some of the Penan settlements, which have no access to the nearby health clinics, are depending on the service of Flying Doctors covered by the Flying Doctor and Mobile Clinic services. This service is still much needed by the community at large due to the nature of communication and transportation problems in the areas.

Besides this, the Medical and Health Department also introduced the *Wakil Kesihatan Kampung* programme. Under this programme a number of young Penan men and women were trained in basic first aid and medical care so that they can provide a basic, proper and correct medical aids and attention to their folks in time of need.



4.5 Agriculture Extension Services

Previously, the service provided by Department of Agriculture (DOA) is limited to food production and extension service through the normal subsidies. The department has taken the effort to instill the interest in settled agriculture and food production among the Penan by organizing pilot project, which involved the community members.

Table 7(a), 7(b) and 7(c) below shows the normal subsidies provided by DOA in Baram, Limbang and Belaga districts.

Table 7(a): Agriculture Development Project for Penan in Baram Area

1	Vegetables	17	11,900	22	18,700	27	17,400	32	18,450
2	Maize	17	13,400	22	13,800	27	11,350	32	12,950
3	Hill Padi	17	17,400	21	28,900	25	43,400	30	38,300
4	Fruit Trees	4	8,000	8	9,600	5	11,000	6	7,500
5	FMDP	0	0	1	4,000	1	2,500	1	2,500
6	Wet Padi	0	0	2	20,000	2	4,000	2	2,500
7	Fisheries	0	0	1	2,000	3	5,000	0	0
8	Livestock (Poultry)	3	8,100	5	13,200	4	7,000	2	4,800
9	In-Situ/ Course	1	2,000	6	9,500	7	12,850	11	14,000
10	Perennial	0	0	1	300	0	0	0	0
11	Farm Unit	0	0	0	0	1	1,500	1	1,000

Table 7(b): Agriculture Commercial Project for Penan in Limbang Area

1	Pepper & spice development program			3	100,000				
2	Vegetables Open Planting System			1	13,500	1	13,500	1	4,050
3	Perennial					1	25,000		
4	Fruit Orchard	1	110,000						

Table 7(c): Agriculture Project for Penan in Belaga Area, Kapit

1	Farm Unit – maize seed, long been seed, chai sim seed and pumpkin seed Farm Unit	19	5,000

Source: Baram, Limbang and Belaga Agriculture Department, 2005

4.6 Penan Affairs Allocations

State government had allocated few types of assistances and aids specifically to the Penan community such as allowance for the Penan Volunteers Corps, scholarship and other grants and aids annually.

From 2002 to 2006 the state government has allocated a total amount of RM 4,120,097 for the purpose of providing schooling materials and transportation for the students, transportation and allowance for the volunteers and other welfare assistance.

5. NINTH MALAYSIAN PLAN (9MP)

Pending approval from Economic Planning Unit.



ANNEXURE 8

Response from Shin Yang Forestry Sdn. Bhd.



昇陽有限公司
SHIN YANG SDN. BHD. (97365-T)



MS ISO 9001:2000 REG NO. AR2821

Head Office : Lot 515, Jalan Daruk Edward Jeli, Piasau Industrial Estate, P. O. Box 1599, 98108 Miri, Sarawak.
 Tel: 085-656699 (30 Lines) Fax: 085-656698 E-mail: shinyang@shinyang.com.my
Kuching : Lot 133, Lorong Simen Raya 2, Jalan Simen Raya, Pending Industrial Estate, 53450 Kuching, Sarawak.
 P. O. Box A1299, Kenyalang Post Office, 93824 Kuching, Sarawak. Tel: 082-349899, 346899 Fax: 082-335899
Sibu : Lot 53774, Jalan Pangkalan Feri, Upper Lanang, P. O. Box 418, 96007 Sibu, Sarawak. Tel: 084-213399 Fax: 084-212299
Bintulu : Lot 1624, Sg. Nyigu, P. O. Box 1069, 97008 Bintulu, Sarawak. Tel: 086-333363 Fax: 086-332779

Our ref: LCS/11/db/sysb/shm(swk)/Vol.1/06/1

30th October 2006

Your ref: SHM (SWK) 004/4/46 Jld 3 (85)

Human Rights Commission of Malaysia
 No. 194, Lot 456-457
 3rd Floor Al-Idrus, Commercial Centre
 Jalan Satok
 93400 Kuching

By fax : 082-254937
 & Nationwide Exp: 90661570

Attn : Enclik Sophian Bin Osman

Dear Sir,

Re: **Laporan Bertulis Mengenai Isu Yang Dibangkitkan Di Long Jaik Dan Singu Serta Sungai Asap Pada 12 Oktober 2006**

We refer to your letter dated 16th October 2006.

We thank you for your visit to our office on 12th October 2006. In response to your follow-up queries, we append the following:-

- (a) the relevant Map have been submitted to the Forests Department;
- (b) please refer the conditions of the License from the Forest Department as they are the Issuing Authority;
- (c)
 - (i) our company has compensated the natives in the area including compensation for their Pemali. Our company has also take care of their welfare including medical and especially during festive season eg. Christmas where we provide rice, food, drinks, other essentials like sugar and salt.
 - (ii) Our company also give aid, both financial and others including transportation during any of their funerals. Most times, we would also purchase coffins for the Penan community and other necessities for such occasions.
 - (iii) Our company also pay fixed salary on a monthly basis to the Ketua Kampung and JKKK Kampung (at least 6 Penans). We have also expended on infrastructure for the Penans in the region eg construction and installation of watertank, pipe lines, roads & access to the Kampung and Schools.



昇陽有限公司
SHIN YANG SDN. BHD. (971565-T)



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Sibu : Lot 53774, Jalan Pangkalan Feri, Upper Lanang, P. O. Box 418, 96007 Sibu, Sarawak. Tel: 084-213399 Fax: 084-212299
Bintulu : Lot 1624, Sg. Nyigu, P. O. Box 1069, 97008 Bintulu, Sarawak. Tel: 086-333353 Fax: 086-332779

- (iv) We also supply and provide generator, including fuel and petrol for them. When they wish to build their houses or longhouses, we would provide the community with building materials like zinc, wood and transportation to carry their materials.
- (d) Our company policy on the Penan community is that we have given employment opportunities and will continue to give them such opportunities. Further, as far as possible, we also look into their welfare by providing them with aid.

Thank you.

Yours faithfully,

Ling Chiong Sing
for an on behalf of Datuk Ling Chiong Ho
Executive Chairman



ANNEXURE 9

Response from the Consultant for the Environmental Impact Assessment (EIA) Report for the Proposed Shin Yang Forest Plantation located between Batang Belaga and Sg. Murum, Belaga, Kapit, Sarawak

0-11-00,12-12



JB AGRICULTURE MANAGEMENT SERVICES

Lot 621 Bintulu Light Industrial Estate, Jalan Sultan Iskandar
P. O. Box 1313, 97008 Bintulu, Sarawak, Malaysia
Tel: 019-8852679

Our Ref: AMS/EIA/710
Date: 09 November 2006

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

(Attn: En Sophian Bin Osman)

Tuan,

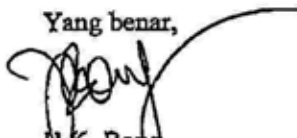
Maklumat Mengenai Environmental Impact Assessment untuk Syarikat Shin Yang Forest Plantation di Batang elaga dan Sungai Murum di Belaga, Kapit

Dengan hormatnya perkara di atas adalah dirujuk.

Saya sertakan bersama ini maklumbalas yang disediakan oleh Dr Joseph Bong sebagai Consultant bagi Laporan EIA berkenaan. EIA berkenaan disediakan pada Januari 2000. Maklumbalas adalah khusus untuk pertanyaan: *Metodologi yang digunakan oleh pihak jururunding (consultant) dalam menulis laporan EIA sama ada mengambil kira mengenai penduduk Orang Asli (indigenous people) di kawasan tersebut sebelum sebarang projek dilakukan oleh pihak syarikat.*

Sekian, untuk makluman tuan.

Yang benar,



N.K. Bong
Manager



Maklumat Mengenai Environmental Impact Assessment untuk Syarikat Shin Yang Forest Plantation di Batang elaga dan Sungai Murum di Belaga, Kapit

Maklumbalas mengenai:

a. Metodologi yang digunakan oleh pihak jururunding (consultant) dalam menulis laporan EIA sama ada mengambil kira mengenai penduduk Orang Asli (indigenous people) di kawasan tersebut sebelum sebarang projek dilakukan oleh pihak syarikat.

Maklumbalas:

Methodology on Social Survey

The guidelines issued by the Natural Resources and Environment Board Sarawak (NREB) on preparation of the EIA were adhered to during the preparation of the EIA. A preliminary visit to the site was done to prepare a Terms of Reference on the EIA report. The TOR was presented to the NREB Panel in a special meeting in Kuching where methodologies and requirements as well as schedule of work for the EIA were discussed in details, and where necessary the TOR will be modified taking into account comments and suggestion from the Panel. Special emphasis was always given to the social environment, and possible impacts to the people, if any, residing in or very near the proposed project site. It was only after the approval of the TOR that works on the preparation of the EIA could be carried.

In this particular case, the standard procedure of social survey (field visits, interviews, socio-economic data collection) was carried out in late 1999. During field work, we visited the site, going through dangerous logging tracts and tried to locate if any people were living within the project site. At the time of the field work, active logging was being carried out in the area. We have surveyed the area and found no local human habitation within the site (except for the logging workers). The logging people also confirmed there was no existing human habitation within the project area. However, we did notice one small area along Sg Jaik in T/3180 (near the central east of the site) which had some banana and bamboo bushes indicating previous short term occupation of the area. We made enquiries with the logging people and was told that the nomadic Punan had briefly settled in the area before. At the time of field work, we could not locate this group of punan who had probably moved on to somewhere else long ago. The local workers had no idea as to their whereabouts. We took note of this and recorded it in the EIA report and informed the proponent about this so that the area could be left as it was.

There was however a 15-door Kenyah longhouse at lower Sg Belepeh (near the site boundary) which had been abandoned quite long ago. It was built earlier probably taking advantage of the logging activities then. When logging was over for the area, the people were believed to have moved to Sg Asap resettlement. There was no other activities near the abandoned longhouse then. There was no claims arising from this case.

As a result, the EIA report submitted in January 2000 to NREB recorded that they was no existing local human habitation within the project area. The case of the remnant of a brief settlement by the Punan near Sg Jaik was noted in the report, although there was no where to confirm the whereabouts of the Punan group then. In the section on

mitigation measures, the EIA specified that local people (in and around the project area) should be given the priority for any suitable jobs within the plantation upon development of the project and that incentives should be given to attract locals to work in the plantation.

The EIA was submitted to NREB in early January 2000. It was reviewed by an EIA Panel involving representatives from the relevant government departments and Ministries, and subsequently approved without amendments.

Present Status of the Punan nomads

The group of Punan returned to their previous brief settlement at Sg Jaik several years ago and settled down. Their land and areas were not disturbed by the plantation development. The plantation upon knowing of their return, had tried to help them and tried to settle any disputes or differences amicably. These locals were given jobs in the nearby nursery operated by the plantation. At the moment about 25 of the Punans were working in the nursery which was less technical and suited them. Transports were provided for them to go to Sg Assap when needed. The management had tried to accommodate to the needs of these settlers. In fact the management had decided not to develop the area in and around the settlement site so that the Punan people were comfortable with their living environment.

Dr. Joseph Bong
Plantation Consultant
For JB Agriculture management Services