

APPEAL BY THE ORANG ULU NATIVES  
TO PROTECT THEIR LANDS,  
FORESTS AND RESOURCES

SUMMARY OF A MEMORANDUM BY SAHABAT ALAM MALAYSIA appealing to the Federal and State Governments of Malaysia and Sarawak to protect the lands, forests and resources of the Natives of Sarawak.

In recent weeks, newspaper reports have highlighted the protests of the *orang ulu* native peoples against logging companies in various areas in Sarawak. The *orang ulu* peoples belonging to the Penan, Kenyah, Kayan, and Kelabit communities in the Baram and the Limbang have been staging blockades and holding out at various sites along logging roads to prevent the logging companies from entering their lands.

This memorandum seeks to explain the problems confronted by the *orang ulu* communities, their plight and why they have resorted to blockades. It also attempts to offer some suggestions to alleviate the plight and suffering of these remote rural communities whose livelihood and survival are being severely threatened by logging activities.

1. Land and forests: an important economic, social and cultural heritage

To the *orang ulu* native peoples, the land and forests are their most important economic resource and the relationship between land and the community has been the cornerstone of *orang ulu* society. Land provided them with food and other materials to satisfy their basic needs. It has deep significance in the spiritual life of the people since it held their ancestral graves, and was a link between present and past generations. This reverence for the land meant that it could not be bought or sold. This principle was enshrined in *adat* 'law' which has legal, moral and religious aspects. Under *adat* or customary law, the concept of private ownership of land did not exist. Customary land tenure provided and entitled anyone who cultivated the land with rights to the use of the land.

Under the Sarawak Land Code (Sarawak Cap. 81), this customary right to land practised by the natives is recognised and enshrined as a basic principle. Customary rights to tenure under Part II Section 5(2) of the Land Code can be created by any of the six methods listed below:

- i) the felling of virgin jungle and the occupation of the land thereby cleared;
- ii) the planting of land with fruit trees;
- iii) the occupation or cultivation of land;
- iv) the use of land for a burial ground or shrine;
- v) the use of land of any class for rights of way; or
- vi) any other lawful method.

The *orang ulu* peoples' existence are intricately linked to the forest ecosystem. They depend entirely on the forest and its resources for their daily subsistence. They obtain wood for their homes, boats, farm implements and tools; they obtain food and medicines from the wildlife and plant life in the forests and jungle produce for which they sell to traders in exchange for cloth, salt and cash. Thus, the viability and sustainability of the forest ecosystem is imperative to their survival and existence. When the forest ecosystem is destroyed, when they are deprived of their lands and forest resources, so will their very survival be threatened. Destruction of the forest habitat means death for them.

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## 2. Destruction of forest and land by the timber industry

In the past 23 years, between 1963 and 1985, a total of 2.8 million hectares or 28,217 sq. km. of forests were logged. This is equivalent to 30% of the total estimated area in Sarawak which is 95,232 sq. km. In 1985, 270,000 hectares or 2,700 sq. km. of forests were logged. This was equivalent to 2.8% of Sarawak's forest area. Should logging continue at this rate, another 20% of Sarawak's forests will be logged in the next ten years. We can see from these estimates what a devastating effect logging has had on Sarawak's forests.

### 2.1 Damage to forests from logging roads

Road building in the forest has also caused heavy damage. In Sarawak, there are hundreds of miles of logging roads, snig tracks and spur roads in the forests which have resulted in severe soil erosion. According to the World Wildlife Fund (WWF), logging of hill forests clears about 12% of the total forest area for roads, landings and trails.

### 2.2 Adverse impact of logging on soil and water retention

The most pervasive effects of logging in hilly terrain is the reduced water-holding capacity of the land and increased erosion from rain.

Many plant and animal species, at all levels of the food web are affected or destroyed as a result. Rural communities are deprived of sources of clean water. Reduced catches of fish and shellfish which is their chief source of dietary protein results from turbid river waters. The quality of rural life suffers as is happening in Belaga in the Seventh Division. In the Tutoh and Tinjar areas of the Fourth Division, the river water is permanently turbid now. It is further most disturbing to note that many important water-catchments like the tributaries of the Rejang and the Baram are located in areas where logging activities are carried out.

### 2.3 Adverse impact of logging on wildlife

The major source of protein for the *orang ulu* communities is the wildlife and fish life that they hunt from the forest and its waters. It has been estimated that one million wild pigs, 23,000 *rusa*, 31,000 *kijang* in addition to other species of wildlife are harvested annually by the rural communities in Sarawak. The value of wild pig meat and venison has been estimated at \$210 million every year. It would take more than \$320 million to replace this source of protein with domestic pork and beef. This goes to show that apart from the important dietary contribution of wildlife to the people, its economic value should not be underestimated. Medical research has also shown that declining meat supply is associated with reduced meat consumption and this has been attributed partly to the chronic under-nutrition and growth stunting reported in various cases in the interior regions of Sarawak. Thus, the effects of logging activities on wildlife has very serious implications for the ecology, economy and health of the forest peoples.

## 3. Native appeals to the authorities go unheeded

Ever since the timber companies operated in their areas, the *orang ulu* communities have made repeated appeals to the timber companies and State authorities to help them in their distress. They have complained that logging activities have damaged their farmlands, their water resources, their sacred ancestral burial grounds, their fruit trees and other

forest resources. Wildlife has disappeared and fish has become scarce while their children have fallen ill consuming water and streams which have become contaminated.

In many instances, no compensation has been paid for the damages inflicted to their lands, water resources and forest resources. They have written numerous letters appealing to the Chief Minister, the Forest Department, the State Secretary, the Resident, the District Officer and even their elected representatives to intervene on their behalf. They have even lodged police reports regarding damages to their property. In many cases, these have been callously ignored. They have travelled at great expense, all the way to the Divisional Headquarters in Miri and Limbang to see the Resident but to no avail.

#### 4. Damage to their forests, farmlands and property

Under the present land laws, their customary rights to land is recognised and enshrined as a basic right. However, logging activities by timber companies have damaged their farmlands (customary lands) with impunity. In many cases, no compensation has been paid for the damage to their lands, water resources, forest resources and other property. Forest concessions have been given in lands which traditionally fall within their *sempadan* (village boundary) without their knowledge. The bitter truth is brought home to them when they see bulldozers and tractors levelling their farms, opening roads through their property and polluting their waters.

#### 5. Application for Communal Forests rejected

The *orang ulu* communities have been applying for Communal Forest Reserves to enable them to obtain their basic necessities from the forests which is their only source of survival. Again, these requests have been ignored or turned down. Increasingly, with the forest all around them being destroyed by logging activities, they find it very hard to live and survive.

Since 1968, the area under Communal Forest had shrunk from 303 sq. km. to only 56 sq. km. in 1984. In the space of a few years, the Communal Forests have been drastically reduced by 82%, thus depriving the *ulu* communities from having access to forest produce in the vicinity of their communities.

To our knowledge, 18 communities in the Limbang and Baram areas have applied for Communal Forest Reserves and none of them have been approved. This clearly reflects the negative stance towards the *orang ulu* communities in their application for Communal Forests (a right upheld in the Sarawak Forest Ordinance). Yet, the same forest are often given over to timber companies.

#### 6. Forest concessions in Sarawak

As at 31 December 1984 (the latest statistics available), 5,752,996 hectares of forested area were currently under concession. This means that the total area currently under concession was 60% of Sarawak's total forest area. In other words, three-fifths of Sarawak's forest was then currently licensed out for logging. The situation is most serious in the Fourth Division where out of a total of 34,017 sq. km. of forest, 24,579 sq. km. or 72% had been given out for logging in 1984.

All these concessions worth billions of dollars are owned by prominent politicians and individuals in the State. Recently, the Chief Minister revealed at a press conference that he had frozen 25 timber concessions worth some \$22.5 billion. The total size of these concessions was 3 million acres (1.25 million hectares). The Chief Minister said that the concessions were 'concentrated in the hands of a few'. The

newspaper report also revealed that the concessions were given to relatives and friends of the former Chief Minister, Tun Rahman, as political favours. In retaliation, Tun Rahman revealed to the press names of prominent politicians, their relatives and associates connected to Datuk Taib with timber concessions.

This goes to show how biased State Policy has been to the *orang ulu* communities in their appeal for Communal Forest Reserves for their community's survival and well-being.

#### 7. Native rights to survival endangered by official indifference

These defenceless and unlettered peoples have no one to turn to. Surrounded by timber concessions which are increasingly encroaching into their forests and lands, they feel trapped and endangered. On top of this, because of the indifferent official policy towards their plight and their problems, the *orang ulu* communities feel abandoned and forgotten.

As more and more of their forest resources disappear and are destroyed by the loggers, their future survival looks very bleak indeed. In recent years, ever since the timber companies entered their lands, their material existence has greatly deteriorated. There is no more forest materials to build their homes with, and their protein consumption has dropped to almost zero because wild game and edible plants have disappeared. Studies have shown that malnutrition rates are very high among the children from the *orang ulu* communities.

There is a feeling of betrayal and disillusionment with the Government which has not given sufficient attention to their problems. This has also engendered a deep sense of insecurity for their own future and their children's future survival.

#### 8. Backlog of cases further frustrate attempts by the *orang ulu* communities to seek justice from the courts

Government apathy towards their problems is compounded by the fact that recourse to the courts of law is also not forthcoming because of the immense backlog of cases pending in the courts.

At present, natives have taken four land disputes against the logging companies to the High Court in Miri. However, with the critical backlog of cases pending in the Miri High Court, it would take the native litigants some twelve years before their cases will finally be heard. By then, there will be no more forests, waters and farmlands left, as they would have all fallen under the might of the chainsaws and bulldozers.

#### 9. Why natives have staged blockades

These poor, helpless people have been arrested, intimidated and harassed by the police when they tried to defend their rights and protect their land. Further, the painful knowledge that any recourse to the law to redress the injustice committed against them will be frustrated simply because of the backlog of cases, does not offer them any hope.

Meanwhile, the wanton destruction of their forests and their lands continue unabated every day. This will ultimately lead to the destruction of their livelihood and their way of life.

They have to defend themselves or else perish under the combined onslaught of the timber companies and the apathy of the Government. That is why they have made blockades together with their women and children in a bid to protect themselves and their children and to ensure their very survival.

#### 10. Police bias against the natives

However, when natives block the logging roads to protect further damage to their lands and forests, whole platoons of the para military, heavily-armed appear on the scene. This intimidation of innocent farmers will not provide any long-term solutions to the problem. In the case of the Penan, heavily-armed troops enter the settlements to frighten innocent women and children with their intimidating presence. These *orang ulu* communities are merely defending their property and their right to live. Even the law recognises this right.

In negotiations between the natives and the timber companies, the para military and senior police officers who appear on the scene have always taken the side of the companies. Surely this is in itself a gross abuse of authority and travesty of justice?

#### 11. Native demands to the Government

The *orang ulu* people are very loyal, peace-loving and law-abiding citizens. By tradition, they have always considered the Government as a benevolent father who looks after the needs of his children. However, this trust and confidence has been shattered and they see the only hope left is to help themselves. They do not want to confront the 'law', get arrested or go to jail. It is through sheer desperation to protect their property and defend their rights that they have resorted to blockades because official assistance has not been forthcoming.

They are not 'wild', 'primitive' or 'uncivilised'. They just want to live their way of life in peace without any disturbance. They want to be justly heard and taken into account. Their demands are that:

- i) The forest ecosystem, its resources and watersheds should be protected and preserved. The forest has been regarded mainly in terms of its commercial value as an abundant supplier of raw materials for export. This thinking should change. The forest is and should be regarded as a renewable resource, which is held in perpetuity by the Government for the good and welfare of its people.
- ii) If the current rate of logging continues, less than half of the forests of Sarawak will be left in ten years from now. Logging operations in and around their areas should be stopped immediately.
- iii) All timber concessions which have not started operating should be cancelled. The Chief Minister has recently frozen 25 timber concessions worth some \$22.5 billion, covering some 3 million acres of land. This is laudable move. The Chief Minister should now revoke or withdraw all timber licences covering their areas and immediate vicinity. As he had said, these concessions only enrich a few people in the State. Hence, the State's resources should be equitably and fairly shared by the peoples of Sarawak. In this respect, the *orang ulu* peoples should be given back the forests and their lands which is their only means of survival and livelihood and which had been unjustly taken away from them.
- iv) The *orang ulu* native peoples want legal protection of their rights to their lands, forests, waters and resources in it. These rights must be recognised and publicly declared, guaranteed by the law and strictly enforced. Due protection to natives to prevent further erosion of their communal and customary lands from timber exploitation must be provided immediately. Timber concessionaires should be prosecuted for the wanton destruction of lands, water catchment areas, river systems, forest environment, farmlands, communal property, and causing hardship to natives with their roads, bridges, and timber camps, thus depriving them of a

livelihood. Existing laws and constitutional remedies should be effectively used and enforced against the misdeeds of loggers and to give ample protection to swidden cultivators and forest dwellers like the Penan.

- v) The special position of customary land tenure and the need for its protection should be recognised. Under the present land laws, native customary lands can be extinguished without natives even realising it. On top of this, adequate compensation for the loss of their lands is often denied. There is, thus, no real security of tenure for natives who practise customary rights. *Adat* law should not be integrated or unified with municipal law. It should instead be given constitutional protection. Those sections of the land (and forest) laws which deny natives the right of control and ownership of their property should be reviewed and removed if possible.
- vi) The welfare and interests of the natives who depend on the forests and its resources for their survival must be safeguarded. In this regard, the area of Communal Forests should be increased. Recognition of the natives' rights to their lands and reserves must be given.
- vii) Prompt investigations must be conducted by the authorities of their complaints concerning damage to their lands, burial grounds, crops, forest and water resources, fruit trees and the like by the activities of logging companies. Equitable and just compensation must be given to natives whose lands and resources have been destroyed by logging activities, both by timber concessionaires and the State. The Government should compensate natives from timber revenue. These monies should be equitably and fairly distributed among the various communities. Apart from this, timber concessionaires should be made to give just and equitable compensation to natives whose fields, communal properties, burial grounds, forests, and waters have already been destroyed.
- viii) In the case of the Penan communities, they want a review of the laws to determine their constitutional rights and to what extent these rights to their customary hunting grounds and forest lands are adequately protected. They want the laws amended to ensure that their rights to their customary lands and forests be totally safeguarded. They have a right to claim the use of the forests, to collect produce and to look for sago which they have been doing since time immemorial. Their traditional areas have to be protected against the encroachment of other groups and outsiders who may hunt and fish in their territories, thus, threatening their resource base.
- ix) Very often, laws, decisions and policies which directly affect natives have been drafted and implemented without prior consultation with these peoples. Consultation is part and parcel of the democratic process, and peoples whose interest are affected by any Government policy have a right to be consulted. Natives want proper consultations to be held with their people before any 'development' takes place in and around their areas and territories. Similarly, all decisions which would affect their lands, forests and way of life should be adequately and fairly explained to them.

## 12. Protection of native rights is the responsibility of the State

Malaysia is blessed with a rich diversity of peoples and cultural traditions. When these cultures and traditions in the nation are fully-protected and nurtured, it will truly be a source of great pride and strength.

In Sarawak alone, there are some 27 recognised ethnic groups. Indeed, the greatest strength and wealth of our nation lies in this rich cultural diversity. The *Rukun Negara* is dedicated to 'ensuring a liberal approach to the nation's rich and diverse cultural traditions, creating a just society in which the wealth of the nation shall be equitably shared, maintaining a democratic way of life and achieving a greater unity of all her peoples'.

The natives of Sabah and Sarawak are given special protection under the Federal Constitution as far as alienation of land is concerned. Although Article 8 states that all persons are equal before the law and entitled to equal protection by the law, Article 161A(5) qualifies this by providing that Article 8 'shall not invalidate or prohibit any provision of State Law in the State of Sabah or Sarawak for the reservation of land for natives of the State or for alienation to them or for giving them preferential treatment as regards the alienation of land by the State'.

The Sarawak State authorities have, therefore, abrogated their constitutional obligations to the natives of Sarawak by ignoring their rights to customary land and instead, awarding large forest concessions to timber companies over their lands. More than this, the protection of the ethnic minorities in the state of Sarawak was a 1987 election promise of the *Barisan Nasional* in Sarawak.

We are confident that you will continue to protect the rights of the *orang ulu* communities and guarantee their survival. We, therefore, appeal to you to seriously consider the demands of the *orang ulu* communities and ensure their right not only to live but also to live in peace and with dignity.

#### GLOSSARY

- Orang ulu* : Refers to 'peoples of the interior'. They include the Kayan, Kenyah, Kejaman, Kelabit, Punan Bah, Tanjong, Sekapan, Lahanan and Penan peoples.
- Adat* : Customary 'law' which applies in all areas of the social, economic, political and spiritual life of indigenous peoples of Sarawak.
- Rusa* : Sambar deer (cervus unicolor)
- Kijang* : Bornean Yellow Muntjac or barking deer (muntiacus atherodes)
- Rukun Negara* : The 'National Ideology'
- Barisan Nasional* : The 'National Front', a coalition of political parties which make up the present government