

Human Rights Council
Expert Mechanism on the Rights of Indigenous Peoples
Sixth session, 7 – 11 July 2014, United Nations Office, Geneva, Switzerland
Agenda Item 7: United Nations Declaration on the Right of Indigenous Peoples

**Partners of Community Organizations (PACOS Trust, Sabah)
Statement by Atama Andrew Ambrose**

Thank you Mr. Chair & Expert Members,

In Sabah, about 62% of the population of indigenous peoples are generally not involved or consulted in planning processes and lack the resources and capacity to defend their land rights which has resulted in the further marginalization of the indigenous peoples by 'development' of which corporations and the wealthy elite are the main beneficiaries. As a nation State which relies heavily on the exploitation of its natural resources for the development of its economy there is a clear tension between the rights of Indigenous Peoples to their ancestral lands, territories, resources and the government's desire to utilize the natural resources.

The Sabah Development Corridor 2008-2025 plan (SDC) is an example of this. The plan outlines the federal government's strategy for the development of Sabah, the goal of which is to 'make sure that Sabah's God-given bounty can be harnessed to bring wealth and prosperity to every corner of Sabah. The plan is 'aimed at enhancing the quality of life of the people by accelerating the growth of Sabah's economy, promoting regional balance and bridging the rural-urban divide while ensuring the sustainable management of the state's resources.'

Paragraph 36 of the 2014 National Budget stipulates: "In 2014, the Government will allocate RM 1.6 billion for development in the five regional corridors. Among the main projects to be implemented include the agropolitan project and oil-palm based industries in the Sabah Development Corridor...." Although the plan claims that 'in our quest to become more economically developed, we will not sacrifice our culture nor our diversity' the plan does not address the issue of indigenous land rights, despite this being identified as a clear issue of concern and contention for the indigenous peoples in the SUHAKAM National Land Inquiry Report, as well as various other academic studies.

Further, in addition to the introduction of the SDC, reform was made to section 76 of the Sabah Land Ordinance 1930 (SLO) in 2009, which significantly increased the government's power to alienate traditionally indigenous land for the purpose of development. Most indigenous lands have already been alienated and developed- to the detriment of the indigenous peoples of Sabah, and the SLO and the Sabah Forest enactment 1968 'continue to be used today in ways that suit different developmentalist agendas'.

The Sabah Land Ordinance 1930 (SLO), is the main source for the recognition of Native Customary Right in Sabah and provides a mechanism for both communal and individual land tenure by the indigenous. The amendments to the SLO brought in the 'FASTRACK' system for claiming Native Customary Rights (NCR). The process, briefly, allows under section 76 of the SLO for indigenous peoples to collectively make a claim for NCR instead of applying for individual title. Whilst the purpose of the amendment was alleged to have been aimed at poverty eradication, some critics

have argued that 'it has become clear that the purpose of this move was to assign these lands to large-scale agricultural development projects through joint-venture agreements involving communities and government or private sector agencies.' It has been reported in one study that many indigenous peoples signed up to the 'Fast Track' scheme because they feared their lands would not be secure otherwise. "The very fear of lands being labelled 'idle' prompts smallholders into action to avoid interventions in the name of 'development' or 'poverty alleviation'.

Currently, indigenous communities making land applications are directed by the land office to apply under section 12 of the Sabah Land Ordinance 1930 despite the fact that section 14 exists which is a special provision for application of Native Customary Right.

Mr.Chair,

Three main reasons why the issue of land rights in Sabah is unresolved and confusing for those involved today are:

First, the traditional socio-economies of the rural communities were based largely on subsistence farming, which are viewed by the present state administration as unsustainable and incompatible with the state land and natural resources agenda.

Second, the Native Customary Rights claims based on the Sabah State Government's definition (as provided under Section 13, 14, 15, 65, 66 and Part IV of the Sabah Land Ordinance 1930) have not been settled, earmarked and gazetted as indigenous domains as all lands and waters are assumed to be state property, and land ownership, either individual or communal, must be determined and approved by the state. Third, there is no systematic mechanism for the inclusion of rural communities in institutional planning and the administrative framework of the state.'

The SUHAKAM National Inquiry Report has confirmed that Indigenous peoples lands, territories and resources continue to be exploited for the development projects such as mega-dams, mega palm oil plantations, mega-aquaculture projects in the Economic Transformation Plan (ETP), Sabah Development Corridor (SDC), Government Transformation Program (GTP) and most recently the set up of Eastern Sabah Security Command (ESSCOM) after the Tando intrusion, all of which was done without any Free, Prior and Informed Consent of Indigenous Peoples.

Mr.Chair and Expert Members,

We recommend that the state government of Sabah to engage constructively with indigenous peoples towards the legal recognition through constitutional and enabling laws and policies to facilitate the implementation of the UNDRIP in issues particularly relating to Native Land Rights & Claim Processes, Overlapping Applications, Land Investigation & Appeals as highlighted by the SUHAKAM National Land Inquiry.

We recommend the state government of Sabah to provide effective education programs on Human Rights particularly Article 26 of UNDRIP to all staffs & management of Sabah Land Department and especially the Office of the Sabah Chief Minister, The Legislation and Judiciary to understand their roles as a State in recognizing and implementation of the right of Indigenous Peoples in Sabah.

Finally, we call on the Office of the High Commissioner for Human Rights, Expert Members of EMRIP to undertake action oriented role to remind the Federation of Malaysia comprising of Malaya, Sabah & Sarawak and their governments of its commitment to the UNDRIP.