

APPENDIX 3

Forest Ordinance - First Schedule and Second schedule

FIRST SCHEDULE (Section 52(2)) PRODUCE TAKEN UNDER LICENCE RATES OF ROYALTY Class I(I)

Botanical Name	<i>Standard Vernacular Or Trade name</i>
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- A. Rates of Royalty: RM65.00 per cubic metre converted or RM 32.50 per cubic metre in the round.

<i>Eusideroxylon malagangai</i>	Malagangai
<i>Eusideroxylon zwageri</i>	Belian
<i>Intsia bijuga</i>	Ipil
<i>Intsia palembanica</i>	Merbau

- B. Rates of Royalty: RM84.00 per cubic meter converted or RM42.00 per cubic metre in the round.

<i>Gonystylus spp.</i>	Ramin
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- C. (i) Rates of Royalty: RM180.00 per cubic metre converted or RM90.00 per cubic metre in the round.

<i>Shorea spp.</i> (light, white, Yellow or red)	Meranti (Hill spp.)
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- (ii) Rates of Royalty: RM126.00 per cubic metre converted or RM63.00 per cubic metre in the round.

<i>Dryobalanops spp.</i>	Kapur (Hill Spp.)
<i>Dipterocarupus spp.</i>	Keruing (Hill spp.)
<i>Agathis spp.</i>	Bindang
<i>Dacridium spp.</i>	Sempilor
<i>Melia excelsa</i>	Ranggu
<i>Upuna borneensis</i>	Penyau

- D. Rates of Royalty: RM108.00 per cubic metre converted or RM54.00 per cubic metre in the round.

<i>Shorea albida</i>	Alan and Alan bunga
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(continued)

APPENDIX 3 (continuation)

Forest Ordinance - First Schedule and Second schedule (continuation)

FIRST SCHEDULE (Section 52(2)) PRODUCE TAKEN UNDER LICENCE RATES OF ROYALTY Class I(I)

E. Rates of Royalty: RM72.00 per cubic metre converted or RM36.00 per cubic metre in the round.

<i>Palaguium & Payena spp.</i>	Nyatoh
<i>Anisoptera spp.</i>	Mersawa
<i>Copaifera & Sindora spp.</i>	Septir
<i>Dactylocladus spp.</i>	Jongkong
<i>Hopea spp.</i>	Giam, Chengal
<i>Shore inaequilateralis</i>	Semayur
<i>Shorea pachyphylla</i>	Kerukup
<i>Shorea spp. (heavy red)</i>	Red Selangan
<i>Shorea spp. (heavy yellow)</i>	Selangan Batu
<i>Shorea spp.</i>	Meranti (Swamp spp.)
<i>Dyera spp.</i>	Jelutong

F. (i) Rates of Royalty: RM54.00 per cubic metre converted or RM27.00 per cubic metre in the ground. All Hill species of included in A, B, C, D and E above.

(ii) Rates of Royalty: RM43.00 per cubic metre converted or RM21.50 per cubic metre in the round. Swamp species of *Cotylelobium* and *Vatica* (Resak), *Dipterocarups spp.* (Keruing), *Dryobalanops spp.* (Kapur) and all other swamp species not included in A, B, C, D and E above.

G. Rates of Royalty: RM2.00 per tonne green weight.

<i>Rhizophora spp.</i>	Bakau
<i>Bruguiera spp.</i>	Berus (Lenggadai)
<i>Excoecaria spp.</i>	Buta-Buta
<i>Carapa spp.</i>	Nyireh

(continued)

APPENDIX 3 (continuation)

Forest Ordinance - First Schedule and Second schedule (continuation)

FIRST SCHEDULE (Section 52(2)) PRODUCE TAKEN UNDER LICENCE RATES OF ROYALTY

Class I(I)

Other mangrove species

Class I(ii)

Shingles

(i) of Class I(I) A timbers, per 1000	RM4.00
(ii) of other timbers, per 1000	1.00
Bark, per tonne	3.50

Class I(ii)

Poles

(i) 10 cm and less than 20 cm in diameter over-bark at bigger end, per 100	RM8.00
(ii) 3 cm and less than 10 cm in diameter over-bark at bigger end per 100	2.00
(iii) less than 3 cm in diameter overbark at bigger end and split nibong, per 100	1.00
(iv) 30 cm and less than 40 cm in diameter over-bark at bigger end, per pieces	12.00
(v) 20 cm and less than 30 cm in diameter over-bark at bigger end, per piece	5.00

(continued)

APPENDIX 3 (continuation)

Forest Ordinance - First Schedule and Second schedule (continuation)

FIRST SCHEDULE (Section 52(2)) PRODUCE TAKEN UNDER LICENCE RATES OF ROYALTY

Class II

Firewood, per tonne	...	RM0.50
Charcoal, per tonne	...	5.00
Firewood, partly converted into charcoal, per tonne	...	1.70
Cordwood, other than for use as fuel, per tonne	...	0.50
Wood or timber of whatever species, used for the manufacture of pulp, per tone	...	0.50

Class III Miscellaneous

Jelutong	10% of the current export value
Other forest produce not Specified above	10% <i>ad valorem</i> .

(continued)

APPENDIX 3 (continuation)

Forest Ordinance - First Schedule and Second schedule (continuation)

SECOND SCHEDULE

(Section 52 (4))

PRODUCE TAKEN UNDER PERMIT

A. Timber:	<i>Per month</i>
(a) Logs, sawn and hewn stock	RM5.00
(b) Poles	2.00
B. Firewood:	
(a) Mangrove and Casuarina (Ru)... ..	3.00
(b) Other sorts	1.00
C. Charcoal:	
(a) Mangrove	3.00
(b) Other sorts	1.00
D. Getah:	
(a) Jeletong	1.00
(b) Other sorts	1.00
E. Bamboo... ..	2.00
F. Bark:	
(a) Mangrove	2.00
(b) Other sorts	1.00
G. Nibong	2.00
H. Other forest produce	1.00

Provided that where charcoal is produced in a kiln other than a kiln of a purely temporary nature there shall be charged in lieu of the fees specified for item C above a fee for such kiln of a sum in ringgit, calculated to the nearest ringgit, equivalent to one and a half time the square of the nearest ringgit, equivalent to one and a half time the square of the interior diameter of the kiln calculated in feet*.

APPENDIX 4A

Malaysia: Area by State and District

State/District	Area (sq. km)	Percentage Distribution
MALAYSIA	3292,733	100.00
<u>JOHOR</u>	<u>18,986</u>	<u>5.76</u>
Batu Pahat	1,878	0.57
Johor Baharu	1,818	0.55
Kluang	2,585	0.87
Kota Tinggi	3,483	1.06
Mersing	2,838	0.86
Muar	2,346	0.71
Pontian	919	0.28
Segamat	2,851	0.86
<u>KEDAH</u>	<u>9,426</u>	<u>2.86</u>
Baling	1,528	0.47
Bandar Baharu	269	0.08
Kota Setar	666	0.20
Kuala Muda	922	0.28
Kubang Pasu	948	0.29
Kulim	767	0.23
Langkawi	466	0.14
Padang Terap	1,357	0.41
Sik	1,635	0.50
Yan	241	0.07
Pendang	627	0.19
<u>KELANTAN</u>	<u>14,920</u>	<u>4.53</u>
Bachok	263	0.08
Kota Baharu	406	0.12
Machang	545	0.16
Pasir Mas	575	0.18
Pasir Puteh	434	0.13
Tanah Merah	868	0.26
Tumpat	167	0.05
Gua Musang	8,106	2.46
Kuala Krai	2,227	0.68
Jeli	1,329	0.41

(continued)

APPENDIX 4A (continuation)

Malaysia: Area by State and District

<u>MELAKA</u>	<u>1,651</u>	<u>0.50</u>
Melaka Utara (Alor Gajah)	673	0.20
Melaka Tengah	299	0.09
Melaka Selatan (Jasin)	679	0.21
<u>NEGERI SEMBILAN</u>	<u>6,634</u>	<u>2.01</u>
Jelebu	1,367	0.41
Kuala Pilah	1,090	0.33
Port Dickson	557	0.17
Rembau	414	0.13
Seremban	951	0.29
Tampin	878	0.27
Jempol	1,386	0.42
<u>PAHANG</u>	<u>35,964</u>	<u>10.91</u>
Bentong	1,831	0.55
Cameron Highlands	712	0.22
Jerantut	7,560	2.29
Kuantan	2,960	0.90
Lipis	5,198	1.58
Pekan	3,851	1.17
Raub	2,269	0.69
Temerloh	4,465	1.35
Rompin	5,201	1.58
Maran	1,917	0.58
<u>PERAK</u>	<u>21,005</u>	<u>6.37</u>
Batang Padang	2,712	0.82
Manjung (Dinding)	1,171	0.36
Kinta	1,958	0.59
Kerian	958	0.29
Kuala Kangsar	2,541	0.77
Larut & Matang	2,095	0.64
Hilir Perak	1,728	0.52
Ulu Perak	6,563	1.99
Perak Tengah	1,279	0.39
<u>PERLIS</u>	<u>795</u>	<u>0.24</u>
Perlis	795	0.24

(continued)

APPENDIX 4A (continuation)

Malaysia: Area by State and District

<u>PULAU PINANG</u>	<u>1,030</u>	<u>0.31</u>
Seberang Perai Tengah (Bukit Mertajam)	235	0.07
Seberang Perai Utara (Butterworth)	262	0.08
Seberang Perai (Nibong Tebal)	241	0.07
Timur Laut	119	0.04
Barat Daya	173	0.05
 <u>SABAH</u>	 <u>73,619</u>	 <u>22.33</u>
Tawau	6,125	1.86
Lahad Datu	6,501	1.97
Kunak	1,134	0.34
Semporna	1,145	0.35
Sandakan	2,266	0.69
Kinabatangan	17,594	5.33
Beluran	8,345	2.53
Kota Kinabalu	350	0.10
Ranau	2,978	0.90
Kota Belud	1,386	0.42
Tuaran	1,165	0.35
Penampang	466	0.14
Papar	1,243	0.38
Kudat	1,287	0.39
Kota Marudu	1,917	0.58
Pitas	1,419	0.43
Beaufort	1,735	0.53
Kuala Penyu	453	0.14
Sipitang	2,732	0.83
Tenom	2,409	0.73
Nabawan	6,089	1.85
Keningau	3,533	1.07
Tambunan	1,347	0.41

(continued)

APPENDIX 4A (continuation)

Malaysia: Area by State and District

<u>SARAWAK</u>	<u>124.44</u>	<u>37.74</u>
Kuching	1,869	0.57
Bau	884	0.27
Lundu	1,812	0.55
Samarahan	594	0.18
Serian	2,040	0.62
Simunjan	2,327	0.70
Sri Aman	3,846	1.17
Lubok Antu	2,338	0.71
Betong	1,776	0.54
Saratok	1,687	0.51
Sarikei	1,716	0.52
Maradong	1,084	0.33
Daro	861	0.26
Julau	2,628	0.80
Sibu	3,150	0.95
Dalat	2,217	0.67
Mukah	5,019	1.52
Kanowit	2,254	0.68
Bintulu	7,220	2.19
Tatau	4,946	1.50
Kapit	15,596	4.73
Song	3,935	1.19
Belaga	19,403	5.88
Miri	4,707	1.43
Marudi	22,070	6.69
Limbang	3,978	1.21
Lawas	3,812	1.16
Matu	680	0.21
<u>SELANGOR</u>	<u>7.955</u>	<u>2.41</u>
Gombak	650	0.20
Klang	627	0.19
Kuala Langat	853	0.26
Kuala Selangor	1,178	0.36
Petaling	484	0.15
Sabak Bernam	997	0.30
Sepang	600	0.18
Ulu Langat	826	0.25
Ulu Selangor	1,740	0.53

(continued)

APPENDIX 4A (continuation)

Malaysia: Area by State and District

<u>TERENGGANU</u>		
Besut	<u>12,955</u>	<u>3.39</u>
Dungun	1,234	0.37
Kemaman	2,735	0.83
Kuala Terengganu	2,536	0.77
Marang	605	0.17
Ulu Terengganu	666	0.20
Setiu	3,875	1.18
	1,304	0.41
<u>KUALA LUMPUR FEDERAL</u>		
<u>TERRITORY</u>	<u>243</u>	<u>0.07</u>
<u>LABUAN FEDERAL TERRITORY</u>		
	92	0.03

Source: *Yearbook of Statistics, Malaysia, 1997*, Table 1.1

APPENDIX 4B

Malaysia - Promotion of Investment Act, 1986 (Pioneer Status or Investment Tax Allowance)

The Promotion of Investment Act, 1986 provides incentives for the following sectors:

- (i) Manufacturing
- (ii) Agriculture
- (iii) Tourism
- (iii) Research and Development
- (iv) Technical and Vocational Training

Companies intending to undertake activities in those sectors are eligible for the following tax incentives:

- (1) Pioneer Status or Investment Allowance
- (2) Double Deduction for Promotion of Exports
- (3) Investment Allowance

Pioneer Status or Investment Tax Allowance is given to companies undertaking the following activities:

- (i) promoted products/activities
- (ii) high tech products/activities
- (iii) strategic products of national importance
- (iv) research and development
- (v) Technical or vocational training (investment tax allowance only)
- (vi) small scale industries (pioneer status only)

Companies granted Pioneer Status or Investment Tax Allowance would enjoy full or partial exemption from income tax depending on the activities undertaken. Dividends paid out of tax-exempt income to shareholders will also be exempted from tax.

Source: Ministry of Finance, Malaysia, *Economic Report, 1996/97*, p. 235

APPENDIX 6A

The case of Sonny Laot: Killed by tear-gas?

STATUTORY DECLARATION

I, Bulan Yoh (birth Certificate No (1592/86 of Long Mobui, Baram do solemnly and sincerely declare that:

1. I am married to Laot Kayan of Long Mobui, Baram. We are currently living in Long Kerong, Baram. We have six (6) children now living. Five (5) of my children have died including Sonny Laot who was my youngest child. Sonny was 4 years old when he died on the 6th day of October 1993.
2. Sony was hospitalized in Marudi hospital for about a month in August/September 1993. He was operated on a swelling on his neck below his left ear. He recovered fully and my husband and I took him back to the Sebatu blockade site. There he actively played with the other children and was eating normally and in general good health.
3. On the second day of our arrival at Sebatu, the tear-gassing and dismantling of the blockade took place. At about 10.00 am that day, a large number of police Field Force (PFF) personnel and other police personnel wearing red helmets with visors and seen advancing towards the blockade. They were accompanying some officers from the Forest Department and some workers from the logging company that operates in the area. I believed there were more than 300 police personnel present. Some men at the blockade went some distance down the road with the intention of negotiating with the police. But they were immediately arrested upon coming into contact with the police.
4. The PFF personnel continued their advance and the large group of men who had followed close behind their representatives retreated towards the blockade. When the PF were about 100metres from the blockade, they started arresting people in the group.
5. My husband was among this group of men. I saw him being arrested. His arms were forcibly held behind his back by four (4) PFF personnel. I head him shouting as if he was in pain. I ran towards my husband to help him. At that moment the PFF started throwing tear gas cannisters at the group without any warning and without any provocation from the group. At the same time those PFF personnel that were armed with M-16 rifles surrounded the area around the blockade.
6. I was afraid for my children whom I had left in our *lamin* (an open-walled temporary hut, raised about 6 feet above the ground) located about 100 metres from the blockade in our *lamin* were Sonny (4 years), Rose (7-8 years) and Stella (6-7 years). My grandchild Joit Abut (5-6 years) was also in the hut.

(continued)

APPENDIX 6A (continuation)

The case of Sonny Laot: Killed by tear-gas?

7. As I made my way towards our *lamin*, I saw the PFF throw tear-gas cannister towards the *lamin* of the people. Some of them landed near our *lamin*. The gas drifted towards the *lamin* and enveloped the area. People ran away from the gas. As I tried to get back to our *lamin* the PFF tried to prevent me and the other people from getting to the *lamin*. It took a long time to reach our *lamin*.
8. When I finally arrived at our *lamin*, there was tear-gas all round and inside. I was choking from the gas. I rushed inside and found only Sonny there. He was crying, coughing and vomiting from the effects of the tear gas.
9. I took him out of the *lamin* and went into the nearby forest to get way from the gas. Sonny as vomiting badly. I tried giving him some water but he drank only a little.
10. That night, I sheltered with Sonny and the rest of the family in a *lamin* in the forest. Sonny was constantly coughing and vomiting and could hardly eat or drink.
11. The next day we set off on foot for Long Kerong with the other families from the blockade as we were extremely fearful of the Police. On the journey Sonny's condition deteriorated. We only had some Panadol for medication. We traveled for 5 days in the forest and reached Long Sait where we stayed with some relatives.
12. At Long Sait, Sonny's condition continued to worsen. He eventually died on the third day after we arrived in Long Sait (61/0/93). We buried Sonny in Long Sait.

Source: IDEAL, 2000

APPENDIX 6B

The case of Sarah Buet*

STATUTORY DECLARATION

I, Buet Kayan, Long Ajeng, Ulu Baram, a Malaysian citizen of about 40 years of age (born in the vicinity of Long Ajeng, Ulu Baram with birth certificate) do solemnly and sincerely declare that:

1. Sometime in early November 1993, my wife Leren Bajau and I returned to our dwelling in Long Kerong after having gone to the forest to gather sago. We found that our daughter M, together with some other people from Long Kerong had returned from Long Ajeng a few days earlier.
2. M had gone to Long Ajeng at about the end of October 1993 to fetch rice for the family. She had traveled on foot to Long Ajeng together with Gembala (pastor) John and his wife, both of Long Kerong and another girl named Martha (a.k.a Merita) from Long Ajeng.
3. M is my third child and was born in April 1981. She is generally reserved and quiet. She has a lisp in her speech and does speak much. My wife and I have 10 children still living, including M.
4. About 2 or 3 day after we returned from the forest, M told my wife and I that she has been raped in Long Mobui while en route to Long Ajeng from Long Kerong. She was sad and depressed and cried while relating her experience. She has been afraid to tell us what has happened to her for fear that my wife and I would be angry.
5. M said that she had been raped at night by 2 men in the house of Datu ak Abeng, the son of the Ketua Kampong (Abeng Jek) of Long Mobui. She said one of the rapists was of big build and had a big stomach. She said that she had struggled, screamed and cried while she was being raped but nobody came to help her. She said she had not told anyone about the rape.
6. My wife and I were shocked. We consoled her and told her we were grateful she had not been injured or killed by the rapists.
7. M then gave me a live bullet. She said she found it near her, on the floor of the house, when she got up the morning after the rape. I took the bullet and kept it in a safe place.

APPENDIX 6B (continuation)

The case of Sarah Buet

8. My wife and I did not tell anybody about the rape until August 1994. We did not know what to do about the matter, or to whom we should report. We finally told Balang Tui (of Long Ajeng) when we heard that some Penan leaders were going to Kuching to make a police report on problems faced by our community in our area. A police report (CPS (K) 8037/94) was made on 30th September 199 at the Kuching Central Police station.
9. On 22nd March 1995, M make a police report (Report No. 2234/95, Miri Central Police Station) and gave a statement to the police in Miri regarding her rape I Long Muboi. I also gave a statement to the police.

And I make this solemn declaration consciously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1960. Subscribed and solemnly declared by the above name Buet Kayan, at Miri in the state of Sarawak on this day of March 1995.

Before me,
Commissioner of Oaths

Source: IDEAL, 2000

* This testimony comes in the form of a signed, statutory declaration. Because the victim was a minor when the rape took place, her name cannot appear in the statutory declaration.

APPENDIX 6C

Penan complain to Human Rights Commission

SUHAKAM (Malaysian Human Rights Commission) Complaints

Submission by

Penan of Ulu Baram, Miri, Sarawak

November 3, 2000

Location: Ulu Baram, Sarawak

Indigenous community: Penan

Complainants:

Nik Kelsau (representing his father who is headman of Long Kerong)

Romeo Pusa (representing the headman of Long Sabai)

Komeok Joe (resident of Ulu Baram)

Thomas Pelutan (representing his father who is headman of Long Sepigen)

Roger Bilong Oyoi (headman of Long Sait)

Complaints:

Erosion of native customary rights over land

Erosion of economic, social and cultural rights

Abuse of police powers, affecting fundamental civil liberties

Date of Complaint: 3 November 2000

Assisted by:

Elizabeth Wong,

Secretary-General, Persatuan HAKAM

29 Jalan Nusa, Taman Duta, Kuala Lumpur

Tel: 03-252 4393

Fax: 03-252 4676

Background on land rights disputes in Sarawak

Over the last thirty years, there have been many cases of conflict and dispute arising from large-scale development projects in the state of Sarawak such as logging, construction of dam, plantation schemes and resorts construction. All these projects shared two commonalities: one, it is extremely lucrative for the elites and private companies; and two, it has adverse effects on the indigenous peoples of Sarawak.

In cases of conflict and dispute, there are two main actors. On one side is an 'alliance' of developers and government agencies (including enforcement agencies) which stands to gain in every respect. The other being the victims i.e. the indigenous peoples with weak bargaining powers.

As always, the government prefers to attach negative labels and to sideline those who may disagree with their line of thinking. It is not uncommon for the government to label: Those who ask for just and adequate compensation, often higher, as 'unreasonable people'. Those who refuse to make way for 'development' projects 'trouble-makers', 'anti-development' and 'subversives'.

Instead of seeking conflict resolutions, the government prefers to use coercive measures to carry out their plans. For example, work can be started without obtaining the prior informed consent of the residents (example: Oil palm plantation Sebatu-Suai case, Kanowit case) Developers and even councillors have gone around to the communities, buying over community leaders, threatening and discouraging the residents.

Development proponents have stopped government and amenity services such as health clinics and schools to force them to move out (example: Bakun dam affected communities). Demolition squads have demolished houses and homes (example: Samarahan Township, Kuching squatters). Police, including the Police Field Force and hired thugs have been used by developers and government agencies to frighten and threaten the people (example: Ulu Baram, Sebatu-Suai case, Rh. Bangga shooting case, Long Geng case). These are some heavy-handed methods used to terminate conflicts and disputes, rather than resort to conflict resolution. These methods also mean that the indigenous populations' views, grievances and the potential for a creative solution to the conflict are ignored and there are serious violations of human rights.

Background on the Penans

The Penans are a minority indigenous group in Sarawak, numbering only 10,000 in the state. Out of this population, the majority are settled or semi-settled communities and there is a group of between 400 to 500 who still maintains their unique, nomadic lifestyle.

As with other indigenous populations in Malaysia, the Penan's culture is entirely tied to their land and forest. Native customary land is central to their existence, livelihood and culture. The Penan communities know the extent and boundaries of their native customary land, in accordance with their native customary rights to land. They practice customary laws or adat asal.

However, recognition from the state has become more and more ambiguous and circumvented, with little sympathy for recognition. There is a proven trend of changing legislations to allow the state and developers more control and access over the land. This is accompanied by constant and intense harassment, victimization and marginalisation of those protecting native customary rights.

In the mid-1980s, logging had become particularly lucrative. Logging concessions were said to be given out as part of the political patronage system. No environmental or social impact assessments were done. Land rights of the Penans were ignored and legislation readily amended to ease the entry of logging companies. There was, and still is, little or no consultation with indigenous communities.

The Penans have taken action, in the form of petitions, meetings with state and federal government authorities, to stop the intrusion of logging companies and the biased actions of security personnel into their customary lands (see Appendix 1; Appendix 2a and 2b). However all their attempts have failed. When all else failed, the Penans resort to peaceful resistance by way of blockades, in order to protect the land. This unfortunately has always been met with dehumanising violence from the police, soldiers and forest officers.

In all of the disputes over land with logging companies, the police and especially the Police Field Force (PFF) had clearly stood on the side of the timber companies. The PFF consistently used all forms of intimidation such as from threatening to shoot them and aiming guns at the Penans, to dismantling blockades, tear-gassing and arresting Penans. There have been hundreds arrested since the 1980s.

The central issue is the non-recognition and non-protection of the Penans' land rights. Without guaranteed land rights, the social fabric, the culture and the existence of the Penans would be exterminated.

(1) Erosion of Native Customary Rights over Land

For the Penans, customary rights encompass farmland, land on which their homes are located as well as surrounding areas. In addition and importantly, they claim customary rights over the forest for community use, rivers, water catchment areas and ancestral burial grounds. The claiming of these rights reflects the way in which the Penans have practised their culture and lifestyle over the centuries. The concept of rights to land, or *pusaka*, is the core of Penan culture.

However in recent years there has been a rapid erosion of native customary rights over land by the Sarawak state government by way of new land legislation and amendments to existing legislation. This is supplemented by laws governing the forests, and by laws retaining to, for example, state agencies such as the Land and Survey Department, the Sarawak Land Development Board, the Sarawak Land Consolidation and Rehabilitation Agency and the Sarawak Water Board.

The recent amendment in laws include:- Land Code (Amendment) Ordinance (1998); Land Code Amendment Section 13(e) (1990); Land Code Amendment Section 5 (1996); Forest Amendment Ordinance Part II (1996); Land Code (Amendment) Ordinance (1997); and the Land Code Amendment (1998). Through these legislations and many more, native customary rights over land are further undermined through increasing limitations in establishing one's claims as well as new rights; expanding set of procedures to allow for the extinguishment of such rights; and increasing state powers to define for itself compensation rates and procedures for such annulment, if any.

Native customary rights over land are seen as barriers and hindrances to profit-making ventures, as oppose to a central and essential feature of the economic, social and cultural existence of the indigenous population in Sarawak. Thus, this right has become more circumscribed and more arbitrary, to the detriment of native customary practices, the ability of the indigenous population to appeal against state government decisions and their ability to control their own land and destiny.

(2) Erosion of economic, social and cultural rights

The forest is the centre of the Penan's universe. However, logging activities have drastically and traumatically affected their lives and livelihood.

The destruction of the forest has deprived the communities of their sources of food, materials, shelter, hunting, fishing, clean water, employment, security and cohesiveness. The economic, social and cultural fabric of the communities has been torn apart.

One of the results is the scarcity of food. Animals are getting more and more difficult to hunt. In Long Sait, the community has to travel further into the forest from their village in order to hunt. Farming is also affected, as farmlands are destroyed due to logging. In Ba Tik, Long Benali, Long Mubui, Long Sait and Long Sepigen, the soil composition has changed, causing the land to turn too dry and hard for cultivation. The supply of clean water for consumption is adversely affected by logging too. Rivers have been polluted due to the logging activities. The river/water catchment areas have dried up. Remaining waters in most villages are dirty and undrinkable.

Sources for the communities' income-generation activities are scarce now, such as materials for building, handicraft and rotan products. This adversely affects their ability to earn the little cash that they do. Poor health has also plagued communities who are situated near logging areas. Public health and medical services, including the Flying Doctors services are woefully inadequate until today. This is despite the communities highlighting this as early as 1995 to the state government. Similarly with education facilities, which remain unavailable and inaccessible for most of the Penans.

(3) Abuse of police powers, affecting fundamental civil liberties

Complaints made by Penans are that the authorities had not only sided with those taking Penan land and livelihood, they were negligent when it comes to investigating complaints and reports lodged by Penans. There are also consistent accounts of the complicity of the police, state government officials and logging companies.

Below are some of these cases in which the Penans urge SUHAKAM to investigate and deliver justice to the community.

(i) February 1992

Over 1000 police officers, armed with tear gas and guns confronted and threatened the lives of the Penans at the Pelutan blockade. Most at the site were children and the elderly. The blockade was violently destroyed.

(ii) September 1993

Sonny Laot was only four years of age when he died on 6 October 1993. The family had gone to a blockade at Sebatu, where there were some 300 Police Field Force (PFF) personnel, other police units, soldiers, forest officers and logging company workers were present. Children of protestors were put in a nearby area on a 'lamin', a

structure 6 feet above ground. A number of people were arrested and the Penans were tear-gassed. Witnesses saw PFF throwing tear-gas canisters towards the lamins, including that of Sonny Laot and his siblings. Due to the effects of the tear-gas, Sonny vomited several times, accompanied by coughs and lack of appetite. On the eighth day at a nearby village of Long Sait, he passed away.

(iii) October 1993

Sarah Buet was only 12 years of age when she was raped in Long Mobui by two men in the house of Datu ak Abeng, the son of the Ketua Kampung, Abeng Jek in October 1993. Two police reports were filed. The first was made on 30 September 1994 (CPS (K) 8037/94) at the Kuching Central Police Station and the second on 22 March 1995 (CPS Miri 2234/95). No one has been charged to date.

(iv) September 1994

Geran Tan died on 8 September 1994. Geran was present near the blockade at Long Maboi, resting in a hut when a clash between the Penans and the police occurred. Witnesses said that tear-gas thrown under the hut where Geran was resting. Geran came out of the hut vomiting and coughing. He was taken to Long Kerong and medical officers from the Flying Doctors team refused to treat him, even though they had visited the village three times during Geran's stay. His health deteriorated rapidly, with continuous vomiting and within weeks he had passed away.

(v) October 1994

Abung Ipui, a pastor, leader and advocate for land rights for his village, was found dead in Sungai Akwar in October 1994. His stomach had been cut open and some of his internal organs had come out. He also had injuries on his head and face. Prior to his death, workers from nearby logging camp, located a mile away from Ba Kerameu, where Abung Ipui lived, had always threatened the villagers of Ba Kerameu that company workers would cut their stomachs if they were to go for a blockade.

(vi) 13 March 1997

On 13 March 1997, a group of 75 Penans went to see the Samling Timber Sdn. Bhd at Ba Segita, Selungoh, Baram for negotiations. The Penans had gone to deliver a letter to the head of the company, but were instead met by a group of Police Field Force who started arresting and beating the Penans without warning and indiscriminately. Company workers also joined in the beating. At the end, 34 Penans were injured, including four who were arrested.

The four arrested men, Pusu Bujang, Wan Musang, Beripin Wan and Jangin Jalong, were taken to the Miri Divisional police station for 2 nights and sent to the Marudi district police station where they

were remanded until they were charged on 21 March 1997. The magistrate released them on bail but were immediately rearrested outside the courts and charged for allegedly stealing a chainsaw. In the end, all charges were dismissed. While in detention, Pusu Bujang was hit three times on the shoulder. Police lifted him by pulling his hair and at the same time, used fingers to poke his eyes and face.

Wan Musang, who suffered from injuries on his chest when a PPH stepped his chest with his boots prior to his arrest. While in detention he was hit three times on his chest. Police also kicked his body and subsequently pushed his body near a pile of 'thorny' wires nearby. All four were not given medical treatment during their remand. Food was rationed to a ridiculous amount of half a packet of instant noodles a day, to be shared by the four men during their 7-day stay. No drinking water was provided.

Conclusion

We bring these three issues of erosion of native customary rights over land, erosion of economic, social and cultural rights, and abuse of police powers, affecting our lives and fundamental civil liberties to the attention of SUHAKAM because all our attempts to seek redress and justice have been totally ignored. Our desperate attempts to seek justice have been futile. We have no other avenues left to turn to.

The state and federal government's response to our plight has been basically to ignore us. Their motives from the very start has been to back the logging companies, give them concessions for logging, plantations, tourism and other profit-making projects over our native customary claims. The Penans at the end of the day receive nothing.

The police have been used by the logging companies as their personal army and bodyguards. The Penans, at the end of the day, only have tear-gas, beatings, arrests and even death.

There has been a lack of regard for cultural integrity; a lack of regard for land claims; a lack of regard for any consultation process or acknowledgement that it should be us, the people, in our communities who decide how we want for our future and what kind of development that we want. This shows that that the state and federal government does not value the indigenous people, especially the Penans and our rights to self-determination.

We, the Penans, want to be treated in accordance with international human rights standards, such as The Universal Declaration of Human Rights; the United Nations Declaration on the Rights of Indigenous Peoples; the Covenant on Civil and Political Rights; and the Covenant on Economic, Social and Cultural Rights. We want to be accorded rights as other citizens of the country.

We invite SUHAKAM to Sarawak, to meet with the Penans and to see for themselves, the rapid destruction of our lives, and to investigate the past and ongoing abuses against our people.

If there is no resolution to our desperate plight, we will die - an agonizingly slow but certain death.

Recommendations

We call on SUHAKAM, to articulate and take up our plight, as well as urge the federal and state government and their agencies, in the following:

Recognise the right of the communities to be the centre of, and controlling, any decision making process about their future;

Recognise the native customary land of the Penans and other indigenous communities;

Suspend all logging and any other licences which infringe on indigenous land, until a Public Enquiry is held, whereby all Penan communities are consulted and their grievances listed and answered;

Urgently investigate the activities of logging and other companies, paying particular regard to destruction of farmlands, graveyards and other lands they have not been licensed to log; illegal land clearing. Culprits must be brought to court and fair compensation ordered and paid to the communities;

Withdrawal of all prosecutions under section 90B of the Sarawak Forest Ordinance 1953 (amended 1987), and repeal of the same; and cessation of all police actions against the peaceful protests of the Penans;

Repeal of the Internal Security Act 1960 and the Emergency (Public Order and Prevention of Crime) Ordinance 1969 which have been used to detain persons working for the cause of the native customary rights;

Subject all logging and land development licences to an independent social and environmental impact assessment where such an assessment would have a public component, whereby the public can view and comment on the assessment prior to its approval or rejection;

Health, educational and other basic facilities must be provided to a decent standard, as this is a right of any Malaysian;

Investigate fully into the abuses perpetrated upon the Penans, including the deaths of Abung Ipui, Geran Tan and Sonny Loat; the rape of Sarah Buet; and the torture of Pusu Bujang, Wan Musang;

Ensure that the police follow the principles of impartiality, accountability and transparency in their dealings with the Penans. This includes any police reports by the Penans must be accepted and acted upon, and the process and results of investigation made available to the complainants;

Investigate fully into the abuses of police powers, including the role of the Police Field Force; police harassment and intimidation of Penans;

Set up SUHAKAM office(s) in Sarawak to protect the human rights of the Penans and other indigenous communities.

Source: Rengah Sarawak, 2000