



# General Assembly

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## Human Rights Council

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Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Written statement\* submitted by Aliran Kesedaran Negara National Consciousness Movement, a non-governmental organization on the roster**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 August 2013]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

## Human rights abuses affecting the indigenous peoples of Malaysia\*

The indigenous peoples of Malaysia represent around 12% of the country's 28.6 million population and are collectively known as Orang Asal.<sup>1</sup> Orang Asal have a close relationship to their lands, territories and resources which are significant not only as a means of livelihood but also as key to their spiritual and cultural life and core to the Orang Asal identity as indigenous peoples.

Malaysia is signatory to the basic principles outlined by internationally agreed conventions and declarations, for example the UNDRIP (United Nations Declaration on the Rights of Indigenous Peoples), but has still not ratified ILO Convention 169. Although Malaysia is forging ahead to become a 'developed nation' by 2020, Malaysia's indigenous peoples are being left behind. In 2008, the Federal Government stated that the *"most significant challenge which besets Malaysia is lifting indigenous groups from backwardness."*<sup>2</sup> It is therefore of profound concern that human rights defenders seeking to uphold the rights of indigenous peoples have been systematically harassed, abused and persecuted, including by company thugs, police and field force personnel who threaten and assault with impunity.<sup>3</sup>

In 2012, the Government appointed human rights commission, SUHAKAM, stated that, *"controversies over native land rights...are still raging with no solution in sight due to a mighty clash of minds with regards to the interpretation of the term 'native rights' between the...government and the natives"*.<sup>4</sup> A devastating Government report, released on 6 August, admitted that the indigenous peoples of Malaysia have been forced, *"to become coolies on their own land"*.<sup>5</sup>

### Land Grabs

The rampant exploitation of forest resources has been high on the Government agenda since the 1980s. This was initially through logging, but more recently has included land conversion to oil palm plantations and other large projects including hydroelectric dams.

In Sarawak, for example, indigenous peoples have already lost a large proportion of their native customary rights (NCR) land. The Chief Minister of Sarawak, Taib Mahmud and his family members allegedly own or hold business interest in more than 400 companies in 25 countries and offshore financial centres: wealth having been accumulated by the deforestation of Sarawak's rainforests and other unlawful abuses against indigenous communities.<sup>6</sup> In 2012, the Chief Minister of Sabah, Musa Aman came under scrutiny after reports emerged of a money laundering scandal involving the logging of Sabah's native forests.<sup>7</sup>

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\* Suara Rakyat Malaysia (SUARAM), an NGO without consultative status, also shares the views expressed in this statement.

<sup>1</sup> IWGIA, The Indigenous World Report, 2013 – JOAS (Jaringan Orang Asal SeMalaysia)

<sup>2</sup> Malaysia: National report submitted in accordance with paragraph 15(A) of the annex to human rights council resolution 5/1. (A/HRC/WG.6/4/MYS/1/Rev.1), 2009 [16]

<sup>3</sup> SUHAKAM, National Inquiry into Indigenous Peoples, Chapter 7: Findings Sarawak [7.101]

<sup>4</sup> The [Malaysian] Star, "Suhakam: No solution to native land rights issue yet", 15 March 2012

<sup>5</sup> SUHAKAM, National Inquiry into Indigenous Peoples, Chapter 9: Non-Recognition of Indigenous Peoples' Right To Land [9.11]

<sup>6</sup> The Bruno Manser Fund, "The Taib Timber Mafia – Facts & Figures on Politically Exposed Persons (PEPs) from Sarawak, Malaysia", September 2012

<sup>7</sup> Reuters, "In Malaysia's election, a focus on rainforest graft", 2 April 2013 and Sarawak Report

In Malaysia, thugs and police harass and intimidate indigenous communities who take a stand against the appropriation and destruction of their native lands.

On 15 March 2012, 66-year-old Surik anak Muntai, an Iban, fighting for land rights in Melikin, Sarawak, was viciously attacked by four men armed with sticks and parangs while he waited to pick up his son from school. Surik identified one of the assailants as an “executive” allegedly of an oil palm plantation company embroiled in a court battle over the Melikin villagers' NCR claim to land. According to Surik's wife, he suffered splintered fractures to his right wrist, a deep gash on his forearm, broken kneecaps and a septic ankle wound.<sup>8</sup> In August 2012, whistle-blower website, Sarawak Report, alleged that a couple of Sarawakian politicians were behind the palm oil company.<sup>9</sup>

In June 2012, Michael Luang, an Iban, fighting for the same NCR campaign in Melikin was the victim of a Molotov cocktail attack on his house. The fire resulted in extensive damage to his vehicle. Residents in Melikin have complained that their police reports of criminal intimidation by gangsters have been ignored and claim that the police only took action when the palm oil company accused villagers of assaulting its workers. In November 2012, a molotov cocktail was thrown into the driveway of indigenous land rights lawyer See Chee How's house. He believed the threat to be connected to his legal work to safeguard the rights of NCR landowners. See Chee How was also threatened by gangsters who warned him to pull out from an NCR lawsuit against the Sarawak State Government and oil palm companies.<sup>10</sup>

The amendment to section 76 of the Sabah Land Ordinance has been heavily criticised by indigenous peoples<sup>11</sup> and NGOs. The division of lots within the communal title does not follow traditional ownership boundaries and does not enable the crops that have been planted by NCR land claimants to be maintained. With the merging of NCR lands to form one large plantation, conflicts have also arisen over the traditional village administration. Community members are also not considered landowners but beneficiaries. This could prove detrimental to natives claiming NCR, as Malaysian courts require stringent proof of continuous use of, and links with, the land in question.<sup>12</sup>

### **Discrimination and Denial of Citizenship**

Indigenous peoples in Malaysia also face a lack of equal rights as citizens. Many indigenous people do not have an identity card, depriving them of access to basic services such as health care, housing, education, clean drinking water, electricity, banking facilities, and the right to vote. Many of the Penan of Sarawak, especially the interior Eastern Penan, are without government-issued identity cards.

A recently released study commissioned by the state government<sup>13</sup> estimated that the replacement value of the forest for indigenous Penan communities in Murum is 75% of household income, and that the effects of logging have caused severe food security issues, leaving 31% of children malnourished and 12% seriously malnourished. Over 80% of Penan in the area are without identity cards, only 2% of children attend school and all the communities are currently living below subsistence level.

<sup>8</sup> Malaysiakini, “Iban furious at attack on land rights defender”, 17 March 2012

<sup>9</sup> Sarawak Report, “Gangster State”, 19 August 2012

<sup>10</sup> Malaysiakini, “Can Palm Oil Fuel a Molotov Cocktail?”, 20 November 2012

<sup>11</sup> SUHAKAM, National Inquiry into Indigenous Peoples, Chapter 6: Findings – Sabah [6.128] <http://sarawakreport.org/suhakam/suhakam-chapter6.html>

<sup>12</sup> IWGIA, The Indigenous World Report, 2013

<sup>13</sup> Social and Environmental Impact Assessment for Murum Hydroelectric Power Project

The exclusion of the Orang Asli of Peninsular Malaysia as one of the groups with special positions and whose interests should be safeguarded under Article 153 of the Federal Constitution is an impediment to Orang Asli land rights. From the perspective of the Orang Asli, Article 8(5)(c) of the Federal Constitution does not provide the same recognition as that accorded to indigenous peoples of East Malaysia.<sup>14</sup> In some States, indigenous children from religious or belief minorities are exposed to Islamic religious instruction allegedly against their will. In October 2012, a group of parents lodged a police report against a teacher at an Orang Asli school near Gua Musang in Kelantan, for slapping four children because they did not recite the *doa* (Islamic prayer).<sup>15</sup> The parents protest that their children were made to practise a religion that is not their faith.<sup>16</sup>

### **Lack of Free, Prior and Informed Consent**

With scarcely 5% of Sarawak's rainforest remaining untouched, the State Government is now strongly pursuing the multi-billion dollar "Sarawak Corridor of Renewable Energy", also known as SCORE, an immense industrialisation project comprising plans for a potential of 50 hydroelectric dams, vast palm oil plantations, smelter and mining projects. This means further confiscation of vast tracts of native land and further destruction of the lives and cultures of indigenous communities in Sarawak.<sup>17</sup> Despite the threat of irreparable harm to their lands and their survival as a people, the Government has failed to gain their free, prior and informed consent. The true scale of SCORE is unknown due to a lack of Government transparency and affected communities have not been allowed to participate effectively or at all in decision making.<sup>18</sup>

On 26 September 2012, 200 villagers commenced a blockade of the access roads leading to the Murum Dam in Sarawak, thereby halting the construction of the dam. The villagers were representing 1,500 indigenous people from the Penan and Kenyah communities who will lose their homes when the dam's reservoir is flooded. The villagers knew they would soon be resettled but did not know the details until the government's plan was leaked to them in September, even though construction of the dam had begun in 2008. The government responded to the protests by setting up police posts near the blockade, sending politicians to negotiate with the communities, declaring the blockade over, and accusing civil society organisations of instigating it. The villagers have issued a set of demands, asking that their rights under the UNDRIP be respected. The government has not yet met these demands.<sup>19</sup>

Protests against hydro dams also took place in the Baram area, where 20,000 indigenous people face displacement. In May 2013, 300 indigenous people protested outside the Borneo Convention Centre in Kuching, asking for an end to hydroelectric dams that are destroying their livelihoods.<sup>20</sup> Anti-dam campaigns also took place in Sabah and Peninsular Malaysia. In Peninsular Malaysia, for example, the Semai communities affected by the Ulu

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<sup>14</sup> SUHAKAM, National Inquiry into Indigenous Peoples, Chapter 8: Findings – Peninsular Malaysia [8.148] <http://sarawakreport.org/suhakam/suhakam-chapter8.html>

<sup>15</sup> Malaysiakini, "Orang Asli Children Slapped for Not Reciting Doa", 29 October 2012

<sup>16</sup> Malaysiakini, "Agencies Apologise Over Orang Asli Kids' Slapping", 2 November 2012

<sup>17</sup> Benjamin K. Sovacool & L.C. Bulan, "Settling the Score, The Implications of the Sarawak Corridor of Renewable Energy (SCORE) in Malaysia", March 2011

<sup>18</sup> Rivers and Baram Protection Action Committee (BPAC)

<sup>19</sup> IWGIA, The Indigenous World Report, 2013

<sup>20</sup> Intercontinental Cry, "Indigenous Peoples Protest Outside International Hydropower Association's Congress in Malaysia", 22 May 2013

Jelai hydroelectric dam in the state of Pahang have organised various protests objecting to the project in their territories without their free, prior and informed consent.<sup>21</sup>

### **Recommendations**

We entreat the UN Human Rights Council and Permanent Missions to make urgent representations to the Malaysian Government, urging them to:

Ratify ILO Convention 169 and end all violence and harassment against indigenous peoples defending their native customary lands; and

Allow the UN Special Rapporteur on Indigenous Peoples to conduct investigative missions to Malaysia as soon as possible.

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<sup>21</sup> Centre For Orang Asli Concerns (COAC), “Orang Asli go on 'memo marathon' over dam project” <https://www.facebook.com/notes/center-for-orang-asli-concerns-coac/orang-asli-go-on-memo-marathon-over-dam-projects/>