

**MEMORANDUM
ON
THE FOREST LAW ENFORCEMENT GOVERNANCE AND TRADE (FLEGT)
VOLUNTARY PARTNERSHIP AGREEMENT (VPA)
MULTISTAKEHOLDER CONSULTATION MEETINGS
ORGANISED BY THE MINISTRY OF PLANTATION INDUSTRIES AND
COMMODITIES**

JAN 22, 2008

A submission from Jaringan Orang Asal dan NGO Tentang Isu Hutan/Network of Indigenous Peoples and Non-Governmental Organisations on Forest Issues (JOANGOHutan) and Jaringan Orang Asal SeMalaysia/The Indigenous Peoples' Network of Malaysia, (JOAS) for

**The Ministry of Plantation Industries and Commodities
No. 15, Aras 6-13
Persiaran Perdana
Presint 2
Pusat Pentadbiran Kerajaan Persekutuan
62654 Putrajaya.**

JOANGOHutan consists of the following organisations:

Borneo Resources Institute of Malaysia (BRIMAS), Sarawak
Centre for Orang Asli Concerns (COAC), Selangor
Indigenous Peoples Development Centre (IPDC), Sarawak
Institute for Development of Alternative Living (IDEAL), Sarawak
Keruan Association (Penan), Sarawak
Partners of Community Organisations (PACOS Trust), Sabah
Peninsular Malaysia Orang Asli Association (POASM)
SACCESS, Sarawak
Sahabat Alam Malaysia (Friends of the Earth Malaysia)
Save Our Sungai Selangor (SOS Selangor), Selangor
Sinui Pai Nanek Sngik (SPNS/'New Life One Heart'), Perak-based Orang Asli
community group

JOAS comprises 33 *Orang Asal* communities and community organisations or networks.

I INTRODUCTION

This memorandum is written in response to the most recent Multi-Stakeholder Consultation Meeting organised by the Ministry of Plantation Industries and Commodities in Kuching, Sarawak on November 15, 2007 for the Forest Law Enforcement, Governance and Trade (FLEGT) – Voluntary Partnership Agreement (VPA) negotiations between Malaysia and the European Union.

This document is written with the same objectives, and in reference to, our comments as contained in our previous memorandum dated Sept 28.

II OUTSTANDING ISSUES

We view that all of our concerns as outlined in our previous memorandum have not been adequately dealt with by the latest consultation meeting, except for the establishment of meeting documentation activities and the slightly earlier distribution of meeting documents, although the two steps are not unencumbered by several technical issues.

In particular, in reference to our previous memorandum, we note that our following concerns still remain:

- The top-down approach of the meeting;
- The lack of a coherent consultation framework which in turn results in a host of other structural and process issues, which include, but not limited to, the absence of a meaningful mechanism to identify, address and resolve outstanding concerns surrounding the timber industry and inefficiencies in its response and comment gathering procedures;
- The failure to address differences of views with regards to the *Definition of Legality*; and
- The failure to find a way forward in resolving several 'core issues' related to the timber industry, including those that pertain to Native Customary Rights.

The lack of seriousness in addressing our concerns on the part of of the Ministry is a deep disappointment to all of us.

III SPECIFIC CONCERNS ON THE MEETING

1. Structural Issues of the Multi-stakeholder Consultation

As mentioned above, this particular issue, which has already been detailed in our previous memorandum, remains as a priority concern for us. We still regard that the current consultation effort as highly ineffective and lacking in the appropriate mechanisms which can ensure that principles of transparency and democracy are observed by the process. As it is, the current effort has failed to give detailed attention to key structural and technical issues which in turn has generated a host of other systemic problems within the process.

As such, in our view, the consultation is unlikely to produce outcome which can provide meaningful and significant inputs and guidance into the currently on-going FLEGT-VPA negotiations, allow the objectives of the EU FLEGT plan to be satisfactorily met or encourage any significant improvements to be made in the future to the existing practices of our timber industry.

The following are some of the weaknesses of the process:

a. Non-participatory decision-making process

It appears to us that the Chair has wide and the sole discretionary power to decide whether immediate effective changes are to be incorporated into the working documents or merely allowing notations to be made to the said documents. We view this function of the Chair as the sole decision-maker in the process who can determine the manner in which meeting documents are altered, as inherently in conflict with the principles and practices of a participatory multi-stakeholder consultation process.

Without any inclusive decision-making and deliberation process, or an agreed upon structure as to how comments are to be accepted, rejected, further deliberated on or merely noted, the inputs contributed not only varied in their ability to produce meaningful changes in the documents, but more importantly, this absence of a standardised and carefully guided method to process the array of comments does not promote the balancing of conflicting interests in the meeting, and pave a way forward on how those conflicts can be resolved in the most acceptable way.

This then results in the meetings operating merely as a rubber-stamping instead of a genuine multi-stakeholder consultation process.

b. Weak feedback-gathering process

In our previous memorandum, we have recommended that a proper feedback process is installed in the consultation process to give all inputs and statements of stakeholder positions equal attention and to allow proper responses to be prepared in the case of conflicting views.

The official written submission process of the Environmental Impact Assessment as stipulated under the *Environmental Quality Act* and our various municipal legislation which demand the soliciting of feedback from stakeholders and interested parties of a given project or process, prior to actual discussions and consultations, are some of the better feedback gathering examples available in this country. Unfortunately, the existence of such systems have not been taken advantage of by the FLEGT-VPA multi-stakeholder consultation meeting.

A more formalised method in feedback solicitation, which incorporates the opportunity for written comments to be submitted prior to the actual meetings to discuss those comments will greatly enhance the quality of the feedback solicited for the following reasons:

- It will tend to encourage feedback content which is more comprehensive, articulate and well-prepared, allowing position statements of different interest groups to be documented in a more formalised method;
- It will provide official recognition to the authorship of the comments and statements, as well as allowing appropriate responses and counter-responses to be formed around them;
- This in turn will direct the process to identify contentious issues that have to be carefully addressed and resolved, opening a greater opportunity for a genuine dialogue and debate to take place amongst different stakeholders within the meetings or communications outside them;
- As it appeared, the setting of a large gathering is already not very conducive for the meaningful and detailed discussions to take place. As such, written submissions will also enhance the participation of stakeholders who may not be able to verbally express their concerns articulately or those who are not able to attend the meeting altogether; and
- Such a process is also likely to result in less errors from being committed in the documentation of the meetings, as they certainly did during the Kuching meeting.

Without a more formalised feedback-gathering process, the meeting will continue to take on an informal and thus inefficient character.

c. Absence of mechanism to address unresolved issues

The consultation process must find a way to identify contentious issues and lay a framework in which they can be further discussed and resolved before documents and inputs from the consultation are formalised into the FLEGT VPA negotiations.

As have been detailed in the previous memorandum, these issues include:

- Violations of Native Customary Rights (NCR) of indigenous communities by timber concessions and the extent of the NCR itself;
- Non-transparency in the issuance of timber licences and the need to root out corrupt and other unlawful practices surrounding the process;
- The inaccessibility of timber and forestry-related information to civil society groups;
- The position of the Malaysian Government on the artificial separation between legality and sustainability concepts in the VPA; and
- The position of the Malaysian Government on the artificial separation between legality and workers' rights as well as social issues.

Although we note the inclusion of NCR references in the meeting documents, this is far from resolving all the outstanding concerns surrounding them. Issues such as native land rights and the flaws within our policy, legal and governance framework should be addressed in subsequent smaller-sized gatherings to allow a more focused consensus-building process to take place and to build future commitments that can correct weaknesses to the existing system.

d. Need for the establishment of multi-stakeholder Steering Committee

We note that in other FLEGT-VPA countries, most notably in Indonesia, the consultation process is led by a multi-stakeholder steering committee that is directly involved in preparing and finalising the multi-stakeholder inputs into the negotiating process.

However this is clearly not the case with Malaysia. The dominant role that the Ministry plays in directing and shaping the consultation process has inevitably resulted in severe limitations being put on the possible output of the consultation itself. Without access to the membership of the steering committee, which we understand is limited to various government agencies, the quality of participation of the various stakeholders has been restricted right from the beginning.

We believe that the Malaysian Government cannot exempt itself from utilising the best standards and practices currently being used and/or developed by other multi-stakeholder process in other FLEGT-VPA countries. Multiple standards in defining and directing key areas to the FLEGT-VPA will defeat the purpose of the EU FLEGT Action Plan itself and are totally unacceptable to us.

4. Advance funds for community stakeholders

A better system of providing advance financial support should be established by the system since some of the stakeholders, notably community representatives, are not in the position to use their own resources prior to the meetings.

5. Definition of Legality and Brussels Commitment

We regret to state that the current *Definition of Legality* is unacceptable to us since it lacks the provision to exclude timber harvested from land on which Native Customary Rights are claimed by native communities from being declared as legal.

We also regard that thus far, the two commitments of the outcome from the negotiations that took place in Brussels have not been fulfilled.

We reiterate that the manner in which the issue of the legality definition and the stakeholder consultation procedures was processed by the consultation thus far has not shown any demonstrable evidence of an acceptable level of commitment on the part of the Malaysian Government to develop and establish strong definitions and procedures which can gain the wide support of the

Malaysian civil society groups.

5. The Sarawak immigration bar for JOANGO Hutan and JOAS members

This issue was briefly discussed during the meeting in which conflicting claims were made. Since none of our members who have had the experience of being barred from entering Sarawak have been personally informed by the Sarawak Immigration Department that they are no longer prevented from entering the state, we believe that it is best that the Department is urged to do so as soon as possible.

If this matter is not clarified officially by the Department, our members have the right to regard that the barring still continues until today. It is unfair to request the individuals concerned to attempt entering the state just so in order to learn this change of policy.

IV RECOMMENDATIONS

We view that the consultation process has not reached an acceptable standard in structure, process and output. If the negotiations are to be continued under these circumstances, it is unlikely that the FLEGT-VPA negotiations will be able to install better policies and operations than those which are currently in place for our timber industry, provide the protection and enhancement of the rights of our indigenous communities to their forests and promote the systematic eradication of the current flaws and weaknesses in the policy, legal and governance framework for land and forest management of this country.

We are reiterating the call that our recommendations as outlined in our previous memorandum to be seriously addressed.

IV CONCLUSION

We believe that the Malaysian Government cannot exempt itself from instituting a proper, democratic and transparent consultation process if the FLEGT-VPA aims to fulfil the objectives of the EU FLEGT Action Plan.

Thus far, we regret to see that the process is not heading towards this direction. An extensive overhaul of the consultation process is therefore urgently needed.