



# Encroachment on Orang Asli Customary Land in Peninsular Malaysia

**CAUSES & SOLUTIONS**



SAHABAT ALAM  
MALAYSIA



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ORANG ASLI SEMENANJUNG  
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# List of Abbreviations and Acronyms

AAC	Annual allowable cut
COAC	Centre for Orang Asli Concerns
DPPTOA	Dasar Pemberian Hakmilik dan Pembangunan Tanah Orang Asli / Orang Asli Land Alienation and Development Policy
EIA	Environmental impact assessment
EUTR	European Union Timber Regulation 2010
FLEGT-VPA	Forest Law Enforcement Governance and Trade - Voluntary Partnership Agreement
FMU	Forest management unit
FPIC	Free, prior and informed consent
FRU	Federal Reserve Unit
JAKOA	Jabatan Kemajuan Orang Asli (formerly JHEOA) / Department of Orang Asli Development
JHEOA	Jabatan Hal Ehwal Orang Asli (currently JAKOA) / Department of Orang Asli Affairs
JKKK	Jawatankuasa Kemajuan dan Keselamatan Kampung / Village Development and Security Committee
JKOAK	Jaringan Kampung Orang Asli Kelantan / Network of Orang Asli Villages of Kelantan
JKOASM	Jaringan Kampung Orang Asli Semenanjung Malaysia / Network of Orang Asli Villages of Peninsular Malaysia
JOANGOHutan	Jaringan Orang Asal dan NGO Tentang Isu-Isu Hutan / Network of Indigenous Peoples and Non-Governmental Organisations on Forestry Issues
JOAS	Jaringan Orang Asal Se-Malaysia / Network of Indigenous Peoples of Malaysia
JUPEM	Jabatan Ukur dan Pemetaan Malaysia / Department of Survey and Mapping of Malaysia
LKPP	Lembaga Kemajuan Pertanian Pahang / Pahang Agricultural Development Board
LTC	Latex timber clone
MTCC	Malaysian Timber Certification Council
MTCS	Malaysian Timber Certification Scheme
NATIP	National Timber Industry Policy 2009 - 2020
NCR	Native customary rights
NGO	Non-governmental organisation
PERHILITAN	Jabatan Hidupan Liar dan Taman Negara / Department of Wildlife and National Parks
PKNP	Perbadanan Kemajuan Negeri Perak / Perak State Development Board

POASM	Persatuan Orang Asli Semenanjung Malaysia / Orang Asli Association of Peninsular Malaysia
PPLRNM	Perbadanan Pembangunan Ladang Rakyat Negeri Kelantan / Kelantan Public Plantation Development Corporation
PRF	Permanent reserved forest
RISDA	Rubber Industry Smallholders' Development Authority
RPS	Rancangan Pengumpulan Semula / Settlement Regrouping Plan
SAM	Sahabat Alam Malaysia / Friends of the Earth Malaysia
SILA	Sarawak Indigenous Lawyers Alliance
SMS	Selective management system
SUHAKAM	Suruhanjaya Hak-Hak Asasi Manusia Malaysia / Human Rights Commission of Malaysia
TSB	Tanaman Semula Berkelompok / Cluster Replanting Scheme
TSK	Tanaman Semula Komersial / Commercial Replanting Scheme
UNDRIP	United Nations' Declaration on the Rights of Indigenous Peoples

# Glossary of Non-English Terms

<i>bukit</i>	hill
<i>gua</i>	cave
<i>gunung</i>	mountain
<i>kampung</i>	village (abbrev. Kg)
<i>ladang rakyat</i>	ladang – plantation; rakyat – citizens, the public. State-owned plantation development schemes open for residents of the concerned state to participate in. Like other citizens, members of the Orang Asli community are also required to undergo an application process in order to participate in such a project even if the scheme is located on their own customary lands.
<i>mukim</i>	subdivision of a district, or subdivision of a sub-district; traditionally a territory made up by a group of independent villages, usually collectively subjected to a common form of governance system
<i>penghulu</i>	traditional chief of a village or a <i>mukim</i> ; holders of this traditional position are now appointed by the state
<i>pos</i>	administrative centre for a group of Orang Asli settlements (from the English ‘post’)
<i>sewang</i>	spiritual ceremony of the various Orang Asli communities, conducted for a host of purposes
<i>sungai</i>	river (abbrev. Sg.)







# 1. INTRODUCTION



# 1. Introduction

## Background

The publication of this report is the outcome of a partnership project between Sahabat Alam Malaysia (SAM) and the Jaringan Kampung Orang Asli Semenanjung Malaysia (JKOASM) to conduct a case study between July 2015 and June 2016.

The project originally intended to document the patterns of encroachment on Orang Asli customary territories by logging and plantation operations in Kelantan, Perak and Pahang through the collection of 10 cases. The collection of data was undertaken by way of a survey and interview sessions with affected village representatives, based on a series of questions that were prepared beforehand, as well as the collection of information on the relevant evidence from the respondents.

Fortunately, we were able to collect 12 cases involving 13 Orang Asli customary territories with 66 villages, with a population of more than 6,000.

## **Main focus: Violations of and encroachments on Orang Asli customary land rights in Peninsular Malaysia**

This publication was initiated in order to propose a set of policy-based solutions to end the violations of and encroachments on Orang Asli customary land rights in Peninsular Malaysia, based on the principles of law and universal natural justice. It is hoped that it will contribute towards the improvement of land and forestry governance and laws in Peninsular Malaysia as a whole.

At its core, the project focuses on verifying that encroachments on Orang Asli customary land have indeed been caused by **systemic** governance and legal issues, as opposed to isolated incidents that may have occurred as a result of the violations and breaches of legislative requirements or executive directives. Thus, the project also seeks to evaluate the quality and effectiveness of the legal and governance framework on land, forestry and conservation areas in Peninsular Malaysia in providing adequate protection towards Orang Asli customary land rights and the management of their claims to customary land rights.

Without denying the urgency of the issue, the project does not highlight incidents of indigenous customary land rights violations and encroachments on the indigenous customary territory which have occurred as a result of contraventions of statutory



provisions or written directives of the state executive administration by logging or plantation operations – commonly termed illegal logging. Rather, the focus is on logging and plantation operations that have reportedly received their licences from the states, but have also encroached upon Orang Asli customary territories.

For a long time reports of encroachment on indigenous customary land rights in Malaysia have been more heavily focused on Sarawak and then Sabah. This has created an inaccurate perception which suggests that the Orang Asli community in the Peninsula either does not confront such issues at all or at most is confronted by them to a lesser extent. This is an incorrect perception that the case study seeks to demonstrate. It is important to understand that encroachment on indigenous customary land rights is indeed a national issue that results from basic weaknesses, limitations and flaws in the governance and legal framework concerning land, forestry and conservation areas, at both the federal and state levels.

This view has also been verified by the Report of the National Inquiry into the Land Rights of Indigenous Peoples published by the Human Rights Commission of Malaysia (SUHAKAM) in 2013.<sup>1</sup> In fact, the first recommendation of the report focuses on the need to address the **lack of tenure security** of the indigenous customary land rights, which it describes as an outcome of flawed governance and legislative conditions that are **systemic** in nature. Therefore, according to SUHAKAM, the violations of and encroachments on indigenous customary land rights go beyond the mere violations of statutory laws, as emphasised in one of the general conclusions of the report:

Indigenous peoples are among the most marginalised and disadvantaged groups in Malaysia. Despite having provisions which recognise their land rights in the Federal Constitution, domestic and international laws, **systemic** issues have denied them the full enjoyment of their legal and human rights. These **systemic** issues evolved mainly from the successive amendments of land laws that do not recognise indigenous peoples' perspectives of land ownership and management and therefore eroded customary rights to land. They also affected administrative decisions with respect to indigenous peoples' land claims. The issues also evolved from the adoption of policies that give priority to approving lands for large-scale development projects over indigenous subsistence economy.<sup>2</sup>

## Indigenous customary land rights

**Indigenous customary land rights or titles** are rights that have been obtained from the authority of **traditional customs and customary laws**, and are commonly acknowledged and enforced by members of a community. They are different from documentary land titles which are rights obtained from documents issued by the state under legislative authority.

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<sup>1</sup> Suruhanjaya Hak-Hak Asasi Manusia Malaysia.

<sup>2</sup> SUHAKAM (2013: 164, emphasis added).

Indigenous peoples are the earliest documented communities in a given territory.<sup>3</sup> Their history of occupation on the land goes back to prehistory, prior to the arrival of other communities in the territory and the latter's subsequent development of economic, political and cultural dominance, which in almost all cases resulted in the marginalisation of the prior communities. The sources of livelihood, culture, spirituality, traditions, customs and laws of indigenous communities are therefore decidedly distinct from the dominant communities in any given nation state.

The main reason for this difference lies in the fact that indigenous communities have continued to sustain their intimate relationship with the land, forests, rivers and other natural resources found on their traditional land. Further, they are also still in occupation of their ancestral territories that have been inherited in accordance with their customs since time immemorial and continue to depend directly on the natural resources found on the land. Even if some members of indigenous communities in Malaysia have started lives in urban areas, the land, forests and natural environment of their villages will always be remembered as part of their flesh and blood and as the very source of life, whose continued existence will always be defended.

Through Western European colonisation around the world, the modern statutory legal framework on matters relating to land, forests and natural resources has disseminated the documentary land titling system that is built upon legislation. From that point onwards, land without a state-issued written grant or document was automatically claimed as property of the state. The reservation process, which is proclaimed in a government gazette, was also introduced, if the state wishes to reserve an area for any specific purpose which it defines as consistent with the public interest.

However, the status of such indigenous customary land that is typically located away from administrative centres, but rich in various natural resources that can be profitably exploited by outside parties, has simply been continuously neglected, without any document of title or reservation from the state, although the communities may be allowed to remain within their original territories.

This is the cause of ambiguities on the status of the indigenous customary land rights within the modern legal framework. While such indigenous villages have

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<sup>3</sup> Indigenous community-based organisations in Malaysia have advocated the use of the term 'Orang Asal' in the Malay language to collectively represent the term 'indigenous peoples' in the country. However, legally, the indigenous peoples of Peninsular Malaysia are collectively known as 'Orang Asli' in Malay or 'Aboriginal Peoples' in English. The legal system in Sabah and Sarawak, meanwhile, utilises the term '*anak negeri*' in Malay or 'native' in English, although the term 'dayak' is also commonly used for its indigenous communities. '*Asal*' and '*asli*' are two closely related words; '*asli*' has a stronger connotation in terms of authenticity and a natural state of being (as opposed to artificiality or imitation), while '*asal*' carries a stronger emphasis on the process of originating and belonging, in particular in terms of geography or territoriality. The terms '*bumiputra*' and '*pribumi*', which literally mean 'child of the soil' and would be inclusive of the Malay community, in actual fact are not mentioned by the Federal Constitution or any other statutory laws.

continued to practise customary land rights ownership based on their traditional laws, the ruling authorities from the colonial period up to the present day have claimed such ancestral land as the property of the state. They have then proceeded to marginalise such rights as merely a limited form of usufructuary rights or a right no better than that of a tenant at will. This has resulted in the widespread encroachments on indigenous customary land rights, especially after the large-scale development of the timber industry in Malaysia in the early 1970s.

However, many of the ambiguities in statutory law on the status of indigenous customary land rights have already been clarified by the Malaysian judiciary, after communities affected by violations and encroachments began to undertake civil actions in the last two decades. Today, after indigenous customary land rights have been recognised as a right to property which is protected under Article 13 of the Federal Constitution, there is no longer any legal justification for states to continue allowing such violations and encroachments.

## **The Orang Asli of Peninsular Malaysia**

The Orang Asli community in Peninsular Malaysia is made up of more than 20 cultural groups, including the Semai, Temuan, Jakun and Temiar who are some of the largest groups.<sup>4</sup> There are approximately 850 Orang Asli customary rights territories throughout the Peninsula, with a population of around 150,000, with heavier concentrations located in the states of Pahang, Perak, Kelantan, Johor and Selangor.

Unlike the indigenous communities that have been legally termed the 'natives' of Sabah and Sarawak in East Malaysia, who form the majority population in those two states, the Orang Asli are an ethnic minority in Peninsular Malaysia. This difference in demography means that the legal structure governing indigenous peoples in Sabah and Sarawak is dissimilar to that operating in the Peninsula. However, the impact and enforcement of the content of these different legal structures on indigenous customary land rights do not significantly diverge.

First, according to Schedule 9 of the Federal Constitution, matters relating to land and forests are under the jurisdiction of the states. As a result, the National Land Council and the National Forestry Council were established as mechanisms for the federal government to monitor land- and forest-related matters taking place at the state level as well as to promote greater governance uniformity between different states. At the same time, the Federal Constitution also gives Sabah and Sarawak total

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<sup>4</sup> This report mainly uses the Malay term 'Orang Asli', except when the discussion has to employ exact legal terminologies in English, in which case the legal terms 'Aborigine' or 'Aboriginal' are used.

jurisdiction on matters relating to the native community in the states, while matters relating to the Orang Asli community in the Peninsula fall under federal jurisdiction. Thus, matters relating to native customary land rights in Sabah and Sarawak are largely regulated under those states' land legislation by their respective Departments of Lands and Surveys. Meanwhile, in the Peninsula, matters relating to the Orang Asli customary land rights, although still under the jurisdiction of the states, are exempt from the main piece of legislation pertaining to land, the National Land Code 1965. In contrast, all affairs affecting the Orang Asli community, including their customary land rights, have been interpreted to fall entirely under the jurisdiction of the Aboriginal Peoples Act 1954 that is regulated by the Department of Orang Asli Development (JAKOA),<sup>5</sup> a federal department under the Ministry of Rural and Regional Development.

Second, laws on land, forestry as well as conservation areas in Sabah and Sarawak have specific provisions to address the regulation of the native customary land rights. This does not occur in the legislative and statutory system of the Peninsula. For instance, the term native customary rights (NCR) is the official terminology utilised by the Sabah and Sarawak legal systems. Both the Land Ordinance 1930 in Sabah and the Land Code 1958 in Sarawak have provisions that stipulate the manner in which NCR can be acquired and, of course, be extinguished by the state authorities. Further, laws on forestry and conservation areas in Sabah and Sarawak all provide for the manner in which the extinguishment of NCR and the subsequent payment of compensation must be carried out, when a forested or a high conservation value area is gazetted by the states, either as a production forest or conservation area.

In Peninsular Malaysia, Orang Asli indigenous customary land rights are not mentioned at all by any of the laws on land, forestry and conservation areas. Even though there are brief provisions on the taking of forest produce by the Orang Asli community in the National Forestry Act 1984 and on their hunting activities in the Wildlife Conservation Act 2010, these provisions only address such rights as a severely limited form of usufructuary right, instead of a form of landownership and proprietary rights in the land itself. In fact, sub-section 4(2)(a) of the National Land Code 1965 clearly states that it does not have any effect on any legal provisions that are in force on customary land rights, which in this case is the Aboriginal Peoples Act 1954.

Third, these governance conditions have resulted in an interpretation that the Aboriginal Peoples Act 1954 is the sole law to regulate affairs pertaining to the Orang Asli community, including their indigenous customary land rights. This

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<sup>5</sup> Jabatan Kemajuan Orang Asli, formerly Jabatan Hal Ehwal Orang Asli (JHEOA) or the Department of Orang Asli Affairs.

includes matters relating to land acquisition and the impacts of the gazetting of forests found on indigenous territories that are undertaken through various other statutes. Consequently, JAKOA ends up playing a central role in regulating a variety of affairs related to the Orang Asli community.

In Sabah and Sarawak, there is no such parallel law which regulates the lives of the natives so thoroughly to the extent the Aboriginal Peoples Act 1954 does. Likewise, in those two states, there is no government department with the same level of authority as JAKOA in the governance of the affairs of its indigenous communities.

As noted, the Aboriginal Peoples Act 1954 is in concept a law which provides for various matters in relation to the affairs of the Orang Asli community. It is not in principle a specific law on indigenous customary land rights. Therefore, although the Act has a few provisions on matters related to land and forests, these provisions are beset with various weaknesses, limitations and flaws. In addition, the history behind the Aboriginal Peoples Act 1954 itself has to be recognised. This law was introduced by the British during the anti-communist Emergency in the late colonial era. Therefore, the Act was not introduced solely to protect the rights of the Orang Asli community. In reality, it also functioned to prevent the Orang Asli community from providing assistance to and participating in the communist movement that was using the deeply forested areas of Malaya as its base.

Therefore, there are numerous provisions of the Act that are severely restrictive in nature and, consequently, encroach upon the personal space and internal communal affairs of the Orang Asli community. In fact, many of the provisions of the Act have the effect of eroding the basic rights of citizens guaranteed by the Federal Constitution.<sup>6</sup>

## **Structure of the report**

This introductory chapter describe the objectives and background to this publication project.

Chapter 2 provides more detailed descriptions of the governance and legislative framework pertaining to indigenous peoples, land, forestry and conservation areas, and how indigenous customary land rights have received only minimal protection

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<sup>6</sup> The following are some of the powers that the Act provides for executive authority: to regulate on matters related to the adoption or custody of Orang Asli children by non-Orang Asli persons; to appoint village leaders and the manner in which they are appointed; to prohibit any person from entering Orang Asli settlements; to prohibit the entry of any written, printed or cinematographic materials into Orang Asli settlements; to regulate the crops that an Orang Asli community may grow, the wildlife and birds that they may hunt, the forest produce that they may harvest; to regulate the employment that an Orang Asli may undertake; and to prohibit the entry of any intoxicating liquors into Orang Asli settlements.

from various statutes, which in turn permits the continued violations of and encroachments on such rights.

Chapter 3 focuses on the debate surrounding the common understanding of 'illegal logging'. It explains why not all legal logging is able to respect Orang Asli customary land rights. Therefore, an understanding of 'destructive logging' is also urgently needed, which looks at the issue beyond the limited, common understanding of legal versus illegal logging. More importantly, the adherence to law refers not only to statutory laws but also extends to the Federal Constitution, which is the highest law of the nation, and the legal interpretations of indigenous customary land rights by the judiciary. Here, the discussion questions the status of statutory laws and executive policies that have failed to be aligned with landmark judicial decisions on indigenous customary land rights.

Chapter 4 looks at the conclusions established from the results of the case study, covering 12 cases in three states, Kelantan, Perak and Pahang. Here, the causes of the encroachments on indigenous customary land in relation to its governance and legal framework are discussed.

Based on the causes already identified, Chapter 5 presents recommendations to be implemented by the federal government and state governments in order to halt the continued encroachments on Orang Asli customary land rights.

Reports of all the encroachment cases involved in this study are placed in the Annex.





**2. STATUTORY LAWS &**

**THE ORANG ASLI CUSTOMARY**

**LAND RIGHTS**



## **2. Statutory laws and the Orang Asli customary land rights**

### **How statutory laws affect Orang Asli customary land rights**

There are several provisions of the Federal Constitution that provide for the protection of the indigenous peoples of the country, including their customary land rights. Unfortunately, even with such protection, violations of and encroachments on indigenous customary land rights by logging, plantation, mining and other resource extractive operations are still prevalent in Peninsular Malaysia, Sabah and Sarawak.

In addition, indigenous customary territories are also frequently confronted by the gazetting of forested areas, either for production or conservation purposes, which either reduces or extinguishes customary land rights. Indigenous communities are also often threatened by land acquisition actions undertaken by the state for purposes that are deemed to fall under the function of 'public purpose', which would include the construction of infrastructure such as dams and expressways.

The main reason that such occurrences take place is due to the fact that the content of the various statutory laws, as well as the interpretation of the federal government and state governments of the indigenous customary land rights, have essentially failed to fully understand the actual characteristics of indigenous customary land rights as how they have been developed by indigenous communities.

A better understanding of this legal issue can be grasped when we study the provisions of the Aboriginal Peoples Act 1954 as well as other laws that pertain to land, forestry and conservation areas that are currently in force.

As explained in Chapter 1, in regulating the affairs of the Orang Asli community, including in interpreting their customary land rights, the peninsular states have chosen to rely solely on the Aboriginal Peoples Act 1954. However, this Act only contains a few inadequate provisions on indigenous customary land rights, and is further beset by weaknesses, limitations and flaws:

- (i) A substantial portion of land-related matters in the Aboriginal Peoples Act 1954 only provides for the different legal classes of Orang Asli settlements, the gazetting process of such customary rights territories into either Aboriginal reserves or Aboriginal areas, the status of such settlements in the event of the land being gazetted as production forests, conservation areas or

the Malay reservations, and the payment of compensation if such land is acquired by the state.

- (ii) The law does not provide for how indigenous customary land rights may have been acquired by an Orang Asli community or provide for the characteristics and features of indigenous customary land rights, in a similar manner in which they are described by land legislation in Sabah and Sarawak.
- (iii) The law also fails to employ the term 'Orang Asli customary land rights'. Instead, Orang Asli customary rights territories are only classed into three legal classes, with varying degrees of legal protection afforded to them. Two of these land classes are required to first be gazetted by the state. The gazettement of Aboriginal reserves receives stronger legal protection compared to Aboriginal areas. Meanwhile, the remaining customary rights territories that have yet to be gazetted are simply termed as the Aboriginal inhabited place, with its inhabitants being interpreted as being in occupation of state land. Nevertheless, even rights to occupy Aboriginal reserves and Aboriginal areas that have been gazetted are still perceived as a right no better than that of a tenant at will. Therefore, the state in essence fails to interpret that the Orang Asli community possesses a proprietary interest in the occupied land itself.
- (iv) Provisions on compensation for the loss of the customary land rights do not guarantee adequate payment as demanded by Article 13 of the Federal Constitution. For non-gazetted territories, compensation will only be paid for the loss of crops, with their amount determined at the discretion of the respective state governments. For gazetted territories, compensation on the loss of land may be paid, but this decision and its amount are also based at the discretion of state governments.
- (v) There is no detailed provision on the notification process for the extinguishment or reduction of Orang Asli customary land rights in the event of a land acquisition process by the state or when their forested land is being gazetted, either as production or conservation forests. The Act does not contain any provisions on matters which elaborate on the location and duration of time for the notices on the extinguishment of the people's rights must be exhibited, the languages to be used, the manner in which affected persons may state their claims and objections, the method of calculating adequate compensation and all other related matters.
- (vi) There is no provision on the free, prior and informed consent from affected Orang Asli communities for any processes pertaining to their customary land rights and other matters pertaining to their lives and well-being.

- (vii) The Act allows for further regulations on the Orang Asli customary land rights to be made to an extent that may prohibit the full exercise of such rights, as they have been developed by the customs of the community. Section 19 allows for the state to make further regulations on the manner of creating evidence and recording the rights of occupancy granted to an Orang Asli community, the planting of any specified product on lands over which rights of occupancy have been granted, the felling of jungle within Aboriginal areas and Aboriginal reserves and the taking of forest produce in Aboriginal areas, and the taking of wild birds and animals by an Orang Asli community.

Further, the division in the jurisdictions between the federal government and the states also frequently creates another difficulty for the community. According to the Federal Constitution, while the affairs of the Orang Asli community fall under the jurisdiction of the federal government, matters related to land and forests are under the jurisdiction of the states.

Therefore, although the Aboriginal Peoples Act 1954 does make provisions for the gazetting of the Aboriginal areas and Aboriginal reserves, and the Orang Asli community themselves are often reminded that their affairs are under the administration of JAKOA, all matters relating to the gazetting of their land, the gazetting of the permanent reserved forest and other conservation areas, the land acquisition and land alienation process as well as the issuance of licences for logging, timber tree plantations, agricultural development and mining activities are all under the jurisdiction of states. As a result, Orang Asli communities who are confronted by the violations of and encroachments on their customary land rights often end up having to seek assistance from the offices of JAKOA, the Forestry Department and the Lands and Mines Department, back and forth, without being able to obtain any effective solutions.

JAKOA, which is a federal department, can often only inform affected communities that it does not have the authority to call off any decision by the state on matters relating to land and forests. It was only a few years ago that most Orang Asli communities began to acquire the confidence to put forward their protests directly to the Forestry Department and the Lands and Mines Department, without the need to first consult JAKOA. Moreover, even the presence of JAKOA would not be able to meaningfully resolve land rights conflicts for the affected communities. Affected communities often report that JAKOA would typically side with the state.

Table 1 lists a group of statutes in Peninsular Malaysia which include those on land, forestry and conservation areas as well as mining that can extinguish, reduce or affect the Orang Asli customary land rights by way of several methods:

- (i) The loss of customary land rights as a result of a land acquisition or land gazetting action by the state for purposes that are deemed to fall under the function of 'public purpose' under the National Land Code 1965.
- (ii) The loss or reduction of customary land rights as a result of the gazetting of production forests or conservation areas, including:
  - (a) The gazetting of the permanent reserved forest under the jurisdiction of the National Forestry Act 1984. Each permanent reserved forest is further divided into various functional classes, either to serve timber production or other ecological protection purposes. However, no matter the functional class, the gazetting of the permanent reserved forest will always affect the continuity of the indigenous customary land rights.
  - (b) The gazetting of national parks and state parks under the jurisdiction of a host of federal or state laws.
  - (c) The gazetting of wildlife reserves and wildlife sanctuaries under the Wildlife Conservation Act 2010.
- (iii) The issuance of logging and timber tree plantation licences under the National Forestry Act 1984 by the state offices of the Forestry Department.
- (iv) The issuance of various permits pertaining to extraction activities of natural resources such as rock materials as well as land development operations such as agricultural activities under the National Land Code 1965 by the state offices of the Lands and Mines Department.
- (v) The issuance of mining licences under the respective state mineral enactments.

Decisions on all such actions above must first be approved by the respective state executive councils before they can be implemented by the various state departments or agencies. Although the department may be a federal department established under federal legislation, the highest authority in matters relating to the implementation of such decisions will nevertheless still be the state departments.

**Table 1: Laws that may affect the Orang Asli customary land rights in Peninsular Malaysia**

	Law	Authority
<b>Laws that have been passed by Parliament</b>		
1.	<b>National Land Code 1965</b>	<b>Department of Lands and Mines</b>
	<ul style="list-style-type: none"> <li>• Land acquisition for public purposes.</li> <li>• Gazetting of government reserves for public purposes.</li> <li>• Issuance of various permits in matters pertaining to extraction activities of natural resources such as rock materials as well as land development operations such as agricultural activities.</li> </ul>	
2.	<b>National Forestry Act 1984</b>	<b>Department of Forestry</b>
	<ul style="list-style-type: none"> <li>• Gazetting of permanent reserved forests (PRF).</li> <li>• Issuance of logging licences.</li> <li>• Issuance of timber tree plantation licences.</li> </ul>	
3.	<b>Wildlife Conservation Act 2010</b>	<b>Department of Wildlife and National Parks</b>
	<ul style="list-style-type: none"> <li>• Gazetting of wildlife reserves.</li> <li>• Gazetting of wildlife sanctuaries.</li> <li>• Listing of protected species and totally protected species.</li> </ul>	
4.	<b>National Forestry Act 1980</b>	<b>Department of Wildlife and National Parks</b>
	<ul style="list-style-type: none"> <li>• Gazetting of national parks.</li> <li>• Presently, only the Pulau Pinang National Park has been gazetted under this law.</li> </ul>	
<b>Laws that have been passed through state legislatures</b>		
1.	<b>National Parks Enactment (Kelantan) 1938 National Parks Enactment (Pahang) 1939 National Parks Enactment (Terengganu) 1939</b>	<b>Department of Wildlife and National Parks</b>
	<ul style="list-style-type: none"> <li>• Gazetting of the Kelantan, Pahang and Terengganu National Parks.</li> <li>• In force only within the three national parks.</li> <li>• The National Parks Act 1980 is not applicable within the three national</li> </ul>	

	parks.	
<b>2.</b>	<b>National Parks Corporation Enactment (Johor) 1989</b>	<b>Johor National Parks Corporation</b>
	<ul style="list-style-type: none"> <li>• The gazetting of Johor national parks (in force only in Johor): <ul style="list-style-type: none"> <li>➤ Endau Rompin (Peta and Selai) National Park</li> <li>➤ Gunung Ledang National Park</li> <li>➤ Pulau Kukup National Park</li> <li>➤ Kepulauan Mersing National Park</li> <li>➤ Tanjung Piai National Park</li> </ul> </li> </ul>	
<b>3.</b>	<b>State Parks Corporation Enactment (Perak) 2001</b>	<b>Perak State Parks Corporation</b>
	<ul style="list-style-type: none"> <li>• Gazetting of Perak state parks (in force only in Perak): <ul style="list-style-type: none"> <li>➤ The Belum Royal State Park</li> </ul> </li> </ul>	
<b>4.</b>	<b>State mineral enactment</b>	<b>Department of Lands and Mines</b>
	<ul style="list-style-type: none"> <li>• Issuance of permits for mineral mining operations except for rock materials and petroleum.</li> <li>• It operates as a state legislative document that is in force only within the state concerned.</li> <li>• Based on the National Mineral Policy, it was respectively passed by the Peninsular states between 2000 and 2004.</li> </ul>	

## Federal Constitution

The rights of the indigenous peoples in Malaysia, including their customary land rights, are among the rights protected under various provisions of the Federal Constitution. These principles of the Federal Constitution have allowed indigenous communities to win several landmark decisions in the courts.

## **Right to life**

The Court of Appeal in 1997 recognised that indigenous customary land rights fall under the right to life protected by Article 5, based on the fact of the close relationship between the culture and spirituality of indigenous peoples and the heritage of their customary land and forests.<sup>7</sup> The judiciary is of the view that the loss of customary land rights will certainly adversely affect the sources of livelihoods and the economic, social and cultural well-being of indigenous peoples.

As a result, such rights have been interpreted to fall under the protection of the provisions of Article 5.

### **Article 5: Fundamental liberties**

- (1) No person shall be deprived of his life or personal liberty save in accordance with law.

## **Equality and the prohibition against ethnic discrimination**

Meanwhile, Article 8 guarantees the equality of all citizens, thus prohibiting discrimination on the grounds of ethnicity.

### **Article 8: Equality**

- (1) All persons are equal before the law and entitled to the equal protection of the law.
- (2) Except as expressly authorized by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.

## **Affirmative actions for the protection, well-being and development of the Orang Asli community**

Article 8(5)(c) emphasises that the provisions on the equality principle do not prevent the undertaking of systematic affirmative actions for the purpose of the protection, well-being and advancement of the Orang Asli community, including through the reservation of land and positions within the civil service for community members. This provision has the same legal effect for the Orang Asli community as

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<sup>7</sup> *Director General of the Department of Environment and Anor v. Kajing Tubek and Ors and Another Appeal.*



that of Article 153 for the indigenous communities of Sabah and Sarawak and the Malay community, which provides for their special position within the nation, which permits the reservation of quotas in the civil service, scholarships, exhibitions, education and training facilities, as well as permits for various trade and business activities.

## **Right to property**

Article 13 guarantees the protection of citizens' right to property. The judiciary has confirmed that indigenous customary land rights are a form of a proprietary interest in the land itself, even in cases where such rights do not possess any documentary title or reservation status.

### **Article 13: Right to property**

- (1) No person shall be deprived of property save in accordance with law.
- (2) No law shall provide for the compulsory acquisition or use of property without adequate compensation.

Article 13 provided the legal principle utilised by the High Court in 2002 and the Court of Appeal in 2005 to rule on *Sagong Tasi*. This civil action was undertaken by six Temuan villagers who represented 26 families in Selangor. Their customary land had earlier been acquired by the state for the purpose of constructing an expressway to the Kuala Lumpur International Airport in 1996, without the payment of adequate compensation. In principle, the court's decision ruled that the indigenous customary land rights do not only comprise usufructuary rights **on** the land, which include the rights to crops and constructed properties, but also encompass the proprietary interest **in** the land itself, even if such land does not possess any documentary title or a reservation status. As such, these rights fall under the protection of Article 13.

Subsequently, the judiciary went on to rule that the use of the Aboriginal Peoples Act 1954 to calculate the payment of compensation for the affected families, was in conflict with the demands of Article 13. The Aboriginal Peoples Act 1954 only provides for the payment of compensation for the loss of crops, while the determination of the compensation amount is left to the discretion of the respective state governments. Compensation for the loss of land itself is not mandatory. All such provisions, according to the court, fail to fulfil the demands of the Federal Constitution for adequate compensation.

Therefore, the statute that must be utilised in determining the payment of adequate compensation for the loss of the Orang Asli customary land rights in Peninsular Malaysia is the Land Acquisition Act 1960, as applicable to the documentary land

title. This Act provides for very detailed methods to calculate the rate of adequate compensation for the land acquired by the state, including compensation for the loss of the land itself, apart from the resources found on them.

In 2010, all the defendants in the case agreed to withdraw their appeal at the Federal Court. The Federal Court subsequently directed that RM6.5 million be paid to the affected villagers. This amount also included payment of damages for trespass that had occurred during the eviction process. With this decision, the judiciary has effectively given legal recognition that the status of indigenous customary land rights without any form of documentary title or reservation status is on the same level and value as a documentary land title, although these two types of landownership may still have particular differences. Therefore, any trespass into indigenous land is a wrongful act that can be subject to a civil action.

### **Membership in the Senate**

Article 45 provides for the Senate to include members who are capable of representing the interests of the Orang Asli community.

### **Customs and usage having the force of law must be respected as law**

Another important provision in the Federal Constitution is Article 160 which elaborates that the definition of law includes written law, common law (i.e. case law or judicial decisions) and communally recognised customs:

any custom or usage having the force of law in the Federation or any part thereof.

### **Aboriginal Peoples Act 1954**

#### **Three classes of Orang Asli land**

First, the Aboriginal Peoples Act 1954 classifies Orang Asli customary territories into three classes, two of which require a gazetting process for them to be in force.

An Aboriginal inhabited place is the sole area which is not gazetted and is defined by section 2 as follows:

#### **Aboriginal Inhabited Place**

Any place inhabited by an aboriginal community but which has not been declared to be an aboriginal area or aboriginal reserve.

Meanwhile, two other types of settlement would first need to be gazetted by state governments before they can come into force. Aboriginal reserves are equipped with stronger legal protection in comparison to Aboriginal areas.

### **Section 6: Aboriginal Areas**

- (1) The State Authority may, by notification in the *Gazette*, declare any area predominantly or exclusively inhabited by aborigines, which has not been declared an aboriginal reserve under section 7, to be an aboriginal area and may declare the area to be divided into one or more aboriginal cantons:

Provided that where there is more than one aboriginal ethnic group there shall be as many cantons as there are aboriginal ethnic groups.

- (2) Within an aboriginal area—
- (i) no land shall be declared a Malay Reservation under any written law relating to Malay Reservations;
  - (ii) no land shall be declared a sanctuary or reserve under any written law relating to the protection of wild animals and birds;
  - (iii) no land shall be alienated, granted, leased or otherwise disposed of to persons not being aborigines normally resident in that aboriginal area or to any commercial undertaking without consulting the Director General; and
  - (iv) no licences for the collection of forest produce under any written law relating to forests shall be issued to persons not being aborigines normally resident in that aboriginal area or to any commercial undertaking without consulting the Director General and in granting any such licence it may be ordered that a specified proportion of aboriginal labour be employed.
- (3) The State Authority may in like manner revoke wholly or in part or vary any declaration of an aboriginal area made under sub-section (1).

### **Section 7: Aboriginal Reserves**

- (1) The State Authority may, by notification in the *Gazette*, declare any area exclusively inhabited by aborigines to be an aboriginal reserve:

Provided—

- (i) when it appears unlikely that the aborigines will remain permanently in that place it shall not be declared an aboriginal reserve but shall form part of an aboriginal area; and
  - (ii) an aboriginal reserve may be constituted within an aboriginal area.
- (2) Within an aboriginal reserve—
- (i) no land shall be declared a Malay Reservation under any written law relating to Malay Reservations;
  - (ii) no land shall be declared a sanctuary or reserve under any written law relating to the protection of wild animals and birds;

- (iii) no land shall be declared a reserved forest under any written law relating to forests;
  - (iv) no land shall be alienated, granted, leased or otherwise disposed of except to aborigines of the aboriginal communities normally resident within the reserve; and
  - (v) no temporary occupation of any land shall be permitted under any written law relating to land.
- (3) The State Authority may in like manner revoke wholly or in part or vary any declaration of an aboriginal reserve made under sub-section (1).

As can be seen, the gazetting of Aboriginal areas and Aboriginal reserves under the Aboriginal Peoples Act 1954 is the method by which peninsular states may provide a stronger recognition on Orang Asli customary territories, although the Act itself does not utilise the term 'Aboriginal customary land rights'. However, as with other gazetting processes, Aboriginal areas and Aboriginal reserves may also be de-gazetted by state governments through sub-sections 6(3) and 7(3) of the Act, as described above.

Further, states have also occasionally chosen to utilise section 62 of the National Land Code 1965 to gazette Aboriginal reserves. Section 62 is the provision that allows states to gazette any land for public purposes.<sup>8</sup> Other than that, the National Land Code 1965 can also be utilised by states to issue private documentary land titles to any Orang Asli customary land.

### **Rights of occupancy no better than that of a tenant at will**

Meanwhile, rights of occupancy are stipulated under section 8, which allows states to confer such rights to Orang Asli communities living within Aboriginal areas and Aboriginal reserves. However, such rights are described as to not confer any person a title **any better than that of a tenant at will**.

#### **Section 8: Rights of occupancy**

- (1) The State Authority may grant rights of occupancy of any land not being alienated land or land leased for any purpose within any aboriginal area or aboriginal reserve.
- (2) Rights of occupancy may be granted—
  - (a) to—
    - (i) any individual aborigine;

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<sup>8</sup> From the gazetting of conservation areas to the gazetting of Orang Asli customary territories, states have sometimes exhibited an inclination to utilise statutes which, according to their interpretation, may provide them with greater power to administer the concerned area.

- (ii) members of any family of aborigines; or
  - (iii) members of any aboriginal community;
  - (b) free of rent or subject to such rents as may be imposed in the grant; and
  - (c) subject to such conditions as may be imposed by the grant, and shall be deemed not to confer on any person any better title than that of a tenant at will.
- (3) Nothing in this section shall preclude the alienation or grant or lease of any land to any aborigine.

On the whole, the three classes of Orang Asli customary territories are still being interpreted as the absolute property of the respective states, based on the provisions of section 9 which prohibits Orang Asli communities from involving their ancestral territories in any form of business transaction without authorisation:

**Section 9: Dealings in land by aborigines**

No aborigine shall transfer, lease, charge, sell, convey, assign, mortgage or otherwise dispose of any land except with the consent of the Director General and any such transaction effected without the Directors General’s consent shall be void and of no effect.

**Status of Orang Asli customary land rights in gazetted production and protection forests**

It must first be emphasised that the terms ‘production forests’ and ‘protection/conservation forests’ are merely administrative terms. They are usually employed for the purpose of managing forestry statistics at the federal level. From a legal point of view, such terms do not exist. In fact, such gazetted forests will be known in accordance with the specific terminologies being employed by the laws that have been used to gazette and/or regulate them (permanent reserved forest, national park, state park, wildlife reserve and wildlife sanctuary).

The purpose of gazetting a forested area is of course to place it under the full jurisdiction and control of a particular governmental department or a government-controlled agency, and under specific regulatory measures which serve to ensure that the gazetting objectives will be fulfilled. For example, the logging operations within the permanent reserved forest are compelled to adhere to various strict rules and regulations, including the enforced minimum diameter limit for tree felling. Such regulations cannot be enforced in non-gazetted forests that are collectively known as state land forests, which are still under the partial authority of the states’ Lands and Mines Department.

This is so because the National Land Code 1965 does not fully relinquish forested areas from its authority, unless they have been gazetted. This can be clearly seen

from the provisions of sub-section 4(2) of the Code, which does not list the law on forestry as one of the laws that remains unaffected by its enactment, unlike the laws pertaining to customary land, Malay reservations, mining, *wakaf*<sup>9</sup> land and other matters.

Without a gazetted status, state land forests do not receive any protection that can guarantee they will permanently remain as forested areas. They are thus legally permitted to be clear-felled for various purposes, such as for agricultural development and infrastructure development. Although logging licences can still be issued within state land forests by the Forestry Department, the jurisdiction of the department is still limited within such non-gazetted forests. As such, the state land forests must also be classed as a form of production forest.

In addition, the gazetting of production forests and conservation areas will also enforce a variety of rules and regulations needed to protect them. These include the prohibition against the unauthorised entry into such forests and other prohibitions that are not applicable to state land forests.

Nevertheless, such regulatory measures in force within gazetted production forests and conservation areas may not be fully applicable to the Orang Asli community as section 10 of the Aboriginal Peoples Act 1954 has provided a few exemptions for the community. These include the fact that they are not obliged to leave such gazetted production forests or conservation areas (as well as Malay reservations).

However, various activities pertaining to customary land rights, such as agriculture and wildlife hunting, may still be imposed with new conditions within the gazetted forests, which in the end may still cause the significant erosion of such rights. These regulations can be set by the minister, as provided for by section 19 of the Act.

In fact, state governments may also altogether order affected Orang Asli communities to leave or remain out of such gazetted areas. If this takes place, section 10 further stipulates that compensation **may** be paid, **as may be necessary**.

**Section 10: Aboriginal communities not obliged to leave areas declared Malay Reservations, etc.**

- (1) An aboriginal community resident in any area declared to be a Malay Reservation, a reserved forest or a game reserve under any written law may, notwithstanding anything to the contrary contained in that written law, continue to reside therein upon such conditions as the State Authority may by rules prescribe.
- (2) Any rules made under this section may expressly provide that all or any of the provisions of such written law shall not have effect in respect of such aboriginal

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<sup>9</sup> In classical Muslim law, privately owned land (or property) donated in perpetuity and held under a trusteeship, for the use and enjoyment of specific beneficiaries.

community or that any such written law shall be modified in their application to such manner as shall be specified.

- (3) The State Authority may by order require any aboriginal community to leave and remain out of any such area and may in the order make such consequential provisions, including the payment of compensation, as may be necessary.
- (4) Any compensation payable under sub-section (3) may be paid in accordance with section 12.

### **Inadequate payment of compensation for the loss of customary land rights**

Section 11 of the Aboriginal Peoples Act 1954 provides for the payment of compensation for the loss of crops belonging to affected Orang Asli villagers in non-gazetted territories, if their land is acquired by the state for any public purpose. In such non-gazetted areas, the land clearly is being interpreted as a form of state land. As such, no provisions are made for compensation payments for the loss of the land itself. The amount of compensation meanwhile is discretionary – that which **shall appear to the state authority to be just**.

The payment of compensation for the loss of the land itself may only be carried out if the land concerned has been gazetted either as an Aboriginal area or an Aboriginal reserve. Section 12 stipulates that in such a case compensation **may** be paid for the loss of the land itself. However, the provision does not stipulate that this action is mandatory. Further, the method in which the compensation must be calculated is not at all specified by the section.

#### **Section 11: Compensation on alienation of State land upon which fruit or rubber trees are growing**

- (1) Where an aboriginal community establishes a claim to fruit or rubber trees on any State land which is alienated, granted, leased for any purpose, occupied temporarily under licence or otherwise disposed of, then such compensation shall be paid to that aboriginal community as shall appear to the State Authority to be just.
- (2) Any compensation payable under sub-section (1) may be paid in accordance with section 12.

#### **Section 12: Compensation**

If any land is excised from any aboriginal area or aboriginal reserve or if any land in any aboriginal area is alienated, granted, leased for any purpose or otherwise disposed of, or if any right or privilege in any aboriginal area or aboriginal reserve granted to any aborigine or aboriginal community is revoked wholly or in part, the State Authority may grant compensation therefor and may pay such compensation to the persons entitled in his opinion thereto or may, if he thinks fit, pay the same to the Commissioner to be held by him as a common fund for such persons or for such aboriginal community as shall be directed, and to be administered in such manner as may be prescribed by the Minister.



Clearly, the provisions of sections 11 and 12 are not capable of providing adequate compensation as demanded by Article 13 of the Federal Constitution and the decision ruled by the Court of Appeal in *Sagong Tasi*.

### **The size of Orang Asli customary territories unilaterally determined by the government**

The discussion above has shown that although the Aboriginal Peoples Act 1954 can be utilised to strengthen protection on the Orang Asli customary land rights, it can also be used to reduce, heavily regulate and even extinguish such rights, leading to the possibility of the forced relocation of affected villagers.

However, the strengthening of the recognition given towards such land has not been actively undertaken, while the gradual erosion of such land rights continues to take place. In addition, there are still several ambiguities in relation to the interpretation of states on the boundaries of the non-gazetted customary territories deemed as Aboriginal inhabited places, although members of the Orang Asli community are themselves clear about the boundaries of their respective customary territories. No matter the interpretation of states on the boundaries and size of such non-gazetted customary territories, there are still many other issues on the matter at hand, including:

- (i) The interpretation has been done unilaterally without consultation and the free, prior and informed consent of the communities.
- (ii) Official maps on the interpretation of state governments pertaining to the boundaries and size of non-gazetted Orang Asli customary territories have not been disseminated to the villagers.
- (iii) Boundary demarcation has also not been conducted on the ground by state governments.

As a result, even if the people's land has been gazetted either as Aboriginal areas or Aboriginal reserves, the gazetting does not guarantee that the process has included the entire customary territories of the concerned villages.

Tables 2 and 3 demonstrate the sorry state of the size of Orang Asli customary territories estimated by the government, as of 2012.

**Table 2: Size of Orang Asli customary territories estimated by JAKOA, 2012 (hectares)**

	State	With gazetted status or documentary land title <ul style="list-style-type: none"> <li>• Aboriginal area</li> <li>• Aboriginal reserve</li> <li>• Private documentary land title</li> </ul>	Without gazetted status or private documentary land title <ul style="list-style-type: none"> <li>• Aboriginal inhabited place</li> </ul>	Size
1	Johor	5,046	3,676	8,722
2	Kedah	173		173
3	Kelantan	247	22,844	23,091
4	Melaka	81	480	561
5	N. Sembilan	5,019	60	5,079
6	Pahang	5,540	52,593	58,133
7	Perak	11,992	33,922	45,914
8	Selangor	1,383	6,228	7,611
9	Terengganu	1,402	455	1,857
	<b>TOTAL</b>	<b>30,883</b>	<b>120,258</b>	<b>151,141</b>

Source: JAKOA. Website of the Ministry of Rural and Regional Development [<http://www.rurallink.gov.my/>].

It can be seen from Tables 2 and 3 that the size of Orang Asli villages estimated by JAKOA to be only approximately 151,141 hectares. **From this, only 20 per cent or 30,883 hectares have either been gazetted or issued with private documentary titles. The remaining 80 per cent or 120,257 hectares have yet to receive any form of recognition.** For areas that have received some form of recognition, 27,768 hectares were under a gazetted status, carried out either under the Aboriginal Peoples Act 1954 or the National Land Code 1965. The remaining 3,115 hectares were land with private documentary titles issued under the National Land Code 1965, consisting only of land for housing and agricultural activities, and not forested areas.

In 2012, the size of Aboriginal areas that have been gazetted under the Aboriginal Peoples Act 1954 stood at only **10,078 hectares**. Meanwhile, the size of Aboriginal

reserves, which receive the strongest protection under the Act, was merely **13,512 hectares** or around 9 per cent of the customary territories estimated by the government. It must be stressed, however, that the size of customary territories as interpreted by the Orang Asli community is almost certainly higher than these official estimations.

**Table 3: Size of Orang Asli customary territories gazetted or issued with private documentary land titles, 2012 (hectares)**

	State	Aboriginal Peoples Act 1954		National Land Code 1965				Size
		S.6 Ab. Area	S.7 Ab. Rsv	S. 62 Public purpose reserve		Private documentary land title		
				Fed	State	Hsg	Agrc	
1	Johor	2,452	2,390	10	11	1	182	5,046
2	Kedah		173					173
3	Kelantan				246	1		247
4	Melaka		14		67			81
5	N. Sembilan	3,058		22	313	1,610	16	5,019
6	Pahang	86	4,245			52	1,157	5,540
7	Perak	3,112	5,376	3,498	2	3	1	11,992
8	Selangor		1,314		9	19	41	1,383
9	Terengganu	1,370					32	1,402
	<b>TOTAL</b>	<b>10,078</b>	<b>13,512</b>	<b>3,530</b>	<b>648</b>	<b>1,686</b>	<b>1,429</b>	<b>30,883</b>

Source: JAKOA. Website of the Ministry of Rural and Regional Development [<http://www.rurallink.gov.my/>]. Note: Ab. – Aboriginal, Rsv – Reserve, Fed – Federal, Hsg – Housing, Agrc – Agricultural land

## National Land Code 1965

In Peninsular Malaysia, the main statute on land, the National Land Code 1965, does not mention anything about Orang Asli customary territories or the rights of occupancy on such land by the communities. In fact, sub-section 4(2)(a) of the Code

clearly states that its enactment does not affect any statutory provisions that are in force on customary land.

The National Land Code 1965 deems state land as all land that **has not been** issued with a documentary land title, gazetted as a government reserve under section 62 for a public purpose, issued with a mining permit and gazetted under a forestry-related law. This indicates that while Orang Asli customary territories that are without any form of documentary land title or a reservation status are deemed as state land, customary territories that have been gazetted either under the Aboriginal Peoples Act 1954 or the National Land Code 1965 are considered as government reserves. Any Orang Asli customary territory which has become part of any gazetted forest under any of the relevant laws, whether for production or conservation purposes, will simply be classed as part of the gazetted forest concerned.

However, as described above, the Court of Appeal in 2005 in the *Sagong Tasi* civil action has already ruled that even if the indigenous customary land rights exist on land interpreted by states as state land, such rights still remain as a form of a proprietary interest in the land itself, which falls under the protection of Article 13 of the Federal Constitution. As such, the existence of the indigenous customary land rights on state land does not affect its status as a right to property.

In 2007, the Federal Court, the highest court, in the civil action *Madeli Salleh* from Sarawak, confirmed that indigenous customary land rights will continue to legally exist so long as no notice of extinguishment in clear written language and without any ambiguity has been produced by the state to successfully terminate such rights, even when the land concerned ends up being gazetted for any other specific purpose.<sup>10</sup> According to the same decision, the enactment of any statutory law also does not automatically abrogate indigenous customary land rights, if it does not clearly state its intention to cause such an effect.

Therefore, if the gazetting of forested land, whether for production or conservation purposes, has been undertaken without any process to extinguish customary land rights through a written notice in clear language, and with the payment of adequate compensation, Orang Asli customary land rights within such gazetted forests can still legally exist, no matter the interpretation and claims of the state governments.

The appeal of the Sarawak state government for the Federal Court to review its decision was rejected in 2009.

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<sup>10</sup> *Superintendent Lands and Surveys, Miri Division and Anor v. Madeli Salleh*.

## National Forestry Act 1984

The National Forestry Act 1984, which provides for the gazetting of permanent reserved forests (PRF) is the main forestry law in Peninsular Malaysia. Passed by Parliament, it is in fact a federal law. However, officially it is being enforced as a state legislative document in each state, although the content of the state enactments is one and the same with that of the federal act.<sup>11</sup>

Sub-section 10(1) of the Act classifies the PRF into different functional classes, which include both production and protection functions, as shown in Table 4. Unsurprisingly, a large part of the PRF has in fact been classed for production purposes, or its actual term, 'timber production forest under sustained yield'. The Forestry Department is tasked to determine the functional classes of the PRF, subject to the approval of the minister. However, according to sub-section 10(4) of the Act, all protection functional classes must first be gazetted by state governments before they can come into force. If this fails to be done for any part of the PRF, the area concerned will automatically be deemed as the aforementioned 'timber production forest under sustained yield'.

Another important development on this law is the fact that since 2001 several states (with the consent of the National Forestry Council) have individually amended their respective state forestry enactments that have all been based on the federal law. This amendment sought to introduce a new functional class for the PRF, i.e. state parks. As explained above, this action is permitted in law as the statute being enforced at the state level is in fact a state legislative document that has been passed by the respective state legislative assemblies and not the federal law passed by Parliament.

This amendment was first pioneered by Perlis in 2001, and was subsequently followed by Selangor and Kelantan in 2005 and Pulau Pinang in 2009. The Perlis State Park, the Selangor State Park, the Gunung Stong State Park in Kelantan and the Bukit Panchor State Park in Pulau Pinang have all been gazetted through this new statutory provision. These state parks all remain as part of the PRF and under the authority of the Forestry Department.

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<sup>11</sup> Article 76(3) of the Federal Constitution stipulates that before particular laws enacted by the Parliament for states (i.e. those enacted to promote governance uniformity or those enacted in response to a state request) can come into operation in any state, they first have to be adopted by a law made by the legislature of the state concerned, in order to legally transform the federal statute into a state legislative document. Correspondingly, section 1 of the National Forestry Act 1984 itself reiterates this condition by stipulating that it may not come into force in a state until its adoption by a law at the state legislature level, pursuant to the aforementioned Article 76(3) of the Federal Constitution. Theoretically, this state legislative document may then be amended or even repealed by another law made by the same state legislature. Thus each of the peninsular state legislatures does have the legal freedom and right to introduce amendments to any such laws, or in fact even to repeal them altogether if they so wish, although they may not necessarily have the financial and political freedom to do so. Further, the National Forestry Council also monitors the actions and decisions made by states on forestry-related matters.



**Table 4: Permanent reserved forest in Peninsular Malaysia and its functional classes based on the National Forestry Act 1984**

	Functional classes	Details
<b>Permanent Reserved Forest</b> <b>National Forestry Act 1984</b> <b>Authority: Forestry Department</b>		
a.	Timber production forest under sustained yield	<p><b>Production forest:</b> Permanently protected for logging and timber tree plantations</p> <p><b>Protection forest:</b> Permanently protected for the purpose of the gazetted functional class</p> <ul style="list-style-type: none"> <li>• These functional classes must first be gazetted by the state governments for them to be in force. Without any gazetting, the PRF concerned will automatically be classed as (a) timber production forest under sustained yield.</li> </ul>
b.	Soil protection forest	
c.	Soil reclamation forest	
d.	Flood control forest	
e.	Water catchment forest	
f.	Forest sanctuary for wildlife	
g.	Virgin jungle reserved forest	
h.	Amenity forest	
i.	Education forest	
j.	Research forest	
k.	Forest for federal purposes	
l.	State park	

Provisions for the gazetting of the PRF do not contain any references to regulate the claims of or objections to the payment of compensation for Orang Asli customary land rights that may be extinguished or reduced as a result of the gazetting. Unlike the forestry laws in Sabah and Sarawak, the Act does not call for any mandatory action that states are compelled to undertake with regard to the publication and display of any extinguishment notification and compensation payment for Orang Asli communities affected by the gazetting of a PRF.

The National Forestry Act 1984 only once mentions the Orang Asli community, in sub-section 62(2)(b). This provision only permits the community to take forest produce within state land forests and alienated forests,<sup>12</sup> without the requirement for

<sup>12</sup> Forested areas that have been issued with a private document of title.

royalty payments. This exemption, however, does not extend to the PRF and only permits the taking of forest produce for domestic use and not for sale or profit.

The following is the limited exemption that has been permitted for the Orang Asli community under sub-section 62(2)(b):

any forest produce or class of forest produce taken from any State land or alienated land by any aborigine for –

- (i) the construction and repair of temporary huts on any land lawfully occupied by such aborigine;
- (ii) the maintenance of his fishing stakes and landing places;
- (iii) fuelwood or other domestic purposes; or
- (iv) the construction or maintenance of any work for the common benefit of the aborigines.

This provision is far from bestowing any form of recognition on Orang Asli customary land rights. Indeed, section 14 of the Act declares that all forest produce as property of the state.

#### **Section 14: All forest produce property of the State Authority**

All forest produce situate, lying, growing or having its origin within a permanent reserved forest or State land shall be the property of the State Authority except where the rights to such forest produce have been specifically disposed of in accordance with the provisions of this Act or any other written law.

Meanwhile, section 15 provides for the prohibition against the unlicensed harvesting of any forest produce.

#### **Section 15: Prohibition on taking of forest produce from permanent reserved forest or State land unless licensed, etc.**

- (1) No person shall take any forest produce from a permanent reserved forest or a State land except –
  - (a) under the authority of a licence, minor licence or use permit; or
  - (b) in accordance with any other written law.

Further, section 32 stipulates the prohibition against occupying or the carrying out of any activity within the PRF without state authorisation in the form of a licence.

Section 81, meanwhile, lists a host of activities that are prohibited within the PRF. These include the prohibition against the felling and cutting of trees, the use of fire to damage the trees, land clearing or ploughing activities for any purpose, including for agriculture, and any action that constitutes as trespass. These provisions have

thus allowed states to regulate and prevent the full exercise of Orang Asli customary land rights within the PRF, despite the fact that the affected communities may still be allowed to remain within the PRF after it has been gazetted.

Equally important, logging and timber tree plantation licences are also issued under the National Forestry Act 1984, whether on the PRF or state land forests. However, the bulk of such licences are issued within the PRF.

Due to the fact that the PRF and state land forests are interpreted as the absolute property of the state, while Orang Asli customary land rights are interpreted as merely a limited form of usufructuary rights and as a right no better than that of a tenant at will, such logging and timber tree licences will frequently encroach on areas that have been part of Orang Asli customary territories since time immemorial.

Table 5 shows the size of forested areas in Peninsular Malaysia for 2008 and 2013.

**Table 5: Size of forested areas in Peninsular Malaysia, 2008 and 2013 (hectares)**

State	Year	PRF	Other gazetted forests	State land forest	Size
<b>Johor</b>	<b>2008</b>	441,251	526	-	<b>441,777</b>
	<b>2013</b>	432,209	5,209	29,375	<b>466,793</b>
<b>Kedah</b>	<b>2008</b>	342,613		2,769	<b>345,382</b>
	<b>2013</b>	341,976		2,258	<b>344,234</b>
<b>Kelantan</b>	<b>2008</b>	623,849	103,082	140,935	<b>867,866</b>
	<b>2013</b>	623,849	103,082	85,265	<b>812,196</b>
<b>Melaka</b>	<b>2008</b>	5,080	20	228	<b>5,328</b>
	<b>2013</b>	5,151	20	228	<b>5,399</b>
<b>N. Sembilan</b>	<b>2008</b>	155,909		3,815	<b>159,724</b>
	<b>2013</b>	154,676	24	3,716	<b>158,416</b>

<b>Pahang</b>	<b>2008</b>	1,562,496	399,740	105,963	<b>2,068,199</b>
	<b>2013</b>	1,562,902	399,740	105,963	<b>2,068,605</b>
<b>Perak</b>	<b>2008</b>	881,900	120,661	41,107	<b>1,043,668</b>
	<b>2013</b>	1,003,616	3,161	41,107	<b>1,047,884</b>
<b>Perlis</b>	<b>2008</b>	10,586	68	318	<b>10,972</b>
	<b>2013</b>	10,799	68	665	<b>11,532</b>
<b>Pulau Pinang</b>	<b>2008</b>	6,098	1,192	519	<b>7,809</b>
	<b>2013</b>	6,060	1,192	519	<b>7,771</b>
<b>Selangor</b>	<b>2008</b>	241,568	1,608		<b>243,176</b>
	<b>2013</b>	250,129		731	<b>250,860</b>
<b>Terengganu</b>	<b>2008</b>	544,118	77,507	33,000	<b>654,625</b>
	<b>2013</b>	544,855	77,507	33,000	<b>655,362</b>
<b>Federal Territory</b>	<b>2008</b>	61		3,617	<b>3,678</b>
	<b>2013</b>	68		1,981	<b>2,049</b>
<b>TOTAL</b>	<b>2008</b>	<b>4,815,529</b>	<b>704,404</b>	<b>332,271</b>	<b>5,852,204</b>
	<b>2013</b>	<b>4,936,290</b>	<b>590,003</b>	<b>304,808</b>	<b>5,831,101</b>

Source: Annual Reports 2008 and 2013, Forestry Department of Peninsular Malaysia.  
<http://www.forestry.gov.my/>

A worrying trend that has begun to take place of late is the development of timber tree plantations within the PRF. This began to take place after the revision of the National Forestry Policy, undertaken for the purpose of promoting the development of such plantations as part of a sustainable forestry management strategy. The logic of such a decision is certainly confounding, as the development of these timber tree plantations will require the clear-felling of the PRF. Another perturbing matter on this development is the fact that such timber tree plantations have now been misleadingly termed ‘forest plantations’, which will continue to be calculated as part of the PRF, and hence the country’s forested areas, by national forestry statistics.

Table 6 illustrates the areas that have been zoned as such timber tree plantations from 2008 to 2013, although presently not all of these proposed areas have actually been developed.

**Table 6: Size of permanent reserved forests that have been designated for timber tree plantation development in Peninsular Malaysia, 2008 - 2013 (hectares)**

State	2008	2009	2010	2011	2012	2013
Johor	43,859	43,859	43,859	43,859	45,544	45,544
Kedah	2,720	2,950	3,100	3,100	3,100	9,133
Kelantan	14,819	14,819	13,890	91,040	104,514	162,485
Melaka	35	35	35	35	36	36
N. Sembilan	2,319	2,319	3,000	3,000	3,000	3,000
Pahang	24,043	24,043	24,043	24,043	24,043	31,831
Perak	4,818	4,818	4,818	4,818	1,680	56,503
Perlis	658	658	671	658	671	671
Pulau Pinang	-	-	-	-	-	-
Selangor	11,381	11,381	11,381	11,381	11,381	11,381
Terengganu	3,860	3,860	3,860	3,860	3,860	3,833
Federal Territory	-	-	-	-	-	-
<b>TOTAL</b>	<b>108,512</b>	<b>108,742</b>	<b>108,657</b>	<b>185,794</b>	<b>197,829</b>	<b>324,417</b>

Source: Annual Reports 2008 - 2013, Forestry Department of Peninsular Malaysia.

<http://www.forestry.gov.my/>



In 2008, the size of the entire PRF which had been classed for the development of such timber tree plantations stood at 108,512 hectares. **By 2013, this figure had already jumped to 324,417 hectares or 6.6 per cent of the entire PRF. This is an increase of close to 200 per cent within a span of just five years.**

As of 2013, Kelantan possessed the largest area of PRF which had been designated for the development of such timber tree plantations, at 162,485 hectares or 26.0 per cent of its PRF. In fact, the website of the Kelantan State Forestry Department states that it has designated a total of 199,352 hectares of its PRF as the latex timber clone plantation zone. As of 2010, 115 companies had been given a permit to develop these latex timber clone plantations on 91,030 hectares of forested land or 14.6 per cent of its PRF. This was followed by Perak, with 56,503 of its PRF having been designated for timber tree plantations, and Johor with 45,544 hectares.

## **Laws on conservation areas**

Conservation areas or also known as totally protected areas or protection areas may include forested, wetland, coastal and other high value and sensitive ecosystems and the habitats of vulnerable species. However, like the National Forestry Act 1984, all laws on conservation areas in the country do not contain any provisions to regulate the claims and compensation payments for the loss of Orang Asli customary land rights which will be extinguished or reduced as a result of the gazetting of such areas. Similarly, all such laws also introduce various prohibitions that will hinder the full exercise of Orang Asli customary land rights upon the establishment of such conservation areas.

### **National Parks Act 1980**

The National Parks Act 1980 provides for the gazetting process and enforcement of regulatory measures of national parks which are under its jurisdiction. The law is under the authority of the Department of Wildlife and National Parks (PERHILITAN). However, only the Pulau Pinang National Park has so far been gazetted under this law.

(All other conservation areas which employ the terms national parks or state parks have actually been gazetted under various other laws, as listed in Table 1.)

Sub-section 9(4) of the Act forbids the action of residing on, entering, using or occupying national parks without state authorisation. Meanwhile, section 11 of the Act permits new regulatory measures to be introduced within national parks,

including those on the killing, trapping and capturing of wildlife and the burning and cutting of vegetation.

All such prohibitive regulations, if legally imposed on local Orang Asli communities, will again affect the full continuity of their customary land rights.

## **Wildlife Conservation Act 2010**

The Wildlife Conservation Act 2010 provides for, among other things, the gazetting process and enforcement of regulatory measures of wildlife reserves and wildlife sanctuaries. Under this Act, conditions to permit the entry into wildlife reserves and wildlife sanctuaries are even stricter, as provided for by section 48.

### **Section 48: Permits to enter wildlife reserves and wildlife sanctuaries**

- (1) No person shall enter a wildlife reserve or a wildlife sanctuary unless he first obtains a written permit from the Director authorizing him to do so.
- (2) No person shall be granted a written permit authorizing him to enter a wildlife reserve or a wildlife sanctuary unless he satisfies the Director by way of a written application that he intends to enter the wildlife reserve or wildlife sanctuary for the purposes of art, science or recreation.

Meanwhile, section 49 describes a list of activities that are prohibited from being carried out in the two conservation areas.

### **Section 49: Prohibition of certain acts in wildlife reserves and wildlife sanctuaries**

No person shall —

- (a) in a wildlife reserve, disturb, cut, remove or take any soil, timber or vegetation;
- (b) in a wildlife sanctuary —
  - (i) hunt any animal or bird;
  - (ii) take, disturb, damage or destroy the nest or egg of any animal or bird; or
  - (iii) disturb, cut, remove or take any soil, timber or vegetation.

Further, the Act also provides the lists of protected and totally protected species. While prohibitions against the hunting, killing, injuring and the sale of such species are certainly crucial, their application to Orang Asli communities whose customs have committed them to a sustainable way of life may again limit the full exercise of their customary land rights.

However, section 51 does provide for permission for members of the Orang Asli

community to hunt specific wildlife, but once again only for their domestic needs and not for sale or profit.

#### **Section 51: Aborigine may hunt certain wildlife**

- (1) Notwithstanding anything in this Act, an aborigine may hunt any protected wildlife as specified in the Sixth Schedule for his sustenance or the sustenance of his family members.
- (2) Any protected wildlife hunted under sub-section (1) shall not be sold or exchanged for food, monetary gains or any other thing.

This permission is of itself not a form of recognition of the Orang Asli customary land rights.

#### **Other state laws**

Apart from the National Parks Act 1980 and the Wildlife Conservation Act 2010, which are federal laws, there are several other state-enacted laws which were introduced either during the colonial era or after independence that provide for the gazetting of their respective conservation areas. These state laws also provide for the establishment of their own distinctive state governance structures, such as corporations or trustees, which would function as the authorities for the conservation areas concerned. In certain cases, states have also allowed for either the state or federal PERHILITAN offices to act as authorities for such areas.

This action is permitted as land and forests are under the full jurisdiction of states while the protection of wildlife and wild birds as well as national parks are under the joint jurisdiction of the states and the federal government.<sup>13</sup>

The following is a list of the laws concerned, as already listed in Table 1:

- (i) National Park Enactment (Kelantan) 1938
- (ii) National Park Enactment (Pahang) 1939
- (iii) National Park Enactment (Terengganu) 1939
- (iv) National Parks Corporation Enactment (Johor) 1989
- (v) State Parks Corporation Enactment (Perak) 2001

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<sup>13</sup> Schedule 9, Federal Constitution.

As has already been explained, the amendments made by individual states to their respective state forestry enactments, which were all based on the National Forestry Act 1984, have also introduced a new protection functional class within the PRF, i.e. state parks, which are still under the authority of the Forestry Department.

The establishment of all such conservation areas also introduces new prohibitions against the various traditional practices of Orang Asli customary land rights, including those against the entry, occupying and utilisation of such gazetted areas without state authorisation. Similarly, they also do not mention anything about the extinguishment of Orang Asli customary land rights and the payment of adequate compensation prior to the enforcement of the gazetting process.

## **The environmental impact assessment process for logging and timber tree plantation operations**

On the whole, the law on the environmental impact assessment (EIA) process for forestry activities such as logging and timber tree plantations, whether in the past or present, still fails to ensure that more such operations are mandatorily required to obtain an EIA approval. The Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 2015, which has come into force recently, repealing the previous order, still fails to introduce stricter minimum conditions for forestry activities that require a mandatory EIA process.<sup>14</sup>

This is an important matter considering the fact that the typical size of a logging licence in Peninsular Malaysia rarely exceeds 100 hectares, which is the minimum requirement for the mandatory application of an EIA process without a public review, unless the activity is conducted at an elevation of 300 metres or higher, in which case the minimum requirement is reduced to 20 hectares. The same conditions are also set for the development of timber tree plantations.

Meanwhile the EIA process with a public review will only be applicable when a logging licence or a timber tree plantation reaches at least 500 hectares in size, unless again it is conducted at an elevation of 300 metres or higher, in which case the minimum requirement is reduced to 100 hectares.

Table 7 provides the list of forestry activities that are mandatorily required to obtain an EIA approval without a public review process. Table 8 provides the list of forestry activities that are mandatorily required to obtain an EIA approval with a public review process.

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<sup>14</sup> The Order is made under the Environmental Quality Act 1974.

## Conclusion

From this discussion, we can conclude that there are numerous weaknesses, limitations and flaws in the content of the various laws on land, forestry and conservation areas, as well as those on Orang Asli customary land rights itself. It is clear that such laws have failed to provide adequate protection on Orang Asli customary land rights as demanded by the Federal Constitution. These statutory weaknesses have led to the numerous problems reported by our case study.

**Table 7: Forestry activities requiring an environmental impact assessment process without a public review**

<b>PUBLIC REVIEW IS NOT MANDATORY</b>
<ul style="list-style-type: none"><li>• Conversion of forest to other land use at 300 metres and above, covering an area between 20 hectares and 99 hectares.</li><li>• Logging, or cutting or the taking of timber for the purpose of forest conversion to other land use, covering an area between 100 hectares and 499 hectares.</li><li>• Logging, or cutting or the taking of timber at less than 300 metres, covering an area of 100 hectares or more, outside the permanent reserved forest.</li><li>• Conversion of mangrove forest, peat swamp forest or fresh water swamp forest for industrial, housing or agricultural use, covering an area between 20 hectares and 49 hectares.</li><li>• Development of timber tree plantations, covering an area between 100 hectares and 499 hectares.</li></ul>

**Table 8: Forestry activities requiring an environmental impact assessment process with a public review**

**PUBLIC REVIEW IS MANDATORY**

- Conversion of forest to other land use at 300 metres and above, covering an area more than 100 hectares.
- Logging or forest conversion to other land use within:
  - a catchment area of reservoirs used for municipal water supply, irrigation or hydro-power.
  - an area adjacent or near to any state park, national park or national marine park.
  - forest which has been gazetted as a water catchment forest under the National Forestry Act 1984.
- Logging, or cutting or the taking of timber at 300 metres and above, covering an area of 100 hectares or more, outside the permanent reserved forest.
- Logging, or cutting or the taking of timber, covering an area of 500 hectares or more.
- Development of timber tree plantations, covering an area of 500 hectares or more.
- Conversion of mangrove forest, peat swamp forest or fresh water swamp forest for industrial, housing or agricultural use, covering an area of 50 hectares or more.
- Clearing of mangrove forest, peat swamp forest or fresh water swamp forest on islands adjacent to any national marine park.









**3. ILLEGAL LOGGING**

**VERSUS DESTRUCTIVE**

**LOGGING**



## 3. Illegal logging versus destructive logging

### **‘Legal’ logging is not necessarily respectful towards indigenous customary land rights**

Beginning in the 1990s, a host of international and national processes have been developed to ensure that logging operations and the production of timber and its products can be conducted sustainably, without involving irreversible forest destruction or activities that are in contravention of the law.

In Malaysia, there are two main such processes, which aim to achieve such objectives for the timber industry. The first is timber certification which was developed in the 1990s. The second is the Forest Law Enforcement Governance and Trade - Voluntary Partnership Agreement (FLEGT-VPA), which began to be negotiated between the Malaysian government and the European Union in 2006.

However, a number of non-governmental organisations in Malaysia have consistently refused to support these two processes. For these organisations, this refusal has been maintained up to the present due to a variety of unresolved legal and governance issues surrounding the indigenous customary land rights, as described in detail in Chapter 2.

In Malaysia, illegal logging is commonly understood by the public as an operation which is in breach of statutory laws or any written directives from the respective state executives pertaining to the timber harvesting process, especially in the field. In fact, violations of law can take place at any of the different levels of timber production through a variety of ways. Among others, these may involve the following activities:

- (i) Timber harvesting without a licence or beyond the duration stipulated by a licence.
- (ii) Timber harvesting which involves the felling of trees that are prohibited on various grounds. These may include young trees below the specified minimum diameter felling limit, specific mature trees that are protected to provide the future sources of seeding and protected and endangered species.
- (iii) Timber harvesting outside of the licensed area.

- (iv) Timber harvesting above a predetermined quota.
- (v) Timber harvesting which encroaches upon gazetted conservation forests. In Peninsular Malaysia, these include the various national parks, state parks, wildlife reserves and wildlife sanctuaries that have been gazetted under a host of federal or state laws. The prohibition also extends to parts of the permanent reserved forest with a gazetted functional class other than the 'timber production forest under sustained yield'.
- (vi) Timber harvesting within prohibited zones of a licensed area, such as near riverbanks or on slopes with a gradient above a legally specified limit.
- (vii) The falsification of any documentary information that is mandatorily required for any purpose, such as the volume and types of species harvested.
- (viii) Fraudulent activities in the documentation operation which have an impact on the amounts due from the payment of royalties and other fees that may be imposed by the state.
- (ix) Timber harvesting which violates any terms or conditions set by a licence.
- (x) The violation of any law pertaining to the processing, trade, business and export of timber and timber products or the processes on corporate financial reporting and taxation.
- (xi) The obtaining of licences for timber harvesting and licences for trade and business involving timber and timber products through graft or other illegal means.
- (xii) The smuggling of timber and timber products from foreign countries.

Based on the above, the understanding on the legality of logging activities and timber and timber products tends to only consider the adherence of a timber production system to statutory laws which govern the licensing process of timber harvesting operations, forestry and ecological protection and matters relating to the processing, trade, business and export of timber and timber products, including those on royalty and tax payments. However, such an understanding clearly fails to take into account logging operations that are embroiled in the violations of and encroachments on indigenous customary land rights and the relevant judicial laws ruled through court decisions, and even the Federal Constitution itself.

As explained in Chapters 1 and 2, the chief reason why such violations and encroachments take place is the fact that the contents of existing statutes and the interpretation of the federal government and states on the law themselves fail to understand indigenous customary land rights, as they have been developed by the community. These problematic contents and interpretations are also in contradiction to the Federal Constitution and landmark judicial decisions on the indigenous customary land rights.

Based on the legal provisions that are beset with a host of weaknesses, limitations and flaws, the peninsular states continue to interpret that the status of Orang Asli customary land rights as merely a limited form of usufructuary rights or as rights that are no better than that of a tenant at will, which can be freely withdrawn by the state at any given time. With this interpretation, indigenous customary land rights are thus denied to be a form of property rights protected under Article 13 of the Federal Constitution. In other words, the Orang Asli community is interpreted to only possess limited rights to cultivate **on** state land and do not possess any ownership rights **in** the land itself, despite the fact that it has been traditionally inherited down the generations.

Compounding the situation is the fact that there is no systematic and participatory boundary demarcation and mapping process of Orang Asli customary territories that has been conducted with the free, prior and informed consent of the people. Orang Asli villagers typically do not have the knowledge of how state governments interpret the size of their customary territories or determine their boundaries. This ambiguity cannot be easily resolved as a result of the absence of openness in information dissemination and governance transparency on the part of the state authorities.

Meanwhile, the National Forestry Act 1984, which regulates the gazetting of the permanent reserved forest and the issuance of logging licences, does not even have any provisions to address Orang Asli customary land rights. Consequently, the gazetting of the permanent reserved forest can easily be carried out without a free, prior and informed consent process and even the prior knowledge of the affected villages. As a result, states will then freely issue logging licences in such permanent reserved forests (and the non-gazetted state land forests) without further consulting affected communities. In recent years, timber tree plantation licences, which require the clear-felling of permanent reserved forests, have also been actively issued.

This is all being carried out without taking into account that a forested area may still contain existing and lawful Orang Asli customary land rights, based on the legal principles that have been confirmed by the judiciary.

## Landmark judicial decisions

The judiciary has already ruled that the related interpretations of the states on the nature of the indigenous customary land rights, as discussed above, are erroneous.

Tables 9 and 10 summarise landmark judicial decisions as ruled in *Adong Kuwau*, *Sagong Tasi*, *Nor Nyawai* and *Madeli Salleh*, from 1997 up to 2007.

First, according to the courts, indigenous customary land rights are a form of a proprietary interest in the land itself, which falls under the protection of Article 13 of the Federal Constitution, as is the case with documentary land titles. Second, to determine the lawfulness of such land rights claim, one has to refer to the customary laws of the concerned community themselves, and not statutory laws, due to the fact that customary laws are the pre-existing laws in relation to all other existing statutes.

This was ruled by the High Court in 2002 and the Court of Appeal in 2005 in *Sagong Tasi*,<sup>15</sup> which also served to affirm earlier decisions such as *Adong Kuwau* from Johor which was ruled by the High Court in 1997 and the Court of Appeal in 1998.<sup>16</sup> The Federal Court eventually rejected the leave to appeal by the Johor state government. The High Court decision in 2001 in the *Nor Nyawai* civil action from Sarawak was also heavily referenced by the *Sagong Tasi* decision.<sup>17</sup>

Consequently, based on this pre-existing legal feature, the enactment of any statutes or issuance of any written directives by different executive powers, from the colonial era up to present, may not in any way automatically extinguish subsisting indigenous customary land rights. Instead, any intention to extinguish such rights may only be carried out successfully and lawfully through clear and unambiguous written language and words. Therefore, modern legislation is only relevant to determine if any such notice has actually done so at any given time.

The above was the decision of the Federal Court in 2007 in *Madeli Salleh*, also from Sarawak, which affirmed the legal principles adopted in *Adong Kuwau*, *Sagong Tasi*

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<sup>15</sup> *Sagong Tasi and Ors v. The Selangor State Government and Ors*. The High Court in 2002 and the Court of Appeal in 2005 both ruled in favour of the Orang Asli community. Between 2009 and 2010, all defendants named by the suit withdrew their appeal which had already reached the Federal Court by then. The Federal Court subsequently directed that RM6.5 million be paid to the affected villagers. This payment also included the payment of damages for the trespass that had occurred during the eviction process against the people.

<sup>16</sup> *Adong Kuwau and Ors v. The Johor State Government and Anor*. The decision of the High Court ruled in favour of the Orang Asli community in 1997. This decision was confirmed by the Court of Appeal in 1998. The leave to appeal of the Johor state government at the Federal Court was dismissed without any reasoned judgment.

<sup>17</sup> *Nor Nyawai and Ors v. Borneo Pulp Plantation Sdn. Bhd and Ors*. The High Court in 2001 ruled in favour of the native community. In 2005, the Court of Appeal overturned the decision made by the High Court. Although the native community suffered a loss in this case, the Court of Appeal also emphasised the fact that this was strictly due to the presentation of non-credible evidence by the plaintiffs. All the principles on the indigenous customary land rights as ruled by the High Court were fully accepted by the Court of Appeal. The leave to appeal by the community was dismissed by the Federal Court in 2008.



and *Nor Nyawai*. The appeal of the Sarawak state government for a review of the decision was eventually rejected in 2009.<sup>18</sup>

**Table 9: Judicial recognition on the pre-existing nature of indigenous customary land rights**

Pre-existing rights
<ul style="list-style-type: none"> <li>• <b>Indigenous customary land rights and titles</b> are rights that have been obtained from the authority of customary laws, that are recognised and enforced by members of an indigenous community. They include:               <ul style="list-style-type: none"> <li>• Cultivation and forested areas under familial ownership.</li> <li>• Collective rights, the commons – forests, rivers, lakes, burial grounds, sacred areas etc.</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• Although the indigenous customary land rights and title are different from the <b>documentary land title</b>, which are rights obtained from documents issued under the authority of a legislation, they possess the same legal status as a form of <b>property ownership right</b>.</li> </ul>
<ul style="list-style-type: none"> <li>• The lawfulness of such rights does not depend on any executive, legislative or judicial proclamation.</li> </ul>
<ul style="list-style-type: none"> <li>• In order to determine its lawfulness, <b>that which must be referred to are the customary laws of the community</b>, and not any legislation. Legislation is only relevant to determine if such rights have ever been successfully extinguished successfully at any point of time.</li> </ul>
<ul style="list-style-type: none"> <li>• If an indigenous customary territory is without a gazetting status or a documentary title, its existence is still lawful.</li> </ul>
<ul style="list-style-type: none"> <li>• The government owes fiduciary duties to indigenous peoples i.e. a duty based on the trust between a trustee (government) and a beneficiary (indigenous peoples). These include the duty to protect the customary land rights and welfare of indigenous peoples and to not act in a manner that is inconsistent with those rights and that which may affect their well-being.</li> </ul>

<sup>18</sup> *Superintendent Lands and Surveys, Miri Division and Anor v. Madeli Salleh*. The decision of the Federal Court ruled in favour of Madeli Salleh in 2007. The appeal of the Sarawak state government for a review of this decision was rejected by the Federal Court in 2009.

**Table 10: Judicial recognition of indigenous customary land rights as a form of property right protected under Article 13 of the Federal Constitution**

Property rights
<ul style="list-style-type: none"> <li>• Property rights that are protected under Article 13 of the Federal Constitution.</li> </ul>
<ul style="list-style-type: none"> <li>• The rights may only be extinguished through clear and unambiguous written notification, in accordance with the law and with the payment of <b>adequate</b> compensation.</li> </ul>
<ul style="list-style-type: none"> <li>• Without issuance of a clearly worded notification on the extinguishment of such rights and the payment of adequate compensation, any denial of subsisting rights can still be legally challenged.</li> </ul>
<ul style="list-style-type: none"> <li>• The payment of adequate compensation <b>must include the payment for the loss of the land itself</b>, apart from crops, properties and other interests:               <ul style="list-style-type: none"> <li>• The loss of heritage land</li> <li>• The loss of the freedom of inhabitation and movement</li> <li>• The loss of forest resources</li> <li>• The loss of future living for oneself and other family members</li> <li>• The loss of future living for one's descendants</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• Adequate compensation in Peninsular Malaysia must be based on the Land Acquisition Act 1960 and not the Aboriginal Peoples Act 1954.</li> </ul>
<ul style="list-style-type: none"> <li>• Entry into the indigenous customary territory without the permission of its inhabitants and in an unlawful manner (including causing destruction to the area) is considered as a <b>trespass</b> that can be subjected to civil action.</li> </ul>

**Therefore, such legal questions on the status and features of indigenous customary land rights have already been resolved, confirmed and extensively clarified by the judiciary since as early as 2007.**

However, state governments have continued to ignore the implications of these landmark decisions. A decade after these decisions, the failure to amend the relevant policies and statutes not only remains a sore legal point but executive actions in fact continue to interpret indigenous customary land rights which do not possess any

form of documentary title as a limited form of usufructuary rights. To date, policy and legal reforms on matters relating to the manner in which logging, plantation and other resource extractive licences are issued by the states have not been undertaken.

**In conclusion, based on the above reasons, we must not simply accept that each logging operation conducted in accordance with statutes and written directives of the executive has indisputably obtained legal impeccability.** ‘Legal’ logging may still be destructive, involving the encroachment on and destruction of forests and natural resources that are customarily owned by the Orang Asli community, whose rights have been obtained legally through their customary laws and are protected by the Federal Constitution and recognised by the judiciary.

### **FLEGT-VPA: Ensuring the export of legal timber**

The negotiation process for the Forest Law Enforcement Governance and Trade-Voluntary Partnership Agreement (FLEGT-VPA) between the government of Malaysia and the European Union began in 2006. The FLEGT-VPA is a bilateral agreement undertaken by the European Union with timber-exporting countries that have agreed to voluntarily participate in the process. In brief, the FLEGT-VPA process seeks to ensure that member countries of the European Union will only accept timber imports that have been produced in accordance with all existing laws.

However, the European Union has yet to conclude an agreement with Malaysia, although it has successfully done so with many other timber-producing countries, including Indonesia.

This process has its origins with the FLEGT Action Plan, which was introduced by the European Commission in 2003. The plan seeks to develop systematic methods that can help stop illegal logging and its associated trade around the world. The VPA is a core strategy of the plan.

The FLEGT-VPA process requires participating timber-producing countries to develop the following two processes:

- (i) A definition of legal timber; and
- (ii) A timber legality assurance system (TLAS).

The TLAS provides details on the procedures and documentation that must be undertaken by a timber production process, beginning from harvesting activities to timber processing and to its export operations. Once the TLAS procedures have been fulfilled, the timber products concerned will be issued with a VPA licence, as a

lawful guarantee that they have indeed been produced in accordance with all existing laws. With this VPA licence, the timber products may now be permitted to enter the European Union market.

Under the European Union Timber Regulation 2010, which came into force in 2013, timber product importers in the European Union must demonstrate the fulfilment of due diligence in determining the legality of the imported timber products and in ensuring that the products concerned carry only a low risk of being illegal in any way. With this VPA licence, the due diligence process will be considerably more efficient for timber importers everywhere within the European Union.

For the purpose of this agreement, in 2008 the Malaysian government finally decided on the following as its definition of legal timber:

Timber harvested by licensed person from approved areas and timber and timber products exported in accordance with the laws, regulations and procedures pertaining to forestry, timber industry and trade of Malaysia.

However, this definition was subsequently criticised by various non-governmental organisations and indigenous community organisations, including Jaringan Orang Asal dan NGO tentang Isu-Isu Hutan (JOANGO Hutan),<sup>19</sup> of which SAM is a member, Jaringan Orang Asal Se-Malaysia (JOAS)<sup>20</sup> and the Sarawak Indigenous Lawyers Alliance (SILA). In March 2008, these groups announced their refusal to continue to be involved in the FLEGT-VPA multi-stakeholder consultations conducted by the federal government for the purpose of developing the definition of legal timber and the procedural contents of the TLAS. The groups also stated their refusal to support the signing of the VPA should the definition of legal timber remain in its present form.

Apart from the issue of the definition of legal timber, there were also various other outstanding issues with the multi-stakeholder consultation process, including the quality of the consultation itself as well as other content of the TLAS. In fact, the requests from these groups for the VPA process to ensure complete public access to information pertaining to forestry management and timber harvesting licences in the entire country were twice rejected by the federal government without any sound justification.<sup>21</sup>

Taking into account the judicial decisions that had been issued by 2008, including the decision of the Federal Court in *Madeli Salleh* in 2007, the groups were of the

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<sup>19</sup> Network of Indigenous Peoples and NGOs on Forestry Issues.

<sup>20</sup> Network of Indigenous Peoples of Malaysia.

<sup>21</sup> All documents and submissions from JOANGO Hutan, JOAS and SILA for this process since 2006 can be accessed at the section for 'Malaysia' on the website <http://loggingoff.info>.

view that at the very least the definition of legal timber must clearly mention the following proviso:

... and that such timber and its products shall be free from indigenous customary claims, and free from indigenous territorial boundaries.

This proposed clause is crucial considering the continued failure of state governments to interpret indigenous customary land rights as a form of property rights protected under the Federal Constitution. This failure, in turn, has allowed for logging licences to continue to be issued all over the country on indigenous customary territories that are without any reservation status or documentary land titles. The defence of this practice is simple – such forests and lands are the property of state governments.

## **Timber certification and sustainable forestry**

The Malaysian Timber Certification Scheme (MTCS) process, the scheme owned by the Malaysian Timber Certification Council (MTCC), was developed much earlier, at the end of the 1990s. However by 2001, JOANGOHutan had already withdrawn its support for the process due to existing governance problems within the Malaysian forestry sector, as described in Chapter 2.

First, the MTCS process will only be applicable within a forest management unit (FMU), which can only be established within gazetted production forests where logging operations are imposed with stricter regulations, in comparison to the non-gazetted state land forests. In Peninsular Malaysia, a forest management unit will extend to all permanent reserved forests within an individual state that are regulated under the National Forestry Act 1984. As such, the auditing process for the scheme and the issuance of the certificates will apply to timbers originating from permanent reserved forests in the respective states. This is so due to the fact that the MTCS certificate is applied for by individual state Forestry Departments in the interest of the forestry management system of the respective states. The application for certification does not originate from logging companies for the auditing and certificate issuance of their individual logging concession areas.

(If the certification process takes place in Sabah, this will be focused on the 'class II commercial forests' of its forest reserves that have either been gazetted through or under the regulatory powers of the Forest Enactment 1968. In Sarawak, the process may only involve the state's forest reserves and protected forests that have either been gazetted through or under the regulatory powers of the Forests Ordinance 2015.)

However, the gazetting of all such production forests in Peninsular Malaysia, Sabah and Sarawak will certainly result in either the extinguishment or, at the very least, the reduction of indigenous customary land rights.

In Sabah and Sarawak, the notification process on the extinguishment of indigenous customary land rights for the purpose of the gazetting of production forests is provided for under the main forestry laws of both states. However, such provisions and their implementation are still beset by numerous weaknesses.

In Peninsular Malaysia, section 10 of the Aboriginal Peoples Act 1954 does stipulate that Orang Asli communities are not obliged to leave all gazetted forests and the affected communities may also receive some exemptions from the related regulations applicable to such forests. However, should the state decide to proceed with the extinguishment or reduction of Orang Asli customary land rights within such forests, the provisions on the payment of compensation under the Act, as explained in Chapter 2, do not at all satisfy the requirements for adequate compensation as spelt out by Article 13 of the Federal Constitution.

Compounding the matter, indigenous communities all over Malaysia frequently report that they have not been adequately consulted prior to the planning, implementation and enforcement of the gazetting process of such production forests. Although they may eventually discover about the status of such gazetted production forests within their territories, the payment of adequate compensation may not have necessarily been done for the loss or reduction of their customary land rights.

Our case study shows that **all** the community representatives interviewed, whose customary territories had already been gazetted as part of permanent reserved forests, confirmed that although they were informed of the status of these forests through their signboards, as far as they knew, the communities themselves had not participated in any free, prior and informed consent consultation process in relation to the gazetting process. For them, although such permanent reserved forests may have absorbed their customary territories, their customary land rights continue to exist within them.

As explained above, the Federal Court in *Madeli Salleh* in 2007 already confirmed that the extinguishment notice of indigenous customary land rights must be written in clear and unambiguous language. This means that as long as members of an affected indigenous community have not received such a notice, any denial of their customary land rights on any gazetted forest, whether for production or conservation purposes, may still be legally challenged.

Although past MTCS standards did contain principles requiring that indigenous customary land rights should be respected, and further improvements were



subsequently introduced in 2012, the fact remains that there are no statutory provisions which can guarantee that without the free, prior and informed consent of affected communities, logging operations are not legally permitted to take place within indigenous customary territories that have yet to be gazetted for the communities.

The free, prior and informed consent process will only be meaningful if an affected community is consulted **before** the issuance of the logging licence itself. **This is not the standard practice in Malaysia due to the simple fact that there is no such policy or legal provision which compels for such a process.**

In 2014, the MTCC issued a new guideline (Document GD-NF 2/2014) to clarify several matters pertaining to its new standards for the certification of natural forests, which came into force in 2012. According to the guideline (emphasis added):

- In addressing sustainability requirements, forest certification requires the FMU manager to take actions that **may go beyond the mandate of the federal, state and local laws.**
- In order to accommodate these situations on the ground and in the spirit of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and based on the principle of free, prior and informed consent (FPIC), FMU managers are required to undertake effective consultations with the affected local communities and indigenous peoples on matters relating to their legal or customary rights, the application of their traditional knowledge, and fair and equitable compensation for the use of this knowledge.

However, the new guideline also cautions on the following (emphasis added):

- The FMU manager is expected to recognise and respect customary rights where these actions would not result in FMU's violation of the **legislative requirements** and **statutory licensing processes.**

There is not one statutory provision in Malaysia which stipulates a mandatory free, prior and informed consent process for affected indigenous communities to be instituted prior to the issuance of logging licences by state governments, and even prior to the commencement of the operations in the field. The National Forestry Act 1984 does not have any provision for such an free, prior and informed consent process for Orang Asli communities affected by the issuance of logging licences (or timber tree plantation licences) or for the gazetting process of the permanent reserved forest itself. This Act also has no provision recognising Orang Asli customary land rights.

Therefore, how is it possible for a forest management unit manager to take actions that may go beyond the mandate of the federal, state and local laws in order to successfully and meaningfully recognise and respect the customary land rights of indigenous peoples if, at the same time, these actions should not result in the forest

management unit's violation of legislative requirements and statutory licensing processes?

When analysed in its entirety, the technical incoherence of the scheme becomes rather conspicuous. We are of the view that the MTCS is not a scheme that is able to guarantee sustainable forestry management, as it is unable to guarantee that indigenous customary land rights are fully respected in accordance with the principles of free, prior and informed consent.

## **Sustainable logging, indigenous customary land rights and the principles of justice**

The well-being of indigenous communities, the protection of their customary land rights as well as compliance with the principles of natural justice are some of the fundamental issues in the sustainable management of forests. Therefore, in our view, the common understanding on 'illegal logging' must be certainly be re-evaluated, as it fails to take into account indigenous customary land rights, a form of rights that has been clarified extensively by judicial law beginning from the late 1990s, but which has unfortunately failed to be accordingly protected by statutory law.

**Legal logging carried out in compliance with statutory law in this country need not necessarily be sustainable or non-destructive. If such legal logging still fails to accord respect towards indigenous customary land rights, it has effectively failed to attain legal impeccability and must not therefore be accepted as sustainable. Clearly, logging operations which encroach upon indigenous customary territories are indeed a form of destructive logging.**

These issues are not only important in order to ensure the well-being and welfare of citizens and that their rights to property are respected by the state, they are also important because the Orang Asli community possesses a sophisticated level of knowledge and expertise in the conservation of forests and natural resources. This expertise has been developed for hundreds of years and passed down across generations. Their knowledge of the forests and their resources is priceless. It is counter-productive, then, that they have been marginalised in the management and conservation of forests.

Equally important, forestry and environmental management must also adhere to the principles of natural justice and governance transparency in the distribution of natural resources. It is extremely unjust that logging companies stand to profit handsomely from their operations when local Orang Asli communities not only continue to live in poverty but are further burdened by the loss of their forest and

river resources and other pollution issues that severely affect their quality of life. For timber tree plantations, the impacts will be even more devastating, as they involve the clear-felling of forests, without any possibility for future restoration.

## **Conclusion: Achieving legal impeccability**

The failure to introduce policy and legislative reforms at both the federal and state levels in order to align the statutes on forests, land, conservation areas and other natural resources with landmark judicial decisions, may certainly have an effect on the legal impeccability of Malaysian timber products harvested from indigenous customary territories without the free, prior and informed consent of the affected communities.

This principle of natural justice certainly becomes even more urgent when we consider the fact that the judiciary has recognised that indigenous customary land rights are a form of property rights protected by the Federal Constitution. This indicates that encroachment on indigenous customary territories has very large legal and justice implications.

**If the documentary land title as a form of property rights cannot be freely encroached upon or unlawfully acquired by the state and without the payment of adequate compensation, the same legal principle must also apply to indigenous customary land rights.**

Therefore, what is the status of the licences for logging, timber tree plantations, mining and other resource extractive activities that are issued on indigenous customary territories without the free, prior and informed consent and even the knowledge of indigenous customary landowners? Can we recognise such resources that have been extracted under such a legally flawed licensing system as having attained legal impeccability and fulfilled sustainability principles?

If the answer is yes, simply because the operation has adhered to all existing statutes and written directives ordered by the executive, this indicates that extreme negligence has indeed occurred in respect of the content of landmark judicial decisions and the Federal Constitution.





## **4. CASE STUDY:**

**CAUSES OF ENCROACHMENT**

**ON ORANG ASLI**

**CUSTOMARY TERRITORIES**



## 4. Case study: Causes of the encroachment on Orang Asli customary territories

### Focus of the case study

Briefly, the case study was designed to verify whether the violations of and encroachments on the Orang Asli customary territories in Peninsular Malaysia by logging and plantation operations are a result of isolated incidents triggered by the failure of a few parties to uphold the respect for the customary land rights of the affected villages, or if they involve something larger or **systemic**, and can be linked to the weaknesses, limitations and flaws of the existing governance and legal framework.

For this purpose, focus was given towards several fundamental issues during the data collection process:

- (i) The chronology of the encroachment from the moment information on the concerned logging or timber tree plantation operations within customary territories was discovered by the affected villages up to the time of the interview. This includes information on the actions that have been taken by the villagers and the effectiveness of such actions.
- (ii) The status of free, prior and informed consent of the affected villagers in each encroachment case, including the quality of the consultations that may have been undertaken by the companies involved and/or the authorities with them.
- (iii) The impacts of the encroachment on the welfare and lives of the villagers, including issues pertaining to the destruction of forest and riverine resources and environmental pollution, and their effects on the livelihood, safety and well-being of the villagers.
- (iv) The types of harassment and pressure from any parties, if any, that may have been faced by the villagers in the defence of their customary land rights against the encroachments.
- (v) The manner in which the companies and the state authorities address customary land rights claims of the affected villagers within the licensed

logging or timber tree plantation areas, including either their acceptance or denial of the existence of such rights.

- (vi) The level of forestry governance transparency and information access available for the affected villagers on matters pertaining to logging and plantation licences as well as the gazetting of forests.

## **Case study methodology and settlement demography**

- (i) From June to August 2015, JKOASM held its first briefings for villagers from Orang Asli customary territories that had been identified earlier as having been affected by encroachment, for the purpose of inviting them to participate in the case study.
- (ii) From September to November 2015, representatives for customary territories that had been determined to be suitable to participate in the case study attended meetings that were conducted in Ipoh (Perak), Gua Musang (Kelantan) and Bandar Muadzam Shah (Pahang). The first round of interviews were conducted with the community representatives, and evaluation was done as to whether the documents and the collected information in their possession were in acceptable order. Interviews were conducted based on a set of survey questions.
- (iii) In January 2016, the second round of interviews was conducted in Kuala Lumpur to ensure that all information that had been organised in the first draft was factually accurate. The collection of other evidentiary documents also continued during and after the meeting.
- (iv) In early June 2016, the community representatives were requested to conduct a final review before giving their approval to the draft of their cases.

Each admission on the encroachment on customary territories collected in this case study must be supported by evidence of protest from local communities in the form of written correspondence, police reports or other actions that are able to demonstrate that consent from affected communities was not obtained by the concerned logging or plantation operation.

Customary territories that were not able to present such information in a systematic manner had to be eventually excluded from the case study. In the end, the project managed to collect a total of 12 cases involving 13 customary territories with 66 villages and more than 6,000 residents.



Table 11 illustrates the demography of the customary territories involved in the case study.

**Table 11: Demography of Orang Asli customary territories involved in the case study**

	Customary territory	District	Number of villages	Estimated population	Ethnicity
<b>Kelantan</b>					
1	Pos Balar	Gua Musang	11	900	Temiar
2	Pos Bihai	Gua Musang	10	1,000	Temiar
3	Pos Hau	Gua Musang	8	600	Temiar
4	RPS Kuala Betis	Gua Musang	5	300	Temiar
5	Lojing	Gua Musang	4	1,000	Temiar
<b>Pahang</b>					
6	Kampung Pos Batu Gong	Chini	6	1,000	Jakun
7	Kampung Ganoh	Rompin	1	300	Semelai
8	Kampung Kemomoi	Rompin	1	80	Semelai
9	Kampung Mengkapor	Kuantan	3	250	Semoq Beri
<b>Perak</b>					
10	Kampung Air Bah	Lenggong	1	300	Lanuh, Temiar

11	Kampung Bukit Tokong, Lawin	Gerik	1	100	Lanuh, Temiar, Jahai
12	RPS Kemar and RPS Banun	Gerik	15	1,000	Temiar, Jahai
	<b>TOTAL</b>		<b>66</b>	<b>6,830</b>	

## Main findings

The following are the main findings gathered from the interviews conducted with the Orang Asli community representatives involved in the case study.

### 1. The absence of consultation and early information dissemination to affected Orang Asli communities *prior* to the issuance of logging and plantation licences and, in many cases, *prior* to the commencement of the operations – their consent is not mandatorily required in law

All representatives stated that their villages had neither been informed nor consulted on the issuance of the logging and plantation licences within their customary territories prior to the issuance of any such licence.

All representatives also stated that they only became aware of the issuance of such logging or plantation operations in their customary territories for the very **first time**, either during the period when some form of preparatory activities were being undertaken in the field prior to the commencement of felling operations, or when the felling operations were about to commence or even when they had in fact already commenced.

Although there were representatives of licence holder companies or their contractors that might eventually conduct consultations with the affected villages, with or without the presence of authorities such as the Forestry Department, all these only took place **after** the licences had been obtained. Further, despite the fact that these consultations might appear to be a process to obtain consent, in actual fact they only functioned as an **information dissemination process**. During such consultations, the companies often emphasised the fact they had been issued with a lawful licence.

The manner in which the villagers would discover such information would vary from one encroachment case to another.

Typically the aforementioned preparatory activities would involve field inspections, survey works or boundary demarcation activities, usually conducted at least several months before the commencement of an operation or when the companies began to construct temporary accommodation facilities for their workers. It was often the villagers themselves who had to inquire about the purpose of the activities from the workers.

However, there were also cases when the villages only discovered the operations when heavy machinery had already entered their villages, or when felling activities had already started, or even when some form of destruction or pollution was discovered.

Kampung Air Bah in Perak only discovered the encroachment taking place on the upstream area of their territory when the local river suddenly turned muddy. Kampung Ganoh in Pahang only knew of the encroachment on their customary territory when a villager on his way to fish discovered that their burial grounds had already been destroyed.

The effectiveness of the people's efforts in halting the operations appears to have depended directly on the strength of their strategies to remain united, mobilise a series of effective actions to defend their land and to diligently monitor their territories. Factors such as the aggressiveness and insistence of the companies may in the end cause the villages to fail in these land rights defence efforts.

## **2. Orang Asli communities are frequently confronted by various difficulties and pressures in highlighting their protests to the encroaching companies**

All representatives reported on the difficulties to assert the legitimate existence of their customary land rights to companies that were operating in their villages. Their complaints often fell on deaf ears or were responded to with the argument that the people did not have any rights to halt logging operations in such areas, as the licences had already been legally obtained from the state governments. Representatives from eight cases reported on the friction that had occurred as a result of the aggressiveness, pressures, threats or particular line of actions from the representatives of logging or plantation companies.

In Gua Musang, Kelantan, the Pos Balar villagers reported how a villager became a victim to racist insinuations allegedly spoken by a representative from the Forestry Department and a logging company.

The Pos Bihai villagers, meanwhile, were told to "get lost" by a member of a group of surveyors who had camped in their village to carry out land surveying activities of a licensed area.

Pos Hau villagers had to face the representative of a logging contractor who verbally threatened them by stating that he would return later to the village with the police, who would be armed with weapons, if the people insisted on continuing their objection against his logging operations.

The Lojing representatives reported on a traumatic incident in which three villagers were ambushed by a large group of workers from a plantation company, resulting in their physical injury and damage to their motorcycles.

In Pahang, the villagers of Pos Batu Gong in Chini became involved in a verbal altercation with a representative from a logging contractor at the police station. Later, the same representative also reportedly sought a villager at his home with the intention of pressurising him into agreeing with another plantation operation, resulting in a physical altercation between the two which was only stopped through the intervention of the villager's wife who demanded that the former leave her home.

The villagers of Kampung Kemomoi in Rompin had to face a company which had been given a plantation licence in the same area in the village that is involved with the Cluster Replanting (TBS) scheme overseen by the Rubber Industry Smallholders' Development Authority (RISDA). The company reportedly attempted to stop the villagers and their RISDA-appointed contractor from carrying out land clearing activities on the people's own land.

The representative from Kampung Mengkapor in Kuantan reported on an incident in which the villagers were forced to take away the key of a logging company's bulldozer when their workers began to move from their first area of operation to the village water catchment area.

In Gerik, Perak, RPS Kemar and RPS Banun, villagers reported how during a consultation with a company and the Forestry Department one of the individuals had turned up with an unconcealed gun, causing the people to feel intimidated.

### **3. Absence of a process that mandatorily compels the direct dissemination of notification letters as well as official documents and information pertaining to the issuance of logging and plantation licences to affected indigenous communities**

Only representatives from three communities i.e. Pos Balar and Lojing in Kelantan and Kampung Kemomoi in Pahang possessed some important documents related to the logging or plantation licences operating within their customary territories. In Pos Balar and Lojing, these documents were obtained only upon the insistence of the villagers. Information from such documents may not necessarily be comprehensive

in nature. Much of the information on such logging and plantation licences was in fact obtained only from the project signboards.

There is no process to compel state authorities to inform affected villages on the issuance of such logging or plantation licences, in a formal manner and through the provision of official notification letters and documents and the establishment of open consultation spaces, which could provide important information about the operations, prior to or even after the issuance of logging or plantation licences within Orang Asli customary territories.

#### **4. Absence of the process that mandatorily compels the direct dissemination of notification letters as well as official documents and information pertaining to the gazetting of permanent reserved forest to affected indigenous communities**

Only the representatives from Lojing, Gua Musang in Kelantan managed to obtain a copy of the state gazette on the reservation of the Lojing Permanent Reserved Forest during a consultation with the Forestry Department. This consultation was undertaken after the communities concerned had refused to allow the Forestry Department to carry out boundary cleaning works within their customary territory.

Other representatives stated that they did not possess any information pertaining to the gazetting of the permanent reserved forest within their customary territories. Most of them were also not informed about the full impact of this process on their rights.

There was much confusion among the respondents on the various aspects of forestry legislation. For example, they were continuously confused by the term permanent reserved forest, and had not been given the necessary information by any parties that such forests are in fact permanently reserved for logging operations and not for conservation purposes.

#### **5. Information on the boundaries of non-gazetted indigenous customary territories as interpreted by the state is not communicated to indigenous communities, whether through maps or ground demarcation**

Only one customary territory, Kampung Pos Batu Gong in Pahang, has its land gazetted as part of an Aboriginal reserve. However, the representative from this customary territory also voiced his concern that the villagers today are no longer clear on the status of the reserve, i.e. whether it has been de-gazetted by the state or not.

Meanwhile, all other representatives affirmed that they were not at all clear on the interpretation of state governments regarding the extent and size of their customary

territories, or how such decisions were arrived at by the states in the first place. The customary territories have never obtained any official maps from state governments and such territorial boundaries have also not been demarcated on the ground.

**6. There has been negligence on the part of the government in ensuring that indigenous communities receive accurate information on their customary land rights and other fundamental human rights**

Representatives from all the customary territories stated that they became confident enough to protest against the encroachment on their customary territories in a more open, formal and organised fashion, starting from around 2007 to 2010, although logging operations had actually began as early as the 1960s, 1970s and the 1980s. This confidence was developed only after they had been given exposure on their rights by various non-governmental organisations. There were even representatives who admitted that in the past their communities did not know they had the right to protest against such encroachments and to take action without approval from JAKOA.

This however, does not mean that the communities did not continue to exercise ownership over their customary territory based upon their customary laws and did not take actions to control their land to the best of their ability.

It does appear that communities have not been encouraged by the relevant government agencies to discover the real facts on the basic rights to liberty and property of all citizens who are protected under the law.

**7. There has been an increase in forest conversion for the purpose of plantation development**

Representatives from seven cases reported on the existence of large-scale plantation projects on their customary territories. These operations also involved the conversion of the remaining logged forests.

**8. Protest letters from indigenous communities frequently did not receive any response from government agencies**

Representatives from nine cases also wrote protest letters either to the authorities or logging companies to express their protest against logging and/or plantation projects taking place in their territories. However, only representatives from three customary territories reported having received written responses, but they were not from the state governments or the state Forestry Departments.

Kampung Pos Hau in Kelantan did receive a response from the Forestry Department



which informed them that their complaint would be referred to the Kelantan state Forestry Department.

Villagers from Kampung Bukit Tokong in Perak had the opportunity to meet with the sub-district chief (*penghulu mukim*) of Kenering to express their protest. Subsequently, the office of the *penghulu mukim* proceeded to write a letter to the district officer of Hulu Perak to inform them of the community protest.

For Kampung Kemomoi villagers in Pahang, JAKOA did take follow-up action to request the Lands and Mines Department of Pahang to resolve the dispute between the villagers and a plantation licence-holder. This licence had been issued on a piece of land that overlapped with the people's customary land that is currently involved in a communal plantation development project with RISDA.

#### **9. The police have generally failed to take effective action in investigating the complaints about encroachment on Orang Asli customary territories**

Representatives from nine cases recounted that their communities did lodge police reports to protest against encroachment on their customary territories. Only the representative from Kampung Mengkapor confirmed having her police report investigated in detail by the police. The police conducted interviews with her, and called for a consultation process that involved government agencies and the representatives of the logging company. Subsequently, the police continued their investigation in the field.

All other representatives did not report any effective follow-up actions undertaken by the police as a result of police reports made by communities.

#### **10. On the whole, indigenous communities are not satisfied with the services provided by government agencies such as JAKOA and the Forestry Department**

Representatives from all but one customary territory reported that they are not satisfied with the quality of services of the various government agencies, in particular those provided by JAKOA and the Forestry Department. The common view voiced by representatives was that government agencies were biased and more inclined to side with the logging and plantation companies. Only the representative from Kampung Bukit Tokong, Lawin in Perak rated the services of these agencies as "quite normal" (*biasa-biasa sahaja*).

**11. Logging and plantation operations still produced damaging impacts on forests, rivers and land as well as adversely affecting potable water sources, food, medicines, natural resources used in cultural and spiritual ceremonies, income and the health of the indigenous communities**

Representatives from all communities affirmed the adverse impacts of logging and plantation operations on the natural resources and ecosystems surrounding their villages, which in turn negatively impacted on the well-being of the villagers and their quality of life:

- (i) All representatives reported on forest destruction and river pollution which took place as a result of logging and plantation operations. Representatives from four cases in Kelantan, all three from Perak and four in Pahang reported that the river pollution caused had also affected their drinking water sources. Some of the villages had managed to find new water sources from smaller streams, while others were not able to do so. In Pos Hau, Kelantan and in Pahang, the villagers managed to protect a few streams or otherwise sourced underground water for their consumption. Landslides were reported by representatives from three cases in Kelantan and two cases in Perak.
- (ii) All representatives reported on the destruction of forest and riverine resources. Wildlife populations were reported to have decreased sharply over the years while many fishing sites have also been destroyed. RPS Kemar and RPS Banun in Perak have also been confronted by human-wildlife conflict involving elephants, which were found in close proximity to the village housing areas and farms. The representatives reported that in recent years three villagers had been trampled to death by elephants, while another villager was severely injured during an attempt to scare away elephants with firecrackers, resulting in the amputation of his arm.
- (iii) All representatives reported that the destruction of forest and riverine resources has adversely affected their sources of food, medicines and ceremonial items used in cultural and spiritual rites. Most of the villagers today have also had to purchase foodstuff like rice and vegetables. As a result of the decreasing size of available land for agriculture, rice cultivation has also been largely abandoned by most of the villages. Rice cultivation, in particular, requires the collective participation of members of a village since a smaller number of rice fields will render them more vulnerable to pest and bird attacks. Further, rice cultivation also requires spiritual knowledge on matters concerning the spirit of rice. Representatives from Kampung Mengkapor and Kampung Kemomoi in Pahang also lamented their frustration with the younger generation who no longer possess knowledge pertaining to the cultivation of hill rice and swamp rice.

- (iv) All representatives reported that the destruction of forest and riverine resources has also adversely affected their sources of income that could have been obtained from the sale of these natural resources. Although there are villagers who still carry out the gathering of forest produce for sale, the sources of income of most villagers today are largely dependent on the cultivation of cash crops such as rubber and fruit, as well as on their employment as labourers in the plantations surrounding their villages. During the rainy season, income from rubber tapping would be affected, resulting in a decline in their overall income.
- (v) All representatives from Kelantan reported that farms had also been destroyed as a result of logging or plantation operations. In Kelantan, representatives from four cases reported on the destruction to their burial areas. Representatives from two cases in Perak and two in Pahang also reported such destruction of communal burial grounds. In Perak, the destruction of farms in RPS Kemar and RPS Banun was also caused by elephants. In Pahang, only Kampung Kemomoi was affected by the destruction of farms as a result of the construction of logging roads.
- (vi) In Kelantan, representatives from four cases reported on adverse health impacts as a result of logging and plantation operations. Diarrhoea is a common health scare among the people, suspected to be caused by contaminated drinking water, apart from skin and eye infections. In Perak, representatives from three cases also reported on other health concerns. Apart from diarrhoea, the people also reported infectious diseases such as typhoid, malaria and dengue. Kampung Air Bah reported on the death of an infant a few years back as a result of diarrhoea, which again was suspected to be caused by contaminated water. In Pahang, where the villages reported on their ability to better protect water sources, only the representative from Kampung Kemomoi reported on the problem of diarrhoea, which was suspected to be caused by water from the nearby river becoming polluted as a result of a plantation project located upstream.
- (vii) All representatives from Kelantan and Perak, as well as from Kampung Kemomoi in Pahang, affirmed that local roads also suffered from regular damage, affecting their access to transportation.

## **Other observations**

The responses given by the community representatives certainly provide a clearer

picture that the territorial encroachment faced by Orang Asli villages is not an exception to the rule, but rather a common experience that has taken place over a long period. It gives a clear confirmation that encroachment on customary land rights of Orang Asli in Peninsular Malaysia is indeed a systemic problem.

Although the case study is participated by only 12 groups of respondents from 13 customary territories, this view is further supported by other indicators:

**(i) Report of the National Inquiry into the Land Rights of Indigenous Peoples, 2013**

As explained in Chapter 1, this report published from a SUHAKAM process elucidates the frustration faced by indigenous peoples all over Malaysia as a result of the frequency of violations of their customary land rights and encroachments on their customary territories. The report further recognises the systemic causes of such problems and has proposed 18 recommendations to be implemented by the authorities.

**(ii) Memorandum on the protest against the Policy on Orang Asli Land Alienation and Memorandum on the protest against the Policy on Orang Asli Land Alienation as approved by the National Land Council at a meeting chaired by the deputy prime minister on 4 December 2009 in Putrajaya, 17 March 2010**

The two memoranda were submitted to the Prime Minister's Department in Putrajaya on 17 March 2010. Thousands of Orang Asli community members gathered in Putrajaya to show support of their submission.<sup>22</sup> The first memorandum was submitted by the Gabungan NGO-NGO Orang Asli Semenanjung Malaysia,<sup>23</sup> while the second memorandum was co-authored by both Persatuan Orang Asli Semenanjung Malaysia<sup>24</sup> (POASM) and Gabungan NGO-NGO Orang Asli Semenanjung Malaysia. Both memoranda voice the grassroots protest of the Orang Asli community against the Orang Asli Land Alienation and Development Policy (DPPTOA)<sup>25</sup>.

**(iii) Kelantan Orang Asli memorandum to demand recognition and protection of Orang Asli customary land, 13 February 2011**

This memorandum was submitted by representatives of Orang Asli villages in Kelantan. It was submitted at the Kelantan Chief Minister's Office on 14

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<sup>22</sup> *Malaysiakini*. Historic Orang Asli show of force. 17 March 2010.

<sup>23</sup> Alliance of Orang Asli NGOs of Peninsular Malaysia.

<sup>24</sup> Association of Orang Asli Peninsular Malaysia.

<sup>25</sup> Dasar Pemberian Hakmilik dan Pembangunan Tanah Orang Asli.

February 2011. The main content of the memorandum explains the collective protest against the encroachment on customary territories by plantation and mining operations.

**(iv) Memorandum to demand the state resolve the customary land issues of Orang Asli communities in northern Perak, 21 June 2016**

This memorandum was submitted to the Perak Chief Minister's Office by the Northern Perak Orang Asli Action Committee. The document demands that the customary Orang Asli territories in northern Perak be swiftly gazetted by the Perak state government according to their original sizes as confirmed by the communities. Further, the memorandum demands that better protection is accorded to such land through the issuance of communal grants. Lastly, the document also demands logging operations be halted in such territories pending the completion of the gazetting process.

## **Systemic causes of the violations of Orang Asli customary land rights**

Based on the findings of the case study as well as the analysis on the legal and governance framework for land, forestry, conservation areas and Orang Asli affairs, it is fair for us to agree with SUHAKAM that the causes of these violations are indeed systemic in nature. The following section provides detailed elaborations on these systemic causes of the violations of Orang Asli customary land rights.

### **1. The absence of land tenure security and the unilateral interpretation of customary territory areas by the state**

Generally, the different authorities from the colonisation era to the present took particular administrative steps to demonstrate that they were aware of the existence of indigenous customary territories that had been acquired based on the customary laws of the communities. However, as a result of various economic, political and geographical factors, most such customary territories, which were (and still are) located far from administrative centres, have never received any document of title, recognition in the form of a gazette or other clear form of written recognition from any authority.

This is the root cause of the land rights violation and encroachment conflicts on indigenous customary territories, i.e. **the absence of land tenure security** of indigenous villages all over Malaysia, including in Peninsular Malaysia. This problem has been allowed to continue from pre-independence times until today.

From a legal point of view, this predicament resulted, first, from weaknesses, limitations and flaws contained within various statutes that regulate the governance of land, forestry and conservation areas. Second, there have also been a host of erroneous interpretations by state governments regarding the features of indigenous customary land. However, such errors in statutory interpretation have already been corrected by the various landmark judicial decisions.

As a result, the determination of the size of Orang Asli customary territories has been conducted unilaterally and without the free, prior and informed consent of the people. Compounding the matter, this state interpretation of the extent of customary territories has not been informed to the Orang Asli villagers themselves, whether through the issuance of official maps or boundary demarcation on the ground. As such, the people are not even certain how state governments have arrived at their interpretation of the size and boundaries of their customary territories.

Third, states also tend not to actively utilise any existing statutory provisions which in fact can be used to improve land tenure security for indigenous territories.

## **2. Unsustainable forestry management**

Unsustainable forestry management can be clearly seen if a few factors are considered.

First, unlike the forestry statutes in Sabah and Sarawak, the National Forestry Act 1984 does not have any provisions to create forests with a functional class reserved for indigenous communities.<sup>26</sup> Community-based forestry management has long been recognised as an effective strategy in sustainable forestry management. However, in Peninsular Malaysia forestry resources are stipulated to be the absolute property of the state, while Orang Asli communities are burdened with numerous legal restrictions and impediments in their efforts to manage their ancestral forests.

Second, the development of timber tree plantations within permanent reserved forests, which began a decade ago, also indicates that natural timber resources have declined considerably since industrial-scale logging started in the 1970s. The National Forestry Policy which is applicable only to Peninsular Malaysia has also been amended to promote the development of such plantations, as part of the sustainable forestry management strategy. How can the clear-felling of forests be

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<sup>26</sup> The Forest Ordinance 1968 in Sabah provides for the gazetting of domestic forests. The Forests Ordinance 2015 in Sarawak provides for the gazetting of communal forest reserves. However, both the Sabah and Sarawak state governments have failed to actively utilise such provisions.



accepted as such? The justification given is that the development of these timber tree plantations will decrease the pressure on natural forest resources.<sup>27</sup>

If the utilisation of the selective management system (SMS) in forestry management is able to successfully ensure that forests permanently remain as such, despite the fact that logging operations continue to be carried out, why is there a need to clear-fell parts of the permanent reserved forests for the purpose of developing such timber tree plantations?

The selective management system process comprises a felling system based on the minimum diameter limit, protection of selected trees for future felling, and a felling cycle of 30 years. An inventory of forestry resources is also developed to identify the quantity and quality of timber resources within a production forest. Apart from this, silvicultural practices may also be applied, depending on the conditions on the ground to promote the growth of trees for future felling. However, the effectiveness of this strategy will depend on the enforced harvesting rates. If harvesting rates in past decades proved to be too high and the intensity of the damage exceeded the ecological threshold, it is inevitable that these logged forests will not be able to regenerate at the projected rates.

The Forestry Department also utilises the annual allowable cut (AAC) based on area size. The AAC for the entire country is implemented within a five-year duration based on the time frame of each Malaysia Plan. However there may be a need to review the effectiveness of such restrictions. In fact, it is also important to consider the use of quota restrictions based on harvesting rates. During the sixth Malaysia Plan (1991–1995), the AAC for Peninsular Malaysia was set at 52,000 hectares per year. For the tenth Malaysia Plan (2011–2015), this was reduced slightly to 40,334 hectares per year.

In actual fact, deforestation can easily be prevented if more forests are gazetted for the exclusive use of Orang Asli communities. Although the communities will continue to hunt and gather produce within such forests, it is simply not plausible that their income generation activities will result in forest destruction. Unlike logging companies, which do not have any cultural and spiritual ties to the land and forests on which they work on and operate solely to generate profit, community-based forestry management that is founded upon traditions that have been held since time immemorial will always ensure the effective conservation of all natural resources, for the use of future generations.

Third, the National Forestry Act 1984 and other related statutes on conservation

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<sup>27</sup> Refer to the National Forestry Policy and the National Timber Industry Policy 2009–2020 (Dasar Industri Kayu Balak Kebangsaan 2009–2020) (NATIP).

areas in Peninsular Malaysia also do not have any provisions to guarantee the public and affected peoples access to information which may have an impact on their lives. The sustainable management of forests certainly requires governance transparency in information dissemination. Currently, there is no such provision to compel the free publication of detailed information for the public at large on matters such as maps and other details on permanent reserved forests, national parks, wildlife reserves, wildlife sanctuaries, Orang Asli customary territories that have or have not been reserved, as well as logging and plantation licences.

Information that can be accessed is limited to matters such as the general sizes of such areas. The websites of the state Forestry Departments do provide maps of permanent reserved forests, but the quality of these maps is very poor indeed. Further, they are also not visually friendly for laypersons.

More importantly, there are simply no maps to show the boundaries of Orang Asli customary territories according to the interpretation of the states and the maps showing the licensed areas for logging and plantation operations. Further information on these licences, such as the duration of operations, licence number, licence holder name and its contractor, is also not published on the websites of the Forestry Department. Such information can only be obtained from signboards erected on location.

Last, the law on the environmental impact assessment (EIA) on activities related to forestry, such as logging and timber tree plantations, whether in the past or present, remains unable to ensure that more logging and timber tree plantation operations are subject to a mandatory EIA approval. Currently, the Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 2015 fails to impose stricter conditions for the EIA process for forestry activities.

For logging operations located at an elevation less than 300 metres, the EIA process without any public consultation is only mandatory when the size of operation is between 100 and 499 hectares. The same minimum requirement is also imposed for timber tree plantations. Only when an operation is located at an elevation of 300 metres or higher will an EIA process without a public consultation exercise become mandatory, once the size of operation reaches the minimum requirement of 20 hectares.

The EIA process with a public consultation component for logging and timber tree plantation operations only becomes mandatory if they take place at an elevation of 300 metres or higher, and reach the minimum requirement of 100 hectares. The process will also be imposed if they take place at an elevation of less than 300 metres if the project size reaches a minimum requirement of 500 hectares.

Due to the fact that most of the licensed areas for logging operations in Peninsular Malaysia do not individually exceed 100 hectares, although several licences may take place in close proximity to each other, such operations may still not be required to obtain an EIA approval.

### **3. The unilateral interpretation of the government on the Orang Asli customary territories which is in conflict with landmark judicial decisions**

To date, Peninsular Malaysian states continue to interpret Orang Asli customary land rights as a limited form of usufructuary right or as a right no better than that of a tenant at will, instead of a citizen's proprietary interest in the land itself. This right may encompass the right to crops, housing and other built structures, but certainly not the right to the land itself.

Such an interpretation is in contradiction to judicial decisions which have ruled that the indigenous customary land rights are a form of a proprietary right in the land itself, which is protected by Article 13 of the Federal Constitution.

Such a loose interpretation of their rights has resulted in large areas of Orang Asli customary territories being gazetted as permanent reserved forest or other classes of conservation areas. When logging, plantation and mining licences are issued on their territories, Orang Asli villagers will be confronted by the difficulty of finding statutory support in protesting against the encroachment. For instance, loggers can simply emphasise the fact that their licences have been acquired legally under the written law.

When their land is to be acquired for public purposes by state governments, the payment of compensation is not adequate and is limited only to the loss of crops, with the amount being determined based on the discretion of state governments.

Equally important, there is also the judicial decision on the fiduciary duty of state governments to protect the customary land rights and welfare of the Orang Asli community. Fiduciary duty is a responsibility based on the trust built between a trustee, i.e. the state governments and the beneficiary, the Orang Asli community. This responsibility includes the duty not to act in a manner that can adversely affect their rights and welfare. Therefore, the failure to provide the highest protection to Orang Asli customary territories through the reservation of their territories and the issuance of logging, plantation and mining licences without their free, prior and informed consent, is a failure to fulfil a form of fiduciary duty by the states.

#### **4. The absence of a definition on the Orang Asli customary land rights in existing statutes**

The Aboriginal Peoples Act 1954 does not contain any provision which gives a detailed interpretation of the features of Orang Asli customary land rights, which must be based on the interpretation developed by the community itself. The term 'Orang Asli customary land rights' is not mentioned at all in the Act or in any existing laws on land, forestry and conservation area.

The Aboriginal Peoples Act 1954 also does not describe how these customary land rights can be acquired by the Orang Asli community as they are described by the land laws in Sabah and Sarawak. The Act only provides for three classifications of the Orang Asli settlement: Aboriginal reserve which requires a gazetting process and receives the highest legal protection; Aboriginal area which must also be gazetted; and, the remaining non-gazetted areas collectively termed Aboriginal inhabited place. The absence of a definition promotes erroneous interpretations and further misunderstandings among state authorities pertaining to the Orang Asli customary land rights.

#### **5. Participatory mapping and boundary demarcation process for the purpose of the communal gazetting of their land is not actively undertaken**

As a result of the misinterpretation of indigenous customary land rights as merely a limited and often neglected form of usufructuary right, states have continuously failed to take the appropriate action to map and demarcate the boundaries of Orang Asli customary territory **with the participation of the communities and their free, prior and informed consent.**

Although Orang Asli communities are fully aware of the boundaries of their customary territories and land use management within their villages, **all** community representatives interviewed affirmed that they did not have any knowledge of how state governments interpret the boundaries of their customary territories.

JAKOA clearly does possess data on the size of land classed as Aboriginal inhabited place. However, the community representatives confirmed that their villages had not been given further information on the extent and size of their customary territories, whether through boundary demarcation or any cartographic documents.

Compounding the situation is the lack of clarity on the status of customary territory defined as an Aboriginal inhabited place, when a gazetted permanent reserved forest is also in existence within the same vicinity. The question is: Does an Aboriginal inhabited place form a distinct area from the permanent reserved forest?

Or do the authorities allow some form of overlapping to occur? This matter appears to be unclear from the perspective of the survey respondents.

Section 10 of the Aboriginal Peoples Act 1954 does permit an Orang Asli community residing in a reserved forest to continue to do so, although some regulatory measures may be introduced to limit the full exercise of their customary land rights. However, to merely permit an Orang Asli community to continue residing in an area already gazetted as a permanent reserved forest, save for a few exemptions such as the permission to harvest forest produce, is far from giving their customary land rights due recognition as a proprietary right to the land itself that is protected under Article 13 of the Federal Constitution. In fact, such an exemption does not even guarantee that such land will not be encroached upon by logging, plantation, mining and other resource-extractive operations.

Encroachment on indigenous customary land must be prevented, not only on the basis of this right to property but also because it is imperative for the purpose of ensuring that the people's forest resources will not be destroyed, as well to ensure that river pollution and other forms of environmental destruction that can adversely impact their lives, sources of income and quality of life will not occur.

Currently, the highest statutory protection that can be given to such Orang Asli customary territories is by way of gazetting them into Aboriginal reserves, whether through section 7 of the Aboriginal Peoples Act 1954 or section 62 of the National Land Code 1965. However, this process has yet to be actively and systematically undertaken by the states. At present, the size of Orang Asli customary territories which have been gazetted in the whole of Peninsular Malaysia is very small. In 2012, only 20 per cent or 30,883 hectares of such territories have been gazetted or issued with documentary titles. Of this, some 3,115 hectares consisted of land issued with a documentary title under the National Land Code 1965, which comprised only housing and agricultural areas and not forested areas. Likewise, the size of the gazetted Aboriginal areas was only 10,078 hectares while the size of Aboriginal reserves stood at 13,512 hectares or only 9 per cent of the areas that have been classified by the authorities as Orang Asli settlement areas.

## **6. Land title issuance that is in conflict with community interest and neglects the concept of territoriality**

Another question associated with the issuance of a land title or the gazetting of Orang Asli customary territories is the failure of the federal and state authorities to take into account the concept of the territoriality of customary land when and where any land title issuance or land gazetting effort is undertaken.



Often, the recognition given may cause the original size of such traditional territories to shrink. This is the reason the Orang Asli Land Alienation and Development Policy (DPPTOA), which was unveiled by the federal government in 2009, was rejected by the Orang Asli community. Although it is claimed that the DPPTOA has been developed precisely to provide recognition to Orang Asli customary territories, further analysis of its content clearly shows that the extent of land included in the process will only encompass the people's housing and cultivation areas. As such, although efforts such as DPPTOA may well intend to provide recognition of Orang Asli customary land rights, they tend to involve only a small part of their land, which may be limited merely to housing sites, the larger village settlement area and family-owned cultivation areas. In the end, the recognition in and of itself will also function as a restriction for villagers to continue asserting their customary rights on forested areas.

### **7. The gazetting of the permanent reserved forest without the community's free, prior and informed consent**

All communities save for one involved in this survey possess customary rights to forested areas that have been gazetted as part of the permanent reserved forest. However, **all** such community representatives stated that, to the best of their knowledge, their villages had never been included in any consultations in the gazetting process of these permanent reserved forests.

The representatives affirmed that they had never seen any documents relating to the gazetting of these forests. Only the respondents from Lojing, Kelantan managed to obtain a copy of the state government gazette pertaining to the gazetting of the Lojing Permanent Reserved Forest, which was gazetted in 1990.

Therefore, apart from not receiving any information prior to the decision to gazette the permanent reserved forests, Orang Asli customary territories also do not receive any adequate compensation payment for the loss or reduction of their customary land rights.

According to section 10 of the Aboriginal Peoples Act 1954, Orang Asli communities are not obliged to leave a gazetted permanent reserved forest and specific regulations can be introduced either to bestow them with particular exemptions (such as the permission to continue residing in their villages) or to impose on them specific restrictions (such as the prohibition against tree-felling or the hunting of particular wildlife). However, the representatives affirmed that they were not very clear on any of such special regulations that may be in force for their customary territories in relation to the gazetting of the permanent reserved forests.

This situation takes place due to the fact that the National Forestry Act 1984 itself does not possess any provisions to compel a mandatory free, prior and informed consent process and the notification process for any proposed extinguishment of indigenous customary land rights as well as the payment of compensation to affected communities for the purpose of the gazetting of the permanent reserved forest.

#### **8. The issuance of logging, plantation and mining licences within indigenous customary territories without the free, prior and informed consent of Orang Asli communities**

Most logging and timber tree plantation licences (the latter requiring the clear-felling of forests) are issued within permanent reserved forests, although there are also licences issued in the non-gazetted state land forests. Meanwhile, there are also other types of plantations such as oil palm that can be issued on state land, whether forested or otherwise.

From the surveys carried out, to the best knowledge of **all** respondents who were interviewed, the villagers had never been consulted prior to the issuance of any logging or plantation licences. All respondents stated that they only became aware of the arrival of such logging or plantation operations in their customary territories for the very **first time**, either during the period when some form of preparatory activities were being undertaken in the field prior to the commencement of felling operations, or when the felling operations were about to commence or even when they had in fact already commenced.

Our survey further shows that if people attempted to discuss matters with companies, the responses tended to emphasise the fact that the licences had been legally awarded by the state governments and that the licence holders had also settled all the mandatory fees and payments required under the law. Therefore, from the perspective of the companies, they had indeed adhered to all statutory provisions. In short, these licences are seen as rights that have been legally obtained from state governments.

Licences are issued in a such a way as a result of the interpretation of states that the permanent reserved forests as well as state land forests are the absolute property of the states while the customary land rights of Orang Asli communities are understood as merely a limited form of usufructuary rights or rights that are no better than that of a tenant at will. Such rights are commonly interpreted to be limited to the crops, housing and built structures found on the land. This interpretation is in conflict with the judicial decisions that have recognised indigenous customary land rights as a form of proprietary right in the land itself.

It does appear that states have failed to pay adequate attention to this matter since the villagers are typically allowed to continue residing in their traditional territories instead of undergoing a forced relocation exercise for the purpose of the gazetting of production forests and conservation areas. Forced relocation typically takes place only under a land acquisition process under the National Land Code 1965 for a host of purposes, including for infrastructure construction such as expressways and dams.

### **9. Orang Asli communities are not encouraged to be aware of their rights**

This current state of affairs resulted from the controlling nature of the Aboriginal Peoples Act 1954, apart from the inattentiveness shown by the authorities towards the basic human rights of the Orang Asli community, such as their right to personal liberty and property which are enshrined in the Federal Constitution. This is further compounded by the absence of provisions to enforce the free, prior and informed consent process for Orang Asli community, including on matters relating to information dissemination and the consultation process in other statutory laws.

### **10. The lack of governance transparency and information access**

All the above issues are in fact closely linked to the absence of transparency in the dissemination of important information to the Orang Asli community. This information includes the boundaries of indigenous territories as interpreted by states, the gazetting of permanent reserved forest and the issuance of logging, plantation and mining licences.

There is not one statutory provision in Peninsular Malaysia that requires the mandatory dissemination of information to the Orang Asli community in respect of matters that may have an impact on their rights and lives. As a result, conflicts over Orang Asli customary territorial boundaries are the norm rather than the exception, wherein the assertions of affected communities are simply ignored and remain unrecognised by the state authorities. Compounding the matter is the fact that the villages are not informed of territorial boundaries as interpreted by states through official maps and boundary demarcation on the ground.

It is almost certain that the government interpretation of the size of Orang Asli customary territories is much lower than the original extent inherited by the communities since time immemorial. However, at the very least, the dissemination of information can be used to develop a dialogue to resolve any disputes that may arise between state governments and villages. Unfortunately, this is not the common practice of state administrations and JAKOA.

High-quality maps that are visually friendly and are able to illustrate the boundaries

of permanent reserved forests, Orang Asli customary territories and licensed areas for logging and timber tree plantations on the websites of government agencies are currently not available for the Orang Asli community and the public at large. The same is true for detailed information on logging, timber tree plantations and mining operations. In actual fact, for the Orang Asli community, such information should be made directly available to them.

State governments and JAKOA are non-transparent in their interpretation of Orang Asli customary territorial boundaries. They have failed to provide the communities with such information through the dissemination of official maps or demarcation on the ground. The state Forestry Departments, meanwhile, do provide maps of the permanent reserved forests on their websites; however, the quality of these maps is extremely poor and visually unfriendly to the public at large.

Only on project sites are signboards erected to provide some important information on such operations. However, these signboards are only erected during the duration of the operations.



## 5. RECOMMENDATIONS



## 5. Recommendations

This final chapter discusses a set of recommendations to be undertaken by both the federal government and the states in order to ensure that violations of and encroachments on Orang Asli customary territories in Peninsular Malaysia will be systematically halted. These recommendations are not necessarily new since there are other non-governmental organisations and community-based organisations that have shared the same position with us on issues relating to such violations and encroachments. Some of these recommendations are also not dissimilar to those proposed in the Report of the National Inquiry into the Land Rights of Indigenous Peoples published by SUHAKAM in 2013.

Two important objectives of the eight recommendations proposed here aim to achieve:

- (i) The provision of **land tenure security** for Orang Asli communities by states, based on the communities' interpretation; and
- (ii) **Governance transparency** for all matters relating to land and forestry management to allow the development of a genuinely sustainable forestry management system.

Only when these objectives have been successfully fulfilled will the production **system** of timber, minerals and other natural resources in Peninsular Malaysia be recognised as sustainable and possessing legal impeccability.

The following are the recommendations of this report.

### 1. Legal reforms for the purpose of aligning statutes with landmark judicial decisions on Orang Asli customary land rights

Taking into account the landmark judicial decisions on indigenous customary land rights and the failure of the federal and state governments to introduce the appropriate amendments to the relevant statutes, there is now a lack of consistency between the two bodies of law.

As such, amendments to the relevant laws must be undertaken for the Aboriginal Peoples Act 1954, the National Land Code 1965, the National Forestry Act 1984, the National Parks Act 1980, the Wildlife Conservation Act 2010 and a host of other state laws on conservation areas, as well as any other statutes that may have an impact on Orang Asli customary land rights, including the individual state mineral enactments



in force.

In view of these landmark judicial decisions, it is therefore **legally inappropriate** for the state authorities in Peninsular Malaysia to continue the following practices:

- (i) The unilaterally determination of the size and territorial boundaries of Orang Asli customary land rights without their free, prior and informed consent.
- (ii) The action of extinguishing or reducing Orang Asli customary land rights without agreement obtained through a free, prior and informed consent process and the payment of adequate compensation. This principle applies to both the land acquisition process and the gazetting of indigenous customary territories into permanent reserved forests or other conservation areas.
- (iii) The issuance of logging, plantation, mining or other resource-extractive licences, even if they take place in permanent reserved forests, with the presumption that any subsisting Orang Asli customary land rights have been successfully extinguished under the law, without actually taking the action to do so in clearly written language, if such forests still form part of an Orang Asli customary territory through their continuous occupation.
- (iv) The issuance of logging, plantation, mining or any resource-extractive licences in Orang Asli customary territories, without their agreement obtained through a free, prior and informed consent process, or at the very least to ensure that the extinguishment of their customary land rights and the payment of adequate compensation for the loss of such rights have been first conducted.
- (v) The refusal to gazette Aboriginal reserves based on the size customarily claimed by the respective communities.

## **2. The introduction of a definition of Orang Asli customary land rights in accordance with the communities' perspective in the legal system**

The Aboriginal Peoples Act 1954 and the National Land Code 1965 must be amended to introduce a detailed definition of the features of Orang Asli customary land rights that are in accordance with the communities' perspective on their customary territorial rights, the Federal Constitution and the landmark judicial decisions on indigenous customary land rights.

These provisions must clarify on how such rights can be acquired by the Orang Asli community and status of the rights as a form of proprietary rights in the land itself, apart from the rights to crops and other properties found on their land.

### **3. The introduction of a participatory mapping and boundary demarcation process for Orang Asli customary territories for the purpose of the gazetting and issuance of a communal grant for the land**

Based on an accurate interpretation of the concept of territoriality in the exercise of indigenous customary land rights and supported by the Federal Constitution and landmark judicial decisions, a participatory mapping and boundary demarcation process must be introduced by the states for the purpose of the gazetting and issuance of a communal grant for Orang Asli customary territories.

Currently, statutory provisions that can be used for this purpose are section 7 of the Aboriginal Peoples Act 1954 and section 62 of the National Land Code for the gazetting of the Aboriginal reserves. However, these provisions still contain many weaknesses as states are still fully empowered to regulate Aboriginal reserves. Therefore, the issuance of a communal grant on behalf of the entire community will be the best way forward, with the respective communities being given full authority to manage such reserves, including the rights to determine the land use management of the territory as well as other matters relating to their livelihoods, income generation activities and general well-being.

This process must be undertaken with the consent and blessing of the concerned territories, within a consultation space that is open and transparent. It requires the full participation of the communities and must not be limited to only the village leaders or other representatives appointed by the state. The structure of this consultation space must include various stakeholders, including any legal advisers appointed by the community, if they wish to do so.

Apart from the above, a reparation process must also be introduced to return Orang Asli customary territories that have been gazetted as permanent reserved forests under the National Forestry Act 1984 or its predecessors, as well as those that have been gazetted as conservation areas under a host of federal or state laws.

### **4. The issuance of land titles or land gazetting that is consistent with community interest and in accordance with the concept of territoriality of Orang Asli villages**

It must be emphasised that the communal gazetting of Orang Asli customary territories must be undertaken with the consent of the concerned communities and should not cause the size of such territories to decrease. Further, it must also take into account the diverse strategies of different tribes in managing the land use patterns of their customary territories.

As long as the consent of an Orang Asli community is not obtained, the issuance of documentary land titles based on the Orang Asli Land Alienation and Development Policy (DPPTOA) must not be continued. The implementation of the DPPTOA must be abandoned if it continues to contain provisions that have clearly been rejected by the Orang Asli community.

**5. The gazetting of permanent reserved forest and other conservation areas can only be undertaken with the free, prior and informed consent of affected communities and the payment of adequate compensation**

The National Forestry Act 1984 must be amended to ensure that the gazetting of the permanent reserved forest contains provisions on the manner in which free, prior and informed consent can be obtained from affected communities. These will include provisions on a transparent notification process, which takes into account the language of the notice, the manner in which the notice is displayed and the duration for which affected communities can put forward objections and claims for adequate compensation. At the same time, similar amendments must also be introduced for the gazetting process of other conservation areas under various federal and state laws.

**6. The halting of the issuance of logging, plantation, mining and other resource extractive operations in Orang Asli customary territories without their free, prior and informed consent**

A host of the relevant laws must be amended to ensure that the process for the issuance of logging, plantation, mining and other resource extractive operations can only be carried out after the free, prior and informed consent of affected Orang Asli communities has been obtained, if their customary territories have yet to be gazetted. This means that any consultation with the affected communities must be undertaken **prior to** and not after such licences have been issued.

In order to permit such a process, the state administrative system must possess clarity on the location and territorial boundaries of Orang Asli customary land rights, in accordance with each community's interpretation. Any unilateral interpretation by states on the locations and boundaries of their territories will only cause an increase in land rights disputes in the future.

## **7. The empowerment of Orang Asli community for the purpose of upholding their human rights, including their customary land rights**

Government agencies must halt all actions that may cause violations of Orang Asli community members' rights to personal liberty and freedom of speech, assembly and association as well as their right to property, which are all upheld by the Federal Constitution. All such actions that may suggest that all affairs relating to the Orang Asli community must be under the direction of the government should be terminated immediately.

Government agencies must be honest towards the Orang Asli community in that the Federal Constitution does provide generous protection of their basic human rights, including their rights to voice peaceful protests against encroachments on their customary territories.

The mandate of government agencies must be communicated clearly and be restricted to the extent necessary to protect the rights and well-being of a minority community. This mandate must not permit decision-making that encroaches upon the private lives of community members as well as their internal communal affairs. The dissemination of any information that suggests that all such community affairs are under the governance of JAKOA and that the people are not free to make their own decisions on matters concerning their private and communal lives, including those relating to their economic, social and cultural well-being, must be immediately halted.

For this purpose, the Aboriginal Peoples Act 1954 must be amended to ensure that it no longer allows a range of private and communal matters concerning the Orang Asli community to be determined by the state.

## **8. Ensuring transparency in the governance and legal structures relating to land, forestry, conservation areas and natural resource extraction activities**

Transparency in the governance and legal structures relating to land, forestry, conservation areas and natural resource extraction activities must be improved through the introduction of the necessary amendments to all the relevant statutes. These laws include the Aboriginal Peoples Act 1954, the National Land Code 1965, the National Forestry Act 1984, the National Parks Act 1980, the Wildlife Conservation Act 2010, state laws concerning conservation areas in Peninsular Malaysia and other federal or state laws pertaining to the extraction of natural resources.

Apart from this, the public administration system must also be empowered with official directives to ensure that information on land, forestry, conservation areas

and the extraction of natural resources which may have an impact on the Orang Asli community and the public at large is publicised through the websites of the relevant government departments and agencies and their direct dissemination on the ground for affected communities.

Information on the boundaries of permanent reserved forests and other conservation areas must be in the public domain. High-quality and visually friendly maps of such areas for the general public must be published on the websites of the relevant government departments or agencies, while clear boundary demarcation must also be carried out in the field.

Equally important, state governments must also provide the public with easy and free access to information on logging, plantation, mining and other resource extractive licences on an annual basis. Such information must include at the very least maps of the licensed areas, duration for operations, license numbers and the names of the licence holders and their contractors.

There has been much confusion on the ground for the Orang Asli community as a result of the lack of such information, especially prior to the commencement of any licensed operations. This has complicated peoples' efforts to articulate their opposition or even to make further inquiries on such licences. All such issues can be easily resolved if there is clear executive policy that compels such information to be placed freely in the public domain.



# 1. Pos Balar, Kelantan



*The construction of a workers' accommodation facility for a plantation project destroyed the farms, orchards and burial ground of the community in February 2011.*



*The Gua Musang Orang Asli communities protesting against the plantation project at a blockade site near Kampung Barong in August 2015.*





*Affected communities are often forced to deal with the labourers of an operation after it has already commenced instead of being consulted by the state authorities prior to the issuance of a resource-extractive licence.*



*Logging also requires logponds and other auxillary infrastructure such as accommodation facility and roads to be built on the Orang Asli customary land.*

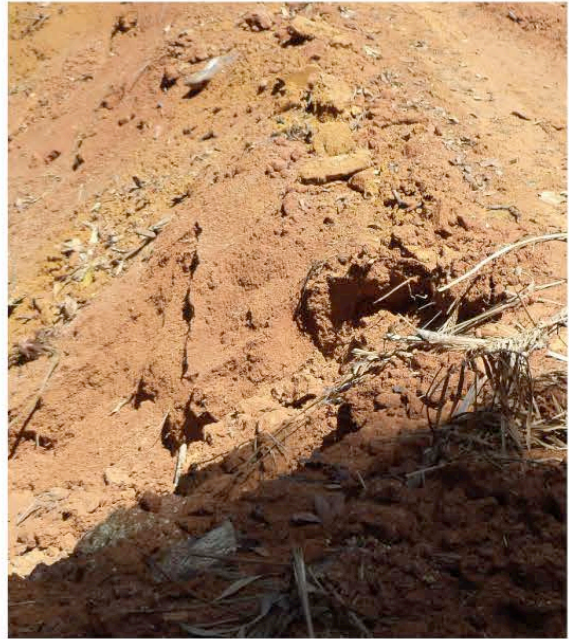
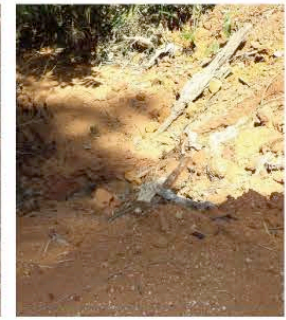


## 2. Kampung Bukit Tokong, Lawin, Perak



*After the logging is done – debris, litter and puddles. This is how logging may promote the breeding of mosquitoes.*





*After the logging is done – soil erosion. This is a problem that local communities would have to continuously face, unless sufficient repair works are done.*



### 3. RPS Kemar dan RPS Banun, Gerik, Perak



*A small stream affected by soil erosion caused by logging.*



*The muddy river water travelling further downstream.*



*Soil damage can also destroy the sources of spring water, from which streams and rivers emerge.*





*Logging debris can cause great danger to local communities during the rainy season and in the event of a flood.*



*Soil erosion is a problem which local communities would have to continuously live with.*



*The injustice of it all. A local Orang Asli villager looks at the prized logs harvested from his ancestral land.*







# **ANNEX**

**Case Study on the Violations of Orang Asli Customary Land Rights by Logging and Plantation Operations in Kelantan, Pahang and Perak**



## 1. Pos Balar, Gua Musang, Kelantan

### **SECTION A: BASIC INFORMATION ON AFFECTED VILLAGES**

<b>District and State</b>	Gua Musang, Kelantan
<b>Affected villages and ethnicity</b>	<p>Pos Balar</p> <p>Pos Balar consists of 11 villages with a population of around 900.</p> <ol style="list-style-type: none"> <li>1. Kampung Barung</li> <li>2. Kampung Ipes</li> <li>3. Kampung Tidag</li> <li>4. Kampung Telur</li> <li>5. Kampung Perawas</li> <li>6. Kampung Sawea</li> <li>7. Kampung Manjul</li> <li>8. Kampung Balar Lama</li> <li>9. Kampung Temaga</li> <li>10. Kampung Dakoh</li> <li>11. Kampung Peng</li> </ol> <p>Temiar</p>
<b>Respondents</b>	<p>Hanan Anjang Kampung Ipes 1986</p> <p>Kamal Alek Kampung Tidas 1985</p> <p>Zesali Along Kampung Sawea 1969</p> <p>Roslan Aliej Kampung Sawea 1960</p>



### Other information

The customary territory is inherited by the villagers from pioneering ancestors.

Pos Balar was formerly referred to as Pos Dakoh. Pos Dakoh was a former British military post. Today the entire territory is referred to as Pos Balar by the state.

Originally, the customary territory was known as Dakoh. *Dakoh* is a type of fruit, also called *mangkong* or *bengkong*, but known as the *kebek dekoh* in the Temiar Language. The ancestral account on the origins of this territorial name relates the story of a powerful shaman and the *dakoh* tree.

The shaman, also called the *tatak belian* in the Temiar Language, was on his way back to the village after having gone fishing in Sungai Getok and Sungai Jupes, when he chanced upon a heavily fruiting *dakoh* tree. He took three of the fruits to be brought home. However, as he continued walking home, he began to hear a very strange and loud voice. Sensing it as a premonition, he began to run and subsequently, ended up dropping the three fruits.

Upon reaching the village, he requested his fellow villagers to temporarily flee to another place, as he was worried if this voice might continue to move and reach the village.

After a few days away, the villagers returned to their homes. When they went to check on the site where the shaman had heard the loud and strange voice, they discovered that the *dakoh* fruits that had been accidentally dropped by him, had turned into stone.

Meanwhile, *balar* is a type of bamboo which in the Temiar Language is known as the *arwen balar*, which has stems that are greenish yellow in colour. The *arwen balar* used to grow in abundance nearby a river, which was eventually called *balar*, leading to one of the villages being called the same.

All the names in the customary territory were derived from names of plants or significant incidents which took place a long time ago. Many of these names have also been accepted in official state documents and maps.

## **SECTION B: VERIFICATION ON THE EXISTENCE OF CUSTOMARY LAND RIGHTS**

The villagers verified that they are able to demonstrate the existence of their customary land rights through the following body of evidence.

<b>A.</b>	<b>Can the villagers provide oral evidence on the history of their customary territory?</b>	
1.	History on the origins of the customary territory and ancestry	x
2.	Site-specific history, folklores, legends	x
<b>B.</b>	<b>Do the villagers still practise the traditional customs and culture of their community?</b>	
1.	Land clearing, agriculture	x
2.	Marriages	x
3.	Deaths, funerals	x
4.	Communal laws, code of conduct and ethics	x
5.	Possession of old items and heirlooms: traditional costumes, gongs, baskets, beads, personal ornaments, decorative objects, kitchen utensils, knives, machetes, weapons, household items etc.	x
<b>C.</b>	<b>Can the villagers provide evidence on their use of the land and its natural resources within the customary territory?</b>	
1.	Tree felling or tree harvesting marks	x
2.	Hunting and fishing sites, saltlicks	x
3.	Burial grounds and sacred sites	x
4.	Trails and pathways within forested or cultivation areas	x
<b>D.</b>	<b>Does the government acknowledge the existence of the villages?</b>	
1.	Government built facilities	x
2.	Visits by ministries or governmental departments and agencies	x

## **SECTION C: LAND ENCROACHMENT REPORT**

### **BACKGROUND**

#### **1. How many logging or plantation companies have encroached upon your customary territory in the last five to ten years?**

Logging operations first commenced in Pos Balar way back since the 1980s. A company which was headquartered in Kuala Lumpur had already been operating in our area from the late 1980s up to the early 1990s, which did destroy parts of the cultivation areas of the community, including fruit trees that had been cultivated by our ancestors, tuber plants, hill rice and medicinal herbs. Such logging companies have always continually attempted to encroach upon our customary territory.

We only began to voice our strong protests against such operations around 2010.

In the past, we were very much dependent on JHEOA/JAKOA. Back then, in our understanding, we were under the responsibility of the department. JAKOA itself had never informed us on our rights, and thus we thought that JAKOA was effectively the sole representative of our voice. We were very afraid in the past and we did not verbally question them on this matter. We had thought, if we did speak up against JAKOA, our village would be excluded from development programmes. However in the past, we could recall a few occasions during in which the people had verbally brought up some land and logging issues to JAKOA. But then, we would always be informed that matters related to land and customary land ownership are not under the jurisdiction of JAKOA as they are under the authority of the Kelantan state government.

In a nutshell, we were really not aware of our rights during this period, although we have been occupying and controlling our customary land since time immemorial.

As such in the past, we would often discover about the arrival of a new logging company at a new site, only after its machinery and vehicles had entered the village territory, without our consent and despite our objections. JAKOA, the Forestry Department and all, they never did inform us on these logging operations.

#### **Plantation**

We did not know that an oil palm plantation project in our customary territory would begin, not until the workers of the project contractor were already in the field. This took place in mid-January 2011.

A few months earlier, during the by-elections of the state legislature for Galas, in November 2010, Kamal Alek was attending a campaign event for the candidate from Barisan Nasional. During the question and answer session, Kamal had inquired on the status of the customary land rights of the Pos Balar Orang Asli, because our territory had yet to be gazetted.

The response received by Kamal seemed to insinuate that the occurrence of such problems was caused by the fact that Barisan Nasional was not in power in the state. If Barisan Nasional was given the power to govern Kelantan, then only would the customary land rights of the Orang Asli community in Kelantan be recognised. Following this exchange, a few television stations went on to interview Kamal on the land rights issue that he had raised.

Possibly, from these television interviews, the plantation project contractor came to hear about Kamal. Subsequently, the company went on to contact Kamal and communicated its intention to appoint him as the middle person acting between themselves and the villagers. They called Kamal in December 2010 when he was in Pahang. They requested for a meeting to be conducted in Pos Balar.

Kamal at last agreed to meet with the representative of the plantation project contractor in Kuala Betis. He then inquired on Kamal's willingness to cooperate with them so that the plantation project was able to commence. However instead, Kamal demanded that copies of all documents related to the project, including its permits, must be handed to him so that he could first inform other villagers.

A week later, the project contractor representative handed to Kamal a copy of an agreement between the Perbadanan Pembangunan Ladang Rakyat Negeri Kelantan (PPLRKN) and Sigur Ros Sdn. Bhd, which was written in English. It was upon seeing this document that we finally knew for certain that there was purportedly the approval for PPLRKN to develop the *ladang rakyat* involving oil palm in Pos Balar. Sigur Ros meanwhile was acting as its contractor.

Following this discovery, nothing happened until mid-January 2011.

Suddenly, without any warning, on January 19, 2011, the residents of Kampung Barong began to hear the sound of chainsaws coming from the burial ground across their housing area. When they went on to check what was happening, they were met by a group of workers who then proceeded to inform them that they were constructing the accommodation facility for the workers of the plantation project. The villagers immediately forbade them to continue with their activities as the area was their burial ground. However, the workers did not believe them.



The workers were adamant in continuing with their land clearing and felling activities. They said that we did not have any rights to the land and that we should just move to more upstream areas.

Thus from January 19 to 20, their activities ended up destroying the farms, crops, burial ground and the customary land belonging to the villagers of Kampung Barong since time immemorial. The river also became polluted as a result of their land clearing activities. We were determined to oppose the project.

Finally on January 25, the villagers organised a meeting to discuss about the encroachment. We then unanimously decided to proceed to the site concerned to meet with the workers again. During this exchange, we attempted to obtain a bit more information on the project since we had not received any further information about it, not to mention the fact that the village chief and residents had also not even given their consent for the project to be carried out. We also discovered that Indonesian foreign workers were being used by the operations.

After voicing our protest on location, representatives from the contractor company were invited to attend a meeting with us at the nearby school. During this meeting, we expressed our firm rejection of the project development, apart from other logging operations within our customary territory. The situation then was quite tense.

The company did try to make a few offers to the villagers. Among others, these included job opportunity in the land clearing activities as well as the proposal to carry out repair works for our roads. However, we rejected all such offers because the project would entail the destruction of our customary land.

On February 6, 2011, a few villagers from Kampong Barong went to lodge police reports regarding the land encroachment attempt. The following are excerpts from the reports:

Rosli Aluij [GUA MUSANG/000389/11] reported on the following:

On January 20, 2011... I heard the sounds of chainsaws coming from my rubber orchard. When I went on to check, I found that the rubber trees that I had planted, around 700 of them, had been destroyed by workers who had been hired to conduct land clearing and forest felling activities, by the company related to the plantation project. I affirm that all works done in my orchard were carried out without my knowledge and I wholeheartedly do not agree with the manner in which they had set to carry out these works, without any consultation with the villagers. With this, my fellow villagers and myself construe these as an infringement of the rights to our customary land as indigenous peoples here.

Meanwhile, Mohd. Abis Angah [GUA MUSANG/000391/11] stated the following:

On January 19, 2011 around 1800 hrs, I discovered that around 11 unknown persons had entered Kampung Barong Pos Balar. I then went on to inquire on their purpose of entering our village and they subsequently informed me that they were going to develop a plantation project in our village. The villagers from Kampung Barong up to Kampung Dakoh and myself, regard this as a land encroachment. On January 20, 2011, they began their felling activities in the cultivated areas belonging to myself and other villagers. Numerous crops were destroyed. For example 600 rubber trees that had reached four years of age, durian, rarah, perah and other types of crops – all were destroyed. We as the original people of the area do not consent to the concept of this plantation project because no consultation had been conducted between the concerned party and the village chief or the village committee members... Apart from that, we as the original people in the area certainly feel deeply disappointed that our rights had been denied, when we in fact are the original people here. We therefore regard this land encroachment as a violation of our customary land rights.

Along Adil Ngah Jasin [GUA MUSANG/000392/11] gave a more detailed statement on the use of foreign workers by the company concerned:

On January 19, 2011, I heard the sounds of chainsaws from the burial ground across the Kampung Barong RPS Balar... I was very suspicious and thus went to conduct a check. After reaching the steel bridge across Sungai Betis, there were 2 four-wheel drive vehicles and I met with a man whom I believe to be Malay and asked what was the purpose of the work being done and he answered that the site is to be used for building the accommodation facility for the workers of the plantation project. I tried to protest against the works being carried out and told him that the site is a burial ground but the man did not believe me. He was just insistent on continuing with the activities despite knowing the area is an Orang Asli burial ground. On January 20, 2011, they were still continuing with the said land clearing and forest felling activities without having written anything to the village chief and village committee members. On January 25, other villagers and myself organised a meeting and we then unanimously decided to go to the project site to conduct a check... When we reached the clearing site, we discovered that the developer carrying out the forest clearing had brought in illegal migrant workers from Aceh (5 persons), Lombok (2 persons), Flores (1 person) and Madura (1 person). The other villagers and myself view the activities as an encroachment and violation of our Orang Asli rights as well as a security threat to us.

On February 13, 2011, around 260 representatives from the Orang Asli community from upstream Kelantan organised a meeting at Kampung Jias in RPS Kuala Betis, along with non-governmental organisations, to discuss on actions that must be undertaken to halt this encroachment. During this meeting, the people agreed to voice our protest against the plantation project. Among the actions being planned

were the submission of a memorandum to the Kelantan state government and the selection of community representatives who would be responsible to submit the document.

On February 14, 2011, the selected representatives went to submit the memorandum to the Kelantan state government at the Chief Minister's Office. The content of the memorandum dated February 13, 2011 included the following demands:

1. The halting of all logging as well as gold and tin mining activities in our customary territories.
2. The halting of the development of plantation projects and the return of the land to the local Orang Asli communities.
3. The establishment of an action committee by the state government, which comprises members of the Orang Asli communities and non-governmental organisations, to investigate on the relevant issues.
4. The call for the state government to take responsibility in the formation of a specific policy on Orang Asli based on the United Nations' Declaration on the Rights of Indigenous Peoples (UNDRIP) and Article 8(5)(c) of the Federal Constitution.
5. The call for the state government to recognise and permanently protect the Orang Asli customary territory in order to ensure the preservation of Orang Asli culture as well as the harmony and vitality of our customs.

During the meeting, the state government agreed to halt all works on the concerned plantation project pending the approval process of the gazetting of Aboriginal reserves in Kelantan.

However, when we returned home, on February 16, we discovered that the company had in fact started painting the demarcated boundaries of the project. Then and there a dispute took place, when we insisted on prohibiting them from continuing with their activities.

A month later, on March 14, 2011, Orang Asli community representatives from southern Kelantan and the Bar Council attended another meeting at the Chief Minister's Office. However, the community representatives failed to meet with the chief minister himself. Only the lawyers were allowed to meet him in person for a very short time. We were made to understand that the content of our memorandum would be deliberated on by the Kelantan state government. We were also informed that the licence holder of the plantation project had issued a stop-work order for their contractor to temporarily halt all land clearing activities. We were then given another appointment date with the chief minister.

During the same month, a confrontation took place between the Pos Balar villagers and the company workers when we insisted on them leaving the project site. When we met with JAKOA in Gua Musang, their officers merely stated that there was nothing that they could do as it was a state-sanctioned project. Following these, the company's activities did cease for a while. However, a representative of the company did state that they would however still return after a period of three years.

We then organised another community meeting on March 29, 2011 to discuss on the upcoming April meeting with the chief minister. The villagers expressed the need for a simple but clear message to be communicated to him. This message must explain on how the lives and culture of the Orang Asli community are closely intertwined with our customary land. Therefore the recognition on our customary land rights is the way to protect our lives and culture. Consequently, if the state government is adamant in continuing with the proposed plantation project, it would be violating the rights of Orang Asli citizens in Kelantan.

Unfortunately however, on April 10, 2011, the meeting was called off as the chief minister had instead travelled to Sarawak.

In the end, the workers' accommodation facility was still built nearby Kampung Barong. This facility however is not very big. They ended up building more workers' quarters, an office and a nursery nearby Kampung Tidag.

In early 2012, the villagers were informed that they had been requested to provide six acres of their land to be surveyed by the state authorities. The purpose of this survey works was to allocate the land for the people to continue their economic and livelihood activities. Of course we did not at all agree with this proposal.

When the state authorities began to arrive in the villages to commence their survey works, the people finally decided to carry out a blockade protest on January 27, 2012 at two locations on the Kuala Betis road. The first would take place at a site leading towards Pos Tohoi, nearby Kampung Parik. The second would take place at another site leading towards Pos Balar, nearby Kampung Angkek. (Kampung Angkek is part of the Lambok Customary Territory which also comprises Kampung Sentep, Kampung Kelapa, Kampung Podek and Kampung Beluru.)

The blockade was also participated by villagers from RPS Kuala Betis and other nearby Orang Asli villages, with more than 800 people.

On January 27, the police began to arrive at Kampung Angkek, the place where we were conducting our blockade preparations. The police then requested that we call off our plans and offered to organise a discussion with the state authorities. However, we rejected all such offers. Kamal then questioned them back:



For how long should we continue discussing? Do you want to wait until all of our customary land is finished up by these logging and plantation projects?

By evening time, the police had already arrived at the blockade site in Kampung Parik. The people then waited to see the developments in Kampung Parik before deciding whether to continue building the second blockade at Kampung Angkek.

On the morning of January 28, we finally decided to move to Kampung Angkek to proceed building the second blockade there. We prepared banners and a sack of forest produce to be put on display by the road side, to show to the authorities the resources that we have been trying to protect all this while. We began to blockade at Kampung Angkek around 3 pm. The police was of course already there by this time.

After an hour or so, we were visited by JAKOA who attempted to advise us to cancel the protest. JAKOA tried to pacify us by saying that the matter at hand could still be discussed over. However, Kamal once again defended our right to assemble:

The Pos Balar case has been going on for quite some time and it is still without any solution. We do not want other Orang Asli villages to suffer the same fate.

In the end, the JAKOA representatives had to leave.

At around 5 pm, the police as well as the Federal Reserve Unit (FRU) began to issue their order for the villagers to disperse. According to the police report of Johari Sandi from Kampung Telur, Pos Balar [GUA MUSANG/000387/12] dated February 1, 2012:

I saw that the police had batons and weapons with them and told us that if we refused to disperse/be stubborn, they would hit us, and they gave us 10 minutes. The reason for my participation in the blockade was to assemble in peace and to demand for our customary land rights that have been encroached upon without our consent. If we fail to disperse, they will hit us. The fact was, we were only assembling peacefully to show how dissatisfied we are over the violation of our rights, which we have been demanding for so long. I believe our purpose of assembling there was not to cause any riot. We have long demanded for our customary land rights, our environment which has been polluted and has remained unprotected by the authorities. However, we have never been given our due rights. Instead the police was using violence against us.

At last, at around 6.30 pm, Kamal and five others were ordered by the police to get into their vehicle and be brought to the Gua Musang Police Station. We were interrogated until 11 pm. Kamal was then allowed to return. In all, 13 people were detained as a result of the blockade.

During the blockade, we managed to halt the movement of tens of logging and mining lorries. The incident was also widely reported in the media.

After the blockade, we continued to defend our customary territory at Pos Balar. On July 24, 2012, Along Aja made another police report [GUA MUSANG/002002/12] on his visit to the company's accommodation facility in Pos Balar on July 18, 2012:

...to request the Kelantan public plantation project to halt all works in the area and to request them to move to another area far from the Pos Balar villagers. The purpose of this report is to protest against the action of the Kelantan public plantation project which wishes to have the land.

On January 9, 2013, we wrote another letter to the Kelantan chief minister to protest against the erection of a signboard which prohibited us from 'trespassing' into the plantation area, with an image of a person purportedly using a gun to shoot a trespasser. The signboard read:

Trespassing is prohibited. Land owned by the Perbadanan Pembangunan Ladang Rakyat Negeri Kelantan Pos Dakoh 6,000 acres.

Our letter also demanded for our customary territory to be given its due recognition by the Kelantan state government:

...that Pos Dakoh/Pos Balar is an area that has been occupied by the Orang Asli community from the Temiar tribe, inherited since the times of our ancestors, but instead today the state authorities have failed to fulfill its responsibility to gazette the area as an aboriginal reserve under the Aboriginal Peoples Act 1954.

On behalf of the Pos Dakoh/Pos Balar Orang Asli, I would like to urge for the chief minister to take the appropriate action... so that our customary land rights will no longer be put under such a threat as how we have discovered, this evidence of the signboard which warns us against trespassing the Pos Balar/Pos Dakoh Customary Territory. Please refer to the photograph which warns us against trespassing.

For now, the plantation company has already ceased its operations. However, we are now facing the threats of logging encroachments.

### **Logging**

In May 2012, we began to receive information that logging companies would soon be entering the plantation project area to harvest timber on the land. It looks now that before the commencement of the plantation operations, valuable logs found within the project area would first be harvested.

In actual fact, the Kelantan State Forestry Department had written a letter dated May 24, 2012 to the contractor of the PPLRNK [PHN.KN 54/2/85 J.3(87)] to inform them of the approval to harvest logs from 10,000 acres of land, along with the permission to construct an accommodation facility for their workers, as well as a temporary log pond, within the project site. We managed to obtain a copy of the letter at a later time.

During the same month of May 2012, our villages began to be visited by various outsiders. A few of our villagers had chanced upon these individuals.

As early as May 9, 2012, representatives from the Kelantan State Forestry Department and a logging company had already visited Pos Balar to start the discussion on the impending logging operations in the village. This meeting was attended by community representatives from Kampung Tembaga, Kampung Dakoh, Kampung Peng, Kampung Ipes and Kampung Balar Lama. However, we expressed our opposition to any such plan.

During this discussion, a representative from the Forestry Department had made a few statements which in our view were insulting and racist in nature. This person stated that the Orang Asli community in Kelantan do not possess any customary territory. He also said that the Orang Asli were stupid and uneducated, and accused the secretary of the Jaringan Kampung Orang Asli Pos Balar (Network of Pos Balar Orang Asli Villages), Mustafa Along, who was also present, to be an instigator. Mustafa was accused to be the person responsible for instigating other villagers to protest against the logging operations. All of us rejected the accusation which was directed against Mustafa.

Then on May 21, 2012, two individuals in a four-wheel drive vehicle came to Pos Balar. We believed that one of them was an Indonesian citizen. We suspected that they may have been driving from the logging area in Kuala Telur. However, they did not stop by at Kampung Perawas, where our village chief was living. Instead, they headed straight for Kampung Peng.

In Kampung Peng, they showed a map of Pos Balar to a villager whom they encountered. Kamal then rushed to Kampung Peng to meet with these two persons. According to them, the map showed the area of the plantation project. They informed us that the plantation area will start at Kampung Peng in Pos Balar up to the hot springs in Pos Hendrop. They then left.

On October 23, 2012, Aja Along from Pos Balar lodged a police report [GUA MUSANG/002918/12] following the entry of government surveyors into Kampung Barong on October 3 and Kampung Perawas on October 8, to demarcate the boundaries of the plantation project area with metal rods. In his report, Aja among others stated the following:

They also informed us that the Orang Asli area only extends from the steel bridge up to Kg. Barong but in actual fact the Orang Asli village extends from Kg. Barong to Kg. Peng... We have managed to stop them from continuing to put up the metal rods. I am not satisfied because they have failed to first inform the village committee members of Pos Balar.

After the surveyors left, the people proceeded to remove the metal rods.

In early February 2014, representatives from a logging company came and informed us that they were going to start logging operations within the PPLRNK licensed area, comprising an area of 2,000 hectares (or slightly more than 5,000 acres). The people were adamant not to allow the operations to begin and informed the company so.

It was later discovered that the logging company had already been appointed by PPLRNK at the end of September 2013, to harvest the timber within the plantation project area. We managed to obtain a copy of a letter from PPLRNK to the Kelantan State Forestry Department dated September 30, 2013 on this matter.

However the company was adamant on continuing with their operations. As such, we continued monitoring the area concerned and were ready to request their workers to stop any activities from being carried out. From time to time, we would meet with representatives from the company to stress our views.

On October 9, 2014, we met up with the company representatives once again at their workers' accommodation facility. There, we repeated our opposition to the project and demanded that they leave our customary land. We also requested for a copy of all the documents related to their operations. They then handed the documents to us on the next day.



Unfortunately however, soon after this, a rather unpleasant incident took place. On October 12, as Kamal was riding his motorcycle on his way out to Gua Musang, near Kampung Tapai, he encountered the representative from the logging company who was in his car. All of a sudden this person handed out some cash amounting to RM200 to Kamal. Kamal proceeded to lodge a police report on the matter [GUA MUSANG/003004/14] on the very same day. He stated that the individual concerned:

...has given me some cash amounting to RM200 as a gift. I am not satisfied with this matter as I have not done any work for him. In my view, this money was gifted to me with the intention to encourage me to side with him.

Further, we also wrote a letter dated June 30, 2015 to PPLRNK to state our protest against the appointment of this logging company to harvest logs from the plantation project area. We stated that this protest had also been communicated to the logging company concerned. Apart from this, the letter also emphasised on the following:

...during the meeting, we the Pos Balar villagers had firmly stated our stand to reject and oppose the approved logging and plantation operations... since in our view, the implementation of these projects would not only cause the destruction of flora and fauna, with each one of them having its own traditional use, but the projects will also deny our rights to the land and territory that we have occupied and inherited since time immemorial through our customs.

Therefore, we would like to request for the corporation to hand back its approved licence for the plantation project in Pos Balar and to freeze all activities immediately. Herewith attached are the signatures and thumb prints to prove the clear and genuine evidence that this objection is undertaken with a majority and not minority community support.

Finally, in early August 2015, we had another meeting with representatives from the logging company. During this meeting, one representative actually used very insulting words against us. This person uttered to Mustafa Along that he apparently "has no standard" to be speaking to them.

Due to the fact that the meeting had failed to produce any solution for us, finally, on August 23, 2015, we erected another blockade nearby Kampung Barong. Indeed, this blockade succeeded in halting further encroachment by the company. Today, we are still successful in ensuring that this company does not enter our village to log.

Apart from the above, we also faced the threats of encroachment from other logging licences.

In early 2013, we began to face another problem with another logging company. The project signboard showed the licence number DS 01 12/2013, to take place in compartment 53 of the Sungai Betis Permanent Reserved Forest, in an area of 50 hectares. The duration of its licence was from March 20, 2013 to September 19, 2013, and was further extended to March 20, 2014.

On April 3, 2013, a worker entered Pos Balar to commence road construction works for the company. He was then immediately stopped by the villagers. We expressed our protest against the works as strongly as we could. Mustafa Along in his police report dated April 4, 2013 [GUA MUSANG/001127/13] among others stated the following:

The village representatives then proceeded to prohibit the worker from entering Pos Balar because we do not agree with the logging operations as the road is also being used as the main road by the students of SK Balar. The representatives then chose April 15, 2013 to conduct a meeting with representatives from the company and the government agencies in charge of the approval process for the logging operations, according to the agreement made on April 3, 2013. The company must then extend the invitation to the relevant government agencies in charge of approving the logging operations to also participate in the April 15, 2013 meeting and if it fails to do so, all Pos Balar villagers will prohibit the company from entering Pos Balar. This report is written for the purpose of safekeeping and to voice the protest of the Pos Balar villagers against any logging operations until the gazetting of the Pos Balar Orang Asli land is completed.

In the end, the company failed to continue their operations as a result of our control of our customary land.

Subsequently, in mid-2015, we were confronted by another threat coming from a another logging company. On May 15, 2015, representatives of this new company came to meet the villagers to request for the permission to log in two areas in the upstream of Sungai Telur. The size of the first area was 32 hectares [DS 01-47/2012] while the size of the second area was 68 hectares [DS 01-55/2012].

We of course refused to grant them the permission to do so. However, on May 23, 2015, the company workers began entering the village to begin constructing the accommodation facility of its workers. We then halted them from continuing their activities and were successful in stopping them.

On May 25, 2015, a police report [GUA MUSANG/004591/15] was lodged by Hanan Anjang from Kampung Ipes in Pos Balar on the matter:

The outcome of the discussion among the villagers was to not consent and allow the company to carry out the logging operations... These involve areas used as the villagers' water catchment and hunting and gathering grounds and the place for numerous resources to be obtained and claimed based on our traditions. With this, the villagers will not permit the company to log the concerned areas. On May 23, 2015 at 1.30 pm this company brought in their machinery to construct its workers' accommodation facility next to Kg. Perawas Pos Balar with (1) bulldozer for land clearing activities. As such, the Pos Balar Action Committee and other villagers took the action of blocking the entry into the road leading towards the construction site. The purpose of this was to make the company halt their logging operations. Logging is one of the causes of the floods and landslides that have recently occurred in Pos Balar.

The villagers then also wrote two letters with the same content to the Kelantan State Forestry Department dated July 12, 2015 to voice our opposition against logging and plantation operations:

This protest is made because we believe that if the logging project/operation is carried out, we will lose the access to various forest resources and clean water because the approved area is rich in forest resources that we have been using traditionally according to our inherited customs.

Currently, we are still successful in defending the areas concerned from being logged.

### **Additional notes**

The villagers also wrote to the Kelantan chief minister a letter dated March 28, 2014 to once again voice our protest against all such projects or operations from taking place on our land without our consent. Among others, the content of the letter was as follows:

The protest concerned is targeted against logging, mining, public plantation projects, private plantation projects, mega dam projects, land surveying works and other projects that are currently, have taken place and will take place on the Orang Asli Customary Territory. Among the reasons for our protest against all such activities is that our community believe, with good reason, that any project which is undertaken without our free, prior and informed consent (FPIC) will create various negative impacts on the continuity of our lives. Our lives are certainly closely intertwined with the existence of the forests as they have always been since time immemorial.

The letter proceeded to demand for:

The Kelantan state government to wait for the outcome from the Special Task Force Committee established by the Prime Minister's Department to investigate on the 18 recommendations proposed by the Human Rights Commission of Malaysia (SUHAKAM) following the completion of its National Inquiry on Indigenous Customary Land Rights and the Orang Asli communities in the interior of Kelantan fully support the implementation of the 18 SUHAKAM recommendations.

The other demands of the letters were focused on other related matters. The letters requested for the Kelantan state government to show its respect towards the free, prior and informed consent principles as described in the United Nations' Declaration of the Rights of Indigenous Peoples (UNDRIP). They also requested for the past demands of the villagers as had been voiced out in other previous memoranda submitted to the state government to also be respected.

Last but not least, we also requested for the clear understanding that the lives of the Orang Asli community are closely intertwined with the forests and that our actions have not been undertaken due to the instigation of external parties. In fact, the letters stated, this protest has been motivated by "the awareness and rational consideration from the grassroots community."

## CONSENT OR OPPOSITION

### **2. For each company or sequence of encroachment event:**

**(i) Describe whether the villagers have given their consent or remained opposed to the logging or plantation operations.**

For our villages, the majority of the villagers are opposed to the operations.

**(ii) Did any of the companies attempt to take the advantage of the consent given by any of the villagers to continue with their operations?**

Yes.

**(iii) Please explain how it was possible for this to take place without the approval of the entire village.**

Because we hold mutually incompatible principles with regard to our customary land rights. They perhaps are more inclined to believe in the sweet promises made by the logging companies. It appears that these outsiders do discriminate between

us, who are seen as being more active in defending our customary land rights alongside JKOASM, and other villagers who are seen as being less inclined to do so. They are much more generous towards the latter. We only wish to defend our customary land rights and customs as Orang Asli in our own customary territory.

**PRE-ENCROACHMENT:  
PRIOR INFORMATION, CONSENT, TRANSPARENCY**

**3. For each company or sequence of encroachment event:**

**(i) Were the affected villagers given prior information on the issuance of the logging or plantation licences before the commencement of any operations?**

The issuance of all such licences did not comply with the free, prior and informed consent (FPIC) process because our consent was not obtained prior to the issuance of the licences.

As far as we know, PPLRNK did not provide any information to the affected villages. Only their contractor attempted to contact our community members, including Kamal, before commencing their activities. However, they did not inform us on the date they would start their activities. As explained above, the Kampung Barong villagers were the first ones to discover about the encroachment when workers entered the village to conduct land clearing activities for the purpose of constructing their company's accommodation facility.

For logging companies, there were those that came earlier to first hold a discussion with us. However, by then they had already received their operating licences. Therefore such discussions functioned more as an attempt to inform us rather than to seek our consent in the true sense of the word. When we refused them our permission, their general response would be that they had already obtained the lawful licence issued by the state government. We however continue to protest against such operations and are concerned with the failure of the government to protect the Orang Asli community.

**(ii) If yes, how was the information dissemination process conducted? (Through village chiefs, community meetings etc.)?**

For the plantation project, Kamal was invited for a discussion with the project contractor.

For logging, we would be informed about the operations when the representatives from the companies and Forestry Department came to the village to conduct their



ground surveys and to seek our permission, after they had already obtained their licence. We continue to protest against such operations to the best of our ability.

**(iii) What was the content of the information given? Was it comprehensive and transparent? Did they fail to transparently respond to any questions raised by the villagers?**

For the plantation project, Kamal did receive copies of a few documents when he requested for them and insisted on the matter. These included the contract signed between PPLRNK and its contractor.

There were logging companies which also handed out information on their licences when we requested for it.

**(iv) Did the villagers obtain important information such as licence registration numbers, maps of the licensed areas and other details?**

Yes. When we obtained the requested documents.

**(v) Was the consent and agreement of the villagers obtained at this point?**

No. We were never consulted prior to the purported issuance of such logging or plantation licences. No party had ever come to the village to disseminate such information to the villagers prior to the purported issuance of such licences. We would only find out about them after being contacted by the companies who had purportedly received their licences or after seeing outsiders attempting to enter our village. We are still determined to stop and protest against such encroachments.

#### **POST-ENCROACHMENT: VERBAL PROTEST ON LOCATION**

**4. For each company or sequence of encroachment event:**

**(i) Did the villagers meet with the company representatives at the encroachment site or their accommodation facility to voice their protest? If yes, please describe these encounters further.**

We did interact with all logging and plantation companies at the location where they were working to voice our protests. We would also frequently express our opposition to their operations and tell them to stop carrying out any activity that they were carrying out.

**(ii) Did the villagers meet with the authorities to voice their protest? If yes, please describe these encounters further.**

The authorities like the police and JAKOA did come over to meet with us during our blockade in February 2012.

**POST-ENCROACHMENT  
OFFICIAL CONSULTATION WITH COMPANIES  
AND/OR AUTHORITIES**

**5. For each company or sequence of encroachment event:**

**(i) Following your protest, did the company or authorities invite the villagers to participate in an official consultation process? If yes, how many times did such meetings take place? Please describe them further.**

Yes. We and other Orang Asli communities in Gua Musang did attempt to meet with the Kelantan chief minister to submit our memorandum in 2011. Please see the above.

**(ii) Were the authorities also present in these meetings?**

Yes.

**(iii) What was the outcome of such meetings? Did they manage to put an end to the encroachments?**

Please see the above.

**COMPENSATION AND DAMAGES**

**6. For each company or sequence of encroachment event:**

**(i) Has compensation ever been promised and actually delivered to any of the villagers or village committee members or entire families? What was the form, amount and rates of the compensation received?**

A villager was once suddenly gifted with a sum of RM200 from a logging company owner when they chanced upon each other. A police report was lodged on this matter.

**(ii) In your view, was this compensation adequate?**

Not applicable.

## PROTEST CORRESPONDENCE AND DOCUMENTS

**7. For each company or sequence of encroachment event:**

**(i) Did the villagers write any letters or other documents to any of the companies and/or the authorities to express their written protest?**

	<b>Date</b>	<b>Sender</b>	<b>Recipient</b>	<b>Title</b>
<b>1.</b>	13 Feb 2011	Representatives of Orang Asli Villages Kelantan Darul Naim	Kelantan chief minister	Kelantan Orang Asli demand the recognition and protection of the Orang Asli customary land
<b>2.</b>	9 Jan 2013	Chairperson The Village Development Committee Kampung Pos Balar	Kelantan chief minister	Orang Asli Villagers of Pos Dakoh/Pos Balar demand the recognition and protection of Orang Asli customary territory
<b>3.</b>	28 Mar 2014	Pos Balar Customary Territory Action Committee	Kelantan chief minister	Protest against projects by the Kelantan state government, which have taken place, are currently taking place and will take place on Orang Asli Customary Territory in Kelantan without the free, prior and informed consent (FPIC) process
<b>4.</b>	30 June 2015	Network of Orang Asli Villagers of Pos Balar	PPLRNK	Protest against the approval of the public plantation in Pos Balar (Pos Dakoh)
<b>5.</b>	12 July 2015	Network of	Kelantan State	Protest against the approval of

		Orang Asli Villagers of Pos Balar	Forestry Department	two (2) logging areas by the Kelantan Forestry Department
6.	12 July 2015	Network of Orang Asli Villagers of Pos Balar	Kelantan State Forestry Department	Protest against the approval of two (2) logging areas by the Kelantan Forestry Department
7.	24 Aug 2015	Pos Balar Customary Territory Action Committee	SUHAKAM	This memorandum is on the protest against the encroachment on our land by any public plantation project and logging activities for the purpose of investigation of SUHAKAM

**(ii) Please describe the responses received from the companies and authorities, if any.**

None.

## POLICE

**8. For each company or sequence of encroachment event:**

**(i) Did the villagers lodge any police reports to express their protest or to complain on any matter related to the encroachments, including concerns on their safety and that of their family members?**

	Date	Report Number	Complainant
1.	6 Feb 2011	GUA MUSANG/000389/11	Rosli Aluij
2.	6 Feb 2011	GUA MUSANG/000391/11	Abis Angah
3.	6 Feb 2011	GUA MUSANG/000391/11	Along Adil Ngah
4.	1 Feb 2012	GUA MUSANG/000387/12	Johari Sandi
5.	24 July 2012	GUA MUSANG/002002/12	Along Aja
6.	12 Oct 2012	GUA MUSANG/003004/14	Kamal Alek
7.	23 Oct 2012	GUA MUSANG/002918/12	Along Aja
8.	3 Apr 2013	GUA MUSANG/001127/13	Mustafa Along
9.	25 May 2015	GUA MUSANG/004591/15	Hanan Anjang

**(ii) Have any villagers ever been detained by the police as a result of their protest actions or related activities? Were they eventually charged?**

A total of 13 people were once detained on January 28, 2012 during our blockade action. We resorted to constructing the blockade because the relevant parties had failed to respond to our protest regarding the violation of our rights.

### **PRESSURE, INTIMIDATION, THREATS, HARASSMENT**

**9. For each company or sequence of encroachment event:**

**(i) Did any of the villagers ever receive any pressure, intimidation, threat or harassment from any party, in relation to the protests against the encroachment on your customary territory?**

There was one of us who had insulting words thrown at him. The first incident occurred when Mustafa Along was treated condescendingly and described as having 'no standard' by the representative of a logging company. Another incident occurred when an officer from the Forestry Department stated that the Orang Asli are stupid and uneducated and should have just accepted development through logging and plantation operations.

**(ii) Did the villagers take any action after experiencing such pressure, intimidation, threat or harassment?**

We just continued our struggle to oppose logging and plantation operations.

**(iii) Please describe the effects of the experience on the person receiving this pressure, intimidation, threat or harassment.**

Our stand has remained firm. However, we are now more cautious when travelling since we do not want any untoward incident to befall us.

### **EVALUATION ON THE APPROACH OF THE COMPANY REPRESENTATIVES**

**10. For each company or sequence of encroachment event:**

**(i) In your view, did the companies respond in a polite and respectful manner when confronted by the complaints and protests from the villagers?**



Some were polite, others not so.

**(ii) Has any company ever broken any of their promises to the villagers? If yes, please describe these incidents further.**

Not applicable.

**(iii) Have you ever had the suspicion that any of the companies was acting dishonestly towards the villagers on any matter? If yes, please describe these incidents further.**

Not applicable.

#### **EVALUATION ON THE APPROACH OF THE POLICE, THE DEPARTMENT OF ORANG ASLI DEVELOPMENT (JAKOA) AND OTHER GOVERNMENT AGENCIES**

**11. Please describe the general views of the villagers with regards to the manner in which the authorities respond to your protests and complaints.**

**(i) Are the villagers satisfied with their responses and services?**

No. We are not clear on the actions that they have undertaken in response to our protests.

**(ii) Did the authorities show any bias in favour of the companies?**

Yes. They did show a bias in favour of the companies, instead of the villagers.

**(iii) Has any authority taken any actions which to your view was excessive?**

There was an official from the Kelantan State Forestry Department who said that the Orang Asli were stupid and uneducated.

**(iv) In your view, have the authorities been transparent in their dissemination of information to the villagers?**

Not at all.

**STATUS OF THE INDIGENOUS CUSTOMARY LAND RIGHTS FROM THE  
PERSPECTIVE OF THE COMPANIES AND AUTHORITIES**

**12. For each company or sequence of encroachment event:**

**(i) Please describe the views of the companies and authorities on the status of the villagers' customary land rights. Did they recognise the existence of your rights?**

The authorities frequently state that our land belongs to the state government or that it has been gazetted as a Malay reservation without our agreement. We are still determined to defend our rights because such assertions are not true.

**(ii) If the villagers are said to possess no such land rights, to which extent then do the authorities accept the existence of your rights, since your housing areas are also located in the same vicinity?**

We are still unclear on the manner in which the authorities interpret the extent of the boundaries of our customary territory. We however are always clear on our rights, which are based upon our own customary laws. Today, we continue to cultivate on our existing farms, carry out various traditional activities in the forested areas and practise our community's spiritual customs, all within our customary territory. In short, we continue to control and manage our customary territory as how it has always been since time immemorial.

**(iii) Did any of the companies or state authorities make any legal references to support their view that the villagers do not possess any rights to the encroached land (state land, permanent reserved forest etc.)?**

The National Forestry Act 1984 and the National Land Code 1965.

**ENCROACHMENT IMPACTS**

**13. On the whole, please describe the adverse impacts of the encroachments on the villagers and your surrounding environment:**

	<b>Type of destruction</b>	<b>Further information</b>
<b>1.</b>	Environment: Forest destruction, river pollution	Forest destruction and river pollution of course occur.  The rivers have turned yellow, like the colour of milk tea. This has affected our sources of drinking water. We thus have to look for smaller streams as

		<p>new sources for our drinking water.</p> <p>Land slides have also occurred.</p>
2.	Environment: Destruction of wildlife and riverine resources	<p>Wildlife and fish population has decreased sharply.</p> <p>Destruction of riverine life is worse. Many fishing sites have been destroyed.</p>
3.	Environment: Destruction of sources of food, medicines and items used in cultural and spiritual ceremonies	<p>In the past, apart from hill rice and tubers, we were also dependent on freshwater fish, domestically bred chickens and hunted wildlife for our sources of protein. There were also abundant vegetable shoots in the forest.</p> <p>Today, the sources of food from forest and river resources have indeed declined sharply. However, we are still largely dependent on them, in comparison to purchasing them. Some of us are still cultivating hill rice.</p> <p>Nevertheless today, we may still need to purchase many vegetables. In the past, this was not the case as food resources were in abundance. We could freely exchange our foods with each other.</p> <p>We believe up to 50 per cent of our resources have already been destroyed.</p>
4.	Loss of income	<p>Our sources of income have been badly affected.</p> <p>The main sources of income today are mainly derived from cash crops such as bananas and chillies.</p> <p>Sometimes we would still try to look for forest produce. However, resources such as the agarwood, rattan, bamboo, <i>damar gum</i>, <i>kacip fatimah</i>, <i>tongkat ali</i> and various medicinal herbs have declined significantly.</p>

		In the past, we could obtain a decent income from rubber and bananas. We also used to sell a lot of rattan crafts.
5.	Loss of property: Farms, crops, farm huts, burial grounds etc.	There were graves that had been destroyed by the land clearing activities.
6.	Social: Health, security and welfare etc.	Diarrhea is a common occurrence.
7.	Road damage	Road damage does occur.

## **SECTION D: CUSTOMARY TERRITORY AND PERMANENT RESERVED FOREST**

**Have any parts of your customary territory been gazetted as the permanent reserved forest under the National Forestry Act 1984?**

Sungai Betis Permanent Reserved Forest and Perias Permanent Reserved Forest.

**(i) If yes, please state the year the gazetting was undertaken. Do the villagers possess any documents on the gazetting process?**

We have no knowledge on the year the gazetting took place and do not possess any documents on it.

**(ii) If yes, please describe how the gazetting of the permanent reserved forest has adversely affected your rights?**

We have never been informed about this matter. We are still firm in continuing with the exercise of our rights and other activities within our customary territory.

**(iii) If yes, did the authorities conduct any consultation with the villagers to obtain their consent on the gazetting process? Please state any important information on how the consultations were conducted.**

No.

**(iv) If no consultation had ever been conducted, how did the people become aware of the existence of the permanent reserved forest?**

Only through the signboards.



## 2. Pos Bihai, Gua Musang, Kelantan

### SECTION A: BASIC INFORMATION ON AFFECTED VILLAGES

<b>District and State</b>	Gua Musang, Kelantan
<b>Affected villages and ethnicity</b>	<p>Pos Bihai</p> <p>Pos Bihai consists of 14 villages. The respondents represent 10 of these, with a population of around 1,000.</p> <ol style="list-style-type: none"> <li>1. Kampung Sau</li> <li>2. Kampung Pahong</li> <li>3. Kampung Badak</li> <li>4. Kampung Hak</li> <li>5. Kampung Lalok</li> <li>6. Kampung Tameng</li> <li>7. Kampung Remau</li> <li>8. Kampung Tendrik</li> <li>9. Kampung Bujuk / Bayo</li> <li>10. Kampung Salak</li> </ol> <p>Temiar</p>
<b>Respondents</b>	<p>Alak a/l Penghulu Asu Kampung Sau 1983</p> <p>Kenek Arom Kampung Pahong 1983</p>
<b>Other information</b>	
The customary territory is inherited by the villagers from pioneering ancestors.	

## **SECTION B: VERIFICATION ON THE EXISTENCE OF CUSTOMARY LAND RIGHTS**

The villagers verified that they are able to demonstrate the existence of their customary land rights through the following body of evidence.

<b>A.</b>	<b>Can the villagers provide oral evidence on the history of their customary territory?</b>	
1.	History on the origins of the customary territory and ancestry	x
2.	Site-specific history, folklores, legends	x
<b>B.</b>	<b>Do the villagers still practise the traditional customs and culture of their community?</b>	
1.	Land clearing, agriculture	x
2.	Marriages	x
3.	Deaths, funerals	x
4.	Communal laws, code of conduct and ethics	x
5.	Possession of old items and heirlooms: traditional costumes, gongs, baskets, beads, personal ornaments, decorative objects, kitchen utensils, knives, machetes, weapons, household items etc.	x
<b>C.</b>	<b>Can the villagers provide evidence on their use of the land and its natural resources within the customary territory?</b>	
1.	Tree felling or tree harvesting marks	x
2.	Hunting and fishing sites, saltlicks	x
3.	Burial grounds and sacred sites	x
4.	Trails and pathways within forested or cultivation areas	x
<b>D.</b>	<b>Does the government acknowledge the existence of the villages?</b>	
1.	Government built facilities	x
2.	Visits by ministries or governmental departments and agencies	x

## **SECTION C: LAND ENCROACHMENT REPORT**

### **BACKGROUND**

**1. How many logging or plantation companies have encroached upon your customary territory in the last five to ten years?**

#### **Logging**

Logging had been around in the Pos Bihai area way back since the 1980s and 1990s. There were villages that began to be logged beginning from the 1980s, while others began to be logged only from the 1990s onwards. This continued throughout the 2000s until recently, despite the fact that we very much disliked the operations and never did not consent to such activities encroaching upon our land.

In the past, the villagers did not know the manner in which we could officially express our protest against such logging encroachments. Back then, we were less aware of our basic rights to protest as citizens, which permit us to protest in defence of our customary territory. In fact, we were often told that we had no property ownership rights to the land by various government agencies. This was known by all. We certainly do not share the authorities' view on this. Until today, we still continue to exercise ownership over our customary territory based upon our customary laws and to the best of our ability, would take actions to control the land.

In 2012, the villagers discovered that there was a logging company which intended to enter our customary territory as a result of the survey activities carried out by the Forestry Department in the concerned area. Finally, a logging company did enter the village in 2014 after having received their logging licence [DS 01-26-14] for an area of 50 hectares.

Later on, we were informed that a second company would also be commencing its operations in February 2016 in an area of 140 hectares, although the licence had yet to be issued out. However, these two companies appeared to be owned by the same party.

In 2012, we first discovered about the impending operation when a few villagers who were on their way out to town, suddenly saw the vehicles of the Forestry Department in the concerned area. Apparently, the Forestry Department had arrived to carry out their survey works. A group of workers were busy building their camp. The area was nearby the housing site of Kampung Sau.

The villagers then stopped by the campsite and inquired from a worker, who incidentally was already cooking by then, on their purpose of entering the village. The worker told us that they had arrived in the area to carry out survey activities. We did not express our protest there and then to them although we did not agree with their entry into our land. We merely relayed the message that we wished to meet with their superior the next day.

On the next day, as promised, the villagers went to the campsite to hold a discussion with them. Unfortunately however, their superior told us that we, the Orang Asli villagers, did not have any rights to the area. We were told not to interrupt their survey activities because the logging licence had already been approved by the state government. He was very aggressive, with a threatening demeanour. He then just ordered us to leave. He used words like "you, get lost" ("*kau belah*"). Therefore the discussion was cut off just like that. The people returned to their homes.

Within two or three days, the villagers once again went to the campsite to attempt another discussion with the workers. Quite the reverse, during this second meeting, the superior softened. He admitted that we indeed have rights to the area. However he told us that the land is also owned by the state government. We are only occupiers of this state land and our rights in actual fact only extend from the housing site, its immediate surroundings, up to the farms nearby our homes. We of course could not agree with such claims.

We tried asking them to show us their identity cards. We wanted to ensure that they were indeed who they said they were, but they refused to do so. They also asked us to do the same. We too refused to show them our identity cards. The people then ended up leaving in frustration. The surveyors meanwhile continued with their survey activities, without our permission.

Later on, around August 2014, workers of the logging company entered our village again to conduct site inspection for the company's accommodation facility.

Subsequently, our fellow villager, Arom Asir from Kampung Pahong, lodged a police report on the survey activities. We are not sure of the date of the report, but it was most probably in September 2014.

Shortly after, the company workers came to the village to look for the villagers of Kampung Sau. They started to inquire on the location of our burial ground. They intended to request us to show them our burial ground because they supposedly wanted to pay Kampung Sau a compensation of merely RM10,000, for some survey works.

The villagers of course flatly refused to comply with this request, or rather, demand. A small quarrel then quickly ensued. At last, the villagers requested for the company to choose a date for a meeting to be held with the company owner. We then agreed to have the meeting on August 27, 2014.

On the said date, the company arrived in two vehicles. This meeting took place in Kampung Badak. It involved the villagers of Kampung Badak, Kampung Hak and Kampung Sau. Although the concerned land belongs to Kampung Sau, residents from other villages also participated in the meeting to show their support to Kampung Sau in protesting against the operations.

On September 4, 2014, the company handed to us a letter dated September 1, 2014, which requested us to demarcate our burial ground. However, this letter was issued by the second company, which purportedly would only start their operation in February 2016. Indeed, there were more graves in the second area, in comparison to the first.

The company requested us to carry out survey and demarcation works for our burial ground by way of paint and ribbons. They promised to pay RM10,000 to Kampung Sau. They requested us to sign the letter, but we once again refused to do as requested.

In addition, they were also cautious enough to state that although they were willing to pay us RM10,000, after the payment has been done, we could no longer demand for further compensation, since they claimed that JAKOA had already clarified to them that we did not in actual fact, have any rights to the area.

In response, we told them that any claim which implied that we did not have rights to the area was absolutely wrong. Such a claim has obviously disrespected our rights. The company in turn insisted that we did not have any rights to obstruct their operations despite our opposition against them.

At last, we requested for the company representatives to leave and only come again with the representatives of JAKOA. They then agreed to this. We were still adamant that we would neither show them our burial ground nor carry out any demarcation activities for them. We continued to refuse to sign the document that had been handed to us.

Our discovery of the said second operation took place when we requested for the company to invite JAKOA for a discussion. Only then, were we informed of the fact that the owner of the company had actually been issued with two logging permits in two different areas. The operation for the second company would purportedly commence around February 2016.



The company representatives also similarly requested for us to cooperate to ensure that the second operation would take place successfully. The villagers once again refused to consider his appeal and suggestion.

On the agreed upon day, two representatives of the company came, but without any representatives from JAKOA. They simply continued the discussion again on the payment for the survey works of our burial ground. They then told us that they were also willing to pay an additional RM5,000 for rental charges of the site used for their accommodation facility, although this payment would be given in a lump sum and not on a monthly basis. This offer was also rejected by us.

In all, they were willing to offer us RM15,000 in total, inclusive of the rental charges for the site used for their accommodation facility. When we continued to refuse this offer, they suddenly raised its amount to RM25,000 and finally to RM33,000. Still the villagers refused to agree.

At last, the company representatives said that they had to leave, but they would come again in a few days to bring us the said cash.

After a few days, a company representative did return. He arrived in a public area, a place by the roadside that is used to conduct the sale and purchase of the rubber latex that the people have tapped. Upon arriving, he abruptly dropped a plastic bag which he claimed to contain some RM33,000 right in front of us who were sitting there. However, after we offered our handshake, he did not reject them.

Immediately after, we sat down together. The same discussion took place again and of course, he was still persuading us to sign the letter for the payment for the demarcation of the burial ground. We then started talking about our rights. But he responded that we were only trying to politicise the issue. We stressed that we were only defending our rights. He then kept quiet.

Later, we handed him our protest letter and requested for him to sign our copy of it to acknowledge its receipt. He then left the village area with his plastic bag.

Despite the absence of our consent, the company still proceeded to continue with the construction of their workers' accommodation facility in another area, nearby a hill which was also to be logged. Subsequently, they began their felling operations in October. After they were done, our village was flooded in December 2014.

We did not manage to do anything to defend the area. During the encroachment, which took place during a span of several weeks, we did not dare to go to the logging area. It would not be safe for us to do so since felling operations were taking place in

full force. However, after the operations ended, we did conduct an inspection of the logged over area. We wanted to determine the size of the affected area.

We are willing to take court action if a case like this takes place again.

Alak Asu did lodge a police report on this entire matter on November 3, 2014 [Gua Musang/003229/14]. The report was also attached with the letter dated September 1, 2014 from the company, which we were requested to sign on. Among others, the report narrated the story of how this individual who was believed to be the owner of both companies had come to meet the villagers:

...gave a letter entitled the agreement on the demarcation of burial ground... He requested us to sign it... With this, the villagers do not consent and continue to protest against the matter.

Further, we also invited JAKOA to attend a discussion with us to resolve this issue. We sent a letter dated November 4, 2014, by hand, to invite them to attend a meeting with the villagers on November 20, at the common hall of Kampung Sau.

We first went to the JAKOA Gua Musang office to hand in the letter. However, the officer in charge was not in the office as he was on medical leave. We then proceeded to hand in the letter to him at his house. He received the letter and said that he would try to attend the meeting.

However on November 19, we were contacted by JAKOA only to be informed that the meeting scheduled on the next day had to be cancelled because of poor weather. Further, their officers also had to attend another programme in the state of Negeri Sembilan.

### **Additional notes: Mining**

Kampung Pos Bihai was also affected by land encroachment carried out by mining activities. Consequently, the Action Committee of Pos Bihai Customary Territory, which represents the villagers of Kampung Pahong, Kampung Tendrik, Kampung Remau, Kampung Hak, Kampung Sau and Kampung Lalok wrote a protest letter dated March 28, 2014 to the Kelantan chief minister.

The letter stated the people's protest against all projects being carried out on our customary territory without the free, prior and informed consent (FPIC) process. The letter was also attached with the signatures and thumb prints of the villagers. Among others, the content of the letter stressed on the following:

The opposition meant here refers to that against logging, mining, public plantation projects, private plantation projects, mega dam projects, land surveying activities and other projects that have and will be carried out in the Orang Asli Customary Territory... The Orang Asli community believe with good reason that any project being carried out without the free, prior and informed consent (FPIC) process does not fulfill the development aspirations of the Orang Asli...

## CONSENT OR OPPOSITION

### 2. For each company or sequence of encroachment event:

**(i) Describe whether the villagers have given their consent or remained opposed to the logging or plantation operations.**

All are opposed to the logging operations.

**(ii) Did any of the companies attempt to take the advantage of the consent given by any of the villagers to continue with their operations?**

No.

**(iii) Please explain how it was possible for this to take place without the approval of the entire village.**

Not applicable.

## PRE-ENCROACHMENT: PRIOR INFORMATION, CONSENT, TRANSPARENCY

### 3. For each company or sequence of encroachment event:

**(i) Were the affected villagers given prior information on the issuance of the logging or plantation licences before the commencement of any operations?**

The issuance of all such licences did not comply with the free, prior and informed consent (FPIC) process because our consent was not obtained prior to the issuance of the licences.

For the first logging licence, we only discovered about their impending operation after the Forestry Department staff had already arrived at the said location to carry

out their survey activities without first obtaining our consent. Even if there were discussions which took place later, with both the Forestry Department and the company concerned, all these failed to stop the first operation from commencing.

For the second licence, please see the above.

Both licences were reportedly issued to the same party.

**(ii) If yes, how was the information dissemination process conducted? (Through village chiefs, community meetings etc.)?**

Please see the explanation in (i) above. The company was insistent that we should sign a letter which stated our agreement to conduct demarcation activities for our burial ground and to receive compensation for this. We refused to do so.

**(iii) What was the content of the information given? Was it comprehensive and transparent? Did they fail to transparently respond to any questions raised by the villagers?**

Please see the explanation in (i) above.

**(iv) Did the villagers obtain important information such as licence registration numbers, maps of the licensed areas and other details?**

We did not obtain a lot of information. The licence number was obtained much later.

**(v) Was the consent and agreement of the villagers obtained at this point?**

No. We were never consulted prior to the issuance of such logging licences. No party had ever come to the village to disseminate such information to the villagers prior to the issuance of these licences. We would only find out about them after seeing outsiders entering and walking about in the village.

#### **POST-ENCROACHMENT: VERBAL PROTEST ON LOCATION**

**4. For each company or sequence of encroachment event:**

**(i) Did the villagers meet with the company representatives at the encroachment site or their accommodation facility to voice their protest? If yes, please describe these encounters further.**

No. Despite our opposition to their operation, we were unable to stop the first company from carrying out their logging activities. When felling operation was in full force, we did not pay a visit to them due to safety concerns.

**(ii) Did the villagers meet with the authorities to voice their protest? If yes, please describe these encounters further.**

No.

**POST-ENCROACHMENT  
OFFICIAL CONSULTATION WITH COMPANIES  
AND/OR AUTHORITIES**

**5. For each company or sequence of encroachment event:**

**(i) Following your protest, did the company or authorities invite the villagers to participate in an official consultation process? If yes, how many times did such meetings take place? Please describe them further.**

No. However, we did send a letter dated November 4, 2014, by hand, to invite JAKOA to a meeting with the villagers on November 20, at the common hall of Kampung Sau. On November 19, we were contacted by JAKOA only to be informed that the meeting had to be cancelled.

**(ii) Were the authorities also present in these meetings?**

Not applicable.

**(iii) What was the outcome of such meetings? Did they manage to put an end to the encroachments?**

Not applicable.

**COMPENSATION AND DAMAGES**

**6. For each company or sequence of encroachment event:**

**(i) Has compensation ever been promised and actually delivered to any of the villagers or village committee members or entire families? What was the form, amount and rates of the compensation received?**



The company at first offered to pay us a sum of RM10,000, which was then raised to RM15,000, then RM25,000 and finally, RM33,000. The company also mentioned about providing assistance to repair our roads and to level the ground for our new housing area. However we rejected all such offers.

**(ii) In your view, was this compensation adequate?**

No.

## PROTEST CORRESPONDENCE AND DOCUMENTS

**7. For each company or sequence of encroachment event:**

**(i) Did the villagers write any letters or other documents to any of the companies and/or the authorities to express their written protest?**

	Date	Sender	Recipient	Title
1.	28 Mar 2014	Action Committee of Pos Bihai Customary Territory	Kelantan chief minister	Protest against projects that have been and will be approved by the Kelantan state government involving the Orang Asli Customary Territory in Kelantan without the free, prior and informed consent (FPIC) process
2.	4 Nov 2014	Action Committee of Pos Bihai Customary Territory	JAKOA District Officer	Invitation to a discussion on logging by a company

**(ii) Please describe the responses received from the companies and authorities, if any.**

None.

## POLICE

8. For each company or sequence of encroachment event:

(i) Did the villagers lodge any police reports to express their protest or to complain on any matter related to the encroachments, including concerns on their safety and that of their family members?

	Date	Report Number	Complainant
1.	3 Nov 2014	Gua Musang/003229/14	Alak Asu

(ii) Have any villagers ever been detained by the police as a result of their protest actions or related activities? Were they eventually charged?

No.

## PRESSURE, INTIMIDATION, THREATS, HARASSMENT

9. For each company or sequence of encroachment event:

(i) Did any of the villagers ever receive any pressure, intimidation, threat or harassment from any party, in relation to the protests against the encroachment on your customary territory?

No. However the company was very insistent.

(ii) Did the villagers take any action after experiencing such pressure, intimidation, threat or harassment?

Not applicable.

(iii) Please describe the effects of the experience on the person receiving this pressure, intimidation, threat or harassment.

Not applicable.

## EVALUATION ON THE APPROACH OF THE COMPANY REPRESENTATIVES

10. For each company or sequence of encroachment event:

**(i) In your view, did the companies respond in a polite and respectful manner when confronted by the complaints and protests from the villagers?**

They were quite aggressive. We felt that the manner in which they spoke to us was quite rude, and their conduct amounted to an insult for us when they claimed that we had no rights to our land.

**(ii) Has any company ever broken any of their promises to the villagers? If yes, please describe these incidents further.**

Not applicable.

**(iii) Have you ever had the suspicion that any of the companies was acting dishonestly towards the villagers on any matter? If yes, please describe these incidents further.**

Not applicable.

## **EVALUATION ON THE APPROACH OF THE POLICE, THE DEPARTMENT OF ORANG ASLI DEVELOPMENT (JAKOA) AND OTHER GOVERNMENT AGENCIES**

**11. Please describe the general views of the villagers with regards to the manner in which the authorities respond to your protests and complaints.**

**(i) Are the villagers satisfied with their responses and services?**

We are not satisfied with the manner in which JAKOA has treated us. They failed to attend the meeting with us on the day requested (November 20, 2014). They cancelled the meeting a day before it was supposed to take place with the excuse that no officer was able to meet us on that day, apart from poor weather.

**(ii) Did the authorities show any bias in favour of the companies?**

Yes. They did show a bias in favour of the companies, instead of the villagers.

**(iii) Has any authority taken any actions which to your view was excessive?**

Yes. For example, JAKOA staff once questioned our action of chasing out a contractor who was working in the area. By right, they are supposed to protect our rights.

**(iv) In your view, have the authorities been transparent in their dissemination of information to the villagers?**

No.

**STATUS OF THE INDIGENOUS CUSTOMARY LAND RIGHTS FROM THE PERSPECTIVE OF THE COMPANIES AND AUTHORITIES**

**12. For each company or sequence of encroachment event:**

**(i) Please describe the views of the companies and authorities on the status of the villagers' customary land rights. Did they recognise the existence of your rights?**

The authorities frequently state that our land belongs to the state government. We do not agree with such a view.

**(ii) If the villagers are said to possess no such land rights, to which extent then do the authorities accept the existence of your rights, since your housing areas are also located in the same vicinity?**

We are still unclear on the manner in which the authorities interpret the extent of the boundaries of our customary territory. We however are always clear on our rights, which are based upon our own customary laws. Today, we continue to cultivate on our existing farms, carry out various traditional activities in the forested areas and practise our community's spiritual customs, all within our customary territory. In short, we continue to control and manage our customary territory as how it has always been since time immemorial.

JAKOA had once said that our rights are only limited to our crops. We do not have any rights beyond that. We do not agree with such a view.

**(iii) Did any of the companies or state authorities make any legal references to support their view that the villagers do not possess any rights to the encroached land (state land, permanent reserved forest etc.)?**

We have never heard any representatives from any government agencies mention any provisions of the law.

## ENCROACHMENT IMPACTS

**13. On the whole, please describe the adverse impacts of the encroachments on the villagers and your surrounding environment:**

	Type of destruction	Further information
1.	Environment: Forest destruction, river pollution	<p>Forest destruction and river pollution of course occur.</p> <p>The colour of the river turned yellow, like milk tea. This is our source of drinking water. For the logging operations expected to commence in February 2016, the pollution impacts may even be worse.</p>
2.	Environment: Destruction of wildlife and riverine resources	The destruction of riverine resources is worse.
3.	Environment: Destruction of sources of food, medicines and items used in cultural and spiritual ceremonies	<p>In the past, apart from hill rice and tubers, we were also dependent on freshwater fish and hunted wildlife for our sources of protein. There were also abundant vegetable shoots in the forest.</p> <p>Today, the sources of food from forest and river resources have somewhat declined. We are still largely dependent on the various natural resources for our food sources, in comparison to purchasing them.</p>
4.	Loss of income	<p>Our sources of income have been badly affected.</p> <p>The main sources of income today are mainly derived from rubber tapping and banana cultivation. If we are to be dependent on forest resources, there is not much left anymore for this purpose.</p>
5.	Loss of property: Farms, crops, farm huts, burial grounds etc.	They are still safe. Our burial ground is located in the hills.



6.	Social: Health, security and welfare etc.	If we have to travel alongside the logging lorries, this can result in eye infections and coughing.
7.	Road damage	Road damage does occur.

## **SECTION D: CUSTOMARY TERRITORY AND PERMANENT RESERVED FOREST**

**Have any parts of your customary territory been gazetted as the permanent reserved forest under the National Forestry Act 1984?**

Perias Permanent Reserved Forest.

**(i) If yes, please state the year the gazetting was undertaken. Do the villagers possess any documents on the gazetting process?**

We have no knowledge on the year the gazetting took place and do not possess any documents on it.

**(ii) If yes, please describe how the gazetting of the permanent reserved forest has adversely affected your rights?**

We are not very clear about the matter due to the lack of comprehensive information from the authorities. We are still firm in continuing with the exercise of our rights and other activities within our customary territory.

**(iii) If yes, did the authorities conduct any consultation with the villagers to obtain their consent on the gazetting process? Please state any important information on how the consultations were conducted.**

No.

**(iv) If no consultations had ever been conducted, how did the people become aware of the existence of the permanent reserved forest?**

Only through the signboards.



### 3. Pos Hau, Gua Musang, Kelantan

#### SECTION A: BASIC INFORMATION ON AFFECTED VILLAGES

<b>District and State</b>	Gua Musang, Kelantan
<b>Affected villages and ethnicity</b>	<p>Pos Hau</p> <p>Pos Hau consists of 11 villages with a population of around 900. The respondents represent 8 of these, with a population of around 600.</p> <ol style="list-style-type: none"> <li>1. Kampung Enching</li> <li>2. Kampung Gertas</li> <li>3. Kampung Badok</li> <li>4. Kampung Muyak</li> <li>5. Kampung Rasah</li> <li>6. Kampung Ladoi</li> <li>7. Kampung Tapai</li> <li>8. Kampung Kelaik</li> </ol> <p>Temiar</p>
<b>Respondents</b>	<p>Angah Aber Kampung Enching 1973</p> <p>Kasim Pandak Kampung Gertas 1977</p>
<b>Other information</b>	
<p>The customary territory is inherited by the villagers from pioneering ancestors.</p> <p>The appointment of the first village chief by the colonial authorities took place in the year 1955.</p>	

## **SECTION B: VERIFICATION ON THE EXISTENCE OF CUSTOMARY LAND RIGHTS**

The villagers verified that they are able to demonstrate the existence of their customary land rights through the following body of evidence.

<b>A.</b>	<b>Can the villagers provide oral evidence on the history of their customary territory?</b>	
1.	History on the origins of the customary territory and ancestry	x
2.	Site-specific history, folklores, legends	x
<b>B.</b>	<b>Do the villagers still practise the traditional customs and culture of their community?</b>	
1.	Land clearing, agriculture	x
2.	Marriages	x
3.	Deaths, funerals	x
4.	Communal laws, code of conduct and ethics	x
5.	Possession of old items and heirlooms: traditional costumes, gongs, baskets, beads, personal ornaments, decorative objects, kitchen utensils, knives, machetes, weapons, household items etc.	x
<b>C.</b>	<b>Can the villagers provide evidence on their use of the land and its natural resources within the customary territory?</b>	
1.	Tree felling or tree harvesting marks	x
2.	Hunting and fishing sites, saltlicks	x
3.	Burial grounds and sacred sites	x
4.	Trails and pathways within forested or cultivation areas	x
<b>D.</b>	<b>Does the government acknowledge the existence of the villages?</b>	
1.	Government built facilities	x
2.	Visits by ministries or governmental departments and agencies	x



## **SECTION C: LAND ENCROACHMENT REPORT**

### **BACKGROUND**

**1. How many logging or plantation companies have encroached upon your customary territory in the last five to ten years?**

#### **Logging**

The first logging company to encroach upon our village did so in the early 1970s. We believed this company was from the state of Perak and owned operations in Kampung Baswok in Lasah, Perak, not far from the Perak-Kelantan border. From there, the company began to move across the border and proceeded to build their camp and workers' accommodation facility at the upstream of Sungai Tol, which is a part of the Sungai Lerwer basin. From here, the company split their operations into three areas. The first was located in the customary territory of Pos Hau from Sungai Perolak to Sungai Enching. The second area was located around Pos Ber. The third area was located around the upstream of Sungai Betis.

From then onwards, logging operations by various companies continued to encroach upon our territory from time to time up to this very day, without our permission.

In the past, we did not voice any protests or attempt to request the companies to leave our area despite the fact that we did not agree with such encroachments. We did not take any such action during this period of time because the villagers believed that we were 100 per cent under the authority of our village chief. The villagers basically did not know the manner in which we could officially express our protest against logging encroachments. Further, we used to be less aware of our basic rights as citizens, which permit us to protest in defence of our customary territory. We had yet to find out about the existence of the right to officially protest because we were often told we had no rights to the land. This was known by all. We used to be very dependent on JHEOA/JAKOA. We put our hopes on them to protect our interests. We did not dare to directly communicate with the companies. All our affairs must first go through JHEOA/JAKOA. Nevertheless, up to this very day, we still continue to exercise ownership over our customary territory based upon our customary laws and to the best of our ability, would take actions to control the land.

Further, in the past we also had to face more difficult transportation challenges. The villagers may need around a week for the journey from Pos Hau to Gua Musang. We thus preferred to travel to Bertam to settle all of our affairs, sleeping over in Kuala Betis. The Chuah Cave was one of the places where we would camp for the night.

Until 2014, we were still being confronted by land encroachments committed by various logging companies. The duration of these logging licences would typically be between three and six months. The following is a list of logging licences operating in our territory between 2012 and 2014. We obtained this information from the contents of the signboard erected by the operations.

We knew of at least four licences which operated in the Sungai Betis Permanent Reserved Forest during this period.

From April 25, 2012 up to July 24, 2012, the first licence [DS 01-45/2011] was issued to a company in compartment 100 for an area of 38 hectares.

From December 19, 2012 to June 18, 2013, the second licence [DS 01-51-2012] was issued in compartment 36, for an area of 35 hectares.

From June 5, 2013 to December 4, 2013, a third licence [DS 01-28-2013], was issued in compartment 74 for an area of 100 hectares.

Then from December 3, 2013 to June 2, 2014, another licence [DS 01-34/2013] was issued in compartment 76 for an area of 50 hectares.

Last but not least, from December 6, 2013 to June 15, 2014, another licence [DS 01-49/2013] was issued for another company, but the operation was most likely located outside of the permanent reserved forest.

All these companies did not obtain consent from the villagers.

On January 27, 2014, Angah Aber from Kampung Enching lodged a police report [GUA MUSANG/000299/14] to protest against these logging encroachments. Among others, the content of the report stated the following:

On behalf of the villagers of Kampung Enching, Pos Hau, I would like to lodge a police report on a land encroachment activity committed by a logging company in the upstream area of Sungai Belkek, the headwaters of Sungai Enching, and in other areas of the Orang Asli customary territory. We have thrice discussed with the owner of the logging company, on December 13 and 16, 2013 and January 20, 2014.

We did stop this logging company from entering and working in our customary territory. Now, the forest resources that the local Orang Asli community rely on for our sources of income have been destroyed and the forest, environment and the headwaters area of Sungai Enching and its streams have also been encroached on by the logging company.

On February 17, 2014, the Kampung Enching villagers wrote a letter to the Forestry Department of Peninsular Malaysia to state our protest against all such logging and plantation encroachments. Among others, the letter stated the following:

We the indigenous local community of Kampung Enching Pos Hau, have been feeling extremely anxious and frustrated with the encroachment activities of the logging company on our customary territory. The sources of income for the local community may soon become extinct, we do not live by monthly salaries and are still dependent on the natural resources found in the forest... we are voicing this strong protest, so that our sources of income would not be destroyed.

Presently, the local community have already conducted discussions with the logging company. These took place on January 13, 16 and 20, 2014 and also on February 17, 2014. All the government agencies which were present had made the decision... the decision was then announced to allow the activities in the concerned area. However by right, the authorities should not have taken side in favour of the company and claimed the right to make any decision on behalf of the Orang Asli. We therefore will continue to protest in order to halt the encroachment activities on our customary territory. The authorities have in fact made this decision on their own, as our decision is to continue opposing, to stop all such encroachment activities on the Kampung Enching Customary Territory. We, the villagers will not allow logging companies and other encroachers to work on our customary territory.

Meanwhile, in Kampung Gertas, one particular company had acted very aggressively with us. There had been three discussions which took place with them in January 2014, in an attempt to stop them from damaging our customary land. Unfortunately however, they still entered our land to start their operations, destroying our forest resources. Even our river was polluted as a result of their activities.

The villagers first discovered about the land encroachment by the company when we saw their workers entering the village in their vehicles. We then went to the area where they had begun working and inquired from them about the purpose of their activities. They told us that they were building their accommodation facility. They subsequently halted their construction activities after we requested them to do so.

The second time we encountered them was when they returned to erect the wooden poles to demarcate the boundaries of the licensed area. The villagers then went together to meet the workers. Once again, we refused to allow them to continue working. They subsequently left.

Immediately after, we proceeded to build a barricade at the junction from which they were accessing the road leading to their work area. Unfortunately however, on

the very next day, we discovered that they had already destroyed the barricade and entered the access road.

We also discovered later that the company's workers were lodging at the accommodation facility of a plantation company, since we had earlier obstructed the construction of their own facility.

At last, on January 20, 2014, a representative of the logging operation came to the village and began to threaten the villagers with a very frightening warning. He questioned our action of obstructing them and threatened that he would come later in the evening with a gun. A police report [GUA MUSANG/000431/14] was lodged by Kasim Pandak from Kampung Gertas on February 6, 2014, which stated the following:

We the villagers of Kampung Gertas have thrice discussed with the owner of the logging company. These discussions took place on January 18, 20 and 25, 2014. We have stopped them and refused to allow the company... to enter and log the timber on our customary territory, in the upstream of Sungai Ceres, the headwaters of the Sungai Prolak, Pos Hau.

The head of the logging area came to Kampung Gertas, a Chinese man, on January 20, 2014 (11.30 am) and began to warn and threaten us with these words, why are you blocking off my area. I have paid the government for the licence, tonight I will bring in my boss and the police we will come in with the gun and shoot you and arrest you. The villagers then asked, oh really? You bring them all, we will wait for them tonight in our houses.

After lodging the police report, another company representative came to the village and asked us about the threats that had been made. We then showed him a copy of the police report. He then told us to come and see him if there were anymore problems in the future.

However we still let him know that the licensed area was in fact part of our customary territory. Therefore, they must not work in the said area. He merely replied that they had paid all the required fees to the government for the licence. They would still continue to work in the area.

In the end, the villagers had no other choice but to let the operations continue. We were still frightened by the threats that had been made against us by the other company representative.

## Plantation

Beginning from 2006 onwards, our villages began to be encroached upon by a public plantation project. It is an oil palm plantation project.

In the beginning, the company came in and began logging around Fort Humid, where an airstrip is located. However, at first, we were not aware of their operations. We only came to know of the operations when their foreign workers, who were Thai nationals, came in with their chainsaws. They then began to fell a very large number of trees, including our own crops. They did not just fell the timber trees as usually done by the normal logging operations. They even felled all the bamboo plants. The villagers then became perplexed by this. In the past, logging was not conducted in this way, with all the plants, trees and crops being felled.

After they were done with the felling, they then began to burn. This was followed by ground levelling and terracing activities. All these took place within a span of a year. They did the burning bit by bit, it was fortunate that we did not end up suffocating.

Finally, we went to see the workers to ask them what was really going on. We asked them why were they working as if they wanted to “finish off” the land? They then replied that they were felling for the development of a public plantation project. They said their company had been contracted to carry out the land clearing activities and was based in the state of Johor.

Further, we were also perplexed by another matter back then. We were unsure of how the workers had actually managed to enter our village. After much asking around, then only did we discover that they had been brought in through an old access road that was already partially colonised by secondary growths, instead of the main road that is usually used by the villagers. They then proceeded to build their accommodation facility near this old road, since they had quite a large number of workers.

Although we did not consent to the development of this plantation project within our customary territory, we really did not know what we could do to officially voice our protest because the company was said to be based in Johor. Therefore we had no way of communicating with them directly. In fact, we did not even know how to look for the representative of the company because he reportedly would only visit the area once in a while. Thus at the most, we could only meet with their labourers.

Finally, the chief of Kampung Enching managed to meet someone from the company’s management. We chanced upon him by the road side. Our chief then took the opportunity to inquire more information about the company from him. But



then, our village chief too received the same old answer, which included the fact that the company was based in Johor.

The company representative also informed us that the development of the public plantation project was for the people, to help the villagers of Pos Hau. This was why the Kelantan state government had approved the project, “for you, the Orang Asli community.” This is why the project is known as ‘*ladang rakyat*’ (public plantation).

We were told that the villagers would be able to participate in the plantation project. It was not a project owned by their company. The company was only carrying out the felling, land clearing and ground levelling activities. Soon, the people would become participants in the project. According to him, all these were done by the state government to raise the economic standard of the Orang Asli community.

Regardless of all such claims made by the representative, the fact remains that the plantation project had been developed without first consulting and obtaining consent from us.

It was not until 2008 that we at last managed to call for our first meeting to discuss about the encroachment. The representatives from Kampung Gertas, Kampung Enching, Kampung Tapai and Kampung Muya all came together to discuss on the actions that we would like to take to protest against the plantation encroachment. Prior to this, we did not manage to organise anything at all. We were left in confusion, due to the confounding nature of their felling operations, which we felt was akin to “grabbing” everything there was on the ground. Of course, we felt very anxious and not at all at peace thinking about the matter.

At last the villagers decided to request our village chief to take specific actions, including organising a meeting with JAKOA and the Department of Lands and Mines, since he was the one who had the official authority. However, despite our opposition, the plantation development continued during the same year. We remained in the dark as to what was really happening.

In 2011, Angah Aber wrote a letter dated November 17, 2011, to the Forestry Department of Peninsular Malaysia to voice our opposition once again. Among others, we stated the following:

Therefore, on behalf of the complainants of Kampung Enching Pos Hau, Gua Musang customary territory, as a fellow villager, I am now writing to express our protest against the activities and the plantation project developer who is currently working and destroying our farms, ancestral orchards, to the point where environmental pollution is affecting the villagers of Kampung Enching, Kampung Galang and Gertas.

On September 24, 2011, all the villagers of this customary territory organised a gathering to express our dissatisfaction and unanimous and strong protest against the actions of the government agencies and state government which permitted the logging activities and the plantation developer to freely work in our area.

This land has been our heritage since time immemorial, and it is also the source of our income as well as the place where we obtain our foods and livelihoods.

As a result of the logging and the plantation project developer freely working on the land, such excessive destruction and encroachment have taken place, causing the villagers to feel very much stressed and troubled.

Due to the fact that the activities are taking place on our customary territory, the water catchment area which serves the needs of the villagers all this while, has almost been destroyed.

We then only received a response from the headquarters of the Forestry Department of Peninsular Malaysia [JH(S) 321/D Jld. 3(27)] dated December 5, 2011, which stated that the matter would be referred to the Kelantan State Forestry Director.

Not long after the letter was written, around six villagers of Kampung Enching went to meet with the representative of the plantation project nearby their accommodation facility at Fort Humid.

We inquired on whether the plantation area would be expanded. He assured us that no further expansion was in plan. Soon, the company would also be carrying out restoration works to repair a few of the environmental damages that had arisen as a result of their activities.

We also inquired from him on the benefits that would be received by the villagers from this project. He only stated that he could not provide any guarantee on this matter. He encouraged us to resolve such matter ourselves by communicating directly with the Kelantan state government.

At this point, we the respondents and the rest of the villagers have yet to be requested to participate in the plantation project. We also did try several times to

inquire from the company workers about the compensation for our land that had been destroyed by the operations. However they told us that they could not promise us anything as the issue at hand was not their responsibility since they were merely ordinary workers of the company.

## CONSENT OR OPPOSITION

### 2. For each company or sequence of encroachment event:

**(i) Describe whether the villagers have given their consent or remained opposed to the logging or plantation operations.**

For our villages, the majority of us are opposed to the operations.

**(ii) Did any of the companies attempt to take the advantage of the consent given by any of the villagers to continue with their operations?**

We are not sure.

**(iii) Please explain how it was possible for this to take place without the approval of the entire village.**

Not applicable.

## PRE-ENCROACHMENT: PRIOR INFORMATION, CONSENT, TRANSPARENCY

### 3. For each company or sequence of encroachment event:

**(i) Were the affected villagers given prior information on the issuance of the logging or plantation licences before the commencement of any operations?**

The issuance of all such licences did not comply with the free, prior and informed consent (FPIC) process because our consent was not obtained prior to the issuance of the licences.

For logging, we only discovered about their impending operations after their workers had already arrived at the said location to carry out their pre-felling preparations without first obtaining our consent. Even if there were discussions which took place later, all these failed to stop the operations from commencing. In fact we were even verbally threatened by a representative of one company.

For the plantation project, the company in fact began their felling and land clearing operations without any prior discussion or notification. We were in fact left in confusion as to what was really happening.

**(ii) If yes, how was the information dissemination process conducted? (Through village chiefs, community meetings etc.)?**

Please see the explanation in (i) above.

**(iii) What was the content of the information given? Was it comprehensive and transparent? Did they fail to transparently respond to any questions raised by the villagers?**

Please see the explanation in (i) above.

**(iv) Did the villagers obtain important information such as licence registration numbers, maps of the licensed areas and other details?**

We could only obtain limited information from the signboards erected by the respective operations.

**(v) Was the consent and agreement of the villagers obtained at this point?**

No. We were never consulted prior to the issuance of such logging or plantation licences. No party had ever come to the village to disseminate such information to the villagers prior to the issuance of these licences. We would only find out about them after seeing outsiders entering and walking about in the village.

#### **POST-ENCROACHMENT: VERBAL PROTEST ON LOCATION**

**4. For each company or sequence of encroachment event:**

**(i) Did the villagers meet with the company representatives at the encroachment site or their accommodation facility to voice their protest? If yes, please describe these encounters further.**

We did interact with all logging and plantation companies at the location where they were working to voice our protests. However, none of these discussions produced any positive outcome.

For logging, there was an incident in which we were being threatened and warned by a representative of one company. He claimed he would be bringing in the police with guns to arrest us.

For the plantation project, they did not heed the demand that we made which called for their operations to be halted. The workers who were in the area were only labourers. So our protests were simply ignored.

Once the representatives from the plantation company did come over to the village to attend a discussion with us. However this did not produce any meaningful outcome for us.

**(ii) Did the villagers meet with the authorities to voice their protest? If yes, please describe these encounters further.**

No.

**POST-ENCROACHMENT  
OFFICIAL CONSULTATION WITH COMPANIES  
AND/OR AUTHORITIES**

**5. For each company or sequence of encroachment event:**

**(i) Following your protest, did the company or authorities invite the villagers to participate in an official consultation process? If yes, how many times did such meetings take place? Please describe them further.**

Yes. We did attend a meeting with the authorities as described in our letter dated February 17, 2014. However this did not produce any positive outcome for us. Logging and plantation operations continued all the same.

**(ii) Were the authorities also present in these meetings?**

Yes.

**(iii) What was the outcome of such meetings? Did they manage to put an end to the encroachments?**

There was no result. It failed to resolve any of the encroachment problems.



## COMPENSATION AND DAMAGES

6. For each company or sequence of encroachment event:

(i) Has compensation ever been promised and actually delivered to any of the villagers or village committee members or entire families? What was the form, amount and rates of the compensation received?

No.

(ii) In your view, was this compensation adequate?

Not applicable.

## PROTEST CORRESPONDENCE AND DOCUMENTS

7. For each company or sequence of encroachment event:

(i) Did the villagers write any letters or other documents to any of the companies and/or the authorities to express their written protest?

	Date	Sender	Recipient	Title
1.	17 Nov 2011	Angah Aber Kg. Enching	Forestry Department of Peninsular Malaysia	Protest against the destruction of our Orang Asli land in Kampung Enching
2.	17 Feb 2014	Angah Aber Kg. Enching	Forestry Department of Peninsular Malaysia	Protest against the encroachment activities of logging companies in the Orang Asli customary territory of Kampung Enching Pos Hau

(ii) Please describe the responses received from the companies and authorities, if any.

We only received a response from the headquarters of the Forestry Department of Peninsular Malaysia [JH(S) 321/D Jld. 3(27)] dated December 5, 2011, which stated that the matter would be referred to the Kelantan State Forestry Director.

## POLICE

### 8. For each company or sequence of encroachment event:

**(i) Did the villagers lodge any police reports to express their protest or to complain on any matter related to the encroachments, including concerns on their safety and that of their family members?**

	Date	Report Number	Complainant
1.	27 Jan 2014	GUA MUSANG/000299/14	Angah Aber
2.	6 Feb 2014	GUA MUSANG/000431/14	Kasim Pandak

**(ii) Have any villagers ever been detained by the police as a result of their protest actions or related activities? Were they eventually charged?**

No.

## PRESSURE, INTIMIDATION, THREATS, HARASSMENT

### 9. For each company or sequence of encroachment event:

**(i) Did any of the villagers ever receive any pressure, intimidation, threat or harassment from any party, in relation to the protests against the encroachment on your customary territory?**

For the logging operations in early 2014, we did receive a threat from a representative of a logging company. He informed us that he would be coming with the police who would be armed, to arrest us if we continue our protest.

**(ii) Did the villagers take any action after experiencing such pressure, intimidation, threat or harassment?**

We lodged a police report on the incident.

**(iii) Please describe the effects of the experience on the person receiving this pressure, intimidation, threat or harassment.**

The villagers tend to feel anxious, especially if we have to travel. However thus far, no untoward incident has ever occurred.

## EVALUATION ON THE APPROACH OF THE COMPANY REPRESENTATIVES

### 10. For each company or sequence of encroachment event:

**(i) In your view, did the companies respond in a polite and respectful manner when confronted by the complaints and protests from the villagers?**

Most of them were polite, nothing unusual. Only in one incident as described above, a company representative had verbally threatened us.

**(ii) Has any company ever broken any of their promises to the villagers? If yes, please describe these incidents further.**

Not applicable.

**(iii) Have you ever had the suspicion that any of the companies was acting dishonestly towards the villagers on any matter? If yes, please describe these incidents further.**

Not applicable.

## EVALUATION ON THE APPROACH OF THE POLICE, THE DEPARTMENT OF ORANG ASLI DEVELOPMENT (JAKOA) AND OTHER GOVERNMENT AGENCIES

**11. Please describe the general views of the villagers with regards to the manner in which the authorities respond to your protests and complaints.**

**(i) Are the villagers satisfied with their responses and services?**

No. We are not satisfied.

**(ii) Did the authorities show any bias in favour of the companies?**

Yes. They did show a bias in favour of the companies, instead of the villagers. Agencies like JAKOA also tend not to show enough concern for our welfare. JAKOA rarely visit some of the villages in Pos Hau.

**(iii) Has any authority taken any actions which to your view was excessive?**

No.

**(iv) In your view, have the authorities been transparent in their dissemination of information to the villagers?**

No.

## **STATUS OF THE INDIGENOUS CUSTOMARY LAND RIGHTS FROM THE PERSPECTIVE OF THE COMPANIES AND AUTHORITIES**

**12. For each company or sequence of encroachment event:**

**(i) Please describe the views of the companies and authorities on the status of the villagers' customary land rights. Did they recognise the existence of your rights?**

The authorities frequently state that our land belongs to the state government and that it is part of the permanent reserved forest. We do not agree with such a view.

**(ii) If the villagers are said to possess no such land rights, to which extent then do the authorities accept the existence of your rights, since your housing areas are also located in the same vicinity?**

We are still unclear on the manner in which the authorities interpret the extent of the boundaries of our customary territory. We however are always clear on our rights, which are based upon our own customary laws. Today, we continue to cultivate on our existing farms, carry out various traditional activities in the forested areas and practise our community's spiritual customs, all within our customary territory. In short, we continue to control and manage our customary territory as how it has always been since time immemorial.

Once we were actually questioned by one of them who said that since our ancestral trees had not been cultivated by us, they did not belong to us. We do not agree with such a view.

**(iii) Did any of the companies or state authorities make any legal references to support their view that the villagers do not possess any rights to the encroached land (state land, permanent reserved forest etc.)?**

No.

## ENCROACHMENT IMPACTS

**13. On the whole, please describe the adverse impacts of the encroachments on the villagers and your surrounding environment:**

	Type of destruction	Further information
1.	Environment: Forest destruction, river pollution	<p>Forest destruction and river pollution of course occur.</p> <p>The colour of the smaller streams turned yellow, like milk tea. However this has not affected our drinking water. Our drinking water is sourced from a more upstream area through a piping system that was contributed by JAKOA.</p> <p>There were also land slides which occurred along the road after the December 2014 flood.</p>
2.	Environment: Destruction of wildlife and riverine resources	<p>Wildlife and fish population has decreased sharply.</p> <p>Many fishing sites have been destroyed.</p>
3.	Environment: Destruction of sources of food, medicines and items used in cultural and spiritual ceremonies	<p>In the past, apart from hill rice and tubers, we were also dependent on freshwater fish and hunted wildlife for our sources of protein. There were also abundant vegetable shoots in the forest.</p> <p>Today, the sources of food from forest and river resources have indeed declined sharply. However, we are still largely dependent on the various natural resources for our food sources, in comparison to purchasing them. Nevertheless, we may still be forced to purchase some vegetables in Kuala Betis.</p> <p>In the past, this was not the case. Food was in abundance and we could freely exchange them amongst ourselves.</p>
4.	Loss of income	Our sources of income have been badly affected.



		<p>Prior to the arrival of the plantation project, it was easy to obtain fish and frogs, be they for our own income or consumption. If we needed money, we could simply sell them at Gua Musang.</p> <p>However, this is no longer possible after the development of the plantation project. The situation is really grave, since many fishing sites have been destroyed and land slides too have been occurring.</p>
5.	Loss of property: Farms, crops, farm huts, burial grounds etc.	<p>There were farms and crops that had been destroyed by the plantation project.</p> <p>Our burial ground is still safe because it is located in the hills.</p>
6.	Social: Health, security and welfare etc.	Our health is still good.
7.	Road damage	Road damage and land slides do occur.

## **SECTION D: CUSTOMARY TERRITORY AND PERMANENT RESERVED FOREST**

**Have any parts of your customary territory been gazetted as the permanent reserved forest under the National Forestry Act 1984?**

Sungai Betis Permanent Reserved Forest.

**(i) If yes, please state the year the gazetting was undertaken. Do the villagers possess any documents on the gazetting process?**

We have no knowledge on the year the gazetting took place and do not possess any documents on it.

**(ii) If yes, please describe how the gazetting of the permanent reserved forest has adversely affected your rights?**

We have never been informed about this matter. We are still firm in continuing with the exercise of our rights and other activities within our customary territory.

**(iii) If yes, did the authorities conduct any consultation with the villagers to obtain their consent on the gazetting process? Please state any important information on how the consultations were conducted.**

No.

**(iv) If no consultations had ever been conducted, how did the people become aware of the existence of the permanent reserved forest?**

Only through the signboards. We have been suspecting that the plantation project is taking place in the Sungai Betis Permanent Reserved Forest, where its signboard used to stand. Today, we could no longer see such a signboard in the plantation project area.



## 4. RPS Kuala Betis, Gua Musang, Kelantan

### **SECTION A: BASIC INFORMATION ON AFFECTED VILLAGES**

<b>District and State</b>	Gua Musang, Kelantan
<b>Affected villages and ethnicity</b>	<p>RPS Kuala Betis</p> <p>RPS Kuala Betis is divided into 3 blocks i.e. A, B and C. Within block C, there are 5 villages. They form the Lambok Customary Territory with a population of around 300 and 60 families.</p> <ol style="list-style-type: none"> <li>1. Kampung Angkek</li> <li>2. Kampung Sentep</li> <li>3. Kampung Kelapa</li> <li>4. Kampung Podek</li> <li>5. Kampung Beluru</li> </ol> <p>Temiar</p>
<b>Respondents</b>	<p>Angah Anjang Kampung Angkek 1966</p> <p>Alang Jambu Kampung Angkek 1971</p>
<b>Other information</b>	
<p>The customary territory is inherited by the villagers from pioneering ancestors.</p> <p>During pre-independence, the British administration constructed Fort Lambok in Batu Lombok, as its administration centre, equipped with an airstrip.</p>	

## **SECTION B: VERIFICATION ON THE EXISTENCE OF CUSTOMARY LAND RIGHTS**

The villagers verified that they are able to demonstrate the existence of their customary land rights through the following body of evidence.

<b>A.</b>	<b>Can the villagers provide oral evidence on the history of their customary territory?</b>	
1.	History on the origins of the customary territory and ancestry	x
2.	Site-specific history, folklores, legends	x
<b>B.</b>	<b>Do the villagers still practise the traditional customs and culture of their community?</b>	
1.	Land clearing, agriculture	x
2.	Marriages	x
3.	Deaths, funerals	x
4.	Communal laws, code of conduct and ethics	x
5.	Possession of old items and heirlooms: traditional costumes, gongs, baskets, beads, personal ornaments, decorative objects, kitchen utensils, knives, machetes, weapons, household items etc.	x
<b>C.</b>	<b>Can the villagers provide evidence on their use of the land and its natural resources within the customary territory?</b>	
1.	Tree felling or tree harvesting marks	x
2.	Hunting and fishing sites, saltlicks	x
3.	Burial grounds and sacred sites	x
4.	Trails and pathways within forested or cultivation areas	x
<b>D.</b>	<b>Does the government acknowledge the existence of the villages?</b>	
1.	Government built facilities	x
2.	Visits by ministries or governmental departments and agencies	x



## **SECTION C: LAND ENCROACHMENT REPORT**

### **BACKGROUND**

**1. How many logging or plantation companies have encroached upon your customary territory in the last five to ten years?**

#### **Logging**

Logging first encroached on our area around the 1980s. During this period, we did not know much about the ways in which to express our protest officially against such encroachments for the purpose of protecting our customary land rights. We certainly disliked such encroachments and our consent was also never obtained. This continued until the 1990s up to 2010.

In the past, we used to be less aware of our basic rights as citizens, which permit us to protest in defence of our customary territory. In fact, we were often told that we had no property ownership rights to the land by various government agencies. This was known by all. We certainly do not share the authorities' view on this. However, we used to be very dependent on JHEOA/JAKOA. We put our hopes on them to protect our interests. We really did not dare to directly communicate with the companies. All our affairs must be conducted through JHEOA/JAKOA. Nevertheless, up to this very day, we still continue to exercise ownership over our customary territory based upon our customary laws and to the best of our ability, would take actions to control the land.

After obtaining some knowledge on our rights, then only did we realise that in actual fact, we do have the rights to take our own actions to stop the encroachment on our customary land in the village.

In 2012, we were confronted by a land encroachment activity committed by a logging company which ended up damaging the village water catchment area.

We first discovered about the impending logging operation when the villagers found wooden poles that had been painted in red for the purpose of boundary demarcation, near the Sungai Leged, in two locations.

Not long after the discovery, we finally encountered the workers of the logging company. As they were about to leave, we stopped their leader when their vehicles were passing in front of the home of our village chief.

We then inquired from them about the purpose of their activities. The leader then informed us that a logging licence had already been approved in the concerned area. When we inquired about the identity of the party that had issued the approval, he said of course it was the Kelantan state government, with the knowledge of JAKOA and other authorities. We then requested for him to relay the message to the licence owner to come and see us. Then we asked them to leave.

Immediately after they left, we went on to conduct a check on the area. We saw the boundary demarcation works that had already been carried out. We then went home.

Subsequently, following a discussion with the village chief and other villagers, we collectively agreed to voice our protest against the activity. We thus went to lodge a police report on the matter. We also wrote to the company to request that a discussion is held with us. All copies of these documents were lost during the December 2014 flood.

Shortly after, the logging company representative came to visit us. We had a meeting at the house of the village chief. He appealed to us to allow his company to log the concerned area since his company had already paid all the required fees to the Kelantan state government. He thus asked for the permission to start their operations in our village. However our chief refused to give any word on the matter as the decision was not for him alone to make but must be decided by all.

After about an hour of discussion, the company representative then left.

The next day, this same person came over again to the village. We then continued our discussion in the village common hall. We still refused to give permission for the logging to commence. At last, there was nothing that he could do and so, he left just like that.

Unfortunately however, in less than a month's time, the company proceeded to begin their operations without our consent anyway. We were unable to stop them. We did write protest letters to the state authorities, including to the Forestry Department. All these letters were lost during the big flood.

During the same year, our friends from a non-governmental organisation also invited four journalists to our village to write about this matter. We showed the areas which had been logged without our permission. This news was published by the media.

Right after this, the logging operations stopped.

In 2013, our customary territory was further encroached on by another logging company which had also entered our customary territory without our consent. It took place in compartment 309 in the Perias Permanent Reserved Forest, covering an area of 100 hectares around the Sungai Tereg. The duration of the licence [DS-01-01-2013] was from January 23 to July 22, 2013. They were working on their own without the use of an external contractor.

A police report [GUA MUSANG/002001/13] was lodged by Ali Andak on this matter on July 30, 2013. Among others, the report stated the following:

The company never came to discuss with the Village Chief and other villagers. On behalf of the Kg. Angkek villagers, I would like to express our dissatisfaction on the matter since the operations have damaged our burial ground, orchards and adversely affected our income and the way of life of the Orang Asli. If they still insist on entering the area to work, we will then take the appropriate action. We the villagers will not permit them to enter the area to work.

Then in 2015, another logging company attempted to encroach upon our territory. The company was issued with a licence [DS 0121-2015] of 100 hectares, operating from May to November 2015. It was located in compartment 305 of the Perias Permanent Reserved Forest.

We first discovered that the company was going to commence its activities in our customary territory after a group of labourers entered our village without our consent to construct the company's accommodation facility. When we inquired about their activities, the labourers told us that they were building the facility for the operations of a logging licence.

On July 12, 2015, a vehicle of the Forestry Department entered our village. There were four people in the four-wheel drive vehicle, all refused to identify their names. When we tried to inquire about their purpose of coming to the village, they informed us that they would like to have our support for the impending operation, which had already started by then. However, the villagers still refused to give our permission.

On July 30, we decided to go to the company's accommodation facility. Our intention was to ask for all the relevant documents on the logging licence. Around 50 of us went over to the place on our motorcycles on that morning.

However, when we arrived there, we found that only the labourers were there. The leader for the area and the licence holder were not around. We then informed the workers to ask their leader to come over to our village upon his return. We told them

that the villagers would like to have a discussion with the company. We then went home.

On the very same day, the leader of the workers came over to the village. We then began the discussion with him. We requested for him to hand us all the relevant documents pertaining to the licence. However he said that such documents were not in his possession. He claimed that he only had the plan for the logging area with him. He told us that all such documents on the licence were being handled by the licence holder directly.

We then asked for the logging operation to be halted. In the end, after failing to obtain our consent, he left. However, after this interaction, although we remained opposed to the operation, we no longer knew what we could do to stop the encroachment. Angah Anjang did lodge a police report [GUA MUSANG/005431/15] dated August 2, 2015, to complain about the incidents above.

In the end, the logging operation continued without our consent.

Of course we would like to voice our protest further. Unfortunately however, this was not easy for us. We did not have the equipment to type protest letters and make other preparations. All our equipment was destroyed during the big flood of 2014.

### **Rubber clone plantation**

We first discovered about the development of the rubber clone plantation in our village after we saw their workers entering our village with their heavy machinery, without first obtaining our permission, somewhere around 2011. They brought in the machinery and then proceeded to start logging without our consent. We were not very sure what we should do to voice our protest against this encroachment. We saw further that they were felling way too many trees. The normal logging operations would usually harvest trees that are quite large. But this logging operation was taking even the smaller-sized trees. We became perplexed at first.

After they started felling such smaller-sized trees, we then began to suspect that they were actually developing a plantation, as this did not look like a normal logging operation. In the end, we discovered that a rubber clone plantation would really be developed in our village. We knew this for sure after they began to carry out land clearing activities. They were felling all the trees, large and small. It was not a normal logging operation. We just did not have the capacity to take any action to stop their activities although we did not at all agree with the operation.

They also further removed the Kampung Angkek Customary Territory signboard that we had put up in the village for quite some time. We lodged a police report on this matter but the copy of the report was also lost during the flood in 2014.

Once they had completed their felling operation, they began carrying out their cultivation activities. All these were done without our permission. Today, the trees are already producing latex. But the rubber tappers are foreign workers. The villagers did not receive any benefit from the development of this plantation at all.

Of course there were many farms, crops and old fruit trees destroyed by the plantation development. In fact, even our graves were destroyed.

We used to have a few documents on the plantation project but they have all been destroyed during the big flood.

### **Additional notes**

The villagers from the Lambok Customary Territory, RPS Kuala Betis and Pos Balar also participated in the blockade with other Orang Asli villages in southern Kelantan on January 27 and 28, 2012. We built the blockade on January 27, 2012 at two locations on the Kuala Betis road, one in the direction leading to Pos Tohoi nearby Kampung Parik, and another in the direction leading to Pos Balar, nearby our village.

There were 800 of us who participated in this protest. In the end, 13 people were detained by the police. This blockade also received wide coverage in the media.

## **CONSENT OR OPPOSITION**

### **2. For each company or sequence of encroachment event:**

**(i) Describe whether the villagers have given their consent or remained opposed to the logging or plantation operations.**

For our villages, more people are opposed to the operations.

**(ii) Did any of the companies attempt to take the advantage of the consent given by any of the villagers to continue with their operations?**

No.

**(iii) Please explain how it was possible for this to take place without the approval of the entire village.**

Not applicable.

**PRE-ENCROACHMENT:  
PRIOR INFORMATION, CONSENT, TRANSPARENCY**

**3. For each company or sequence of encroachment event:**

**(i) Were the affected villagers given prior information on the issuance of the logging or plantation licences before the commencement of any operations?**

The issuance of all such licences did not comply with the free, prior and informed consent (FPIC) process because our consent was not obtained prior to the issuance of the licences.

For logging, we only discovered about their impending operation after their workers had already arrived at the said location to carry out their pre-felling preparations without first obtaining our consent. Even if there were discussions which took place later, all these failed to stop the operations from commencing.

For the rubber clone plantation project, the company in fact began their felling and land clearing operations without any prior discussion or notification to us. We were in fact left in confusion as to what was really happening.

**(ii) If yes, how was the information dissemination process conducted? (Through village chiefs, community meetings etc.)?**

Please see the explanation in (i) above.

**(iii) What was the content of the information given? Was it comprehensive and transparent? Did they fail to transparently respond to any questions raised by the villagers?**

Please see the explanation in (i) above.

**(iv) Did the villagers obtain important information such as licence registration numbers, maps of the licensed areas and other details?**

We could only obtain limited information from the signboards erected by the respective operations.



**(v) Was the consent and agreement of the villagers obtained at this point?**

No. We were never consulted prior to the issuance of such logging or plantation licences. No party had ever come to the village to disseminate such information to the villagers prior to the issuance of these licences. We would only find out about them after seeing outsiders entering and walking about in the village.

**POST-ENCROACHMENT:  
VERBAL PROTEST ON LOCATION**

**4. For each company or sequence of encroachment event:**

**(i) Did the villagers meet with the company representatives at the encroachment site or their accommodation facility to voice their protest? If yes, please describe these encounters further.**

We did interact with all logging and plantation companies at the location where they were working to voice our protests. However, none of these discussions produced any positive outcome.

**(ii) Did the villagers meet with the authorities to voice their protest? If yes, please describe these encounters further.**

No.

**POST-ENCROACHMENT  
OFFICIAL CONSULTATION WITH COMPANIES  
AND/OR AUTHORITIES**

**5. For each company or sequence of encroachment event:**

**(i) Following your protest, did the company or authorities invite the villagers to participate in an official consultation process? If yes, how many times did such meetings take place? Please describe them further.**

No.

**(ii) Were the authorities also present in these meetings?**

Not applicable.

**(iii) What was the outcome of such meetings? Did they manage to put an end to the encroachments?**

Not applicable.

## COMPENSATION AND DAMAGES

**6. For each company or sequence of encroachment event:**

**(i) Has compensation ever been promised and actually delivered to any of the villagers or village committee members or entire families? What was the form, amount and rates of the compensation received?**

No.

**(ii) In your view, was this compensation adequate?**

Not applicable.

## PROTEST CORRESPONDENCE AND DOCUMENTS

**7. For each company or sequence of encroachment event:**

**(i) Did the villagers write any letters or other documents to any of the companies and/or the authorities to express their written protest?**

Most of the documents in our possession were destroyed during the big flood in December 2014.

**(ii) Please describe the responses received from the companies and authorities, if any.**

Not applicable.

## POLICE

**8. For each company or sequence of encroachment event:**

**(i) Did the villagers lodge any police reports to express their protest or to complain on any matter related to the encroachments, including concerns on their safety and that of their family members?**

	<b>Date</b>	<b>Report Number</b>	<b>Complainant</b>
<b>1.</b>	30 July 2013	GUA MUSANG/002001/13	Ali Andak
<b>2.</b>	2 Aug 2015	GUA MUSANG/005431/15	Angah Anjang

**(ii) Have any villagers ever been detained by the police as a result of their protest actions or related activities? Were they eventually charged?**

No.

### **PRESSURE, INTIMIDATION, THREATS, HARASSMENT**

**9. For each company or sequence of encroachment event:**

**(i) Did any of the villagers ever receive any pressure, intimidation, threat or harassment from any party, in relation to the protests against the encroachment on your customary territory?**

No.

**(ii) Did the villagers take any action after experiencing such pressure, intimidation, threat or harassment?**

Not applicable.

**(iii) Please describe the effects of the experience on the person receiving this pressure, intimidation, threat or harassment.**

Not applicable.

### **EVALUATION ON THE APPROACH OF THE COMPANY REPRESENTATIVES**

**10. For each company or sequence of encroachment event:**

**(i) In your view, did the companies respond in a polite and respectful manner when confronted by the complaints and protests from the villagers?**

They were polite, nothing unusual. But they were unrelenting in wanting to continue with their operations. They often stressed that they had settled all the payments as required by the state government despite our opposition to their operations.

**(ii) Has any company ever broken any of their promises to the villagers? If yes, please describe these incidents further.**

Not applicable.

**(iii) Have you ever had the suspicion that any of the companies was acting dishonestly towards the villagers on any matter? If yes, please describe these incidents further.**

Not applicable.

#### **EVALUATION ON THE APPROACH OF THE POLICE, THE DEPARTMENT OF ORANG ASLI DEVELOPMENT (JAKOA) AND OTHER GOVERNMENT AGENCIES**

**11. Please describe the general views of the villagers with regards to the manner in which the authorities respond to your protests and complaints.**

**(i) Are the villagers satisfied with their responses and services?**

No. JAKOA has never explained to us about our rights to our customary land. We feel oppressed in this situation.

**(ii) Did the authorities show any bias in favour of the companies?**

Not applicable. We have never complained on the logging and plantation operations to government agencies.

**(iii) Has any authority taken any actions which to your view was excessive?**

No.

**(iv) In your view, have the authorities been transparent in their dissemination of information to the villagers?**

No. The Forestry Department has never conducted an open consultation with us on the issuance of these logging licences.

**STATUS OF THE INDIGENOUS CUSTOMARY LAND RIGHTS FROM THE PERSPECTIVE OF THE COMPANIES AND AUTHORITIES**

**12. For each company or sequence of encroachment event:**

**(i) Please describe the views of the companies and authorities on the status of the villagers' customary land rights. Did they recognise the existence of your rights?**

The authorities frequently state that our customary territory belongs to the state government and that it is part of the permanent reserved forest. We do not agree with such a view.

**(ii) If the villagers are said to possess no such land rights, to which extent then do the authorities accept the existence of your rights, since your housing areas are also located in the same vicinity?**

We are still unclear on the manner in which the authorities interpret the extent of the boundaries of our customary territory. We however are always clear on our rights, which are based upon our own customary laws. Today, we continue to cultivate on our existing farms, carry out various traditional activities in the forested areas and practise our community's spiritual customs, all within our customary territory. In short, we continue to control and manage our customary territory as how it has always been since time immemorial.

**(iii) Did any of the companies or state authorities make any legal references to support their view that the villagers do not possess any rights to the encroached land (state land, permanent reserved forest etc.)?**

No. They have never mentioned anything on the law.

**ENCROACHMENT IMPACTS**

**13. On the whole, please describe the adverse impacts of the encroachments on the villagers and your surrounding environment:**

	<b>Type of destruction</b>	<b>Further information</b>
<b>1.</b>	Environment: Forest destruction, river pollution	Forest destruction and river pollution of course occur.  The river water would turn muddy and dirty. The smaller streams sometimes would simply dry up. When the pressure of the water piped to our

		<p>homes is low, we would have to walk and carry the water from other sources in containers.</p> <p>Land slides have also occurred.</p>
2.	Environment: Destruction of wildlife and riverine resources	<p>Wildlife and fish population has now decreased sharply.</p> <p>Many fishing sites have been destroyed. It is indeed difficult to obtain fish today.</p>
3.	Environment: Destruction of sources of food, medicines and items used in cultural and spiritual ceremonies	<p>In the past, apart from hill rice and tubers, we were also dependent on freshwater fish, domestically bred chickens and hunted wildlife for our sources of protein. There were also abundant vegetable shoots in the forest.</p> <p>Today, the sources of food from forest and river resources have indeed declined sharply. We tend to purchase more foodstuff, including rice.</p> <p>It is quite difficult to cultivate rice today. If only a few families are engaged in rice cultivation, most of the harvest will end up being eaten up by the birds.</p> <p>The natural resources used in our <i>sewang</i> ceremonies are also more difficult to find today.</p>
4.	Loss of income	<p>Our sources of income have been badly affected.</p> <p>Today, most of our income is derived from rubber tapping and the cultivation of bananas. There are also villagers who are employed as labourers in the oil palm plantations nearby our village.</p> <p>Sometimes we would still try to look for forest produce or hunt. However, resources such as the agarwood, rattan, <i>kacip fatimah</i>, <i>tongkat ali</i>, various medicinal herbs and wildlife have declined significantly.</p>



5.	Loss of property: Farms, crops, farm huts, burial grounds etc.	There were crops, graves and sacred sites that had been destroyed.
6.	Social: Health, security and welfare etc.	Sometimes, there are villagers who suffer from diarrhea, vomiting and skin irritation from the polluted river water.
7.	Road damage	Road damage does occur.

## **SECTION D: CUSTOMARY TERRITORY AND PERMANENT RESERVED FOREST**

**Have any parts of your customary territory been gazetted as the permanent reserved forest under the National Forestry Act 1984?**

Perias Permanent Reserved Forest.

**(i) If yes, please state the year the gazetting was undertaken. Do the villagers possess any documents on the gazetting process?**

We have no knowledge on the year the gazetting took place and do not possess any documents on it.

**(ii) If yes, please describe how the gazetting of the permanent reserved forest has adversely affected your rights?**

We are not very clear about the matter due to the lack of comprehensive information from the authorities. We are still firm in continuing with the exercise of our rights and other activities within our customary territory.

**(iii) If yes, did the authorities conduct any consultation with the villagers to obtain their consent on the gazetting process? Please state any important information on how the consultations were conducted.**

No.

**(iv) If no consultation had ever been conducted, how did the people become aware of the existence of the permanent reserved forest?**

Only through the signboards.

## 5. Lojing, Gua Musang, Kelantan

### SECTION A: BASIC INFORMATION ON AFFECTED VILLAGES

<b>District and State</b>	Gua Musang, Kelantan
<b>Affected villages and ethnicity</b>	<p>Lojing</p> <p>Respondents are representatives of 4 villages with a population of around 1,000.</p> <ol style="list-style-type: none"> <li>1. Kampung Sigar</li> <li>2. Kampung Bahong</li> <li>3. Kampung Kuala Tahu</li> <li>4. Kampung Sandroad</li> </ol> <p>Temiar</p>
<b>Respondents</b>	<p>Muya Bah Said Kampung Sigar, Lojing 1986</p> <p>Itam Anjang Kampung Kuala Tahu, Lojing Berusia 50an</p>
<b>Other information</b>	
<p>The customary territory is inherited by the villagers from pioneering ancestors.</p> <p>There are a total of 23 Orang Asli villages in Lojing. Although the respondents only represent four of the villages above, the environmental impacts of the destructive activities affect all the villages. In fact, many of the natural landmarks which served as the boundary markers of the different Lojing villages had already been destroyed by vegetable farming companies.</p> <p>In the Temiar Language, <i>sigar</i> refers to the tree known as <i>bertam</i> tree in the Malay Language. The ancestral account on the origins of the village name relates the story of a confrontation between two groups vying for the same <i>sigar</i> tree, which each group wished to have for the purpose of making the darts for their blowpipes. After</p>	

having attacked each other during the fight, with both groups possessing equally intense mystical powers, they soon realised that they could never defeat each other. As a result, both groups agreed to a peace pact and vowed never to fight each other again.

Not long after the incident, an extraordinary thunderstorm and heavy raining occurred in the area where the *sigar* tree grew. After the storm receded, the villagers discovered that the *sigar* tree had simply vanished.

In the 1950s, the British attempted to resettle the Kampung Sigar villagers to Pos Brooke, since communist insurgent groups were operating heavily in the area in their campaign to oust colonial rule. However the villagers' stay in Pos Brooke lasted for only a week or so, as they soon returned to Kampung Sigar. Later on, a clinic and a helicopter landing area were built by the British in the village. Both facilities are still there.

Meanwhile, the ancestral account on the origins of the village name *Tahu* relates the story of a powerful shaman whose name was *Tahu*, who used to live by a riverbank. He was said to be able to physically disappear in one place and manifest himself elsewhere. The river was then called Sungai Tahu, which eventually led to the village being named the same.

The boundary of Kampung Sigar and Kampung Kuala Tahu is made up by the nearby mountain which has three peaks, which give the mountain a star-like appearance. We call the mountain *Gunung Tiga Cabang*, or the Mountain of Three Peaks. All three peaks have their own names, namely, *Gayur*, *Tenunju* and *Wak Repeh*. *Wak Repeh* was named after a beautiful female shaman who had vanished somewhere in the peak.

Kampung Kuala Tahu is famed for its deceased leader known by all as Datuk Pangoi Long, who was respected in equal measure by both the communists and the British. When the Second World War was over, Datuk Pangoi was requested by the British to assist them in airdropping special pamphlets from a helicopter. The pamphlets carried the announcement on the end of the war, intended to persuade the remaining Orang Asli communities who were still hiding from the war in the deep forests, to return to their villages.

Datuk Tahu had also planted a durian tree by the Sungai Brooke. *Broog* means wide open or expansive in the Temiar Language. The tree is still there.

## **SECTION B: VERIFICATION ON THE EXISTENCE OF CUSTOMARY LAND RIGHTS**

The villagers verified that they are able to demonstrate the existence of their customary land rights through the following body of evidence.

<b>A.</b>	<b>Can the villagers provide oral evidence on the history of their customary territory?</b>	
1.	History on the origins of the customary territory and ancestry	x
2.	Site-specific history, folklores, legends	x
<b>B.</b>	<b>Do the villagers still practise the traditional customs and culture of their community?</b>	
1.	Land clearing, agriculture	x
2.	Marriages	x
3.	Deaths, funerals	x
4.	Communal laws, code of conduct and ethics	x
5.	Possession of old items and heirlooms: traditional costumes, gongs, baskets, beads, personal ornaments, decorative objects, kitchen utensils, knives, machetes, weapons, household items etc.	x
<b>C.</b>	<b>Can the villagers provide evidence on their use of the land and its natural resources within the customary territory?</b>	
1.	Tree felling or tree harvesting marks	x
2.	Hunting and fishing sites, saltlicks	x
3.	Burial grounds and sacred sites	x
4.	Trails and pathways within forested or cultivation areas	x
<b>D.</b>	<b>Does the government acknowledge the existence of the villages?</b>	
1.	Government built facilities	x
2.	Visits by ministries or governmental departments and agencies	x

## **SECTION C: LAND ENCROACHMENT REPORT**

### **BACKGROUND**

**1. How many logging or plantation companies have encroached upon your customary territory in the last five to ten years?**

#### **Logging**

As far as we know, logging operations have continually encroached on our territory since the 1980s. During this time, we did not know much about our right to voice our protest officially against such encroachments, although we certainly did not like them.

At first, we were informed by JHEOA/JAKOA that a road would be levelled and built, heading towards our customary territory, purportedly for the Orang Asli community. The company dealt directly with JHEOA/JAKOA. JHEOA/JAKOA then relayed the information to our village chief. Our chief in turn informed the villagers that a road would be built for the Lojing villages. The purpose of the road was to facilitate us to connect with the outside world.

Not long after the road construction was completed, a logging company then began to enter our village without our permission. They came all of a sudden, without first informing the villagers. They then began their operations without consulting or obtaining the consent of the villagers.

In the past, we did not voice strong and official protests to demand the loggers to leave our area. We did not manage to do so because back then, the villagers believed that we were 100 per cent under the support of JHEOA/JAKOA. The villagers put all their hopes to JHEOA/JAKOA, to take the appropriate actions to defend our rights. However, up to this very day, we still continue to exercise ownership over our customary territory based upon our customary laws and to the best of our ability, would take actions to control the land.

In every village, there is an official leader. He would be the one responsible to manage the affairs of the village. Maybe he did inform JHEOA/JAKOA on the encroachment, but we can never be sure of that. Our relationship with JHEOA/JAKOA has always been quite limited since the agency tends to communicate only with the village chiefs without involving the entire village on the whole.



Today, after attending the various awareness and training programmes organised by a few non-governmental organisations, we are more aware of our rights as citizens to protest against any encroachment on our customary territory. In addition, the forest and environmental destruction occurring today is much more critical than that which took place in the 1980s.

In 2013, there was one logging company which intended to begin their operations in our village.

The first time we became informed on this matter was around May 2013, when representatives from the company entered our customary territory to conduct a field inspection of the area to be logged. They entered our village in a four-wheel drive vehicle without first obtaining our permission. The villagers then asked the loggers about the purpose of their entry. The people were then told that the company would be coming in to begin logging in the area concerned. We were of course opposed to the operation.

At last, the villagers from four villages, Kampung Sandroad, Kampung Bahong, Kampung Sigar and Kampung Kuala Tahu chose a date on which to discuss the matter. We discussed on the ways in which we could protect our customary land and stop the operation. Subsequently, we agreed to lodge a police report on the matter and to write to various government agencies to voice our protest.

During the same month of May, Itam Anjang was at last contacted by one of the company representatives through the telephone. The representative had earlier obtained Itam's number from the chairperson of the Pos Brooke Village Development and Security Committee (JKKK).

There was of course the possibility that members of the JKKK had already been contacted earlier by the company. However, we are only ordinary members of the village, thus we would not know any further details on the possibility of this having taken place.

The representative who called introduced himself as the company owner ("*taukeh balak*") who had received the logging licence. He expressed his wish to meet Itam Anjang in Gua Musang.

On the agreed upon date, in June 2013, around 10 villagers went to the company office in Gua Musang. However in the end, only Itam Anjang was allowed to meet the company representatives. They told us the meeting room was quite small.

During the meeting, the representative asked for our help ("please help me"). He told Itam that the company needed to harvest the logs in the licenced area. He said

“I can give you some rewards in return.” He also offered a total of RM30,000 to the villagers of Kampung Sandroad, Kampung Bahong, Kampung Sigar and Kampung Kuala Tahu.

Itam then told the company representative that he would first have to “think” the matter over. However, he first requested for all documents related to the approval of the logging licence to be handed over to the people. Initially, the representative appeared to be reluctant to fulfill this request. Nevertheless at last, he showed Itam his logging permit and also handed a copy of it to the villagers.

After we left, we continued to discuss amongst ourselves. In the end, we decided to remain opposed to the entry of the logging company into our area, even with the compensation payment of RM30,000.

A day after the villagers returned from Gua Musang, the company actually entered the village with their heavy machinery to construct the access road to the forest. Subsequently, a large number of villagers went to the concerned area – men, women from all ages went to stop their operations. At last, the machinery had to be driven out by the workers. From that day onwards, the company no longer came to our villages.

Meanwhile, in June 2013, the village chiefs of Kampung Sigar and Kampung Kuala Tahu received a notification letter dated June 26, 2013 [PHN.KN. 12/1]5] from the Forestry Department on the “Notification on boundary cleaning works for the Lojing Permanent Reserved Forest”. According to the letter, the purpose of the works being carried out was to determine the position of the Lojing Permanent Reserved Forest to protect it from any form of encroachment. The villagers were requested to cooperate to ensure that the works can be carried out without any disturbance.

However, as the state government had never provided us with land tenure security despite the fact that we have continued to exercise our customary land rights based on our customary laws, we became concerned with the content of the letter. Moreover, all these years, we never knew how the Kelantan state government interpreted the boundaries of our customary territories, and whether our territories overlap with that of the Lojing Permanent Reserved Forest. As such, we sought to request some key information which we had never been able to access before.

The Lojing Customary Territory Action Committee then proceeded to write a letter dated July 11, 2013 to the Kelantan State Forestry Department. Among others, we informed them on the following:

The indigenous community needs certain important information to understand the boundary cleaning works of the permanent reserved forest in greater detail, including where our indigenous customary territory may overlap with the concerned permanent reserved forest area.

The information needed includes the PRF plan and its plan number. It is important for us to know the official area plan in order to ensure that our customary territory will not be disturbed by outsiders.

Apart from that, what is the size of the concerned forest area. We would like to know the size of the forest involved, has its original size remained the same or has the size been increased.

Further, the gazetting plan or any related information with clear verifications, with all the relevant details.

Meanwhile, if the department has any proposal, changes or additional information for us, please provide them in writing. This is to facilitate the discussion process between the Village Action Committee and the rest of the villagers.

Two months later, probably around August 2013, the Forestry Department from Gua Musang came into Kampung Kuala Tahu in four-wheel drive vehicles. The villagers then attempted to inquire from them on the purpose of their visit. They then informed us that they would like to conduct survey activities in the permanent reserved forest. We of course refused them the permission to carry out the survey works in our customary territory.

Further, we also observed that the area that they wished to survey was the same with the location where the logging company had earlier conducted field inspection of their licensed area. It basically involved the area from Sungai Brooke up to Kampung Sungai Tahu, although no ground demarcation had been conducted.

After we refused them the permission to carry out the works, the team then left.

Not long after this incident, they came over again in their four four-wheel drive vehicles. They still headed to the same location. Once again we disallowed and prevented them from carrying out any activities there. We told them:

On the first day, we had already said so, the second time – if you still insist, we would surely take the appropriate action.

A short dispute then started there and then between the villagers and the Forestry Department. Both parties were adamant that they would be lodging police reports

on the matter. The villagers, around 10 of us, stressed that we were the owners of the concerned customary land and had every right to lodge our own police reports.

We also insisted that the Forestry Department must leave the area. If the team were not happy with our actions, we told them to ask their superiors to come and meet with us, including the Director of Forestry of Kelantan herself.

They then left.

On March 20, 2014, one of the officers who had earlier come to our village, came again to look for Bah Muya Bah Said. They told Muya that their superior would like to meet with him at the Lojing District and Land Office.

They then handed an invitation letter dated March 16 to us, to attend a meeting on March 20. However, on the day we received the letter, it was already March 20. It was as if they were forcing the villagers to simply just go and attend a meeting on the same day the invitation was delivered to us.

At last, Muya and around 15 villagers agreed to travel to the said office. We were really not informed on this matter at an earlier time, they all took place on the same day.

In the office, we were introduced to all the Forestry Department staff present for the meeting. Representatives from the Lojing District and Land Office, JAKOA and the police were also there in this meeting.

During this meeting, we were told by the Kelantan State Forestry Department that they had received the report from their staff that the Lojing villagers had protested against and obstructed the land surveying activities of the department. The department informed us that because the area concerned is already a permanent reserved forest, we therefore do not have any rights to it.

In response, the villagers explained that we could never accept such a notion. We replied that if it were true that we have no rights to the concerned area, the department must then explain where we had actually come from. We asked the department representatives about the name of the nearby mountain, which in actual fact was named by the Orang Asli community:

If we have no rights, where did we originate from then? Please sir, tell me. If you say we have no rights, I'd like to ask you the name of that mountain. Please tell me.

The department then softened its tone and explained that the purpose of the land surveying activities was to prevent the highlands from being encroached upon.

We then stated that logging operations had effectively harvested all the timber from the borders of Cameron Highlands up to Kelantan. We felt it was illogical that now they had suddenly wanted to survey the lowland areas, in order to prevent encroachment. We told them that “the rice has already turned into porridge”. Therefore, we were firm in not wanting the area to be surveyed because it is part of our customary territory.

The department then informed us that the implementation of the survey works was in fact based on the law. They possessed all the required plans and all their actions were in compliance with the National Forestry Act 1984.

We then simply replied that the department must first think about who were the first people to occupy the country. The Act became enforced only from 1984. We however have been occupying our customary land long before 1984. We told them that the burial grounds of our villages are always there as evidence – the bones of our ancestors are all still there.

After this exchange, they did not say much anymore. They implied that the situation was akin to us trying to play a game of badminton, when we were asked to play football. They said that our actions had only complicated the situation further.

We then told them that this was the final warning from the villagers that the survey works must be stopped once and for all.

Therefore no survey works have been carried out until today. Likewise, the company has also not entered the customary territory of the four villages.

### **Vegetable farms**

Apart from logging encroachment, our customary territory has also been encroached upon by several vegetable farming companies. Today, there are five vegetable farming projects located on our customary territory which were developed without first obtaining our consent.

The earliest large scale vegetable farms were opened in 2011 by several companies without our permission. They clear felled such a large part of the forested areas. We simply did not have the capacity to halt such an operation.

The villagers then began to discuss amongst ourselves on the best actions to take in order to voice our protest against such encroachments. We also lodged police reports

to state our protest against the projects. We also visited the project locations to meet with the representatives of the companies to voice our protests against their encroachments. Sometimes, we even ended up quarrelling with them.

One of the companies claimed that they had already paid such high fees due to the Kelantan state government. They also implicated the names of prominent public figures who were said to own the land, although we could never be sure if this was true. They were basically adamant in continuing with their clear felling activities despite our protests against their encroachment.

On April 21, 2013, the villagers of Kampung Kuala Tahu and Kampung Sigar, through the Network of Orang Asli Villages of Kelantan (JKOAK) respectively sent protest letters against the said agricultural operations and development, with similar contents. Below are parts of the letter from Kampung Sigar:

For your information, the indigenous community are absolutely opposed to the development plans by the state government on our customary territory. This is so because such development had only been agreed to between two parties, i.e. the state government and the developers themselves. By right, in this situation, we should have been given the right to voice our opinions and the space to give our views, instead of being simply marginalised.

The state government should be aware of our rights as indigenous peoples to obtain detailed information on any projects being planned on our customary land. In relation to this, we as indigenous peoples would like to know more about the state government's plans as this is our right as indigenous peoples which should not be questioned by any party. The state government must disclose all the projects being planned on our customary territory without any distortion of facts.

There are many matters that must be taken into account by the state government before approving any projects which take place on our customary territory to the companies. Each project approved by the state government often burdens the lives of the indigenous community. The attitude of the state government is akin to giving us the halved lime that is sour, it clearly does not act justly to the indigenous community. The state government tends to be more in favour of those capable of giving it something in return rather than the indigenous peoples who have the most obvious rights to be protected.

The letters further disclosed the fact that the spring water for Kampung Sigar had been destroyed by pollution that it was no longer fit for consumption. Further, the use of chemical fertilisers, pesticides and the dusty roads are producing a stench in the area, as well as causing water and visual pollution which threatens the health of the villagers. Meanwhile, the felling of the forest had also destroyed our daily necessities such as the sources of poison for our blowpipe darts, medicinal herbs, items for the spiritual *sewang* ceremony and the hunting grounds of the villagers.



Apart from that, our customary land today also suffers from soil erosion and river pollution, which in turn have caused the colour of the river to change, causing us to suffer a water crisis. Last but not least, the letter also related the fact that our burial grounds had also been destroyed by these operations.

The letters were also attached with several police reports that had been lodged by the Kampung Sigar and Kampung Kuala Tahu villagers.

Rada Jambu from Kampung Sigar lodged a police report [GUA MUSANG/001313/13] on April 20, 2013 against the land encroachments carried out by the companies, which had caused:

...the destruction of our spring water, ancestors' graves, ancestral orchards and the place where we used to source our livelihoods from. The companies... did not conduct any consultation with the villagers before carrying out their activities after having received the approval from the state government.

Similarly, Itam Anjang from Kampung Kuala Tahu also lodged another police report [GUA MUSANG/001312/13] on April 20, 2013, to report on how in February 2013, the villagers' customary territory had been encroached upon, causing severe destruction:

The destruction has adversely impacted our traditional inheritance, that is the place from which we sourced our livelihoods, our spring water has been polluted, and our crops have also been destroyed. This company from outside has made its way through our customary territory without conducting any consultation with the villagers. All these projects have been approved by the state government.

Then in early 2014, the villagers were confronted by a severely frightening incident.

On February 26, 2014, at noontime, three villagers were travelling on their motorcycles to Kampung Kuala Tahu to attend a community meeting to discuss on our community agricultural development activities. They had earlier been invited by the village chief of Kampung Kuala Tahu.

On their way to the meeting, all of a sudden, they were ambushed by a group of foreign workers from one of these vegetable farming companies. These workers began to beat the three villagers up to the point where one of them later had to receive seven stitches. Their motorcycles were also badly damaged after being rammed by the company's heavy machinery.

The attackers' group was really big, tens of them. They attacked the three villagers while the latter were still on their motorcycles, causing the three to fall off. They had earlier hidden amongst the tomato plants along the road. That is the only road to get to Kampung Kuala Tahu. In this chaos, the three villagers suddenly realised that they had not only been attacked by this large group of people, the attackers were also equipped with their four-wheel vehicles, heavy machinery and lorries. Some of the attackers who had wooden planks and machetes with them had also arrived in these lorries.

Fortunately, there were other foreign workers in the same area who came to protect our three brothers. In the end, the three villagers managed to free themselves and ran off. They at last found other foreign workers to ask for help and were taken to the clinic.

They then lodged police reports on the incident. However, the Gua Musang police failed to take any actions. At last, the victims went to the Kuala Lumpur Police Headquarters in Bukit Aman to lodge another set of report.

After returning from Kuala Lumpur, the police came to the village to look for the three villagers. They were brought in to the police station for interrogation but in a twist of event, ended up being charged. The three had to spend five nights in the police lockup. They were charged under section 148 of the Penal Code, which relates to the possession of weapons during a riot. They were finally released with a bail of RM2,000 each. Subsequently, the three chose to claim trial at the Magistrate Court in Gua Musang. At last in December 2015, the Magistrate Court found the three not guilty. However, the government is now appealing against the decision.

## CONSENT OR OPPOSITION

### **2. For each company or sequence of encroachment event:**

**(i) Describe whether the villagers have given their consent or remained opposed to the logging or plantation operations.**

All are opposed to logging and plantation operations.

**(ii) Did any of the companies attempt to take the advantage of the consent given by any of the villagers to continue with their operations?**

No.

**(iii) Please explain how it was possible for this to take place without the approval of the entire village.**

Not applicable.

**PRE-ENCROACHMENT:  
PRIOR INFORMATION, CONSENT, TRANSPARENCY**

**3. For each company or sequence of encroachment event:**

**(i) Were the affected villagers given prior information on the issuance of the logging or plantation licences before the commencement of any operations?**

The issuance of all such licences did not comply with the free, prior and informed consent (FPIC) process because our consent was not obtained prior to the issuance of the licences.

For the logging company, the notification was done merely for the purpose to inform us. We were being pressured into giving the consent for the operations. For the vegetable farming companies, they were continued despite the absence of our consent.

For the logging company, we only discovered about their impending operations after their workers had already arrived at the said location to carry out their pre-felling preparations without first obtaining our consent. Even if there were discussions which took place later, they were still adamant in commencing their operations, until we ourselves stopped them on-site.

Similarly, the vegetable farming companies did not even provide any information to us, until we ourselves had to go and meet them to voice our protest against their encroachments. We had never been consulted prior to the issuance of any licence by the state government.

**(ii) If yes, how was the information dissemination process conducted? (Through village chiefs, community meetings etc.)?**

Please see the explanation in (i) above.

**(iii) What was the content of the information given? Was it comprehensive and transparent? Did they fail to transparently respond to any questions raised by the villagers?**

Please see the explanation in (i) above.

**(iv) Did the villagers obtain important information such as licence registration numbers, maps of the licensed areas and other details?**

For the logging company, these were obtained only after we requested for them during a meeting with the logging company in Gua Musang. The company was initially reluctant to hand us the relevant documents.

For vegetable farming companies, we did not receive any information at all.

**(v) Was the consent and agreement of the villagers obtained at this point?**

No. We were never consulted prior to the issuance of such logging or plantation licences. No party had ever come to the village to disseminate such information to the villagers prior to the issuance of these licences. We would only find out about them after seeing outsiders entering and walking about in the village.

#### **POST-ENCROACHMENT: VERBAL PROTEST ON LOCATION**

**4. For each company or sequence of encroachment event:**

**(i) Did the villagers meet with the company representatives at the encroachment site or their accommodation facility to voice their protest? If yes, please describe these encounters further.**

For the logging company, not applicable.

For the vegetable farming companies, we did interact with them at the location where they were working to voice our protests. However, none of these discussions produced any positive outcome.

**(ii) Did the villagers meet with the authorities to voice their protest? If yes, please describe these encounters further.**

For the logging company, not applicable.

For the vegetable farming companies, no.

**POST-ENCROACHMENT  
OFFICIAL CONSULTATION WITH COMPANIES  
AND/OR AUTHORITIES**

**5. For each company or sequence of encroachment event:**

**(i) Following your protest, did the company or authorities invite the villagers to participate in an official consultation process? If yes, how many times did such meetings take place? Please describe them further.**

For the logging company, not applicable.

For the vegetable farming companies, no.

**(ii) Were the authorities also present in these meetings?**

Not applicable.

**(iii) What was the outcome of such meetings? Did they manage to put an end to the encroachments?**

Not applicable.

**COMPENSATION AND DAMAGES**

**6. For each company or sequence of encroachment event:**

**(i) Has compensation ever been promised and actually delivered to any of the villagers or village committee members or entire families? What was the form, amount and rates of the compensation received?**

For the logging company, we were offered a sum of RM30,000. A villager was also offered any kind of 'reward' if he agreed to help the company by giving his consent for them to begin working in the village. However we rejected all such offers.

**(ii) In your view, was this compensation adequate?**

No.

## PROTEST CORRESPONDENCE AND DOCUMENTS

**7. For each company or sequence of encroachment event:**

**(i) Did the villagers write any letters or other documents to any of the companies and/or the authorities to express their written protest?**

	Date	Sender	Recipient	Title
1.	21 Apr 2013	Network of Orang Asli Villages of Kelantan	Kelantan chief minister	Complaint against land encroachment activities by companies in the indigenous villages of Kg. Kuala Tahu, Lojing, Pos Brooke
2.	21 Apr 2013	Network of Orang Asli Villages of Kelantan	Kelantan chief minister	Complaint against the development projects in the indigenous village of Kg. Sigar, Lojing, Pos Brooke
3.	4 Dec 2013	Network of Orang Asli Villages of Kelantan	Kelantan chief minister	Complaint against land encroachment activities on the indigenous customary territory of Lojing

**(ii) Please describe the responses received from the companies and authorities, if any.**

None.

## POLICE

**8. For each company or sequence of encroachment event:**

**(i) Did the villagers lodge any police reports to express their protest or to complain on any matter related to the encroachments, including concerns on their safety and that of their family members?**

	Date	Report Number	Complainant
1.	20 Apr 2013	GUA MUSANG/001313/13	Rada Jambu
2.	20 Apr 2013	GUA MUSANG/001312/13	Itam Anjang



We also made two sets of police reports on the attack carried out by the workers of the vegetable farming company on February 26, 2014, against three villagers. One set of reports were lodged in Gua Musang, another in Bukit Aman, Kuala Lumpur.

**(ii) Have any villagers ever been detained by the police as a result of their protest actions or related activities? Were they eventually charged?**

Yes. This was related to the attack against the three villagers of Lojing, carried out by the foreign workers of a vegetable farming company in February 2014. However, the villagers were the ones who ended up being charged under section 148 of the Penal Code. The charge was related to the possession of weapons during a riot. All three have been found not guilty by the Magistrate Court. However the government intends to appeal against the decision.

## **PRESSURE, INTIMIDATION, THREATS, HARASSMENT**

**9. For each company or sequence of encroachment event:**

**(i) Did any of the villagers ever receive any pressure, intimidation, threat or harassment from any party, in relation to the protests against the encroachment on your customary territory?**

For the logging company, no. Although the company was somewhat insistent in continuing with their operations.

For the vegetable farming companies, please see the above on the attacks carried out against the three villagers.

**(ii) Did the villagers take any action after experiencing such pressure, intimidation, threat or harassment?**

We lodged two sets of police reports on the incident, one in Gua Musang, another in Bukit Aman, Kuala Lumpur.

**(iii) Please describe the effects of the experience on the person receiving this pressure, intimidation, threat or harassment.**

The three villagers ended up receiving several stitches for their wounds while their motorcycles were damaged after being rammed by the heavy machinery of the company. They now have to live in trauma and fear. They also no longer dare to travel alone.

## EVALUATION ON THE APPROACH OF THE COMPANY REPRESENTATIVES

### 10. For each company or sequence of encroachment event:

**(i) In your view, did the companies respond in a polite and respectful manner when confronted by the complaints and protests from the villagers?**

For the logging company, they were polite, nothing unusual. However, they were somewhat insistent.

For the vegetable farming companies, they were far more aggressive, with the workers of one of them ended up attacking and inflicting violence against the villagers.

**(ii) Has any company ever broken any of their promises to the villagers? If yes, please describe these incidents further.**

Not applicable.

**(iii) Have you ever had the suspicion that any of the companies was acting dishonestly towards the villagers on any matter? If yes, please describe these incidents further.**

Not applicable.

## EVALUATION ON THE APPROACH OF THE POLICE, THE DEPARTMENT OF ORANG ASLI DEVELOPMENT (JAKOA) AND OTHER GOVERNMENT AGENCIES

**11. Please describe the general views of the villagers with regards to the manner in which the authorities respond to your protests and complaints.**

**(i) Are the villagers satisfied with their responses and services?**

No.

**(ii) Did the authorities show any bias in favour of the companies?**

Yes. They did show a bias in favour of the companies, instead of the villagers. Sometimes, they would appear to discourage us from defending our rights.

**(iii) Has any authority taken any actions which to your view was excessive?**

In our view, their actions at times could indeed be excessive. Sometimes, even though they are civil servants, they would still be quite rude to us. For example, the Kelantan State Forestry Department had actually forced the villagers to attend the meeting to discuss on the survey works of the Lojing Permanent Reserved Forest, on the same day the invitation letter was delivered to us.

They would also frequently put a pressure on us so that we would give our consent to those logging and agricultural projects. They would say, "just consent to it, it's for your own good."

**(iv) In your view, have the authorities been transparent in their dissemination of information to the villagers?**

No.

## **STATUS OF THE INDIGENOUS CUSTOMARY LAND RIGHTS FROM THE PERSPECTIVE OF THE COMPANIES AND AUTHORITIES**

**12. For each company or sequence of encroachment event:**

**(i) Please describe the views of the companies and authorities on the status of the villagers' customary land rights. Did they recognise the existence of your rights?**

The authorities frequently state that our land belongs to the state government and that it is part of the permanent reserved forest. Therefore we do not possess any customary land rights to our territory. We do not agree with such a view.

**(ii) If the villagers are said to possess no such land rights, to which extent then do the authorities accept the existence of your rights, since your housing areas are also located in the same vicinity?**

We are still unclear on the manner in which the authorities interpret the extent of the boundaries of our customary territory. We however are always clear on our rights, which are based upon our own customary laws. Today, we continue to cultivate on our existing farms, carry out various traditional activities in the forested areas and practise our community's spiritual customs, all within our customary territory. In short, we continue to control and manage our customary territory as how it has always been since time immemorial.

**(iii) Did any of the companies or state authorities make any legal references to support their view that the villagers do not possess any rights to the encroached land (state land, permanent reserved forest etc.)?**

The Forestry Department has stressed to us that the boundary cleaning activities for the Lojing Permanent Reserved Forest was planned in compliance with the National Forestry Act 1984.

### ENCROACHMENT IMPACTS

**13. On the whole, please describe the adverse impacts of the encroachments on the villagers and your surrounding environment:**

	Type of destruction	Further information
1.	Environment: Forest destruction, river pollution	<p>Forest destruction and river pollution of course occur.</p> <p>There has been excessive forest destruction. The colour of the river would turn yellow, like milk tea. We also face severe soil erosion.</p> <p>The river water used for our consumption originates from a small stream upstream, where logging also takes place. This same river is also now polluted by poisons coming from the vegetable farms. Our spring water has also been destroyed.</p> <p>We also suffer from water, olfactory and visual pollution. The landscape around us has radically changed.</p>
2.	Environment: Destruction of wildlife and riverine resources	Wildlife and fish population has decreased sharply.
3.	Environment: Destruction of sources of food, medicines and items used in cultural and spiritual ceremonies	In the past, apart from hill rice and tubers, we were also dependent on freshwater fish, domestically bred chickens and hunted wildlife for our sources of protein. We could hunt wildlife such as the deer, mouse deer and wild boar and obtain really large

		<p>fish from the rivers. There were also abundant vegetable shoots in the forest.</p> <p>Today, the sources of food from forest and river resources have indeed declined sharply. Many of our rice fields have been destroyed by the construction of logging roads and log pond camps. Similarly, many of our farms have also been destroyed by logging and vegetable farms.</p> <p>Further, most families now would also have to purchase rice. The same applies to meats, fish and vegetables because it is just very difficult to obtain them from our own land today. We are living like urban people now.</p> <p>For vegetables, we can still depend on cassava shoots. The purchase of fishes and meats would of course have to depend on the financial situation of each family. Sometimes there would even be families who would run out of cash to purchase rice.</p> <p>Deforestation has also destroyed other daily resources such as the sources of poisons for our blowpipe darts, medicinal herbs, items for the spiritual <i>sewang</i> ceremony and the hunting grounds of the villagers.</p>
4.	Loss of income	<p>Our sources of income have been badly affected.</p> <p>Today, most of our income is derived from employment as labourers in various companies. Our daily wage is only between RM15 to RM20. We also cultivate crops like cassava, yams, bananas and various other crops. A few of us still attempt to find forest produce for sale.</p>
5.	Loss of property: Farms, crops, farm huts, burial grounds etc.	<p>There were graves that have been destroyed by these developments.</p> <p>Many of our farms and crops have also been</p>

		destroyed by the various projects, including the vegetable farming operations.
6.	Social: Health, security and welfare etc.	<p>Coughing, fevers, skin irritation, stomachaches and diarrhea.</p> <p>We believe these are caused by our dependence on water that has been polluted by the poisons from the vegetable farms.</p> <p>Today, there are also villagers who have suffered from malaria.</p> <p>The attack that was carried out by the foreign workers of a vegetable farming company against the villagers, which resulted in physical injuries for the latter and damage to their motorcycles, was a very frightening incident.</p>
7.	Road damage	During the rainy season, it is quite difficult for us to travel. Meanwhile during the dry season, the road would be dusty.



## **SECTION D: CUSTOMARY TERRITORY AND PERMANENT RESERVED FOREST**

**Have any parts of your customary territory been gazetted as the permanent reserved forest under the National Forestry Act 1984?**

Lojing Permanent Reserved Forest.

**(i) If yes, please state the year the gazetting was undertaken. Do the villagers possess any documents on the gazetting process?**

We only discovered about the gazetting when we finally obtained a copy of the Kelantan State Government Gazette. It shows that the gazetting was carried out in 1990.

**(ii) If yes, please describe how the gazetting of the permanent reserved forest has adversely affected your rights?**

We have been told that we have no rights in the permanent reserved forest. We are only allowed to occupy the area. We are still firm in continuing with the exercise of our rights and other activities within our customary territory.

**(iii) If yes, did the authorities conduct any consultation with the villagers to obtain their consent on the gazetting process? Please state any important information on how the consultations were conducted.**

No.

**(iv) If no consultations had ever been conducted, how did the people become aware of the existence of the permanent reserved forest?**

We received information from the maps of the Forestry Department during our meeting with them to discuss on the survey activities on March 20, 2014.



## 6. Kampung Pos Batu Gong, Chini, Pahang

### SECTION A: BASIC INFORMATION ON AFFECTED VILLAGES

<b>District and State</b>	Chini, Pekan, Pahang
<b>Affected villages and ethnicity</b>	<p>Kampung Pos Batu Gong</p> <p>Kampung Pos Batu Gong consists of 6 villages with a population of around 1,000.</p> <ol style="list-style-type: none"> <li>1. Kampung Rambai Nia</li> <li>2. Kampung Gemapal</li> <li>3. Kampung Genggerong</li> <li>4. Kampung Geliau</li> <li>5. Kampung Pematong</li> <li>6. Kampung Patah Jelutong</li> </ol> <p>Jakun</p>
<b>Respondent</b>	<p>Ismail Leh</p> <p>Kg. Rambai Nia</p> <p>1970</p>
<b>Other information</b>	
<p>The customary territory is inherited by the villagers from pioneering ancestors.</p> <p>An Orang Asli school was once built in the village by the British. The school may have been built as early as 1930s. By the time the respondent's mother was born in 1934, the school had already been built.</p> <p>A part of the Kampung Pos Batu Gong has been gazetted as an Aboriginal reserve, at 3,910 acres. However the villagers are not certain of its current status.</p>	

## **SECTION B: VERIFICATION ON THE EXISTENCE OF CUSTOMARY LAND RIGHTS**

The villagers verified that they are able to demonstrate the existence of their customary land rights through the following body of evidence.

<b>A.</b>	<b>Can the villagers provide oral evidence on the history of their customary territory?</b>	
1.	History on the origins of the customary territory and ancestry	x
2.	Site-specific history, folklores, legends	x
<b>B.</b>	<b>Do the villagers still practise the traditional customs and culture of their community?</b>	
1.	Land clearing, agriculture	x
2.	Marriages	x
3.	Deaths, funerals	x
4.	Communal laws, code of conduct and ethics	x
5.	Possession of old items and heirlooms: traditional costumes, gongs, baskets, beads, personal ornaments, decorative objects, kitchen utensils, knives, machetes, weapons, household items etc.	x
<b>C.</b>	<b>Can the villagers provide evidence on their use of the land and its natural resources within the customary territory?</b>	
1.	Tree felling or tree harvesting marks	x
2.	Hunting and fishing sites, saltlicks	x
3.	Burial grounds and sacred sites	x
4.	Trails and pathways within forested or cultivation areas	x
<b>D.</b>	<b>Does the government acknowledge the existence of the villages?</b>	
1.	Government built facilities	x
2.	Visits by ministries or governmental departments and agencies	x

## **SECTION C: LAND ENCROACHMENT REPORT**

### **BACKGROUND**

**1. How many logging or plantation companies have encroached upon your customary territory in the last five to ten years?**

#### **Logging**

Logging operations began to encroach on our village as early as the 1960s. During this time, we did not know much about the ways in which to express our protest officially against such encroachments in order to protect our customary land rights. We certainly disliked such encroachments and our consent was also never obtained.

In the past, we used to be less aware of our basic rights as citizens, which permit us to protest in defence of our customary territory. In fact, we were often told that we had no property ownership rights to the land by various government agencies. This was known by all. We certainly do not share the authorities' view on this. Up to this very day, we still continue to exercise ownership over our customary territory based upon our customary laws and to the best of our ability, would take actions to control the land.

In the 1990s, I (Ismail Leh) began to attend various programmes organised by a non-governmental organisation, the Consumers' Association of Penang, which was working actively on agricultural issues. At some point, they visited Chini. Later, around 2008 or 2009, I began to work closely with other Orang Asli activists who were focused on campaigning on our customary land rights, right after their visit to Chini.

Protests against logging encroachment were first organised in 2012.

The villagers first discovered about the encroachment after we heard the sound from heavy machinery working in our territory, somewhere in June 2012. Members of the Village Development and Security Committee (JKKK) and I then immediately rushed to the forest to investigate on the source of this noise.

We then found that there was indeed a machinery, which turned out to be a bulldozer, that had entered our customary forest for the purpose of building a new logging access road without first obtaining our consent. We subsequently confronted its driver.

We were informed that the road would be utilised for the purpose of a new logging operation. We inquired from him on the party that had approved the logging licence. He told us that the licence had already been approved by the government. I asked if they had obtained any consent from the villagers. He claimed that consent had also been obtained from a member of our village, who also happened to be the contractor to this operation. They however had not obtained consent from the rest of the village. Of course I knew the individual whom he named.

Nevertheless, we still insisted that he halted his activities there and then. He eventually obliged and left.

Unfortunately however, the next day he returned to the same area and proceeded to continue the road leveling works, again without first obtaining our consent. Once again we had to confront him. We demanded him to call the said contractor, who was living in a neighbouring village, to come to the location immediately.

At last, the contractor came over to the site. We then began to discuss. I told him that he should be well aware of the need to obtain consent from the villagers. However, he insisted that he did not have to do so since the logging licence had already been approved by the government. We of course did not agree with such a statement.

I replied that as members of the JKKK, my colleagues and I too had been appointed by the government. We would still have to be informed on the matter. I also added that he was only a contractor of the logging licence. He was not the licence holder himself. When we requested information on the licence and other matters from him, it was obvious that he did not possess any of those. Therefore, we requested for the activities to be halted that instance.

We requested for him to ask the licence holder himself to come and see us. The contractor at last agreed to call an individual named Mr. Y to come to Batu Gong to meet us.

The next day, Mr. Y came over and began a discussion with me. He said the logging licence had already been approved by the Pahang state government. We then demanded him to show us all the relevant documents. However, he refused to do so. We really did not know anything about this licence because we did not possess any information on the operation at all. We did not even see any signboard belonging to this particular licence before.

Mr. Y then claimed that the logging licence was held by a very important person. However I was doubtful that this was really the case since the timbers in the area were rather small. In any case, we were still adamant that the operations must not be continued.



We then made a police report on the encroachment on June 8, 2012. Jusoh Pa Chu through his report [CHINI/000591/12] among others stated the following:

The land is the burial ground of the Orang Asli village of Kg. Batu Gong. We, the Orang Asli of Batu Gong have been occupying the area way since before the Japanese came to occupy the Malay Peninsula. We have also developed the area into farms and cultivated the land with various fruit trees. As the Customs Chief, I am lodging this report to urge the authorities to take the appropriate action against this encroacher of the Orang Asli customary territory.

Meanwhile I too lodged my own report [CHINI/000593/12] which stated that the concerned area was:

...an old burial ground of my grandfather's cousin by the name of Pak Tandang. The village also possesses rubber and fruit trees... The concerned area is also the economic source of Kg. Batu Gong, which is around 600 acres altogether... I would like to appeal for the cooperation of the authorities to take the sternest action against the encroachment on Orang Asli land.

Following this, they halted their activities for a while.

Then in April 2013, a logging company appeared again in our village without first obtaining our consent. At first, there was a team which came to widen the old logging road. In the 1960s, the concerned area used to be a logging area. At this point, we did not take any actions due to the lack of information on the purpose of the activities.

Soon, once again we discovered that logging operations had already commenced without our permission, only after hearing the sound of heavy machinery in our village. We then rushed to the concerned area. Indeed, tree felling operations had already begun. By this time, there were already many workers there. We immediately asked them to stop working. However the workers told us that they would not stop since their licence had already been approved. In fact, their accommodation facility had already been built in a location quite far from our houses. We did not even know about this.

Initially, we thought that this company was a different company from the one we confronted the year before since a signboard had just been erected, bearing the name of a Malay contractor. However, later we believed that this may not be the case. This

is how the situation usually is, it is not easy for us to obtain comprehensive information on such activities.

At this point, the villagers then began to feel divided whether we should lodge a police report about the matter. At last, we decided to call this plan off. However, when they moved their operations to another area which was also our burial ground, we ended up lodging a police report anyway.

We found out about them moving to a new area after being informed by their workers. In the beginning, we were quite confused and almost did not believe the information because the area in question no longer contained that much timber anymore. In the end, the information proved to be true as the company began to open a new access road.

When we went to the police station to lodge our report, we saw one of their workers was already there. We thought that he might have already found out that we were coming to lodge our report, or perhaps he had wanted to protect the operation from our continued protests. We then had a discussion with the police. The police advised us not to lodge any report because the company did possess a valid licence. However we insisted to lodge the report anyway.

At the police station, a verbal dispute ensued between us and the aforementioned worker. We explained to him that we indeed had the evidence to prove that the land was ours with the existence of our burial grounds and farms. We thus asked him, why did they have to log the area? The worker simply said it was because their logging licence had already been approved. We stressed that the area belonged to our ancestors.

A police officer then advised us to stop fighting. In the end, we both lodged our own reports. Afterwards, both parties left. However, we still asked him:

Sir, if this were the burial ground of your grandfather, would you give others the permission to log the area?

He replied, "no".

Not long after this, the logging operations stopped.

### **Plantation**

A few days after the report was lodged, Mr. Y suddenly appeared again in the village. He came over to let us know that our territory had already been approved to

participate in the Commercial Replanting (TSK) scheme. He showed us what was purportedly the TSK plan, spanning an area of 600 acres.

We disputed his information because we believed the proposed development of the TSK scheme had already been called off. As far as we knew, the proposal for the scheme was first brought up in 2010. When I became a member of the JKKK in 2012, I heard once again from JAKOA that our village would be involved in this scheme.

During this time, I had verbally expressed to JAKOA that our land was an ancestral heritage. It was thus inappropriate to engage it in such a scheme. However there was a JAKOA officer who responded that we could not oppose the scheme because it was designed to be a large project for the local Orang Asli community. Having received no further information on the matter for quite some time, I began to believe that the project had been called off.

However Mr. Y repeated that the project had already received its approval from the authorities. He then took out another topographic plan which showed the project approval. However we still refused to give our consent to the project development. At last, Mr. Y left.

A month later, he returned to the village. He came to see me and began offering me money or “anything at all” that I would want – be they even a house or a car. I rejected all these offers. I told him that if there were any truth to all his offers, they should have also been made to each family in the village, and not only to myself.

Again, after one month, Mr. Y attempted to send two other people to my house. The two included the worker whom we had met and fought with at the police station and another fellow villager. They wanted to know why would we want to stop the project. I remained firm in adhering to the decision that had already been made by the villagers.

The worker then told us that we could not stop them. Subsequently, the situation became quite tense and escalated into a minor physical altercation, we were already pushing against each other. At last, my wife screamed for them to get out of our house. At last, they left.

Presently, we have not received any new information about this project. Mr. Y and his representatives also had stopped coming over to my house.

## CONSENT OR OPPOSITION

### **2. For each company or sequence of encroachment event:**

**(i) Describe whether the villagers have given their consent or remained opposed to the logging or plantation operations.**

For our villages, there are only a few of us who dare to voice our protests. The rest of the villagers have generally been keeping silent, although in actual fact, the majority of us do not agree with the operations at all.

**(ii) Did any of the companies attempt to take the advantage of the consent given by any of the villagers to continue with their operations?**

Possibly yes.

**(iii) Please explain how it was possible for this to take place without the approval of the entire village.**

They may have done this quietly, behind our backs.

**PRE-ENCROACHMENT:  
PRIOR INFORMATION, CONSENT, TRANSPARENCY**

**3. For each company or sequence of encroachment event:**

**(i) Were the affected villagers given prior information on the issuance of the logging or plantation licences before the commencement of any operations?**

The issuance of all such licences did not comply with the free, prior and informed consent (FPIC) process because our consent was not obtained prior to the issuance of the licences.

For logging, we only discovered about their impending operations after their workers had already arrived at the said location to carry out their pre-felling preparations without first obtaining our consent. Even if there were discussions which took place later, all these failed to stop the operations from commencing.

For the plantation project, attempts were made to inform us on the advent of the plantation scheme. However the information which we received was very limited. It would also be generally stressed to us that the project had already been approved by the state. Presently, there is no further information on this.

**(ii) If yes, how was the information dissemination process conducted? (Through village chiefs, community meetings etc.)?**

Please see the explanation in (i) above.

**(iii) What was the content of the information given? Was it comprehensive and transparent? Did they fail to transparently respond to any questions raised by the villagers?**

Please see the explanation in (i) above.

**(iv) Did the villagers obtain important information such as licence registration numbers, maps of the licensed areas and other details?**

For logging, we could only obtain limited information from the signboard erected by the operation.

For the plantation project, not much is currently known except we were once shown the purported maps of the scheme by the same logging contractor.

**(v) Was the consent and agreement of the villagers obtained at this point?**

No. We were never consulted prior to the issuance of such logging licences. No party had ever come to the village to disseminate such information to the villagers prior to the issuance of these licences. We would only find out about them after seeing outsiders entering and walking about in the village. For the plantation project, we were contacted by the company representatives all of a sudden, who claimed that a plantation licence had already been approved in our village.

However it is possible that these representatives may have met with other parties in the village, but certainly not us.

#### **POST-ENCROACHMENT: VERBAL PROTEST ON LOCATION**

#### **4. For each company or sequence of encroachment event:**

**(i) Did the villagers meet with the company representatives at the encroachment site or their accommodation facility to voice their protest? If yes, please describe these encounters further.**

For logging, we did interact with the company at the location where they were working. We informed them that we did not consent to their activities during both encroachment incidents. For the first incident, we communicated our protest to them

while they were still engaged in road leveling activities for the first time. For the second incident, we communicated our protest to them after the completion of their road widening activities and commencement of their felling operations, in an area further away from our houses. However, none of these discussions produced any positive outcome.

For the plantation project, an individual named Mr. Y or his representatives had visited me in my house a few times, leading to a tense incident in which they were at last told to leave by my wife.

**(ii) Did the villagers meet with the authorities to voice their protest? If yes, please describe these encounters further.**

No.

#### **POST-ENCROACHMENT OFFICIAL CONSULTATION WITH COMPANIES AND/OR AUTHORITIES**

**5. For each company or sequence of encroachment event:**

**(i) Following your protest, did the company or authorities invite the villagers to participate in an official consultation process? If yes, how many times did such meetings take place? Please describe them further.**

No.

**(ii) Were the authorities also present in these meetings?**

Not applicable.

**(iii) What was the outcome of such meetings? Did they manage to put an end to the encroachments?**

Not applicable.

#### **COMPENSATION AND DAMAGES**

**6. For each company or sequence of encroachment event:**



**(i) Has compensation ever been promised and actually delivered to any of the villagers or village committee members or entire families? What was the form, amount and rates of the compensation received?**

For logging, no.

For the plantation project, Mr. Y, attempted to entice me with offers of cash, a house and a car, or anything that I wished for. I rejected all such offers.

**(ii) In your view, was this compensation adequate?**

No. Such material things do not last forever.

## PROTEST CORRESPONDENCE AND DOCUMENTS

**7. For each company or sequence of encroachment event:**

**(i) Did the villagers write any letters or other documents to any of the companies and/or the authorities to express their written protest?**

No.

**(ii) Please describe the responses received from the companies and authorities, if any.**

Not applicable.

## POLICE

**8. For each company or sequence of encroachment event:**

**(i) Did the villagers lodge any police reports to express their protest or to complain on any matter related to the encroachments, including concerns on their safety and that of their family members?**

	Date	Report Number	Complainant
1.	8 June 2012	CHINI/000591/12	Jusoh Pa Chu
2.	8 June 2012	CHINI/000593/12	Ismail Leh

In April 2013, we also lodged another report after the logging operations had commenced and intended to move to a second area.

**(ii) Have any villagers ever been detained by the police as a result of their protest actions or related activities? Were they eventually charged?**

No.

## **PRESSURE, INTIMIDATION, THREATS, HARASSMENT**

**9. For each company or sequence of encroachment event:**

**(i) Did any of the villagers ever receive any pressure, intimidation, threat or harassment from any party, in relation to the protests against the encroachment on your customary territory?**

For logging, we were involved in a verbal quarrel with a company worker at the police station.

For the plantation project, when they came over to my house repeatedly and said that I did not have the power to stop their rights because they had already received approval from the state government, and their words were uttered rudely, I felt like it was also a form of pressure and threat.

The same person whom we quarrelled with at the police station, also further acted aggressively with me in my own home, until my wife demanded that he and his friend get out of our house.

**(ii) Did the villagers take any action after experiencing such pressure, intimidation, threat or harassment?**

I did call a police officer at the Pekan Police Station, who happened to be my friend, to let him know about the incident which took place in my house. He advised me to lodge a police report. However, I told him that I would like to monitor the situation first. If the same incident repeats itself, then only would I lodge a report.

**(iii) Please describe the effects of the experience on the person receiving this pressure, intimidation, threat or harassment.**

I am a little anxious about my family's safety.

## EVALUATION ON THE APPROACH OF THE COMPANY REPRESENTATIVES

### 10. For each company or sequence of encroachment event:

**(i) In your view, did the companies respond in a polite and respectful manner when confronted by the complaints and protests from the villagers?**

Not really. For both logging and the plantation project, the situation became quite tense on two occasions, triggered by the same individual.

**(ii) Has any company ever broken any of their promises to the villagers? If yes, please describe these incidents further.**

Not applicable.

**(iii) Have you ever had the suspicion that any of the companies was acting dishonestly towards the villagers on any matter? If yes, please describe these incidents further.**

We suspect that attempts to deceive us were made.

For logging, they were implicating the names of public figures in the licence ownership.

For the plantation project, they were bringing in maps which did not appear to be official to show us its development area.

## EVALUATION ON THE APPROACH OF THE POLICE, THE DEPARTMENT OF ORANG ASLI DEVELOPMENT (JAKOA) AND OTHER GOVERNMENT AGENCIES

**11. Please describe the general views of the villagers with regards to the manner in which the authorities respond to your protests and complaints.**

**(i) Are the villagers satisfied with their responses and services?**

No. We are not satisfied.

**(ii) Did the authorities show any bias in favour of the companies?**

Yes. They did show a bias in favour of the companies, instead of the villagers. JAKOA did not discuss anything with us on the entrance of these companies.

**(iii) Has any authority taken any actions which to your view was excessive?**

No.

**(iv) In your view, have the authorities been transparent in their dissemination of information to the villagers?**

No. The Pahang State Forestry Department has not been transparent. They have never informed us on the issuance of logging licences.

## **STATUS OF THE INDIGENOUS CUSTOMARY LAND RIGHTS FROM THE PERSPECTIVE OF THE COMPANIES AND AUTHORITIES**

**12. For each company or sequence of encroachment event:**

**(i) Please describe the views of the companies and authorities on the status of the villagers' customary land rights. Did they recognise the existence of your rights?**

The authorities frequently state that our land belongs to the state government. We do not agree with such a view.

**(ii) If the villagers are said to possess no such land rights, to which extent then do the authorities accept the existence of your rights, since your housing areas are also located in the same vicinity?**

We are still unclear on the manner in which the authorities interpret the extent of the boundaries of our customary territory. We however are always clear on our rights, which are based upon our own customary laws. Today, we continue to cultivate on our existing farms, carry out various traditional activities in the forested areas and practise our community's spiritual customs, all within our customary territory. In short, we continue to control and manage our customary territory as how it has always been since time immemorial.

If it were true that we do not have any rights here, what about the electricity, water and education services that are being provided for us? Even lawmakers have visited us several times. During the British rule, an administration centre was even built here.

**(iii) Did any of the companies or state authorities make any legal references to support their view that the villagers do not possess any rights to the encroached land (state land, permanent reserved forest etc.)?**

No. They have never mentioned anything on the law.

### ENCROACHMENT IMPACTS

**13. On the whole, please describe the adverse impacts of the encroachments on the villagers and your surrounding environment:**

	Type of destruction	Further information
1.	Environment: Forest destruction, river pollution	<p>Forest destruction and river pollution of course occur.</p> <p>However our drinking water is sourced from another river which is still clean.</p> <p>The size of our forest has truly shrunk. Apart from logging, several other agricultural projects have also taken our customary land away without first obtaining consent from us.</p>
2.	Environment: Destruction of wildlife and riverine resources	<p>Wildlife and fish population has now decreased sharply.</p>
3.	Environment: Destruction of sources of food, medicines and items used in cultural and spiritual ceremonies	<p>In the past, apart from hill rice and tubers, we were also dependent on freshwater fish, domestically bred chickens and hunted wildlife for our sources of protein. There were also abundant vegetable shoots in the forest.</p> <p>Today, the sources of food from forest and river resources have indeed declined sharply. We tend to purchase more foodstuff.</p> <p>The resources used in our <i>sewang</i> ceremonies are also more difficult to find today.</p>
4.	Loss of income	<p>Our sources of income have been badly affected.</p> <p>Today, most of our income is derived from rubber tapping and the cultivation of oil palm</p>

		<p>and other cash crops. There are also villagers who are employed as labourers in the plantations nearby our village.</p> <p>Sometimes we would still look for forest produce or hunt. However, resources such as the agarwood, rattan, <i>kacip fatimah</i>, <i>tongkat ali</i> and various medicinal herbs have declined significantly.</p>
5.	Loss of property: Farms, crops, farm huts, burial grounds etc.	No.
6.	Social: Health, security and welfare etc.	No.
7.	Road damage	No.



**SECTION D:  
CUSTOMARY TERRITORY AND PERMANENT RESERVED  
FOREST**

**Have any parts of your customary territory been gazetted as the permanent reserved forest under the National Forestry Act 1984?**

Our customary territory is part of the gazetted Aboriginal reserve. However, we are uncertain of its status today. Our territory is also located near the Chini Permanent Reserved Forest.

**(i) If yes, please state the year the gazetting was undertaken. Do the villagers possess any documents on the gazetting process?**

Not applicable.

**(ii) If yes, please describe how the gazetting of the permanent reserved forest has adversely affected your rights?**

Not applicable.

**(iii) If yes, did the authorities conduct any consultation with the villagers to obtain their consent on the gazetting process? Please state any important information on how the consultations were conducted.**

Not applicable.

**iv) If no consultations had ever been conducted, how did the people become aware of the existence of the permanent reserved forest?**

Not applicable.



## 7. Kampung Ganoh, Rompin, Pahang

### **SECTION A: BASIC INFORMATION ON AFFECTED VILLAGES**

<b>District and State</b>	Bukit Ibam, Rompin, Pahang
<b>Affected villages and ethnicity</b>	Kampung Ganoh  The population of the village is around 300.  Semelai
<b>Respondents</b>	Aslan b. Pendek Kampung Ganoh 1982  Berahim Tamby Kampung Ganoh 1951
<b>Other information</b>	
<p>The customary territory is inherited by the villagers from pioneering ancestors.</p> <p>When Berahim Tamby's mother was born in 1937, the village had long existed. During the Emergency, the village had remained at its present area.</p>	

## **SECTION B: VERIFICATION ON THE EXISTENCE OF CUSTOMARY LAND RIGHTS**

The villagers verified that they are able to demonstrate the existence of their customary land rights through the following body of evidence.

<b>A.</b>	<b>Can the villagers provide oral evidence on the history of their customary territory?</b>	
1.	History on the origins of the customary territory and ancestry	x
2.	Site-specific history, folklores, legends	x
<b>B.</b>	<b>Do the villagers still practise the traditional customs and culture of their community?</b>	
1.	Land clearing, agriculture	x
2.	Marriages	x
3.	Deaths, funerals	x
4.	Communal laws, code of conduct and ethics	x
5.	Possession of old items and heirlooms: traditional costumes, gongs, baskets, beads, personal ornaments, decorative objects, kitchen utensils, knives, machetes, weapons, household items etc.	x
<b>C.</b>	<b>Can the villagers provide evidence on their use of the land and its natural resources within the customary territory?</b>	
1.	Tree felling or tree harvesting marks	x
2.	Hunting and fishing sites, saltlicks	x
3.	Burial grounds and sacred sites	x
4.	Trails and pathways within forested or cultivation areas	x
<b>D.</b>	<b>Does the government acknowledge the existence of the villages?</b>	
1.	Government built facilities	x
2.	Visits by ministries or governmental departments and agencies	x

## **SECTION C: LAND ENCROACHMENT REPORT**

### **BACKGROUND**

**1. How many logging or plantation companies have encroached upon your customary territory in the last five to ten years?**

#### **Logging**

Logging operations first began encroaching on our village in the 1970s. Since then, different logging companies have continually encroached on our territory without first obtaining our consent.

Although the villagers did not consent to and disliked the operations, we did not voice any protest back then, because we did not know the way in which this could be done and how to go about doing it. In the past, the villagers did not know the manner in which we could officially express our protest against the logging encroachments. Back then, we used to be less aware of our basic rights as citizens, which permit us to protest in defence of our customary territory. Up to this very day, we still continue to exercise ownership over our customary territory based upon our customary laws and to the best of our ability, would take actions to control the land.

Around 2012, our village began to be visited by representatives from a political party which encouraged us to defend our customary land rights. Today, we have more awareness, after learning the lessons from our past experiences.

The last encroachment in the village took place in 2012.

The villagers did not have a clue on the entrance of this logging company. We suspected that perhaps they may have met with certain individuals in the village to ask for permission. However we are not very certain of the matter. In any case, they did not obtain consent from the rest of the village.

In the beginning, a villager who was on his way to fish, informed us that he had seen an encroachment taking place. The location was quite distant from our houses. On August 25, 2012, by the time we went to check on the concerned area, our burial ground had already been damaged. We then took photographs of the area.

Afterwards, we rushed to the logpond area. We went together on our motorcycles. Upon reaching the area, we inquired from the representative of the company, whether they were the ones who had damaged our burial ground.

The representative then denied that their company had caused the destruction. Instead, he placed the blame on another logging contractor. He asked us to go and find the concerned contractor.

However, we could see that all the logs around us had indeed been felled by them. We also told him that as far as we knew, there was no other contractor working in the area, they were in fact the only one there. He neither denied this fact nor affirmed it. He then said that he could show us all their work plans. However, the documents were in his home.

At last, we only took some photographs in the logpond and went home, without receiving any affirmation from the company.

Subsequently, we took two actions.

First, Berahim Tamby, as representative of the families of the deceased who had been buried there, wrote a letter dated August 25, 2012 to the company to request for compensation for the destruction of the graves. Among others, the letter stated the following:

...the burial ground of the Ganoh Orang Asli has been destroyed as a result of the logging operations of your company. 14 old graves had been destroyed as a result of the land leveling, felling and transport of the logs carried out by the workers...

As such, I would like for compensation to be paid to the families and myself. The payment would be RM20,000 for each damaged grave, amounting to a total of RM280,000, along with RM220,000 for exemplary damages, bringing it to a total of RM500,000 as a symbol of apology to my family, other affected families and the larger community of the Orang Asli of Kampung Ganoh. This is for the insensitive destruction of the old burial ground without any consideration to the feelings and customs of the Orang Asli community.

Secondly, Berahim also lodged a police report [BK IBAM/000208/12] on August 27, 2012. Among others the report stated the following:

...myself with a few other villagers from Kg. Ganoh, Bukit Ibam, Rompin, Pahang went to our old burial ground and discovered that the area had been destroyed by the contractor... who was carrying out tree felling activities. Discussion with the logger had already been undertaken but our complaints were simply ignored. The following are the names of the family members of the deceased who were there during the discussion...



The purpose of this report is to express our dissatisfaction over the action of the company in destroying our burial ground and as a reference for JAKOA, JPS, the Forestry Department and PTG for them to take further action.

The logging contractor then halted their activities for a few days before continuing. Afterwards, I contacted Ismail Leh, the Orang Asli activist from Chini, Pahang, after the Kampung Ganoh villagers had been informed by the Chini villagers that Ismail may be able to help us because he was actively working with JKOASM. We then contacted Ismail and began to discuss the matter in greater detail.

At last, at the end of 2012, Ismail assisted in bringing in the representatives from the Human Rights Commission of Malaysia (SUHAKAM) to pay us a visit and witness the encroachment impacts of the logging company. Most importantly, we wished for them to see for themselves the damaged burial ground. During this time, Pahang was suffering from heavy monsoon rains.

Unfortunately, on the day of the SUHAKAM visit, the road leading to the burial ground were blocked by tree trunks. It appeared that this obstruction had been deliberately planned to prevent our movement. We then simply continued on foot. SUHAKAM then took photographs of the site. After a short discussion and all, the delegation left with Ismail. We were asked to call Ismail should anything similar happen in the future.

Subsequently, three villages went to visit the Rompin office of the Pahang State Forestry Department to lodge a complaint about the matter. We met with an officer there and discussed on the unresolved issue of the damaged graves. He promised to look at the case in greater detail.

Not long after this, the Forestry Department did come to the village. They took photographs of the concerned site and had with them global positioning system devices and other equipment.

In the end, a few months later, the company left our territory. We never did receive any compensation from them for the destruction that they had done.

## CONSENT OR OPPOSITION

### **2. For each company or sequence of encroachment event:**

**(i) Describe whether the villagers have given their consent or remained opposed to the logging or plantation operations.**

By and large, although most of the villagers dislike such logging encroachments, we tend to keep silent on the matter. We are generally afraid to voice our protest. We also did not receive much information which would have enabled us to voice our protest.

**(ii) Did any of the companies attempt to take the advantage of the consent given by any of the villagers to continue with their operations?**

Yes.

**(iii) Please explain how it was possible for this to take place without the approval of the entire village.**

We are uncertain as to how this could have happened.

**PRE-ENCROACHMENT:  
PRIOR INFORMATION, CONSENT, TRANSPARENCY**

**3. For each company or sequence of encroachment event:**

**(i) Were the affected villagers given prior information on the issuance of the logging or plantation licences before the commencement of any operations?**

The issuance of all such licences did not comply with the free, prior and informed consent (FPIC) process because our consent was not obtained prior to the issuance of the licences.

It is possible that certain parties who were close with them actually did know something.

**(ii) If yes, how was the information dissemination process conducted? (Through village chiefs, community meetings etc.)?**

Please see the explanation in (i) above.

**(iii) What was the content of the information given? Was it comprehensive and transparent? Did they fail to transparently respond to any questions raised by the villagers?**

Please see the explanation in (i) above.

**(iv) Did the villagers obtain important information such as licence registration numbers, maps of the licensed areas and other details?**

No.

**(v) Was the consent and agreement of the villagers obtained at this point?**

No. We were never consulted prior to the issuance of the logging licence. No party had ever come to the village to disseminate such information to the villagers prior to the issuance of the licence. We only discovered about the operation after seeing our graves had already been destroyed by the company.

We do not know if a small number of people in our village had been informed on the operation before it began.

**POST-ENCROACHMENT:  
VERBAL PROTEST ON LOCATION**

**4. For each company or sequence of encroachment event:**

**(i) Did the villagers meet with the company representatives at the encroachment site or their accommodation facility to voice their protest? If yes, please describe these encounters further.**

We went to the area in which they were working to inquire more from them about the destruction of the graves belonging to our village.

**(ii) Did the villagers meet with the authorities to voice their protest? If yes, please describe these encounters further.**

No.

**POST-ENCROACHMENT  
OFFICIAL CONSULTATION WITH COMPANIES  
AND/OR AUTHORITIES**

**5. For each company or sequence of encroachment event:**

**(i) Following your protest, did the company or authorities invite the villagers to participate in an official consultation process? If yes, how many times did such meetings take place? Please describe them further.**

We later went to visit the Rompin office of the Pahang State Forestry Department to lodge our complaint with them. However this was our own initiative to meet them.

**(ii) Were the authorities also present in these meetings?**

We only had a discussion with an officer of the Forestry Department.

**(iii) What was the outcome of such meetings? Did they manage to put an end to the encroachments?**

No.

## COMPENSATION AND DAMAGES

**6. For each company or sequence of encroachment event:**

**(i) Has compensation ever been promised and actually delivered to any of the villagers or village committee members or entire families? What was the form, amount and rates of the compensation received?**

We ourselves have never received anything. However we heard stories that some compensation was given to certain parties in the village. Apparently the compensation amounted to RM3,000 for each damaged grave.

**(ii) In your view, was this compensation adequate?**

No.

## PROTEST CORRESPONDENCE AND DOCUMENTS

**7. For each company or sequence of encroachment event:**

**(i) Did the villagers write any letters or other documents to any of the companies and/or the authorities to express their written protest?**

	Date	Sender	Recipient	Title
1.	15 Aug 2012	Berahim Tamby	Contractor	Request for compensation for the old burial ground destroyed by the contractor

(ii) Please describe the responses received from the companies and authorities, if any.

None.

### POLICE

8. For each company or sequence of encroachment event:

(i) Did the villagers lodge any police reports to express their protest or to complain on any matter related to the encroachments, including concerns on their safety and that of their family members?

	Date	Report Number	Complainant
1.	17 Aug 2012	BK IBAM/000208/12	Berahim Tamby

(ii) Have any villagers ever been detained by the police as a result of their protest actions or related activities? Were they eventually charged?

No.

### PRESSURE, INTIMIDATION, THREATS, HARASSMENT

9. For each company or sequence of encroachment event:

(i) Did any of the villagers ever receive any pressure, intimidation, threat or harassment from any party, in relation to the protests against the encroachment on your customary territory?

No.

(ii) Did the villagers take any action after experiencing such pressure, intimidation, threat or harassment?

Not applicable.

**(iii) Please describe the effects of the experience on the person receiving this pressure, intimidation, threat or harassment.**

Not applicable.

## **EVALUATION ON THE APPROACH OF THE COMPANY REPRESENTATIVES**

**10. For each company or sequence of encroachment event:**

**(i) In your view, did the companies respond in a polite and respectful manner when confronted by the complaints and protests from the villagers?**

They were polite, nothing unusual.

**(ii) Has any company ever broken any of their promises to the villagers? If yes, please describe these incidents further.**

Not applicable.

**(iii) Have you ever had the suspicion that any of the companies was acting dishonestly towards the villagers on any matter? If yes, please describe these incidents further.**

Not applicable.

## **EVALUATION ON THE APPROACH OF THE POLICE, THE DEPARTMENT OF ORANG ASLI DEVELOPMENT (JAKOA) AND OTHER GOVERNMENT AGENCIES**

**11. Please describe the general views of the villagers with regards to the manner in which the authorities respond to your protests and complaints.**

**(i) Are the villagers satisfied with their responses and services?**

No. When we lodged our complaints, no concrete action was undertaken. The Forestry Department did come to investigate the site concerned, but it did not produce any positive outcome for us.



**(ii) Did the authorities show any bias in favour of the companies?**

Yes. They did show a bias in favour of the companies, instead of the villagers.

**(iii) Has any authority taken any actions which to your view was excessive?**

No.

**(iv) In your view, have the authorities been transparent in their dissemination of information to the villagers?**

No.

## **STATUS OF THE INDIGENOUS CUSTOMARY LAND RIGHTS FROM THE PERSPECTIVE OF THE COMPANIES AND AUTHORITIES**

**12. For each company or sequence of encroachment event:**

**(i) Please describe the views of the companies and authorities on the status of the villagers' customary land rights. Did they recognise the existence of your rights?**

The authorities frequently state that our land belongs to the state government. We do not agree with such a view.

**(ii) If the villagers are said to possess no such land rights, to which extent then do the authorities accept the existence of your rights, since your housing areas are also located in the same vicinity?**

We are still unclear on the manner in which the authorities interpret the extent of the boundaries of our customary territory. We however are always clear on our rights, which are based upon our own customary laws. Today, we continue to cultivate on our existing farms, carry out various traditional activities in the forested areas and practise our community's spiritual customs, all within our customary territory. In short, we continue to control and manage our customary territory as how it has always been since time immemorial.

If we are said not to have any rights, various authorities have indeed visited us from time to time. The Tenaga Nasional Berhad (TNB) has built solar facilities, the Department of Health has visited us to conduct health checks for expecting mothers and babies, a kindergarten has been built and JAKOA has also visited us.

**(iii) Did any of the companies or state authorities make any legal references to support their view that the villagers do not possess any rights to the encroached land (state land, permanent reserved forest etc.)?**

We have never heard any representatives from any government agencies mention any provisions of the law.

### ENCROACHMENT IMPACTS

**13. On the whole, please describe the adverse impacts of the encroachments on the villagers and your surrounding environment:**

	Type of destruction	Further information
1.	Environment: Forest destruction, river pollution	<p>Forest destruction and river pollution of course occur.</p> <p>The river turned red during logging. Some of us have managed to build a piping system from a stream in the hill nearby, and this source of water is shared with others. However, there are also villagers who still have to obtain water from the nearby polluted river.</p>
2.	Environment: Destruction of wildlife and riverine resources	<p>Wildlife and fish population has decreased sharply.</p> <p>Wild boar are still abundant. However the population of other wildlife such as monkeys and the deer has declined sharply.</p>
3.	Environment: Destruction of sources of food, medicines and items used in cultural and spiritual ceremonies	<p>In the past, apart from hill rice and tubers, we were also dependent on freshwater fish and hunted wildlife for our sources of protein. There were also abundant vegetable shoots in the forest. We also cultivated some vegetables like spinach and maize.</p> <p>Today, the sources of food from forest and river resources have indeed declined sharply. We tend to purchase more foodstuff, including rice. It is difficult to obtain hill rice seeds these days.</p>

		Wild tubers are difficult to find these days. Up to the 1980s, it was still easy to hunt wildlife. We could go out for a few hours and we would be able to return with something. Their population started to decline around the 1990s. Outsiders also began to enter our area to hunt. Fish would be easier to find during the rainy season.
4.	Loss of income	<p>Our sources of income have been badly affected.</p> <p>Today, most of our income is derived from rubber tapping.</p> <p>Sometimes we would still try to look for forest produce. However, resources such as the agarwood, rattan, <i>damar</i> gum, <i>kacip fatimah</i>, <i>tongkat ali</i> and various medicinal herbs have declined significantly.</p> <p>The rainy season is especially difficult for the villagers since we cannot carry out rubber tapping activities. Sometimes we would get into debts.</p>
5.	Loss of property: Farms, crops, farm huts, burial grounds etc.	14 graves were destroyed in the last operation.
6.	Social: Health, security and welfare etc.	No.
7.	Road damage	No.

## **SECTION D: CUSTOMARY TERRITORY AND PERMANENT RESERVED FOREST**

**Have any parts of your customary territory been gazetted as the permanent reserved forest under the National Forestry Act 1984?**

Bukit Ibam Permanent Reserved Forest.

**(i) If yes, please state the year the gazetting was undertaken. Do the villagers possess any documents on the gazetting process?**

We have no knowledge on the year the gazetting took place and do not possess any documents on it.

**(ii) If yes, please describe how the gazetting of the permanent reserved forest has adversely affected your rights?**

We are not very clear about the matter due to the lack of comprehensive information from the authorities. We are still firm in continuing with the exercise of our rights and other activities within our customary territory.

**(iii) If yes, did the authorities conduct any consultation with the villagers to obtain their consent on the gazetting process? Please state any important information on how the consultations were conducted.**

No.

**(iv) If no consultations had ever been conducted, how did the people become aware of the existence of the permanent reserved forest?**

Only through the signboards.

## 8. Kampung Kemomoi, Rompin, Pahang

### **SECTION A: BASIC INFORMATION ON AFFECTED VILLAGES**

<b>District and State</b>	Bukit Ibam, Rompin, Pahang
<b>Affected villages and ethnicity</b>	Kampung Kemomoi The population of village is around 80. Semelai-Tembok
<b>Respondents</b>	Moriol Libak Kampung Kemomoi Bukit Ibam 1968
<b>Other information</b>	
<p>The customary territory is inherited by the villagers from pioneering ancestors.</p> <p>There are senior citizens in the village who were born in the village in the 1930s.</p> <p>The name of the village came from a type of snake known as <i>kemomol</i> which was killed by three siblings. They encountered the snake when they were digging for <i>kelunak</i>, a type of tuber, and ended up killing it. The village is located between two fishing sites which also used to harbour a lot of these <i>kemomol</i> snakes. The name was later changed to <i>kemomoi</i> as a result of JHEOA/JAKOA mishearing its pronunciation, causing it to be permanently misspelt as such.</p> <p>The villagers were also involved in assisting the British administration in their airdrop activities during the Emergency, acting as their guides.</p>	

## **SECTION B: VERIFICATION ON THE EXISTENCE OF CUSTOMARY LAND RIGHTS**

The villagers verified that they are able to demonstrate the existence of their customary land rights through the following body of evidence.

<b>A.</b>	<b>Can the villagers provide oral evidence on the history of their customary territory?</b>	
1.	History on the origins of the customary territory and ancestry	x
2.	Site-specific history, folklores, legends	x
<b>B.</b>	<b>Do the villagers still practise the traditional customs and culture of their community?</b>	
1.	Land clearing, agriculture	x
2.	Marriages	x
3.	Deaths, funerals	x
4.	Communal laws, code of conduct and ethics	x
5.	Possession of old items and heirlooms: traditional costumes, gongs, baskets, beads, personal ornaments, decorative objects, kitchen utensils, knives, machetes, weapons, household items etc.	x
<b>C.</b>	<b>Can the villagers provide evidence on their use of the land and its natural resources within the customary territory?</b>	
1.	Tree felling or tree harvesting marks	x
2.	Hunting and fishing sites, saltlicks	x
3.	Burial grounds and sacred sites	x
4.	Trails and pathways within forested or cultivation areas	x
<b>D.</b>	<b>Does the government acknowledge the existence of the villages?</b>	
1.	Government built facilities	x
2.	Visits by ministries or governmental departments and agencies	x



## **SECTION C: LAND ENCROACHMENT REPORT**

### **BACKGROUND**

**1. How many logging or plantation companies have encroached upon your customary territory in the last five to ten years?**

#### **Logging**

From the time I (Moriol Libak) was little, throughout my primary school days, my teenage years and until after I finally married and began to start a family, logging operations have continually encroached on our territory. The companies would constantly change, working on the different areas, without first obtaining our consent.

Although the villagers did not consent to and disliked the operations, they did not voice any protest since there was no way for us to do so, apart from the fact that we actually also did not know how to do so. In the past, the villagers did not know the manner in which we could officially express our protest against the logging encroachments. Back then, we used to be less aware of our basic rights as citizens, which permit us to protest in defence of our customary territory. However, up to this very day, we still continue to exercise ownership over our customary territory based upon our customary laws and to the best of our ability, would take actions to control the land.

Today, the villagers have acquired more awareness, our past experiences have served as a lesson for us. We also have begun to attend programmes organised by JKOASM and friends from other non-governmental organisations. As a result, we have learnt on how our protests could be voiced officially.

The impacts of logging today have also become more and more adverse and severe, in comparison to the past. This is because in the past, logging operations did not use to harvest smaller-sized trees, they only took the larger ones. In the past, the forest was also still thick, wildlife and the water catchment area were also still relatively protected. Now the loggers would also take the smaller-sized timber to the point where the water catchment is affected and wildlife population is in decline.

Around 2010 and 2011, there was a logging company which entered our village without first obtaining our consent.

The first time the villagers discovered about the encroachment of the logging operation was when we saw heavy machinery entering the village without even informing the villagers first. Although we wished we could do so, the villagers did not stop the operation because we were uncertain as to how we could assert our rights to them in a firm manner. We did not even have much information on their operation. There were however some villagers who scolded the company workers when their rubber smallholdings were destroyed by the heavy machinery of the company. However, even their scoldings were simply ignored by the company.

The loggers left the village once they had completed their activities.

In 2013, the villagers began to suspect that another logging operation would commence in the village. Two outsiders had come to the village in their vehicles to inspect our forest without first obtaining consent from us. We were not certain where they had come from, but we suspected that they must have been from a logging company.

We then inquired from them on what they were intending to do in the concerned area. They replied that they were inspecting the area because a logging area would soon be opened there. Although we did not agree with such an operation, there was little that we could do at that point of time to express our protest officially. They did not first come to hold any consultation with us on the matter. We were not given any further information on the matter.

In August 2015, a group of workers began to enter the village. They proceeded to demarcate the area by using wooden poles that had been painted in red, without first obtaining consent from us. Due to the lack of further information, we have been unable to voice our protest to them in a more formal way. If in the end their machinery begin to enter our village, then we would be writing our protest letter to them and the state authorities.

### **Plantation**

The first time the villagers discovered about the plantation operation was a few years back when a group of workers came to the village to conduct land surveying activities without first obtaining our consent. We went to see them to ask them about the purpose of their activities. However, they refused to answer us. Later, more outsiders came with the Pahang State Forestry Department to inspect the concerned area, once again without our permission. They too did not give any definitive reply when asked about their purpose of coming into the village.

The villagers thought it would be odd for the area to be logged again since the last operation had just in fact recently ended there.

The villagers have been involved with the Cluster Replanting scheme (TSB) under the management of the Rubber Industry Smallholders Development Authority (RISDA) since about five years ago. At first, the villagers were asked to collect the names of persons who were interested to participate in this scheme. Eventually, 30 people agreed to be involved in the project.

These participants would first have to reach a consensus in determining the project location. Once this was done, a RISDA-appointed contractor would come in with their machinery to conduct land clearing activities for us. In the beginning there were people who wanted the project to be developed in our old rubber smallholdings. However this was not agreed by all as some participants' smallholdings were still quite productive. After more discussion, at last we managed to choose a site deemed as suitable by all.

On January 31, 2012, ten villagers attended a meeting with RISDA in our village. The purpose of the meeting was to establish a management committee to oversee the implementation of the scheme. They were then informed that the said contractor would begin clearing the project site somewhere in the middle of the year. This operation then took place as planned. Following the completion of the land clearing activities, the scheme participants then began their cultivation activities.

On July 15, 2013, another meeting with RISDA took place in the village. During the meeting we were informed that if all went on well, the TSB scheme would enter its second phase. We were then requested to select a new site for the second phase of the scheme.

Subsequently, the villagers concerned began to discuss on the selection of the new site for the second phase of the scheme. Eventually, a new site was selected. The land in concern was made up by forested areas, secondary growths and some old orchards.

In November 2014, land clearing activities for this second phase commenced, with the assistance of the RISDA-appointed contractor. It was during this land clearing operation that a representative of a plantation company suddenly turned up in the village. He told the villagers that we could not develop the second phase of the scheme at the selected site, because the site concerned was his area.

The villagers had no idea how this company had discovered about the land clearing activities. That was the first time we received confirmation that there was in fact another plan to develop another plantation in our village. However, the villagers and the RISDA contractor continued to clear the land.

On November 26, 2014, a meeting was organised between the company owner and the Kampung Kemomoi villagers. During the meeting, the company owner, Mr. M, revealed that his company had already received the approval from the Pahang State Secretariat Office to develop a plantation project on the land. The concerned project area spanned some 2,000 acres (or more than 800 hectares). He claimed that he had made his application for the project approval as early as 2001.

This piece of land also included our old burial ground and forested areas utilised by the villagers to harvest forest produce such as medicinal roots as well as saps and oils from particular trees.

Mr. M claimed that his company had the rights to the land. They were the ones who had been appointed to develop it. Therefore, if the villagers would like to voice their protest, this should then be addressed to the state government, and not him.

However, the villagers firmly informed Mr. M that we would never let go of the land. We reasoned that all this while, the Rompin District and Land Office had never informed us on such a matter. By right, the state government should have first discussed this over with us before making any such decision. At a time when we had already made the preparations to take the TSB scheme into its second phase, only did we find out about the permit that had been issued to Mr. M's company.

The next day, the villagers continued to discuss amongst us about the writing of a protest letter. We discussed on the possible content and recipients of this letter. We then decided to write to JAKOA and the Rompin District and Land Office first. Three villagers were chosen to hand in the letter to the said authorities.

On November 28, the letter was written. It stated, among others, the following:

We the villagers of Kampung Kemomoi do not agree with this matter because the government did not first conduct any consultation with us.

The PSK developer applied for this project in 2001. The villagers have been residing in Kampung Kemomoi since 1932. The government should not act in a manner which will result in our marginalisation. The government should have first inspected the land currently leased out to the said developer, because it also contains an old village area. This land has been cultivated with rubber and fruit trees and also contains an old burial ground.

In addition, the villagers have also yet to be granted with any aboriginal reserve by the government. What we have now is a result of our own hard work, without any plan or document of title, because we are rural folks without any steady income. We harvest the forest produce. We will always defend our ancestral land for our future generation.

On the morning of December 3, 2014, the three villagers went to the JAKOA office. The officer who received our letter told us that JAKOA did not have any jurisdiction on land matters. We were advised by her to write another letter to the Rompin District and Land Office. JAKOA's further advice was for the villagers to ensure that the company's machinery would not encroach on the concerned site where the second phase of our TSB scheme is located.

In the afternoon, we went to visit the Rompin District and Land Office to hand in the same letter and to have a discussion with them. We met with three officers. The last officer whom we met was the most senior amongst the three. She received the letter from us and listened to our explanation. The villagers requested for the 1,000 acres of Kampung Kemomoi land to be gazetted for us. She promised that the issue would be discussed in a meeting with her superiors.

On December 16, 2014, the villagers once again visited the JAKOA office to have a discussion with the representatives from the Rompin District and Land Office as well as with JAKOA itself. As a result of the discussion, a field visit was proposed to take place on December 18, 2014.

However as a result of the bad weather and transportation issues, the visit was postponed. However, following this delay, the matter was just left at that.

After ten months, on October 15, 2015, four land surveyors came to the village without informing us on their visit beforehand. They came to conduct land surveying activities for the Pahang State Secretariat Office in Kuantan. They came to determine the precise location of the plantation project of Mr. M's company. They informed the villagers that this information would be handed to the superiors at the Rompin District and Land Office. We told them that they should have informed us earlier on the purpose of the survey activities. The land surveyed also included our burial ground.

On the morning of October 20, 2015, two villagers went to the Rompin District and Land Office to discuss further about the matter. We showed them that we had in fact obtained two different development plans on the area concerned. We therefore would like some verification on this. However the officer whom we met could not provide any confirmation on the matter. He informed us that his office was also still waiting for further information from their headquarters in Kuantan. We were also requested to refer our protest to JAKOA, despite the fact that JAKOA had already informed us that land matters are not under their jurisdiction.

On the same day, the land surveyors who had come earlier in October suddenly re-entered the village to continue their works. The villagers once again voiced our

dissatisfaction over the manner in which they had simply entered the village and commenced their activities without first informing us.

On October 22, Mr. M once again visited the village. He informed the villagers not to dispose his project signboard. If we still attempted to do so, he would then lodge a police report against us. He also showed us the survey plan for his plantation project. He told us that the development of the land would commence in March 2016. The people insisted that we would still be protecting our land from his project.

At around noontime on October 28, four representatives of the company came to the village again. They wanted to have a meeting with the villagers. The representatives brought with them documents to show us that their company had already obtained approval to develop the land in question. They claimed that they had paid hefty fees as required by the state government for the development of the plantation. Therefore, they were the ones who had the rights to develop the said land.

Subsequently, a verbal dispute ensued between the company and the villagers. The villagers said the development must not involve our farms and burial ground. However the company was adamant in wanting the land for itself. The situation then became tense. A company representative then issued an ultimatum for us. We could either let go of our land that had been developed under the earlier phase, or he would take a new area within the village. The villagers then asked them to first have a discussion with the Forestry Department, JAKOA as well as ourselves. Before they left, they finally relented to attend the proposed discussion.

However, around 4 pm on the same day, the villagers suddenly heard the sound of heavy machinery in the village. We then went over together to the area from which the sound came. To our surprise some ground leveling activities had already been undertaken in the area, in the presence of a few land surveyors, without our prior knowledge. According to them, the land being leveled was part of the boundary of the plantation project.

We then stopped them from continuing. The land surveyors then informed us that they did not know that the area contains some of our orchards. They then agreed to halt the activities. At last, all of them left. A few days later, they took their machinery out of the village. Now the area is filled with secondary growths, even bamboo plants have regrown over there.

On the same day, the villagers proceeded to write a letter to the Rompin District and Land Office and JAKOA to express our protest against the incident. We intended to hand in the letters the next day.



The next morning, six villagers, including myself, travelled to town. Firstly, I lodged a police report [BK IBAM/000385/15] on the incident. Among others, the report stated the following:

On October 28, 2015, around 4.30 pm, as a representative of Kampung Kemomoi villagers of Bukit Ibam, Rompin, Pahang, I went to the project site... together with other villagers to protest against the ground leveling activities on our customary territory. No quarrel happened during the incident.

This police report was then attached to the letters which had been written the evening before. The letters themselves contained explanation on the villagers' protest:

We the villagers of Kampung Kemomoi would like to express our strong protest against the grabbing of our customary land as well as our ancestral burial ground... without any consultation with the Orang Asli of Kampung Kemomoi.

The government must not marginalise us in matters related to our land settlement here. Before any land surveying activities are conducted, your office must first meet with the villagers.

With this, the villagers will always defend our ancestral land for the future generation in any way possible. We hope your office will pay attention to this matter.

After having lodged the report, the six villagers then headed for the Rompin District and Land Office. Upon reaching the office, we went straight to the inquiry desk and let them know that we intended to hand in our protest letter to the office. We inquired on the right person to hand in the protest letter to. We were then asked to first wait since the officer in charge had gone to Kuantan for a meeting.

However we ended up having to wait for such a long time, until 3 pm. At last, a sympathetic officer asked us as to why we were still lingering in the area. He then assisted us and took us to see another staff.

Right after we were taken to meet this staff, we immediately told him that we would like to hand in our protest letter to the Rompin District and Land Office. We also expressed our wish to discuss the matter further with an officer. However he told us that he was not the right person to discuss the matter with. He requested that we meet with another staff in the administration section. Once again then, we were asked to wait near the inquiry desk.

We then inquired from another staff and was at last told that the second staff was in fact present in the office on that day. It was only after this that we managed to meet this second person. However, we felt that he was quite aloof with us. We then handed him the letter and requested for an acknowledgement of receipt to be stamped on our copy.

Then, we went home.

On October 30, another letter was handed to JAKOA to the same staff whom we had met with on December 3, 2014. Although she received the letter, she was still stating that land matters were not under JAKOA's jurisdiction. In this case, JAKOA may only assist us further at the request of the Rompin District and Land Office. The villagers then responded that to date, no officer from the Rompin District and Land Office had visited the village to discuss about the plantation project with us.

In November, the protest letters were also posted to the Pahang chief minister, the headquarters of JAKOA, SUHAKAM, non-governmental organisations and Mr. M's company.

As a follow up from our letter, JAKOA wrote a letter dated November 11, 2015 to the Rompin District and Land Office [JAKOA.MDZM.B1(3).001.JLD 1]. Among others, JAKOA made references to the following:

For your information, this issue had already been raised by the Action Committee for your attention during a discussion with one of your staff... on December 16, 2014 in the JAKOA office in Muadzam Shah. As a result, a field visit had been proposed and arranged to take place on December 18, 2014, however due to the bad weather and constant raining as well as damaged roads, the visit was at last postponed. Nevertheless, until their follow up letter dated October 20, 2015 was sent, no further responses or follow up actions had been undertaken by your office to resolve the matter.

In the meantime, on November 1, 2015, the villagers agreed to establish the Action Committee of Kampung Kemomoi Orang Asli to work in finding the solutions to this problem as well as other matters pertaining to our customary land rights. We also had other internal discussions as well. We intended to invite the Department of Lands and Mines of Pahang, the Pahang State Forestry Department and JAKOA to have a discussion with us. We would like them to attend the meeting so that all such government agencies would learn about the precise location of our burial ground and old farms.

On November 11, the company representatives visited the village again. Prior to this, they had relayed a message about this visit to one of the villagers. They arrived with the staff from the Department of Lands and Mines.

During this discussion, the villagers once again got into an argument with the company representatives. The company took out their grant document which purportedly had given them the permission to work on the said land for another 30 years.

In response, we told them that although the company had received the approval to develop the land, we would still not permit them to do so because no prior discussion had been undertaken with us.

The company representatives then requested for the name and identity card number of a resident of the village who could act as our leader. They said that they could further discuss the matter with the Chief Minister's Office on that very day itself in order to provide jobs opportunity for the villagers. We then simply told them, we were all leaders.

They then went home.

## CONSENT OR OPPOSITION

### **2. For each company or sequence of encroachment event:**

**(i) Describe whether the villagers have given their consent or remained opposed to the logging or plantation operations.**

For our villages, more people are opposed to the operations.

**(ii) Did any of the companies attempt to take the advantage of the consent given by any of the villagers to continue with their operations?**

No.

**(iii) Please explain how it was possible for this to take place without the approval of the entire village.**

Not applicable.

**PRE-ENCROACHMENT:  
PRIOR INFORMATION, CONSENT, TRANSPARENCY**

**3. For each company or sequence of encroachment event:**

**(i) Were the affected villagers given prior information on the issuance of the logging or plantation licences before the commencement of any operations?**

The issuance of all such licences did not comply with the free, prior and informed consent (FPIC) process because our consent was not obtained prior to the issuance of the licences.

For logging, we only discovered about their impending operations after their workers had already arrived at the said location without first obtaining our consent. For the first company, they had already brought in their heavy machinery and subsequently proceeded to commence their operation, without even informing us beforehand. For the second company, we discovered about the proposed operation after they came into our village to conduct field inspection of the concerned area. To date, their operation has yet to commence. No consent has been given to them.

For the plantation project, the villagers only discovered about the existence of the licence after the company representative came to the village, attempting to stop the land clearing activities of the second phase of our TSB scheme with RISDA. They claimed that they had received a licence to develop the same parcel of land.

**((ii) If yes, how was the information dissemination process conducted? (Through village chiefs, community meetings etc.)?**

Please see the explanation in (i) above.

**(iii) What was the content of the information given? Was it comprehensive and transparent? Did they fail to transparently respond to any questions raised by the villagers?**

Please see the explanation in (i) above.

**(iv) Did the villagers obtain important information such as licence registration numbers, maps of the licensed areas and other details?**

For logging , no.

For the plantation project, we only obtained some information as a result of the company's attempt to show to us that they had indeed received a licence to develop our land, which was being developed for the second phase of the TSB scheme.

**(v) Was the consent and agreement of the villagers obtained at this point?**

No. We were never consulted prior to the issuance of such logging and plantation licences. No party had ever come to the village to disseminate such information to the villagers prior to the issuance of these licences. We would only find out about the logging licences after seeing outsiders entering and walking about in the village. For the plantation project, it was only discovered after the company attempted to stop us from clearing our land for the TSB project with RISDA.

**POST-ENCROACHMENT:  
VERBAL PROTEST ON LOCATION**

**4. For each company or sequence of encroachment event:**

**(i) Did the villagers meet with the company representatives at the encroachment site or their accommodation facility to voice their protest? If yes, please describe these encounters further.**

We did interact with all logging and plantation companies at the location where they were working to voice our protests.

For logging, in both cases, the interaction was much more limited. We failed to voice a strong protest to the first company as a result of our inexperience in doing so in a firm manner. Nevertheless, we did not give our consent to their operations.

For the plantation project, we had meetings with the company from time to time. However they were adamant on continuing with the project. We maintained our position of not allowing them to start their operation. In one meeting, they even issued us with an ultimatum. They demanded that we either let go of our land that had been developed under the earlier phase, or they would take a new area within the village.

**(ii) Did the villagers meet with the authorities to voice their protest? If yes, please describe these encounters further.**

For logging, no.

For the plantation project, the authorities did promise to come to the village on December 18, 2014 for the purpose of a field visit and to have a discussion with the villagers. However, due to the heavy rain and damaged roads, the visit was postponed. After this, the matter was left without any follow-up.

**POST-ENCROACHMENT  
OFFICIAL CONSULTATION WITH COMPANIES  
AND/OR AUTHORITIES**

**5. For each company or sequence of encroachment event:**

**(i) Following your protest, did the company or authorities invite the villagers to participate in an official consultation process? If yes, how many times did such meetings take place? Please describe them further.**

For logging, no.

For the plantation project, we did have a discussion with JAKOA and the Rompin District and Land Office on December 3, 2014. However, this was done based on our own initiative to visit the government agencies concerned. A date was then chosen for a field visit and discussion at the village. However due to the bad weather and damaged road, the visit was postponed and the matter was left without any follow-up. We visited these offices again in October 2015. However, both authorities were not able to provide any solutions to the problem thus far.

**(ii) Were the authorities also present in these meetings?**

JAKOA and the Department of Lands and Mines.

**(iii) What was the outcome of such meetings? Did they manage to put an end to the encroachments?**

No.

**COMPENSATION AND DAMAGES**

**6. For each company or sequence of encroachment event:**

**(i) Has compensation ever been promised and actually delivered to any of the villagers or village committee members or entire families? What was the form, amount and rates of the compensation received?**



No.

**(ii) In your view, was this compensation adequate?**

Not applicable.

## PROTEST CORRESPONDENCE AND DOCUMENTS

**7. For each company or sequence of encroachment event:**

**(i) Did the villagers write any letters or other documents to any of the companies and/or the authorities to express their written protest?**

	<b>Date</b>	<b>Sender</b>	<b>Recipient</b>	<b>Title</b>
<b>1.</b>	28 Nov 2014	The Villagers of Kampung Kemomoi	Rompin District and Land Office	Protest letter against the project under the PSK on Kampung Kemomoi land
<b>2.</b>	28 Oct 2015	The Villagers of Kampung Kemomoi	Rompin District and Land Office	Protest against the project under the PSK the taking of the ancestral land of Kampung Kemomoi Orang Asli
<b>3.</b>	28 Oct 2015	The Villagers of Kampung Kemomoi	JAKOA	Protest against the project under the PSK the taking of the ancestral land of Kampung Kemomoi Orang Asli
<b>4.</b>	Nov 2015	Village Action Committee and Villagers of Kampung Kemomoi	Rompin Member of Parliament	Protest memo on the land encroachment on Kampung Kemomoi, Bukit Ibam

**(ii) Please describe the responses received from the companies and authorities, if any.**

As a follow-up from our letter dated October 28, 2015 to JAKOA, the Department wrote a letter dated November 11, 2015 to the Rompin District and Land Office [JAKOA.MDZM.B1(3).001.JLD 1] to refer the matter to them.

### **POLICE**

**8. For each company or sequence of encroachment event:**

**(i) Did the villagers lodge any police reports to express their protest or to complain on any matter related to the encroachments, including concerns on their safety and that of their family members?**

	<b>Date</b>	<b>Report Number</b>	<b>Complainant</b>
<b>1.</b>	29 Oct 2015	BK IBAM/000385/15	Moriol Libak

**(ii) Have any villagers ever been detained by the police as a result of their protest actions or related activities? Were they eventually charged?**

No.

### **PRESSURE, INTIMIDATION, THREATS, HARASSMENT**

**9. For each company or sequence of encroachment event:**

**(i) Did any of the villagers ever receive any pressure, intimidation, threat or harassment from any party, in relation to the protests against the encroachment on your customary territory?**

No. However, the plantation company representative would sometimes call the secretary of our Action Committee. She would at times feel a bit stressed having to receive such calls.

**(ii) Did the villagers take any action after experiencing such pressure, intimidation, threat or harassment?**

No.

**(iii) Please describe the effects of the experience on the person receiving this pressure, intimidation, threat or harassment.**

At times, she would find it to be a bit stressful.

## **EVALUATION ON THE APPROACH OF THE COMPANY REPRESENTATIVES**

**10. For each company or sequence of encroachment event:**

**(i) In your view, did the companies respond in a polite and respectful manner when confronted by the complaints and protests from the villagers?**

The company representative was quite rude with us. However he was only verbally aggressive, not physical.

**(ii) Has any company ever broken any of their promises to the villagers? If yes, please describe these incidents further.**

Not applicable.

**(iii) Have you ever had the suspicion that any of the companies was acting dishonestly towards the villagers on any matter? If yes, please describe these incidents further.**

Not applicable.

## **EVALUATION ON THE APPROACH OF THE POLICE, THE DEPARTMENT OF ORANG ASLI DEVELOPMENT (JAKOA) AND OTHER GOVERNMENT AGENCIES**

**11. Please describe the general views of the villagers with regards to the manner in which the authorities respond to your protests and complaints.**

**(i) Are the villagers satisfied with their responses and services?**

No.

**(ii) Did the authorities show any bias in favour of the companies?**

Yes. They did show a bias in favour of the companies, instead of the villagers.

For the Forestry Department, if they would like to conduct boundary demarcation activities for licensed areas, they should have met with us first. Then only could we inform them on the location of our water catchment and other important sites. But this was never done.

Likewise for JAKOA. They informed us that the gazetting process of Orang Asli customary land would take an extremely long time and would involve the Department of Survey and Mapping (JUPEM) and other government agencies. It is as if they are washing their hands off on matters related to the protection of our customary land rights.

**(iii) Has any authority taken any actions which to your view was excessive?**

No.

**(iv) In your view, have the authorities been transparent in their dissemination of information to the villagers?**

No. The Forestry Department and other authorities have not been transparent. We never did know anything about the issuance of logging and plantation licences in our village.

## **STATUS OF THE INDIGENOUS CUSTOMARY LAND RIGHTS FROM THE PERSPECTIVE OF THE COMPANIES AND AUTHORITIES**

**12. For each company or sequence of encroachment event:**

**(i) Please describe the views of the companies and authorities on the status of the villagers' customary land rights. Did they recognise the existence of your rights?**

The authorities frequently state that our customary territory belongs to the state government. We do not agree with such a view.

At times, this has caused us to hesitate from constructing better houses. We are uncertain as to what could happen since we had been told that we do not have rights to the land.

**(ii) If the villagers are said to possess no such land rights, to which extent then do the authorities accept the existence of your rights, since your housing areas are also located in the same vicinity?**

We are still unclear on the manner in which the authorities interpret the extent of the boundaries of our customary territory. We however are always clear on our rights, which are based upon our own customary laws. Today, we continue to cultivate on our existing farms, carry out various traditional activities in the forested areas and practise our community's spiritual customs, all within our customary territory. In short, we continue to control and manage our customary territory as how it has always been since time immemorial.

However, if we are said to not have any rights to the land, government agencies have visited us before. There was even a party which came to build a solar project to power the pumping of the underground water supply for us. The Department of Health visits us about once a month, sometimes handing out mosquito nets to us and conducting health checks for our infants. There are also people who have participated in the Housing Project for the Hardcore Poor Programme. JAKOA also visits us. Census activities have also been conducted.

**(iii) Did any of the companies or state authorities make any legal references to support their view that the villagers do not possess any rights to the encroached land (state land, permanent reserved forest etc.)?**

The Forestry Department has mentioned about the National Forestry Act 1984 to us.

### ENCROACHMENT IMPACTS

**13. On the whole, please describe the adverse impacts of the encroachments on the villagers and your surrounding environment:**

	Type of destruction	Further information
1.	Environment: Forest destruction, river pollution	Forest destruction and river pollution of course occurred.  When logging operations took place, the river water would turn muddy and dirty. This river was our source for drinking water. Bathing in this polluted water would often result in skin irritation. Today, we obtain our source of drinking water from underground water.
2.	Environment: Destruction of wildlife and riverine resources	Wildlife and fish population has now decreased sharply, especially in logged over areas.

		Many fishing sites have been destroyed.
3.	Environment: Destruction of sources of food, medicines and items used in cultural and spiritual ceremonies	<p>In the past, apart from hill rice and tubers, we were also dependent on freshwater fish, domestically bred chickens and hunted wildlife such as wild boar, deer and monkeys for our sources of protein. There were also abundant vegetable shoots in the forest.</p> <p>Today, the sources of food from forest and river resources have indeed declined sharply. We tend to purchase more foodstuff, including rice.</p> <p>My father used to cultivate rice all his life. In the past, the harvested rice could fill up an entire hut. This could last for over a year.</p> <p>The natural resources used in our <i>sewang</i> ceremonies are also more difficult to find today.</p>
4.	Loss of income	<p>Our sources of income have been badly affected.</p> <p>Today, most of our income is derived from our own farms, including from rubber tapping. There are also villagers who are employed as labourers in the plantations nearby our village or work as security guards and all.</p> <p>Sometimes we would still try to look for forest produce or hunt. However, resources such as <i>petai</i> and medicinal herbs have declined significantly.</p> <p>Today, incidents where the villagers would run out of cash and other necessities often happen, especially during the rainy season when they could not carry out rubber tapping activities. However, we always try to share what we have with each other.</p>
5.	Loss of property: Farms, crops, farm huts, burial grounds etc.	There were crops and graves that had been destroyed by the construction of logging roads.



6.	Social: Health, security and welfare etc.	<p>Upstream from our village, there are other plantation projects. We would suffer from diarrhea and skin irritation if we utilise the river.</p> <p>If one would like to cultivate rice, we must learn about the spirit of the rice. Much of such knowledge has been lost because we are no longer free to cultivate as before.</p>
7.	Road damage	Road damage does occur.

## **SECTION D: CUSTOMARY TERRITORY AND PERMANENT RESERVED FOREST**

**Have any parts of your customary territory been gazetted as the permanent reserved forest under the National Forestry Act 1984?**

Chini Permanent Reserved Forest

**(i) If yes, please state the year the gazetting was undertaken. Do the villagers possess any documents on the gazetting process?**

We have no knowledge on the year the gazetting took place and do not possess any documents on it.

**(ii) If yes, please describe how the gazetting of the permanent reserved forest has adversely affected your rights?**

We have never been informed about this matter. We are still firm in continuing with the exercise of our rights and other activities within our customary territory.

**(iii) If yes, did the authorities conduct any consultation with the villagers to obtain their consent on the gazetting process? Please state any important information on how the consultations were conducted.**

No.

**(iv) If no consultations had ever been conducted, how did the people become aware of the existence of the permanent reserved forest?**

Only through the signboards.

## 9. Kampung Mengkapor, Kuantan, Pahang

### SECTION A: BASIC INFORMATION ON AFFECTED VILLAGES

<b>District and State</b>	Kuantan, Pahang
<b>Affected villages and ethnicity</b>	<p>Mengkapor Customary Territory</p> <p>The Mengkapor Customary Territory consists of 3 villages with a population of around 250.</p> <ol style="list-style-type: none"> <li>1. Kampung Cahabuk</li> <li>2. Kampung Tom Pesel</li> <li>3. Kampung Gemarang</li> </ol> <p>Majority made up by the Semoq Beri</p>
<b>Respondent</b>	<p>Fatimah Bah Sin</p> <p>Mengkapor</p> <p>1974</p>
<b>Other information</b>	
<p>The customary territory is inherited by the villagers from pioneering ancestors.</p> <p>Originally, Kampung Mengkapur was known as Kampung Tom Baha'uk. <i>Tom</i> means river in the Semoq Beri Language. Meanwhile <i>baha'uk</i> is the Semoq Beri name for a tree known as the <i>terap</i> tree in the Malay Language. The <i>baha'uk</i> trees used to be found in great abundance in the territory.</p> <p>Later on, the <i>Baha'uk</i> territory also was referred to as <i>Bekepur</i>, which means limestone in the language, due to the presence of a limestone hill in the area, known as the Bukit Batu Kapur in Malay. <i>Batu Kapur</i> also means limestone in the Malay Language. Gradually, the government began to refer to our territory as Mengkapur or Bakapur, although this was really the name of a Malay village at the mouth of the Sungai Baha'uk. Amongst us, we still call the territory as <i>Baha'uk</i>.</p> <p>During the Emergency, the villagers were subjected to a forced relocation by the British to Kampung Paya Bungor in Kuantan. We were also later given some land in Kampung Paya Bungor for our cultivation activities. This cultivation land is located at the upstream of the Sungai Paya Bungor. The Malay communities were given</p>	

land in the more downstream areas. When the Emergency ended, some of the villagers returned to Baha'uk/Mengkapor. Some continued to remain in Kampung Paya Bungor, although they still continue to keep their farms in Baha'uk/Mengkapor. The distance between Baha'uk/Mengkapor and Paya Bungor is about 20 km.

The name *cahabuk* comes from a type of durian fruit. The skin of this species of durian has an ashen appearance. *Cahabuk* refers to the ashes from our cooking wood in the Semoq Beri Language.

*Tom Pesel* meanwhile means the Pesel River in the language. *Pesel* comes from the word *pasal*, which is a type of fruit used to be abundant in the area. Now there is only one tree left in the village, after logging has destroyed the rest.

*Gemarang* is also a type of fruit tree. There is none left today after logging operations destroyed them all.

Nearby Kampung Gemarang, there is a place called the Paya Puting Beliung or the Whirlwind Swamp, where whirlwinds used to occur until many decades ago. Although there are no big trees there, there used to be an abundance of smaller-sized plants in the area, such as the *kelubi*, *salak*, *mengkuang* and various medicinal herbs.

There are also many caves (*gua*) and hills (*bukit*) within the territory that have been named by the community's ancestors.

Gua Pampong was named after a poisonous fruit called *pampong*. Gua Tongkat was named after the stalactite at its entrance which looks like a cane.

Gua Simpai tells the story of a girl who left her *simpai*, or bracelet, in the cave when she was making the container for the darts of the blowpipe.

Gua Ces was so named because the people once saw some smoke or *ces* circling around the cave.

Gua Lelayang was named after its swiftlet population.

Gua Bekaca comes from the word *kaca*, because from afar the cave looks like it has a glassy appearance. The origins of the name

Gua Ketuh Keteh meanwhile revolved around the story of a young woman who had disappeared there, believed to have been captured by a tiger. A rock in the cave is said to be the manifestation of her breasts. The young woman used to love to

engage in mat-weaving during the twilight. She was thus often warned by her mother not to do so as there was a taboo against it. It was believed such an action would offend the tigers and may well cause one to be possessed by its spirit. *Ketuh keteh* is the sound made during mat-weaving.

## **SECTION B: VERIFICATION ON THE EXISTENCE OF CUSTOMARY LAND RIGHTS**

The villagers verified that they are able to demonstrate the existence of their customary land rights through the following body of evidence.

<b>A.</b>	<b>Can the villagers provide oral evidence on the history of their customary territory?</b>	
1.	History on the origins of the customary territory and ancestry	x
2.	Site-specific history, folklores, legends	x
<b>B.</b>	<b>Do the villagers still practise the traditional customs and culture of their community?</b>	
1.	Land clearing, agriculture	x
2.	Marriages	x
3.	Deaths, funerals	x
4.	Communal laws, code of conduct and ethics	x
5.	Possession of old items and heirlooms: traditional costumes, gongs, baskets, beads, personal ornaments, decorative objects, kitchen utensils, knives, machetes, weapons, household items etc.	x
<b>C.</b>	<b>Can the villagers provide evidence on their use of the land and its natural resources within the customary territory?</b>	
1.	Tree felling or tree harvesting marks	x
2.	Hunting and fishing sites, saltlicks	x
3.	Burial grounds and sacred sites	x
4.	Trails and pathways within forested or cultivation areas	x
<b>D.</b>	<b>Does the government acknowledge the existence of the villages?</b>	
1.	Government built facilities	x
2.	Visits by ministries or governmental departments and agencies	x



## **SECTION C: LAND ENCROACHMENT REPORT**

### **BACKGROUND**

**1. How many logging or plantation companies have encroached upon your customary territory in the last five to ten years?**

#### **Logging**

Logging operations have continually encroached on the Mengkapor Customary Territory since the 1970s. In the past, they used to harvest really large trees. Although there were adverse impacts on the forest and rivers, they were still not very extreme. Nevertheless, our consent was never obtained for such operations.

However, during the 1990s, the operations became more aggressive. Even the smaller-sized trees would be harvested. There was also the development of plantations in our vicinity, which began to use toxic pesticides and fertilisers. As a result, all these adverse impacts became progressively worse for us.

On normal days, the source of our drinking water is pumped from Sungai Tom Pesel. However during the rainy season, the runoff of such toxic chemicals and fertilisers from the plantations would all flow into Sungai Tom Pesel and Sungai Gemarang. During such times, we would be forced to source water from the smaller creeks in the upstream reaches of the Sungai Tom Pesel and Sungai Gemarang. This is why we really treasure the Sungai Gemarang and are extremely protective of its water catchment.

In the past, although our lives were indeed becoming more and more difficult, we did not dare to lodge a formal and strong protest against such encroachments. Although the rivers became muddy or polluted and the forest was destroyed, we thought that all these parties had their rights to operate. We on the other hand, did not have the rights to protest against their encroachments despite the fact that we did not agree with such activities taking place on our land. We certainly felt saddened to witness the destruction of the forest, rivers and wildlife.

Back then, the villagers did not know the manner in which we could officially express our protest against such logging encroachments. We used to be less aware of our basic rights as citizens which permit us to protest in defence of our customary territory. In fact, we were often told that we had no property ownership rights to the land by various government agencies. We certainly do not share the authorities' view on this. Up to this very day, we still continue to exercise ownership over our customary

territory based upon our customary laws and to the best of our ability, would take actions to control the land.

We first began to learn about our rights only around 2009 after having participated in several rights awareness programmes. As a result, we became confident enough to protest in a more formal and organised way against logging operations which encroached upon our area.

Presently, no logging company is operating in our area. The two last logging encroachments took place in 2014 and 2015.

We first discovered about the first licence after seeing a group of forest rangers in our territory conducting boundary demarcation activities of the area about to be logged by way of red paint, without having first obtained our consent.. This took place nearby Kampung Tom Pesel in the middle of 2013. We then inquired from them on the purpose of their activities. One ranger then told us that a logging licence would soon be issued for the area. We then informed them that this must not take place, we would never consent to it. They however said it was unreasonable for us to say so, because we were occupying the land illegally. They said that the land belonged to the state. After completing their works, they then left the area.

At the end of April 2014, a logging company indeed began to encroach on the demarcated area without our permission.

At first, we saw the company bringing in heavy machinery into the village area. When we went to inquire, they replied that they were going to log the concerned area. The situation then became quite tense. They were adamant on continuing with their operation despite our opposition to it. During this time, we went to see them several times to state our dissatisfaction with their operation.

We questioned them on the absence of a signboard and other information on the operation. We also asked if this was an illegal operation due to this absence. Soon after, they erected a signboard along with other information such as the licence number [CK-02 21/14 KP/K] and the size of area, which was 12.02 hectares, and the duration of its operations, which was from May 1 until June 30, 2014.

I then made a police report [GAMBANG/000907/14] on the matter on May 12, 2014. Among others, I stated the following:

We would like to stress that the authorities must conduct their investigation and take action against the logging company... We demand that the authorities evict the company and order them to remove their machinery from our customary territory immediately.

After this first report, the police came to the village. The police came in a few vehicles. All of them were not wearing their uniforms.

They then asked if any of us was a lawyer. We told them that none of us was one, we were only ordinary villagers. They then asked, "who is Fatimah, the one who has lodged a police report?" According to them, they had been instructed to come to Mengkapor to take the villagers to the Gambang Police Station. However, all of us refused to do so because they were not in their uniforms.

A police officer then took out his police card. Still they did not bring any documents to provide the reason as to why we had to follow them to the police station. We insisted on not coming with them.

Then one of them called their superior. We overheard him saying, "the Orang Asli are stubborn, they won't come." I then responded that we could go to the police station next Monday:

We could go by ourselves, you don't have to force us like this.

On June 9, 2014, the next Monday, I then went to the Gambang Police Station and proceeded to lodge a second police report [GAMBANG/001083/14]. Among others, the report stated the following:

The purpose of this report is to defend our customary land, what is left today is not that much, only around 20-30 acres. All the rest has been encroached upon by the company named above. The reason we are defending the remaining area is due to the fact that if logging continues there, the source of our water will be destroyed. Where could we possibly find an alternative water source? Next to our village, the existing river has already been destroyed by the LKPP plantation. Toxic water has been flowing into the river. Therefore we hope that the area we are protecting will not be destroyed or encroached further.

At the police station, they proceeded to call the state headquarters to inform the office on my report. My telephone number was given to them. We then went home.

After a few days, a police officer from the Crime Division in the state headquarters office in Kuantan called me. He requested for me to meet him up at his office. I then agreed to this. Subsequently, a date was set for the meeting at the police state headquarters in Kuantan.

On the said day, I then went to the headquarters in Kuantan, as promised. When we started off the meeting, I tried asking him on the purpose of him wanting to meet me. He then said that he was responsible for investigating my reports and would like to verify that I was indeed the person who had lodged the reports.

During this first meeting, I also handed to him documents on the United Nations' Declaration on the Rights of Indigenous Peoples (UNDRIP). I also inquired on how the case could be resolved. The officer then proposed that I organise a meeting between the villagers, the police, the company, the Forestry Department and JAKOA.

I then responded that if I was the one to organise such a meeting, it would be unlikely that other parties would be interested to attend. As such, it was the police who should be organising such a meeting. Therefore, I would leave it to the police to arrange a meeting between the villagers, the company, the Pahang State Forestry Department and JAKOA. The police officer then agreed to this proposal.

Meanwhile, the company at this point of time wanted to move to a new area to log, which was nearby the Sungai Gemarang, once again without first obtaining our consent. They essentially would like to move to the water catchment area of Kampung Tom Pesel. The people then took their own action in order to stop the operation. They grabbed the key to the company's bulldozer. The people also told the company workers that they must leave the area.

During this particular incident, I was not there in the village. An in-law of mine called me and asked that I speak to a company representative who was with them. I then just repeated on the phone the same demand that had already been voiced by the villagers to him, which was, they must leave. They then left this second area of operation and returned to the first area. Later they halted their operation altogether.

A few days after this, the police officer who had interviewed me called me again to let me know of the date and time of the agreed upon meeting.

On the agreed upon date and time, at the state police headquarters in Kuantan, the meeting took place. Representatives from the company, the Pahang State Forestry Department and JAKOA were also there. The police acted as the mediator to the meeting. Their condition was that the meeting must be strictly focused on the land issue at hand, and politics must not be thrown into the discussion.

The Forestry Department then presented their documents to the police. They informed the meeting that the operation had indeed been approved, and there was no illegality to it. The company in the meantime remained silent.

When it came for our turn to speak, we began by emphasising that the company had already logged its first area despite our protest. However, now that they would like to move into our water catchment area, it was simply not permissible for them to do so.

The representative of the Forestry Department then replied that he had never seen any water catchment area in the concerned location. I then said that the water catchment area belongs to an Orang Asli village, of course one would not be seeing any tanks or dams there. I said:

...where there is a river and a spring, that would be our water catchment area.

All of a sudden, a forest ranger remarked that we were actually supporters of a state assemblyperson from an opposition party. Apparently, he knew that this state lawmaker had visited Mengkapor before. We thought what this Forestry Department staff was saying had nothing to do with the discussion at all.

The police at last requested that the Forestry Department not to bring politics into the meeting.

Meanwhile JAKOA was insisting that the Mengkapor Customary Territory was not recognised by the department because the actual settlement of the villagers was at Kampung Paya Bungor. They said that our villages at Mengkapor were splinter villages.

We then responded that it was JAKOA who had not done their duty and research properly. As a matter of fact, it was Kampung Paya Bungor which had broken away from the Mengkapor Customary Territory. All of us in fact originated from the Mengkapor Customary Territory. During the Emergency, the British had resettled us in Kampung Paya Bungor. After the Emergency ended, some of us returned to Mengkapor. Some of us meanwhile chose to remain in Kampung Paya Bungor. However, even members of the latter group still keep their farms at Mengkapor.

Subsequently, the situation became tense. The police then asked us and JAKOA to stop talking. Representatives from the logging company meanwhile showed their agreement with the Forestry Department.

During this meeting, we also began to realise that the police were also aware of the incident at Sungai Gemarang. They were however confused about the type of vehicle whose key the villagers had taken away. They thought we had taken the key to the company's four-wheel drive vehicle instead of the bulldozer's. We corrected them on this.

The police then stated that they understood that each party was not satisfied. We naturally affirmed this. They then suggested that the Forestry Department, JAKOA and themselves visit the concerned location. The meeting agreed to conduct this field visit at 8 am the next morning.

The next day, the police and the company representative came on the agreed upon time. The Forestry Department representative came quite late. JAKOA representative failed to appear.

We then wanted to take the group to the disputed site, downstream of Sungai Gemarang, next to Kampung Tom Pesel. However only the police followed us to the concerned site to see the water catchment area. A police officer proceeded to take photographs of the location.

When we returned to Kampung Tom Pesel, the representative from the Forestry Department looked quite irritated. He was grumbling on and on, saying that there was no actual need to visit the concerned water catchment area. According to him, the department already had all its plans ready.

However the villagers were still not satisfied and demanded for more information on the boundary of the logging licence. The representative from the Forestry Department however refused to show us the location of the boundary. Finally, the police put their foot down and instructed him to show to everyone present the boundary of the area to be logged.

We retorted to the Forestry Department:

What is there on your plan anyway? We would like to see the location itself.

On our way there, the logging company owner finally let us know that he actually had the licence to log in two other areas. We maintained that we were not going to give our rights away. He then said that he would suffer a loss if this was the case. We merely told him:



Whether or not you are going to lose money, that is your business with the Forestry Department.

When we reached the site, we were showed the boundary of the logging area. We were informed that the boundary would continue upstream, until our water catchment area. We then became very anxious over this. If all the area was to be logged, the impacts would be extremely disastrous to the villagers. We then requested for the licensed area to be changed to another area.

After this field investigation by the police, the company halted their operations in our territory.

Then sometime in early 2015, the second logging encroachment incident took place in our territory. A company had entered our village and proceeded to build a road in order to begin harvesting logs in our territory without first obtaining our consent.

One day, we suddenly heard the sound of heavy machinery entering our village. We then saw container lorries and other vehicles being driven into the village. They had apparently entered through the road built by the Pahang Agricultural Development Board (LKPP) a few years ago. We immediately stopped one of these vehicles as it passed through our village. We inquired from them on the purpose of them bringing in all of the containers. Their leader told us that they would be harvesting logs from the area.

However from their explanation, they gave us the impression that they would be harvesting logs from a forest adjacent to but beyond the boundaries of the Mengkapor Customary Territory. We then informed them that although we would not permit them to harvest logs from the Mengkapor Customary Territory, we would not stop them from doing so outside of our customary territory.

The leader convinced us that they would not be harvesting logs from within our territory. Their operations would only be focused on areas outside of the Orang Asli territory. As a result, we let them and their vehicles pass, to head towards the area which we believed was outside of our customary territory.

Unfortunately however, later in the late afternoon of the same day, we began to hear the sound of heavy machinery from the middle of the Mengkapor Customary Territory, nearby the Sungai Maaja and Sungai Mengkapor. This area is also part of the forest which has been reserved as our village water catchment.

Apparently, the company had continued to drive on and proceeded to leave the containers outside of our territory. However, they then began to surreptitiously enter another logging road which would lead to the middle of our territory. This was the road which leads to Kampung Cahabuk.

We then quickly rushed to the place where the sound had come from. There were more than ten of us who went there. We saw that the area had already been leveled to construct a new access road. We then met again with the leader from the company whom we had met earlier in the morning.

We asked them, what exactly were they doing? He then informed us that they would be logging the area and was constructing a new access road. We inquired on the name of the company which would be carrying out the operations and the name of its owner. However, he refused to reveal such names to us, except to insinuate that the people behind the operations were dignitaries, including someone with the honorific title *Datuk*.

We told them that we would protest against any attempt to log our area, we did not care about their status or position in society. For us, whomever they may be, if they had wanted to log the area, they would have to first come to the village to obtain consent from us. We demanded for the licence owners to meet us in our village, show us their logging licence and permit from the Forestry Department, and the actual area they wish to log.

For us, if such people could not even say anything about the actual area to be logged and identify with the history of the village, they should not be having any rights to harvest logs from our territory.

He then called someone from the company to discuss the matter over. We on the other hand, were still insistent on not permitting them to continue with their works. At last, they left the area, along with their equipment and machinery, on the very same day.

After this incident, through the non-governmental organisation, Centre for Orang Asli Concerns (COAC), we wrote a protest letter dated July 10, 2015, to the Malaysian Timber Certification Council (MTCC) via email to inform them on this incident – the attempt to log without the free, prior and informed consent (FPIC). MTCC then referred this protest to the Pahang State Forestry Department.

A week later, I received a call from the Pahang State Forestry Department, requesting us for a meeting. However, the meeting was only to be participated by myself (Fatimah Bah Sin) and the representatives from the department and the logging company.

Nevertheless I still asked the staff who was on the telephone with me if I was allowed to bring other villagers and other parties to the meeting, such as lawyers and other people whom I would like to invite. He said no. Only the company representatives and myself would be allowed to come to the office of the Pahang State Forestry Department. I then informed him that I would have to decline such an invitation, if that was the condition being set upon by the department:

I would like all the Mengkapor villages and representatives whom I wish to invite to also participate in the meeting and we should meet at the location where the incident took place. I do not wish to have a meeting in the office because that is not the place where the incident took place. If this is about paperwork, even I could produce those.

I also told him that I did not wish to meet with the department subordinates. I wished to meet with the Director of Forestry himself. Likewise, I also did not want for the company subordinates to come, I would like for the owner of the company to come to the location. He then said if such were our demands, then the department could not possibly fulfill them. That was his response. He however said that he would be discussing with his superiors about this matter.

However, until today, we never heard from them again. We never knew anything about the name of the logging company or the logging licence. We never found any signboard or other information either about the operations.

## CONSENT OR OPPOSITION

### **2. For each company or sequence of encroachment event:**

**(i) Describe whether the villagers have given their consent or remained opposed to the logging or plantation operations.**

For our villages, the majority of us are opposed to the logging operations. The rest just remained silent although they too disliked such operations.

**(ii) Did any of the companies attempt to take the advantage of the consent given by any of the villagers to continue with their operations?**

No.

**(iii) Please explain how it was possible for this to take place without the approval of the entire village.**

Not applicable.

**PRE-ENCROACHMENT:  
PRIOR INFORMATION, CONSENT, TRANSPARENCY**

**3. For each company or sequence of encroachment event:**

**(i) Were the affected villagers given prior information on the issuance of the logging or plantation licences before the commencement of any operations?**

The issuance of all such licences did not comply with the free, prior and informed consent (FPIC) process because our consent was not obtained prior to the issuance of the licences.

**(ii) If yes, how was the information dissemination process conducted? (Through village chiefs, community meetings etc.)?**

Please see the explanation in (i) above.

**(iii) What was the content of the information given? Was it comprehensive and transparent? Did they fail to transparently respond to any questions raised by the villagers?**

Please see the explanation in (i) above.

**(iv) Did the villagers obtain important information such as licence registration numbers, maps of the licensed areas and other details?**

We did not obtain a lot of information. The licence number was obtained much later.

**(v) Was the consent and agreement of the villagers obtained at this point?**

No. We were never consulted prior to the issuance of such logging licences. No party had ever come to the village to disseminate such information to the villagers prior to the issuance of these licences. We would only find out about them after seeing outsiders entering and walking about in the village.

**POST-ENCROACHMENT:  
VERBAL PROTEST ON LOCATION**

**4. For each company or sequence of encroachment event:**

**(i) Did the villagers meet with the company representatives at the encroachment site or their accommodation facility to voice their protest? If yes, please describe these encounters further**

For the first case, when we first voiced our protest against their operations, the logging company nevertheless continued their activities until we took away the key to their bulldozer after they wanted to move towards our water catchment area. At last, all parties were called to attend a meeting in Kuantan by the police.

For the second case, after we rushed to the site where the construction of a new logging access road was taking place and prevented them from continuing their works, the company ended up leaving our territory on the same day.

**(ii) Did the villagers meet with the authorities to voice their protest? If yes, please describe these encounters further.**

For the first case, we did voice our protest to the forest rangers who first conducted the boundary demarcation area of the licensed area as early as mid-2013. However our protest was said to be unreasonable because we were told that we were occupying the land illegally because our land was the property of the state. We of course do not agree with such a view.

For the second case, no.

**POST-ENCROACHMENT  
OFFICIAL CONSULTATION WITH COMPANIES  
AND/OR AUTHORITIES**

**5. For each company or sequence of encroachment event:**

**(i) Following your protest, did the company or authorities invite the villagers to participate in an official consultation process? If yes, how many times did such meetings take place? Please describe them further.**

For the first case, the police acted as a mediator and called the villagers and representatives from the company, the Pahang State Forestry Department and JAKOA for a meeting at their state headquarters in Kuantan. The meeting led to a

field investigation by the police on the next morning, accompanied by the villagers and the company representative. The company halted their operations after this.

For the second case, the Pahang State Forestry Department did attempt to ask me (Fatimah Bah Sin) and the company representatives to attend a meeting at their office. However, upon learning that other villagers or parties invited by me would not be allowed to participate in the meeting, I declined the invitation. Although the staff who called promised to bring the matter up to his superior, we did not hear anything from him anymore.

**(ii) Were the authorities also present in these meetings?**

For the first case, the police acted as the mediator for this meeting. Representatives from the Pahang State Forestry Department and JAKOA were also present.

For the second case, the proposed meeting never took place.

**(iii) What was the outcome of such meetings? Did they manage to put an end to the encroachments?**

For the first case, yes.

For the second case, not applicable.

## COMPENSATION AND DAMAGES

**6. For each company or sequence of encroachment event:**

**(i) Has compensation ever been promised and actually delivered to any of the villagers or village committee members or entire families? What was the form, amount and rates of the compensation received?**

No.

**(ii) In your view, was this compensation adequate?**

Not applicable.

## PROTEST CORRESPONDENCE AND DOCUMENTS

**7. For each company or sequence of encroachment event:**

**(i) Did the villagers write any letters or other documents to any of the companies and/or the authorities to express their written protest?**

No.

**(ii) Please describe the responses received from the companies and authorities, if any.**

Not applicable.

## POLICE

**8. For each company or sequence of encroachment event:**

**(i) Did the villagers lodge any police reports to express their protest or to complain on any matter related to the encroachments, including concerns on their safety and that of their family members?**

	Date	Report Number	Complainant
1.	12 May 2014	GAMBANG/000907/14	Fatimah Bah Sin
2.	9 June 2014	GAMBANG/001083/14	Fatimah Bah Sin

**(ii) Have any villagers ever been detained by the police as a result of their protest actions or related activities? Were they eventually charged?**

No.

## PRESSURE, INTIMIDATION, THREATS, HARASSMENT

**9. For each company or sequence of encroachment event:**

**(i) Did any of the villagers ever receive any pressure, intimidation, threat or harassment from any party, in relation to the protests against the encroachment on your customary territory?**

No.

**(ii) Did the villagers take any action after experiencing such pressure, intimidation, threat or harassment?**



Not applicable.

**(iii) Please describe the effects of the experience on the person receiving this pressure, intimidation, threat or harassment.**

Not applicable.

## **EVALUATION ON THE APPROACH OF THE COMPANY REPRESENTATIVES**

**10. For each company or sequence of encroachment event:**

**(i) In your view, did the companies respond in a polite and respectful manner when confronted by the complaints and protests from the villagers?**

They were polite, nothing unusual. However the situation could get quite tense at times when we met them.

**(ii) Has any company ever broken any of their promises to the villagers? If yes, please describe these incidents further.**

Not applicable.

**(iii) Have you ever had the suspicion that any of the companies was acting dishonestly towards the villagers on any matter? If yes, please describe these incidents further.**

Not applicable.

## **EVALUATION ON THE APPROACH OF THE POLICE, THE DEPARTMENT OF ORANG ASLI DEVELOPMENT (JAKOA) AND OTHER GOVERNMENT AGENCIES**

**11. Please describe the general views of the villagers with regards to the manner in which the authorities respond to your protests and complaints.**

**(i) Are the villagers satisfied with their responses and services?**

No.

**(ii) Did the authorities show any bias in favour of the companies?**

Yes. They did show a bias in favour of the companies, instead of the villagers.

By right, JAKOA should be protecting the rights of the Orang Asli. Instead, they often show hostility towards us. They would assist the company but not us. When we agreed to meet with the police on location to assist them to conduct further investigation on the site of our water catchment area, they failed to turn up.

As for the Forestry Department, they would often act quite rudely with us, especially on location. During the police investigation, they refused to cooperate fully. They also questioned our relationship with a state lawmaker and his political party, which is well within our rights and had nothing to do with the encroachment incident at all.

The police was quite good. Although they would sometimes sound rough, they would eventually soften after awhile.

**(iii) Has any authority taken any actions which to your view was excessive?**

No.

**(iv) In your view, have the authorities been transparent in their dissemination of information to the villagers?**

No. The Forestry Department has not been transparent. They have never informed us anything on the issuance of logging licences.

The police was quite transparent. They endeavoured to investigate our reports.

## **STATUS OF THE INDIGENOUS CUSTOMARY LAND RIGHTS FROM THE PERSPECTIVE OF THE COMPANIES AND AUTHORITIES**

**12. For each company or sequence of encroachment event:**

**(i) Please describe the views of the companies and authorities on the status of the villagers' customary land rights. Did they recognise the existence of your rights?**

The authorities frequently state that our land belongs to the state government or is part of the permanent reserved forest. The Forestry Department staff had once told us we were occupying the land in Mengkapor illegally. We do not agree with such a view.

**(ii) If the villagers are said to possess no such land rights, to which extent then do the authorities accept the existence of your rights, since your housing areas are also located in the same vicinity?**

We are still unclear on the manner in which the authorities interpret the extent of the boundaries of our customary territory. We however are always clear on our rights, which are based upon our own customary laws. Today, we continue to cultivate on our existing farms, carry out various traditional activities in the forested areas and practise our community's spiritual customs, all within our customary territory. In short, we continue to control and manage our customary territory as how it has always been since time immemorial.

The boundary to our territory is defined and recognised by the community. We do not recognise the boundary defined by the government.

**(iii) Did any of the companies or state authorities make any legal references to support their view that the villagers do not possess any rights to the encroached land (state land, permanent reserved forest etc.)?**

No.

### ENCROACHMENT IMPACTS

**13. On the whole, please describe the adverse impacts of the encroachments on the villagers and your surrounding environment:**

	Type of destruction	Further information
1.	Environment: Forest destruction, river pollution	Forest destruction and river pollution of course occur.  In areas where we have managed to protect, the condition is still quite good.
2.	Environment: Destruction of wildlife and riverine resources	Wildlife and fish population has decreased sharply.  Wild boar are still abundant. However the population of other wildlife such as monkeys and deer has declined sharply.
3.	Environment: Destruction	In the past, apart from swamp rice and wild tubers

	<p>of sources of food, medicines and items used in cultural and spiritual ceremonies</p>	<p>such as <i>takup</i> and <i>kuwau</i>, we were also dependent on freshwater fish, domestically bred chickens and hunted wildlife for our sources of protein. There were also abundant vegetable shoots in the forest. We also cultivated some vegetables ourselves.</p> <p>Today, the sources of food from forest and river resources have indeed declined sharply. We tend to purchase more foodstuff, including rice. These resources were in abundance up to the 1980s.</p> <p>Wild tubers are very difficult to find these days. The cultivation of swamp rice has also largely been abandoned for quite some time already. This is a result of the loss of such swamps and the pollution of rivers, once logging entered our territory. When logging took place at swampy areas, the swamp would be drained out. Today, many of these swamps have dried out.</p>
4.	Loss of income	<p>Our sources of income have been badly affected.</p> <p>Today, most of our income is derived from rubber tapping and other cash crops like oil palm and sugarcane. There are also villagers who are employed as labourers in the oil palm plantations owned by other parties nearby our village.</p> <p>Sometimes we would still try to look for forest produce. However, resources such as the agarwood, rattan, bamboo, the damar gum, <i>kacip fatimah</i>, <i>tongkat ali</i> and various medicinal herbs have declined significantly.</p>
5.	Loss of property: Farms, crops, farm huts, burial grounds etc.	They are still safe because we have been monitoring them diligently.
6.	Social: Health, security and welfare etc.	As a result of the villagers being forced to purchase rice, the youth today no longer possess the knowledge on swamp rice cultivation and rice processing.

		We are still healthy because we have managed to avoid using the water from Sungai Tom Pesel each time it is polluted.
7.	Road damage	No.

## **SECTION D: CUSTOMARY TERRITORY AND PERMANENT RESERVED FOREST**

**Have any parts of your customary territory been gazetted as the permanent reserved forest under the National Forestry Act 1984?**

Bekelah Permanent Reserved Forest.

**(i) If yes, please state the year the gazetting was undertaken. Do the villagers possess any documents on the gazetting process?**

We have no knowledge on the year the gazetting took place and do not possess any documents on it.

**(ii) If yes, please describe how the gazetting of the permanent reserved forest has adversely affected your rights?**

We are not very clear about the matter due to the lack of comprehensive information from the authorities. We are still firm in continuing with the exercise of our rights and other activities within our customary territory.

**(iii) If yes, did the authorities conduct any consultation with the villagers to obtain their consent on the gazetting process? Please state any important information on how the consultations were conducted.**

No.

**(iv) If no consultations had ever been conducted, how did the people become aware of the existence of the permanent reserved forest?**

Only through the signboards.





## 10. Kampung Air Bah, Lenggong, Perak

### **SECTION A: BASIC INFORMATION ON AFFECTED VILLAGES**

<b>District and State</b>	Lenggong, Perak
<b>Affected villages and ethnicity</b>	Kampung Air Bah  The village has a population of approximately 300.  Lanuh
<b>Respondents</b>	Adnan bin Panjang Kampung Orang Asli Air Bah Sawa Lenggong 1971  Panjang Din Kampung Orang Asli Air Bah Sawa Lenggong 1950
<b>Other information</b>	
<p>The customary territory is inherited by the villagers from pioneering ancestors.</p> <p><i>Air Bah</i> is the Malay phrase for <i>Ong Baal</i> in the Lanuh Language. <i>Ong</i> means water while <i>Baal</i> is the seed of a type of fruit. The seed has a glistening appearance to it.</p> <p>The Lanuh community were former hunter gatherers of the Lenggong District which used to be heavily forested even up to the 1970s. The originating central ancestral domain was known as Kampung Mehto, where a hill with the same name is located. Today, Kampung Mehto has turned into township of Lenggong. In fact, the site of the Lenggong District Office today used to be one of the community's settlements.</p> <p>The Lanuh community's cyclical movements in the forest were based on the fruiting season of the forests surrounding Lenggong, Ijok, Pekan Terong, Kuala Kurau and Taiping. The many caves around the area used to be their hunting shelters and dwelling homes, although as time passed by, the people also began to build temporary huts. The community reportedly began to engage in shifting agriculture</p>	

around the 1930s.

Some of the caves used by their ancestors included those known as the Kajang Cave, Sewong Cave, Ular (*Snake*) Cave, Princess (*Puteri*) Cave, Kelawar (*Bat*) Cave and the Harimau (*Tiger*) Cave. Many of the (non-prehistoric) paintings done by the Lanuh ancestors can still be seen in many of these caves. The community also has numerous folklores on the various special features of each cave. These caves of the Lenggong district are also well-known as the most important archaeological sites in Peninsular Malaysia.

In the early 1960s, members of the community were requested by the government to settle permanently at *Ong Baal*. In the late 1960s, a fatal epidemic broke out in the village, causing many of the remaining villagers to temporarily flee *Ong Baal* and return to other ancestral sites around the Lenggong area.

In the the 1970s, they were given some 50 acres of land by the government, or around 2 acres for each family, to be cultivated with rubber.

The customary territory reportedly did apply for their land to be gazetted as an Aboriginal reserve in the late 1970s. However the land has remained ungazetted.

## **SECTION B: VERIFICATION ON THE EXISTENCE OF CUSTOMARY LAND RIGHTS**

The villagers verified that they are able to demonstrate the existence of their customary land rights through the following body of evidence.

<b>A.</b>	<b>Can the villagers provide oral evidence on the history of their customary territory?</b>	
1.	History on the origins of the customary territory and ancestry	x
2.	Site-specific history, folklores, legends	x
<b>B.</b>	<b>Do the villagers still practise the traditional customs and culture of their community?</b>	
1.	Land clearing, agriculture	x
2.	Marriages	x
3.	Deaths, funerals	x
4.	Communal laws, code of conduct and ethics	x
5.	Possession of old items and heirlooms: traditional costumes, gongs, baskets, beads, personal ornaments, decorative objects, kitchen utensils, knives, machetes, weapons, household items etc.	x
<b>C.</b>	<b>Can the villagers provide evidence on their use of the land and its natural resources within the customary territory?</b>	
1.	Tree felling or tree harvesting marks	x
2.	Hunting and fishing sites, saltlicks	x
3.	Burial grounds and sacred sites	x
4.	Trails and pathways within forested or cultivation areas	x
<b>D.</b>	<b>Does the government acknowledge the existence of the villages?</b>	
1.	Government built facilities	x
2.	Visits by ministries or governmental departments and agencies	x

## **SECTION C: LAND ENCROACHMENT REPORT**

### **BACKGROUND**

**1. How many logging or plantation companies have encroached upon your customary territory in the last five to ten years?**

#### **Logging**

Logging companies have continually encroached on our territory since the 1970s. This continued until the 1980s and 1990s. However back then, the people did not conduct any protest actions despite the fact that they disliked the operations and their consent was not obtained.

During this time, the villagers did not know much about their right to protest against such encroachments in a more formal and organised way. Even if there were discussions on such matters, they would have just taken place between JHEOA/JAKOA and the village leaders. We would just keep quiet because we did not know the manner in which we could protest. We were also made to be accustomed to always obey the directives of our village leaders.

However in the past, our elders would always remind us that our land is our rights. When an elder back then said that “this is your ancestral land”, this would mean that the land belongs to our family. We must seek to protect it faithfully. Still, we could not have taken all such protest actions previously, since we were unclear on where we could go to lodge our complaints.

Up to this very day, we still continue to exercise ownership over our customary territory based upon our customary laws and to the best of our ability, would take actions to control the land.

It was only after SUHAKAM conducted its national inquiry process in 2010 that we began to mobilise in a more organised fashion. A friend of ours, who is an Orang Asli himself who used to work with JAKOA, informed us about the national inquiry process. We then attended the reporting session in Ipoh. Subsequently, we began to form a closer network with a few non-governmental organisations. As a result, today our spirit to fight on has become stronger. We have also gained a higher sense of self-confidence to speak up on matters which affect the protection of our rights.

Although we had long felt opposed to logging operations which encroached upon our customary territory, we only dared to lodge our protest in a more formal and organised way somewhere around 2007.

Panjang Din has always been active in meeting up with the officers from agencies such as JAKOA and the Forestry Department for the purpose of managing the various village affairs. However in the process of doing so, he also began to witness logging encroachment repeatedly occurring in other villages and how the villagers would be cheated and deceived by the encroaching companies.

Upon this observation over how badly the Orang Asli communities had been taken for a ride, he began to feel extremely regretful about such things. Thereafter, he began to raise the awareness of the people so that they would not be continuously deceived by others.

This report is about an encroachment which took place in 2007. This particular logging contractor was always active working in the Gerik district.

The Sungai Air Bah villagers began to be aware that something was happening when the Sungai Air Bah turned muddy. We then went to the upstream area to check on the source of this pollution. It was then that we discovered that a logging operation had already commenced in the area without first obtaining our consent. Subsequently, we tried to look for the company workers. Upon meeting them, we told the company that the Kampung Air Bah villagers were opposed to their operation.

Right after this meeting, Panjang went to meet with the forest ranger in Lawin to inform him about the problem. However the ranger told Panjang that the area concerned falls within the boundaries of the Lenggong sub-district. He then helped us by calling his office in Lenggong to request for a dialogue to be organised with the villagers.

On the same evening, the villagers organised a community meeting to discuss the matter. On the agreed upon date, we then went to the Forestry Department in Lenggong to attend the meeting with them.

Representatives from the logging company were also present in the meeting. The villagers also brought with them a bottle of the muddy water from the river to show them what had happened to it. The villagers stressed that if the company continued their logging operation, we would bring the water sample to the Chief Minister's Office.

At last, the logging company offered us a compensation of RM25,000. This amount was to compensate for the destruction of our water sources. The people agreed to receive the money. They paid us in cash.

Before we went home, we demanded that the operation be halted. The company said that they could stop, but they still would like the remaining logs currently placed at the logpond and some timber that had yet to be felled in the concerned forest.

However, we refused to allow them to enter our village again. We stressed that they could no longer encroach upon our customary territory. If they failed to heed this, the people would take the appropriate action. The people were really worried that land slides would happen during the monsoon season if the operations were to be continued.

At last, they halted their operation in our area. However, they continued to work in other neighbouring Orang Asli villages. After they left our village, they went upstream of the Sungai Air Bah. Thus, their operation was still affecting our water source. They then moved downstream, and during this time, the impacts affected us less.

At present, we have been informed by the villagers of Kampung Lawin that there is possibility of a new logging company entering the Kampung Air Bah. They let us know after witnessing some boundary demarcation activities moving towards our area. We will certainly protest against this operation if it is really going to take place. To date, we have yet to receive any further information on the matter.

## CONSENT OR OPPOSITION

### **2. For each company or sequence of encroachment event:**

**(i) Describe whether the villagers have given their consent or remained opposed to the logging or plantation operations.**

For our villages, the majority of us are opposed to the operation.

**(ii) Did any of the companies attempt to take the advantage of the consent given by any of the villagers to continue with their operations?**

Yes.

**(iii) Please explain how it was possible for this to take place without the approval of the entire village.**

Perhaps it was because the companies only dealt with our leaders. This was done behind our back.

**PRE-ENCROACHMENT:  
PRIOR INFORMATION, CONSENT, TRANSPARENCY**

**3. For each company or sequence of encroachment event:**

**(i) Were the affected villagers given prior information on the issuance of the logging or plantation licences before the commencement of any operations?**

The issuance of the licence did not comply with the free, prior and informed consent (FPIC) process because our consent was not obtained prior to its issuance.

We only found out about the logging operation after the Sungai Air Bah became muddy.

**(ii) If yes, how was the information dissemination process conducted? (Through village chiefs, community meetings etc.)?**

Please see the explanation in (i) above.

**(iii) What was the content of the information given? Was it comprehensive and transparent? Did they fail to transparently respond to any questions raised by the villagers?**

Please see the explanation in (i) above.

**(iv) Did the villagers obtain important information such as licence registration numbers, maps of the licensed areas and other details?**

Not applicable.

**(v) Was the consent and agreement of the villagers obtained at this point?**

No. We were never consulted prior to the issuance of the logging licence. No party had ever come to the village to disseminate such information to the villagers prior to the issuance of the licence. We only found out about the operation after the Sungai Air Bah became muddy.



**POST-ENCROACHMENT:  
VERBAL PROTEST ON LOCATION**

**4. For each company or sequence of encroachment event:**

**(i) Did the villagers meet with the company representatives at the encroachment site or their accommodation facility to voice their protest? If yes, please describe these encounters further.**

We did interact with the logging company at the location where they were working to voice our protest. We went to meet them there after the river became muddy.

**(ii) Did the villagers meet with the authorities to voice their protest? If yes, please describe these encounters further.**

We went to see the forest ranger in Lawin. He subsequently helped to set up a meeting at the Forestry Department office in Lenggong.

**POST-ENCROACHMENT  
OFFICIAL CONSULTATION WITH COMPANIES  
AND/OR AUTHORITIES**

**5. For each company or sequence of encroachment event:**

**(i) Following your protest, did the company or authorities invite the villagers to participate in an official consultation process? If yes, how many times did such meetings take place? Please describe them further.**

We were invited for a dialogue at the Lenggong office of the Forestry Department after lodging our complaint with the forest ranger in Lawin. The company representatives were also present at the meeting.

**(ii) Were the authorities also present in these meetings?**

Yes.

**(iii) What was the outcome of such meetings? Did they manage to put an end to the encroachments?**

Yes. It did put a stop to the encroachment.

## COMPENSATION AND DAMAGES

**6. For each company or sequence of encroachment event:**

**(i) Has compensation ever been promised and actually delivered to any of the villagers or village committee members or entire families? What was the form, amount and rates of the compensation received?**

We received RM25,000 as compensation for the pollution of our river.

**(ii) In your view, was this compensation adequate?**

No. After the cash had been divided amongst all the families, each family ended up receiving only a few hundred ringgit.

## PROTEST CORRESPONDENCE AND DOCUMENTS

**7. For each company or sequence of encroachment event:**

**(i) Did the villagers write any letters or other documents to any of the companies and/or the authorities to express their written protest?**

No.

**(ii) Please describe the responses received from the companies and authorities, if any.**

Not applicable.

## POLICE

**8. For each company or sequence of encroachment event:**

**(i) Did the villagers lodge any police reports to express their protest or to complain on any matter related to the encroachments, including concerns on their safety and that of their family members?**

No.

**(ii) Have any villagers ever been detained by the police as a result of their protest actions or related activities? Were they eventually charged?**

No.

### **PRESSURE, INTIMIDATION, THREATS, HARASSMENT**

**9. For each company or sequence of encroachment event:**

**(i) Did any of the villagers ever receive any pressure, intimidation, threat or harassment from any party, in relation to the protests against the encroachment on your customary territory?**

No.

**(ii) Did the villagers take any action after experiencing such pressure, intimidation, threat or harassment?**

Not applicable.

**(iii) Please describe the effects of the experience on the person receiving this pressure, intimidation, threat or harassment.**

Not applicable.

### **EVALUATION ON THE APPROACH OF THE COMPANY REPRESENTATIVES**

**10. For each company or sequence of encroachment event:**

**(i) In your view, did the companies respond in a polite and respectful manner when confronted by the complaints and protests from the villagers?**

They were polite, nothing unusual.

**(ii) Has any company ever broken any of their promises to the villagers? If yes, please describe these incidents further.**

Not applicable.

**(iii) Have you ever had the suspicion that any of the companies was acting dishonestly towards the villagers on any matter? If yes, please describe these incidents further.**

Not applicable.

## **EVALUATION ON THE APPROACH OF THE POLICE, THE DEPARTMENT OF ORANG ASLI DEVELOPMENT (JAKOA) AND OTHER GOVERNMENT AGENCIES**

**11. Please describe the general views of the villagers with regards to the manner in which the authorities respond to your protests and complaints.**

**(i) Are the villagers satisfied with their responses and services?**

No. We received very limited assistance from the government, such as some small support to settle the costs of our children's schooling.

**((ii) Did the authorities show any bias in favour of the companies?**

Yes. They did show a bias in favour of the companies, instead of the villagers.

**(iii) Has any authority taken any actions which to your view was excessive?**

No.

**(iv) In your view, have the authorities been transparent in their dissemination of information to the villagers?**

No.

## **STATUS OF THE INDIGENOUS CUSTOMARY LAND RIGHTS FROM THE PERSPECTIVE OF THE COMPANIES AND AUTHORITIES**

**12. For each company or sequence of encroachment event:**

**(i) Please describe the views of the companies and authorities on the status of the villagers' customary land rights. Did they recognise the existence of your rights?**

The authorities frequently state that our land belongs to the state government and that it is part of the permanent reserved forest. We do not agree with such a view.

**(ii) If the villagers are said to possess no such land rights, to which extent then do the authorities accept the existence of your rights, since your housing areas are also located in the same vicinity?**

We are still unclear on the manner in which the authorities interpret the extent of the boundaries of our customary territory. We however are always clear on our rights, which are based upon our own customary laws. Today, we continue to cultivate on our existing farms, carry out various traditional activities in the forested areas and practise our community's spiritual customs, all within our customary territory. In short, we continue to control and manage our customary territory as how it has always been since time immemorial.

**(iii) Did any of the companies or state authorities make any legal references to support their view that the villagers do not possess any rights to the encroached land (state land, permanent reserved forest etc.)?**

We are only frequently told that our customary land is the property of the state.

### ENCROACHMENT IMPACTS

**13. On the whole, please describe the adverse impacts of the encroachments on the villagers and your surrounding environment:**

	Type of destruction	Further information
1.	Environment: Forest destruction, river pollution	<p>Forest destruction and river pollution of course occur.</p> <p>The drinking water today is sourced from the river that has been impacted by logging. Sungai Air Bah is our only source for drinking water. During the rainy season, the river would turn muddy.</p> <p>We are being surrounded by plantation projects such as those developed by FELDA and the Perbadanan Kemajuan Negeri Perak (PKNP). We therefore do not have other options to find an alternative source of drinking water.</p> <p>Land slides have also taken place in the upstream of Sungai Air Bah as a result of logging.</p>
2.	Environment: Destruction of wildlife and riverine resources	Wildlife and fish population has decreased sharply.

		<p>In the past, it was very easy to find the <i>tengas</i> fish. However, after logging, many fishing sites were destroyed. The <i>tengas</i> is the favourite fish of our community.</p> <p>Wild boar are still abundant. However the population of other wildlife such as the mouse deer and muntjac has declined sharply.</p>
3.	Environment: Destruction of sources of food, medicines and items used in cultural and spiritual ceremonies	<p>In the past, apart from hill rice and tubers, we were also dependent on freshwater fish, domestically bred chickens and hunted wildlife for our sources of protein. There were also abundant vegetable shoots in the forest.</p> <p>Today, the sources of food from forest and river resources have indeed declined sharply. We tend to purchase more foodstuff.</p>
4.	Loss of income	<p>Our sources of income have been badly affected.</p> <p>Today, most of our income is derived from rubber tapping. There are also villagers who are employed as labourers in plantations and farms owned by other parties.</p> <p>Sometimes we would still try to look for forest produce. However, resources such as the agarwood, rattan, <i>kerdas</i> fruit, <i>petai</i>, <i>kacip fatimah</i>, <i>tongkat ali</i> and various medicinal herbs have declined significantly.</p>
5.	Loss of property: Farms, crops, farm huts, burial grounds etc.	Our burial ground were affected in past operations.
6.	Social: Health, security and welfare etc.	In the past, during the times when logging was in operation in the vicinity and the river became polluted, many of the villagers would often suffer from diarrhea. The river sometimes would be polluted by oily substance.

		<p>A few years back, there was an incident of a kindergarten-going child who suffered from diarrhea as a result of the polluted water. The child later died.</p> <p>Incidence of dengue and malaria tend to increase when logging was in operation. We would also suffer from eye and skin infections.</p>
7.	Road damage	Road damage does occur.



## **SECTION D: CUSTOMARY TERRITORY AND PERMANENT RESERVED FOREST**

**Have any parts of your customary territory been gazetted as the permanent reserved forest under the National Forestry Act 1984?**

Gunung Inas Permanent Reserved Forest.

**(i) If yes, please state the year the gazetting was undertaken. Do the villagers possess any documents on the gazetting process?**

We have no knowledge on the year the gazetting took place and do not possess any documents on it.

**(ii) If yes, please describe how the gazetting of the permanent reserved forest has adversely affected your rights?**

We have never been informed about this matter. We are still firm in continuing with the exercise of our rights and other activities within our customary territory. All this while, we had thought that the permanent reserved forest is to be permanently conserved, and not to be logged. It was only after learning from non-governmental organisations that we have a better understanding on the matter.

**(iii) If yes, did the authorities conduct any consultation with the villagers to obtain their consent on the gazetting process? Please state any important information on how the consultations were conducted.**

No.

**(iv) If no consultations had ever been conducted, how did the people become aware of the existence of the permanent reserved forest?**

Only through the signboards.



## 11. Kampung Bukit Tokong, Lawin, Gerik, Perak

### SECTION A: BASIC INFORMATION ON AFFECTED VILLAGES

<b>District and State</b>	Gerik, Perak
<b>Affected villages and ethnicity</b>	Kampung Bukit Tokong Sungai Ulu Lawin Selatan Kenering.  The population of the village is estimated to be around 100.  Lanuh, Temiar and Jahai
<b>Respondents</b>	Fauzi bin Bani 1983
<b>Other information</b>	
<p>The customary territory is inherited by the villagers from pioneering ancestors.</p> <p>In the 1980s, the villagers were relocated by the government to RPS Dala due the presence of communist guerillas in the surrounding forested areas. However the people later moved back to their original territory.</p> <p>The village used to be known as Kampung Gasek. <i>Gasek</i> is the material harvested from the <i>gabuk</i> tree, used as the substance to absorb the poison used in the darts of blowpipes. It gradually became known as Kampung Bukit Tokong because when the earliest loggers in the area who were ethnic Chinese men began to enter the area, they used to light up incense and offer their prayers at the nearby Tengkoh Hill and Gasek waterfall. Therefore the hill and our village began to be known as Kampung Bukit Tokong. <i>Tokong</i> is the Malay word for a Chinese shrine.</p>	

## **SECTION B: VERIFICATION ON THE EXISTENCE OF CUSTOMARY LAND RIGHTS**

The villagers verified that they are able to demonstrate the existence of their customary land rights through the following body of evidence.

<b>A.</b>	<b>Can the villagers provide oral evidence on the history of their customary territory?</b>	
1.	History on the origins of the customary territory and ancestry	x
2.	Site-specific history, folklores, legends	x
<b>B.</b>	<b>Do the villagers still practise the traditional customs and culture of their community?</b>	
1.	Land clearing, agriculture	x
2.	Marriages	x
3.	Deaths, funerals	x
4.	Communal laws, code of conduct and ethics	x
5.	Possession of old items and heirlooms: traditional costumes, gongs, baskets, beads, personal ornaments, decorative objects, kitchen utensils, knives, machetes, weapons, household items etc.	x
<b>C.</b>	<b>Can the villagers provide evidence on their use of the land and its natural resources within the customary territory?</b>	
1.	Tree felling or tree harvesting marks	x
2.	Hunting and fishing sites, saltlicks	x
3.	Burial grounds and sacred sites	x
4.	Trails and pathways within forested or cultivation areas	x
<b>D.</b>	<b>Does the government acknowledge the existence of the villages?</b>	
1.	Government built facilities	x
2.	Visits by ministries or governmental departments and agencies	x

## **SECTION C: LAND ENCROACHMENT REPORT**

### **BACKGROUND**

**1. How many logging or plantation companies have encroached upon your customary territory in the last five to ten years?**

#### **Logging**

The earliest logging operations began right from the time the RPS Dala was established, as early as the mid-1970s. In the ensuing years, such operations would continually encroach on our territory, even after I (Fauzi Bani) was born. All these were done without first obtaining consent of the villagers.

In the past, the villagers did not know the manner in which we could officially express our protest against the logging encroachments. Back then, we used to be less aware of our basic rights as citizens, which permit us to protest in defence of our customary territory. In fact, we were often told that we had no property ownership rights to the land by various government agencies. This was known by all. We certainly do not share the authorities' view on this. Up to this very day, we still continue to exercise ownership over our customary territory based upon our customary laws and to the best of our ability, would take actions to control the land.

Back then, we did not frequently meet with non-governmental organisations such as JKOASM, Jaringan Orang Asli Se-Malaysia (JOAS) and the Pertubuhan Pelindung Khazanah Alam Malaysia (PEKA). We first heard stories from our Orang Asli friends from Gerik who were telling us about an Orang Asli organisation, JKOASM, which campaigns for our customary land rights, may be somewhere around 2009. Then we began to participate in the annual Orang Asli Land Conference organised by JKOASM in Kuala Lumpur as well as other related events too.

Around 2011, there was a logging company which intended to enter our customary territory. We became aware of this fact when the Forestry Department staff began to conduct their land surveying activities around the village without first obtaining consent from us. When the villagers discovered about the matter, we quickly went to see the surveyors to voice our protest against their activities. However they clarified to us that they were only carrying out tree inventory activities as part of the boundary management works between the FELDA scheme and the permanent reserved forest. We thus just went home after being told as such.

Not long after this, representatives from the Forestry Department and a group of individuals who were from the nearby Orang Asli communities began to enter our village. They had with them various tools such as global positioning system devices, red ribbons and paint to demarcate the area. They then proceeded to carry out boundary demarcation activities without first obtaining our permission.

Following this, the Forestry Department came again for the third time. They were also accompanied by another group of Orang Asli individuals from the nearby villages. This time around, they carried out tree tagging activities, by using cards and plates. This was also carried out without our permission.

When we saw the works that they were carrying out, we became even more convinced that the area would soon be logged.

Shortly after, we encountered four persons from a Malay village in southern Lawin who were marking the logging road with stringed ribbons. Then, heavy machinery was brought in to level the road. Finally, after having witnessed all these activities, we went to see the workers involved in the road leveling activities and told them to leave our village. They did comply and left.

Later on, we quickly erected a signboard which displayed the prohibition against outsiders from entering our area. Thus in the next two years, no works were undertaken in our village.

Nevertheless, in 2013, we were informed that a logging company was indeed going to enter our village to commence their operation. Staff from the Forestry Department arrived once again to continue with their tree tagging activities, without our permission. The road was also leveled once again. It seemed to us that these works involved additional areas. At last, we were informed by a Forestry Department staff that the impending logging operation would be divided into three areas. We then expressed our protest against the operation to him. However this discussion ended without any positive outcome.

Following this, the villagers invited representatives from the Forestry Department and the company to participate in a discussion with us in the village. During this meeting, the company claimed that they were willing to pay compensation to all the villagers, amounting to some RM300,000. In addition, they also offered to construct new houses for us. However we rejected all such offers from them, including the cash payment. We also firmly voice our protest against the operation. They at last went home without obtaining our consent.

The last time we met with the company representatives was in the presence of the Forestry Department staff and accompanied by a police officer. The Forestry

Department representatives told us that they were merely workers of a government agency. They were not the decision makers, as all such decision making was made by the state government.

In these meetings, we would often be requested to come to the office of the Forestry Department to continue having further discussion on the matter. Even the company would request for us to meet them outside of the village. We rejected all such requests and told them, if they wished to discuss with us, they were the ones who should be coming to the village.

We take such a position because all logging operations concerned in the end, would take place in the village itself and not elsewhere. As such, we did not want to conduct any discussion outside of the village, in other places. The location of free, prior and informed consent must take place at site of the concerned operations and not anywhere else.

Unfortunately however in 2014, the company still entered our village to log our forest, without first obtaining consent from us. It was very difficult for us to carry out a more organised protest during this time. We did not have all the necessary equipment such as computers and cameras.

On December 4, 2014, a group of us led by Agat Goh met with the Kenering Subdistrict Chief (*Penghulu Mukim*) of Lawin, to express our protest against the logging operation. Subsequently his office wrote a letter to the District Officer of Hulu Perak to inform the latter on our protest. Among others, the letter stated the following:

The Orang Asli community of Kampung Bukit Tokong are protesting against any logging activities in their village area and its surroundings, and stated that the land in concern is their ancestral village and an orang asli customary territory.

They are also concerned that if the activities are continued, the Sungai Lawin would of course be polluted and this would create problems to the villagers who are entirely dependent on the river for their source of water.

...stated that such pollution will not only affect the gravity-fed water supply of the Southern Lawin Felda community, but it will also affect the recreational area of Ulu Lawin waterfall which is being maintained and was developed by the Kampung Lawin Village Committee.

The logging operations only halted for a while after this. Shortly after, it was continued again.



Around August 2015, we began to suspect that another logging operation would commence in our area. At first, we could not take any actions due to the lack of information on the matter. Although we were yet to be certain even about the name of the company, they had already begun boundary demarcation activities. The investigation that the villagers managed to carry out, yielded very little information. According to a group of villagers, this licence area may extend to even Kampung Air Bah.

In September, the villagers finally organised a community meeting to discuss on the manner in which our protest against the proposed operation could be made. During this discussion, we voiced our concern over the possibility of soil erosion and river pollution that would occur as a result of the operation. The area in question was located in an upstream area. The water is also being used by the Malay villages and the Southern Lawin FELDA community.

We were also worried about the possible destruction of forest produce which has been our source of income, such as rattan, *tongkat ali*, *kacip fatimah*, *petai*, the *kenwak* fruit and other wild fruits. In fact, we were also worried about the loss of the natural resources used in our *sewang* ceremonies.

The villagers were also still traumatised by the great flood of December 2014, which devastated Lawin. This tragedy was still fresh in the villagers' minds. The flood had caused homes to be swept away, the destruction of numerous properties, the collapse of a bridge and most importantly, adverse impacts on our sources of income.

In the end, around October, some villagers who were harvesting forest produce finally saw the signboard for the operation. It would take place for six months in compartment 66 of the Bintang Hijau Permanent Reserved Forest.

We then contacted the non-governmental organisations SAM and PEKA, and began to mobilise for an organised protest against the entry of the operation. In addition, the protest was also joined by the villagers of the surrounding Malay villages and the Southern Lawin FELDA.

During this period, representatives from the logging company came to the village to hold three discussions with us in order to obtain our consent to log. However we still refused to give them the permission to log.

In November 2015, the villagers along with the representatives of the Malay villages in Lawin began a joint effort to write a memorandum to the Perak chief minister. Among others, the memorandum highlighted their concerns on the adverse impacts of such an operation:

- 1) Impacts on the source of clean drinking water for the villagers
- 2) Impacts on recreational and picnic areas of the Ulu Lawin waterfall
- 3) Impacts on the Bintang Hijau Permanent Reserved Forest, which is the main access route to Mount Inas
- 4) Concerns on flooding
- 5) Destruction of flora and fauna
- 6) Concerns on soil erosion
- 7) Impacts on the livelihood and economic activities of the Orang Asli community

On December 20, 2015, we along with other Malay villages and the FELDA community in Lawin, as well as SAM and PEKA, organised a press conference to state our protest against the operation. The press conference received coverage from the national media.

Up to May 2016, no encroachment has taken place.

## **CONSENT OR OPPOSITION**

### **2. For each company or sequence of encroachment event:**

**(i) Describe whether the villagers have given their consent or remained opposed to the logging or plantation operations.**

For our villages, the majority of us are opposed to the operations.

**(ii) Did any of the companies attempt to take the advantage of the consent given by any of the villagers to continue with their operations?**

No.

**(iii) Please explain how it was possible for this to take place without the approval of the entire village.**

Not applicable.

## **PRE-ENCROACHMENT: PRIOR INFORMATION, CONSENT, TRANSPARENCY**

### **3. For each company or sequence of encroachment event:**

**(i) Were the affected villagers given prior information on the issuance of the logging or plantation licences before the commencement of any operations?**

The issuance of all such licences did not comply with the free, prior and informed consent (FPIC) process because our consent was not obtained prior to the issuance of the licences.

We only discovered about their impending operations after their workers had already arrived at the said location to carry out their pre-felling preparations without first obtaining our consent. For the first company, even if there were discussions which took place later, they were still adamant in commencing their operations.

**(ii) If yes, how was the information dissemination process conducted? (Through village chiefs, community meetings etc.)?**

Please see the explanation in (i) above.

**(iii) What was the content of the information given? Was it comprehensive and transparent? Did they fail to transparently respond to any questions raised by the villagers?**

Please see the explanation in (i) above.

**(iv) Did the villagers obtain important information such as licence registration numbers, maps of the licensed areas and other details?**

We could only obtain limited information from the signboards erected by the respective operations.

**(v) Was the consent and agreement of the villagers obtained at this point?**

No. We were never consulted prior to the issuance of such logging licences. No party had ever come to the village to disseminate such information to the villagers prior to the issuance of these licences. We would only find out about them after seeing outsiders entering and walking about in the village.

**POST-ENCROACHMENT:  
VERBAL PROTEST ON LOCATION**

**4. For each company or sequence of encroachment event:**

**(i) Did the villagers meet with the company representatives at the encroachment site or their accommodation facility to voice their protest? If yes, please describe these encounters further**

We did interact with the first logging company at the location where they were working to voice our protest. They also came to the village to have several discussions with us.

For the first company, none of these discussions produced any positive outcome.

For the second company, our more organised protest jointly undertaken with the nearby Malay villages and FELDA community, and with the support of SAM and PEKA, has thus far managed to prevent the operation from commencing, although boundary demarcation activities had already taken place.

**(ii) Did the villagers meet with the authorities to voice their protest? If yes, please describe these encounters further.**

For the first company, we did have meetings with the Forestry Department. However, they ended up expressing their inability to help us. They argued that the actual decision maker is the state government and not the Department.

## **POST-ENCROACHMENT OFFICIAL CONSULTATION WITH COMPANIES AND/OR AUTHORITIES**

**5. For each company or sequence of encroachment event:**

**(i) Following your protest, did the company or authorities invite the villagers to participate in an official consultation process? If yes, how many times did such meetings take place? Please describe them further.**

For the first company, we were often requested to visit the office of the Forestry Department to continue having further discussions on the matter. Even the company would request us to meet them outside of the village. We rejected all such requests and told them, if they wished to discuss with us, they were the ones who should be coming to the village. The location of free, prior and informed consent must take place at site of the concerned operations and not anywhere else.

**(ii) Were the authorities also present in these meetings?**

For the first company, the Forestry Department staff would also sometimes join in the meetings in the village.

**(iii) What was the outcome of such meetings? Did they manage to put an end to the encroachments?**

For the first case, no.

For the second case, please see 4(i).

## COMPENSATION AND DAMAGES

**6. For each company or sequence of encroachment event:**

**(i) Has compensation ever been promised and actually delivered to any of the villagers or village committee members or entire families? What was the form, amount and rates of the compensation received?**

The first company claimed that they were willing to pay us a sum of RM300,000 and help construct new homes for us. But we rejected all such offers.

**(ii) In your view, was this compensation adequate?**

No.

## PROTEST CORRESPONDENCE AND DOCUMENTS

**7. For each company or sequence of encroachment event:**

**(i) Did the villagers write any letters or other documents to any of the companies and/or the authorities to express their written protest?**

	Date	Sender	Recipient	Title
1.	November 2015	Southern Lawin FELDA and Lawin Orang Asli communities	Perak chief minister	Protest against the logging operation in the Bintang Hijau Permanent Reserved Forest

**(ii) Please describe the responses received from the companies and authorities, if any.**

None.

## **POLICE**

**8. For each company or sequence of encroachment event:**

**(i) Did the villagers lodge any police reports to express their protest or to complain on any matter related to the encroachments, including concerns on their safety and that of their family members?**

For the second company, we did lodge a police report on the matter. However we do not possess a copy of the report.

**(ii) Have any villagers ever been detained by the police as a result of their protest actions or related activities? Were they eventually charged?**

No.

## **PRESSURE, INTIMIDATION, THREATS, HARASSMENT**

**9. For each company or sequence of encroachment event:**

**(i) Did any of the villagers ever receive any pressure, intimidation, threat or harassment from any party, in relation to the protests against the encroachment on your customary territory?**

No.

**(ii) Did the villagers take any action after experiencing such pressure, intimidation, threat or harassment?**

Not applicable.

**(iii) Please describe the effects of the experience on the person receiving this pressure, intimidation, threat or harassment.**

Not applicable.

## EVALUATION ON THE APPROACH OF THE COMPANY REPRESENTATIVES

**10. For each company or sequence of encroachment event:**

**(i) In your view, did the companies respond in a polite and respectful manner when confronted by the complaints and protests from the villagers?**

They were polite, nothing unusual.

**(ii) Has any company ever broken any of their promises to the villagers? If yes, please describe these incidents further.**

Not applicable.

**(iii) Have you ever had the suspicion that any of the companies was acting dishonestly towards the villagers on any matter? If yes, please describe these incidents further.**

Not applicable.

## EVALUATION ON THE APPROACH OF THE POLICE, THE DEPARTMENT OF ORANG ASLI DEVELOPMENT (JAKOA) AND OTHER GOVERNMENT AGENCIES

**11. Please describe the general views of the villagers with regards to the manner in which the authorities respond to your protests and complaints.**

**(i) Are the villagers satisfied with their responses and services?**

They are quite normal.

**(ii) Did the authorities show any bias in favour of the companies?**

Yes. They did show a bias in favour of the companies, instead of the villagers.

**(iii) Has any authority taken any actions which to your view was excessive?**

No.

**(iv) In your view, have the authorities been transparent in their dissemination of information to the villagers?**



No.

## **STATUS OF THE INDIGENOUS CUSTOMARY LAND RIGHTS FROM THE PERSPECTIVE OF THE COMPANIES AND AUTHORITIES**

### **12. For each company or sequence of encroachment event:**

**(i) Please describe the views of the companies and authorities on the status of the villagers' customary land rights. Did they recognise the existence of your rights?**

The authorities frequently state that our customary territory belongs to the state government. We do not agree with such a view.

**(ii) If the villagers are said to possess no such land rights, to which extent then do the authorities accept the existence of your rights, since your housing areas are also located in the same vicinity?**

We are still unclear on the manner in which the authorities interpret the extent of the boundaries of our customary territory. We however are always clear on our rights, which are based upon our own customary laws. Today, we continue to cultivate on our existing farms, carry out various traditional activities in the forested areas and practise our community's spiritual customs, all within our customary territory. In short, we continue to control and manage our customary territory as how it has always been since time immemorial.

**(iii) Did any of the companies or state authorities make any legal references to support their view that the villagers do not possess any rights to the encroached land (state land, permanent reserved forest etc.)?**

We have never heard any representatives from any government agencies mention any provisions of the law.

## **ENCROACHMENT IMPACTS**

**13. On the whole, please describe the adverse impacts of the encroachments on the villagers and your surrounding environment:**

	Type of destruction	Further information
1.	Environment: Forest destruction, river pollution	<p>Forest destruction and river pollution of course occurred.</p> <p>Our source for drinking water is the Sungai Lawin. Currently, the condition is quite good. However, when logging used to be in operation, the water would turn yellow, like milk tea.</p>
2.	Environment: Destruction of wildlife and riverine resources	<p>Wildlife and fish population has decreased sharply.</p> <p>In the past, it was very easy to find fish. However, many fishing sites have already been destroyed by the logging operation.</p> <p>The population of wildlife such as the mouse deer and muntjac has declined significantly.</p>
3.	Environment: Destruction of sources of food, medicines and items used in cultural and spiritual ceremonies	<p>In the past, apart from hill rice and tubers, we were also dependent on freshwater fish, domestically bred chickens and hunted wildlife for our sources of protein. There were also abundant vegetable shoots in the forest.</p> <p>Today, the sources of food from forest and river resources have indeed declined sharply. We tend to purchase more foodstuff, including rice.</p>
4.	Loss of income	<p>Our sources of income have been badly affected.</p> <p>Today, most of our income is still derived from the gathering and sale of forest produce such as agarwood, rattan, <i>kacip fatimah</i>, <i>tongkat ali</i> and various medicinal herbs as well as the capture and sale of small animals like frogs. However, these resources have declined significantly.</p>
5.	Loss of property: Farms, crops, farm huts, burial grounds etc.	<p>Sacred sites and graves have been destroyed by the logging operation.</p>

6.	Social: Health, security and welfare etc.	<p>Scabies, coughing and stomachaches.</p> <p>During the time the logging operation took place, there were incidents of diarrhea and vomiting suffered by the villagers, as a result of drinking water that had been polluted with some oily substance.</p>
7.	Road damage	Road damage does occur.

## **SECTION D: CUSTOMARY TERRITORY AND PERMANENT RESERVED FOREST**

Have any parts of your customary territory been gazetted as the permanent reserved forest under the National Forestry Act 1984?

Bintang Hijau Permanent Reserved Forest.

**(i) If yes, please state the year the gazetting was undertaken. Do the villagers possess any documents on the gazetting process?**

We have no knowledge on the year the gazetting took place and do not possess any documents on it.

**(ii) If yes, please describe how the gazetting of the permanent reserved forest has adversely affected your rights?**

We have never been informed about this matter. We are still firm in continuing with the exercise of our rights and other activities within our customary territory. All this while, we had thought that the permanent reserved forest is to be permanently conserved, and not to be logged. It was only after learning from non-governmental organisations that we have a better understanding on the matter.

**(iii) If yes, did the authorities conduct any consultation with the villagers to obtain their consent on the gazetting process? Please state any important information on how the consultations were conducted.**

No.

**(iv) If no consultations had ever been conducted, how did the people become aware of the existence of the permanent reserved forest?**

Only through the signboards.

## 12. RPS Kemar and RPS Banun, Gerik, Perak

### **SECTION A: BASIC INFORMATION ON AFFECTED VILLAGES**

<b>District and State</b>	Gerik, Perak
<b>Affected villages and ethnicity</b>	<p>RPS Kemar</p> <p>RPS Kemar consists of 15 villages. The respondent represents villages 1-6, with a population of around 500.</p> <ol style="list-style-type: none"> <li>1. Kampung Katong</li> <li>2. Kampung Lerlar</li> <li>3. Kampung Rantau</li> <li>4. Kampung Senangit</li> <li>5. Kampung Shah</li> <li>6. Kampung Ralak</li> <li>7. Kampung Liedau</li> <li>8. Kampung Jarau Lama</li> <li>9. Kampung Jarau Baru</li> <li>10. Kampung Akei</li> <li>11. Kampung Badag</li> <li>12. Kampung Chuwau</li> <li>13. Kampung Bal</li> <li>14. Kampung Banun</li> <li>15. Kampung Penderas</li> </ol> <p>Temiar</p>
	<p>RPS Banun</p> <p>RPS Banun consists of 19 villages. The respondent represents villages 1-9, with a population of around 500.</p> <ol style="list-style-type: none"> <li>1. Kampung Sungai Tekam</li> <li>2. Kampung Pulau Tujuh</li> <li>3. Kampung Semelor</li> <li>4. Kampung Chadak</li> <li>5. Kampung Desa Ria</li> <li>6. Kampung Chuweh</li> </ol>

	<p>7. Kampung Charok Bus  8. Kampung Selaor  9. Kampung Sungai Klab  10. Kampung Pengkalan Permai  11. Kampung Kabel  12. Kampung Banun  13. Kampung Tebang Lama  14. Kampung Tebang Baru  15. Kampung Sungai Chiong  16. Kampung Sungai Kejar  17. Kampung Sungai Tiang  18. Kampung Raba  19. Kampung Desa Damai</p> <p>Jahai and Temiar.</p>
<b>Respondents</b>	<p>Mohd. Affendi Along  Kampung Katong  RPS Kemar  1976</p> <p>Tami Serdang  Kampung Sungai Tekam  RPS Banun  1985</p>
<b>Other information</b>	
<p>The report for RPS Kemar and RPS Banun is combined because they are often encroached on by the same companies at the same time.</p> <p>The customary territory is inherited by the villagers from pioneering ancestors.</p> <p>Before the establishment of both RPS in the 1970s due to the presence of communist guerillas in the surrounding forested areas, the housing sites of the communities used to be further away from each other. There were numerous of them, some of which are still around. Although the housing sites have been relocated, the people still maintain rights to their farms and forests surrounding the old settlements.</p> <p>RPS Kemar used to be a British military post, known as Fort Kemar. <i>Kemar</i> in the Temiar Language means the river with three forks. Its tributary comprises the <i>Ong Temengok</i>, <i>Ong Kemar</i> and <i>Ong Penras</i>. <i>Ong</i> means water or river in the language.</p>	

For the villages of RPS Banun, the ancestral home of its Jahai community is around Sungai Belum and Sungai Kejar. The ancestral home of its Temiar community is around Sungai Sengak and Sungai Gambir, and parts of Pulau Tujuh.

During the communist insurgency, many of these housing sites relocated to Kampung Cermin, before being moved again to Sungai Rekam, Sungai Telan, Pulau Kuda and Pulau Budui. Some members of the community had also moved further to Kampung Bobong.

Like RPS Kemar, RPS Banun villages also had a long history of contact with the British, especially when they had their homes in Pulau Budui. Some of the youngsters used to be part of the *Senoï Praaq* (unit of the Royal Malaysian Police made up almost entirely by members of the Orang Asli) and were trained to be medical assistants by the British.

The communities and territories of the RPS Kemar and RPS Banun have always been closely related due to their adjacent locations in what is now the Temenggor and Banding Permanent Reserved Forests.

Temenggor in fact came from the word *Temengok*, which is a type of fruit in the Temiar Language.



## **SECTION B: VERIFICATION ON THE EXISTENCE OF CUSTOMARY LAND RIGHTS**

The villagers verified that they are able to demonstrate the existence of their customary land rights through the following body of evidence.

<b>A.</b>	<b>Can the villagers provide oral evidence on the history of their customary territory?</b>	
1.	History on the origins of the customary territory and ancestry	x
2.	Site-specific history, folklores, legends	x
<b>B.</b>	<b>Do the villagers still practise the traditional customs and culture of their community?</b>	
1.	Land clearing, agriculture	x
2.	Marriages	x
3.	Deaths, funerals	x
4.	Communal laws, code of conduct and ethics	x
5.	Possession of old items and heirlooms: traditional costumes, gongs, baskets, beads, personal ornaments, decorative objects, kitchen utensils, knives, machetes, weapons, household items etc.	x
<b>C.</b>	<b>Can the villagers provide evidence on their use of the land and its natural resources within the customary territory?</b>	
1.	Tree felling or tree harvesting marks	x
2.	Hunting and fishing sites, saltlicks	x
3.	Burial grounds and sacred sites	x
4.	Trails and pathways within forested or cultivation areas	x
<b>D.</b>	<b>Does the government acknowledge the existence of the villages?</b>	
1.	Government built facilities	x
2.	Visits by ministries or governmental departments and agencies	x

## **SECTION C: LAND ENCROACHMENT REPORT**

### **BACKGROUND**

**1. How many logging or plantation companies have encroached upon your customary territory in the last five to ten years?**

#### **Logging**

The earliest logging operations began right from the time both RPS were established, as early as the mid-1970s. The operations have been encroaching on our territories continually, even until today. Although we disliked such encroachments, we were unable to voice our protest in a more formal and organised manner due to our circumstances.

In the past, the villagers did not know the manner in which we could officially express our protest against the logging encroachments. Back then, we used to be less aware of our basic rights as citizens, which permit us to protest in defence of our customary territory. In fact, we were often told that we had no property ownership rights to the land by various government agencies. This was known by all. We certainly do not share the authorities' view on this. Up to this very day, we still continue to exercise ownership over our customary territory based upon our customary laws and to the best of our ability, would take actions to control the land.

However since 2012, during the national inquiry investigation conducted by SUHAKAM, a few of us were asked by the Orang Asli community in Gua Musang to participate in the process. We received a lot of information from SUHAKAM which made us more conscious of our rights to openly protest against encroachments on our land.

The logging companies never provided us with any prior notification. When the villagers voiced our protest, the companies would often stress that we had no rights to the affected areas because they were either parts of the permanent reserved forest or state land forest. We of course do not agree with such a view as the forested areas belong to our customary territory.

The companies certainly do not respect our customary land rights because they never did organise any prior consultations with the villagers and applied the free, prior and informed consent process.

There were also companies which had promised to redevelop the logged over areas for the cultivation of rubber for us, but until today no such thing has ever happened.

In RPS Kemar, the villagers found at least three signboards for different logging licences operating between 2014 and 2015. They were all located in the Temenggong Permanent Reserved Forest.

The first signboard belonged to a company whose licence [PPN. PK. 16/2014B (HSK/HPK)] ran from January 16 to April 15, 2014, in an area of 24 hectares. It was located in compartment 9.

The second signboard belonged to a company whose licence [PPN. PK. 24/2014B (HSK/HPK)] ran from February 16, 2014 to May 15, 2014, in an area of 25 hectares. It was located in compartment 85.

The third signboard belonged to a company whose licence [AU-01-04-15] ran from January 1, 2015 to June 30, 2015, in an area of 80 hectares. It was located in compartment 141.

These three companies were using the same contractor.

In RPS Banun, the villagers also found at least three signboards for different logging licences, but their operations began as early as 2012 up to 2015.

The first signboard belonged to a company whose licence ran from July 1, 2012 to December 31, 2012, in an area of 136 hectares. It was located in compartments 55 and 87 of the Temenggong Permanent Reserved Forest. This company carried out its own operation without the use of an external contractor.

The second signboard belonged to a company whose licence [PPN. PK. 88/2013B (HSK/HPK)] ran from July 16, 2013 to January 15, 2014, in an area of 80 hectares. It was located in compartments 364 and 365 of the Banding Permanent Reserved Forest.

The third signboard belonged to a company whose licence ran from January 1, 2015 to June 30, 2015, in an area of 80 hectares. It was also located in compartment 364 of the Banding Permanent Reserved Forest.

The last two companies in RPS Banun each used a different contractor for their operations.

All these companies have never obtained the consent of the villagers of RPS Kemar or RPS Banun. We only managed to gather the information above from their signboards.

It also appeared that all these companies have always been using the same accommodation facility for their workers.

Around March or April 2014, we, the Orang Asli villagers in the district of Temenggor, Gerik, in northern Perak, including those from RPS Kemar and RPS Banun decided to organise a meeting to discuss on how to voice our protest against the encroachments in a stronger and clearer way. This intention arose amongst us because we were worried about the worsening situation caused by these logging encroachments. More than 100 villagers came over to Kampung Chuweh. This discussion took place in the village common hall.

As a result of this meeting, the villagers collectively agreed to take several actions.

The first action was to write a protest letter to the Perak State Forestry Department to state our position of rejecting logging activities in our customary territory.

The second action was to write another protest letter to other government agencies such as JAKOA as well as the state and federal lawmakers and the head of the Orang Asli zone.

The third action was to write a third protest letter to the logging companies themselves to request for a meeting with us.

This request letter was handed by hand to the logging companies at the said accommodation facility.

The letter had to be handed in this way because the villagers did not have any further information on these different companies. We did not have much understanding on the logging licence issuance process and did not know if these companies were related to one another. Therefore we decided to just go to the accommodation facility to hand in the invitation letter.

The representative there agreed to attend a meeting with us on April 9, 2014, at the common hall of Kampung Chiong in RPS Banun.

On the agreed upon date, around 100 villagers were present. The representatives from the Forestry Department and a company were also there. There were also a few policemen who came over.

During this meeting, we requested for logging to be halted in our customary territory. We reasoned that the forest destruction that was taking place had already affected our lives adversely, including our sources of income. However the company representative said this matter was under the jurisdiction of the state government. Meanwhile according to the Forestry Department, our customary territory was also the property of the state. We of course did not agree with such a view. For matters related to our customary territory, the Forestry Department representatives advised us that it was best for us to refer the matter to JAKOA. The meeting thus ended without any result or the agreement for the company to halt their operations in our territory. We were deeply dissatisfied with this outcome.

After this meeting, we sent another letter to the company at their accommodation facility again, to request for another meeting.

We also lodged a police report [GRIK/001242/14] through our representative, Judin Hitam, on the same day i.e. April 9, 2014, to report on the previous meeting and state the reasons for it having been organised, which was to protect our customary territory and livelihoods from the adverse impacts of logging.

After this meeting, the companies still continued their operations without our permission.

Because there was no response from the companies and their failure to fulfill our demand to halt their operations in our area, we organised a second community meeting to discuss over the matter. The result was another letter to invite them for this second meeting. This letter was again handed to them directly.

On September 25, 2014, more than 100 villagers came to participate in the second meeting at Kampung Chuweh. Two representatives from the company and two representatives from the Forestry Department arrived at the village to meet with us. Unfortunately however, we were really shocked when we saw one of them was actually carrying a gun with him. We felt very much threatened by this.

During this second meeting, we repeated the fact that we did not want further encroachment on our villages. We showed them the United Nations' Declaration on the Rights of Indigenous Peoples (UNDRIP) and other documents about our rights. As such, they could no longer say that we did not have rights to our territory. Then, not long after the meeting started, two policemen arrived. However they informed us that they were only carrying out their duty. In the end, the company representatives said that they had to leave.

The meeting again ended without any result. Once again we were disappointed with the outcome of this meeting.

We then lodged another police report [BERSIA/000583/14] to report on this meeting on the next day i.e. September 26, 2014 through the same representative, Judin Hitam. Among others, in the report we stated the following:

Upon their arrival, we became very shocked to see that one of them was actually holding a gun. We felt our lives would be threatened should we refuse to agree with their words. We do not understand why they had to carry a dangerous firearm to a discussion place that is full of people. This is dangerous for our villages. We are making this report so that the police will take the appropriate action on this matter.

Following the second meeting, nothing happened. We were only advised by the head of the Orang Asli zone that it was not appropriate for us to protest against logging and that we should instead obey the government.

## CONSENT OR OPPOSITION

### 2. For each company or sequence of encroachment event:

**(i) Describe whether the villagers have given their consent or remained opposed to the logging or plantation operations.**

For our villages, the majority of us are opposed to the operations.

**(ii) Did any of the companies attempt to take the advantage of the consent given by any of the villagers to continue with their operations?**

Yes.

**(iii) Please explain how it was possible for this to take place without the approval of the entire village.**

Perhaps this was possible due to the fact that the companies only communicated directly with our leaders.

## PRE-ENCROACHMENT: PRIOR INFORMATION, CONSENT, TRANSPARENCY

### 3. For each company or sequence of encroachment event:

**(i) Were the affected villagers given prior information on the issuance of the logging or plantation licences before the commencement of any operations?**

The issuance of all such licences did not comply with the free, prior and informed consent (FPIC) process because our consent was not obtained prior to the issuance of the licences.

**(ii) If yes, how was the information dissemination process conducted? (Through village chiefs, community meetings etc.)?**

Please see the explanation in (i) above.

**(iii) What was the content of the information given? Was it comprehensive and transparent? Did they fail to transparently respond to any questions raised by the villagers?**

Please see the explanation in (i) above.

**(iv) Did the villagers obtain important information such as licence registration numbers, maps of the licensed areas and other details?**

We could only obtain limited information from the signboards erected by the respective operations.

**(v) Was the consent and agreement of the villagers obtained at this point?**

No. We were never consulted prior to the issuance of such logging licences. No party had ever come to the village to disseminate such information to the villagers prior to the issuance of these licences. We would only find out about them after seeing outsiders entering and walking about in the village.

**POST-ENCROACHMENT:  
VERBAL PROTEST ON LOCATION**

**4. For each company or sequence of encroachment event:**

**(i) Did the villagers meet with the company representatives at the encroachment site or their accommodation facility to voice their protest? If yes, please describe these encounters further.**



We did interact with the logging company at the location where they were working to voice our protests. However, none of these discussions produced any positive outcome.

They also attended two meetings with us, which were participated by more than 100 of us at our village, after receiving our invitation.

**(ii) Did the villagers meet with the authorities to voice their protest? If yes, please describe these encounters further.**

No. However during these two meetings, there were representatives from the Forestry Department as well as the police who came to join us. However, we were not the ones who requested for the police to attend the meetings.

**POST-ENCROACHMENT  
OFFICIAL CONSULTATION WITH COMPANIES  
AND/OR AUTHORITIES**

**5. For each company or sequence of encroachment event:**

**(i) Following your protest, did the company or authorities invite the villagers to participate in an official consultation process? If yes, how many times did such meetings take place? Please describe them further.**

No.

**(ii) Were the authorities also present in these meetings?**

Not applicable.

**(iii) What was the outcome of such meetings? Did they manage to put an end to the encroachments?**

Not applicable.

**COMPENSATION AND DAMAGES**

**6. For each company or sequence of encroachment event:**

**(i) Has compensation ever been promised and actually delivered to any of the villagers or village committee members or entire families? What was the form, amount and rates of the compensation received?**

Kampung Chiong once received a boat and engine, along with some water piping materials and other items.

**(iii) In your view, was this compensation adequate?**

No.

## PROTEST CORRESPONDENCE AND DOCUMENTS

**7. For each company or sequence of encroachment event:**

**(i) Did the villagers write any letters or other documents to any of the companies and/or the authorities to express their written protest?**

Yes. But we have forgotten to bring them along. Please see the above.

**(ii) Please describe the responses received from the companies and authorities, if any.**

None.

## POLICE

**8. For each company or sequence of encroachment event:**

**(i) Did the villagers lodge any police reports to express their protest or to complain on any matter related to the encroachments, including concerns on their safety and that of their family members?**

	Date	Report Number	Complainant
1.	9 Apr 2014	GRIK 001242/14	Judin Hitam
2.	25 Sept 2014	BERSIA/000583/14	Judin Hitam

**(ii) Have any villagers ever been detained by the police as a result of their protest actions or related activities? Were they eventually charged?**

No.

### **PRESSURE, INTIMIDATION, THREATS, HARASSMENT**

#### **9. For each company or sequence of encroachment event:**

**(i) Did any of the villagers ever receive any pressure, intimidation, threat or harassment from any party, in relation to the protests against the encroachment on your customary territory?**

No. Only during our second meeting with the company representatives and the Forestry Department, there was an individual who was carrying a gun. This frightened the villagers who were present.

**(ii) Did the villagers take any action after experiencing such pressure, intimidation, threat or harassment?**

We lodged a police report on the incident.

**(iii) Please describe the effects of the experience on the person receiving this pressure, intimidation, threat or harassment.**

We simply continued the meeting.

### **EVALUATION ON THE APPROACH OF THE COMPANY REPRESENTATIVES**

#### **10. For each company or sequence of encroachment event:**

**(i) In your view, did the companies respond in a polite and respectful manner when confronted by the complaints and protests from the villagers?**

Most of them were polite, nothing unusual.

**(ii) Has any company ever broken any of their promises to the villagers? If yes, please describe these incidents further.**

Not applicable.

**(iii) Have you ever had the suspicion that any of the companies was acting dishonestly towards the villagers on any matter? If yes, please describe these incidents further.**

Not applicable.

**EVALUATION ON THE APPROACH OF THE POLICE, THE DEPARTMENT OF ORANG ASLI DEVELOPMENT (JAKOA) AND OTHER GOVERNMENT AGENCIES**

**11. Please describe the general views of the villagers with regards to the manner in which the authorities respond to your protests and complaints.**

**(i) Are the villagers satisfied with their responses and services?**

No. We are not satisfied because we are unclear on the actions that have been taken in response to our protests.

**(ii) Did the authorities show any bias in favour of the companies?**

Yes. They did show a bias in favour of the companies, instead of the villagers.

Sometimes they put the pressure on us to not defend our rights. For instance, we were advised by the representative of our zone not to protest against the logging operations in our area.

**(iii) Has any authority taken any actions which to your view was excessive?**

No.

**(iv) In your view, have the authorities been transparent in their dissemination of information to the villagers?**

No.

**STATUS OF THE INDIGENOUS CUSTOMARY LAND RIGHTS FROM THE PERSPECTIVE OF THE COMPANIES AND AUTHORITIES**

**12. For each company or sequence of encroachment event:**

**(i) Please describe the views of the companies and authorities on the status of the villagers' customary land rights. Did they recognise the existence of your rights?**

The authorities frequently state that our land belongs to the state government and that it is part of the permanent reserved forest. We do not agree with such a view.

**(ii) If the villagers are said to possess no such land rights, to which extent then do the authorities accept the existence of your rights, since your housing areas are also located in the same vicinity?**

We are still unclear on the manner in which the authorities interpret the extent of the boundaries of our customary territory. We however are always clear on our rights, which are based upon our own customary laws. Today, we continue to cultivate on our existing farms, carry out various traditional activities in the forested areas and practise our community's spiritual customs, all within our customary territory. In short, we continue to control and manage our customary territory as how it has always been since time immemorial.

**(iii) Did any of the companies or state authorities make any legal references to support their view that the villagers do not possess any rights to the encroached land (state land, permanent reserved forest etc.)?**

They have just been repeating that our land is the property of the state. We ourselves are unsure if our land is part of the Aboriginal reserve.

### ENCROACHMENT IMPACTS

**13. On the whole, please describe the adverse impacts of the encroachments on the villagers and your surrounding environment:**

	Type of destruction	Further information
1.	Environment: Forest destruction, river pollution	<p>Forest destruction and river pollution of course occur.</p> <p>A few springs have already been destroyed by the logging operations. There has been pollution to the rivers which were our sources of drinking water. When such rivers were polluted, we had to find other smaller streams to supply us with our drinking water.</p> <p>Land slides have also occurred.</p>

2.	Environment: Destruction of wildlife and riverine resources	<p>Wildlife and fish population has decreased sharply.</p> <p>Wild animals like the elephants have recently begun to approach the villages.</p>
3.	Environment: Destruction of sources of food, medicines and items used in cultural and spiritual ceremonies	<p>In the past, apart from hill rice and tubers, we were also dependent on freshwater fish, domestically bred chickens and hunted wildlife for our sources of protein. There were also abundant vegetable shoots in the forest.</p> <p>Today, the sources of food from forest and river resources have indeed declined sharply. We tend to purchase more foodstuff.</p>
4.	Loss of income	<p>Our sources of income have been badly affected.</p> <p>The main sources of income today are mainly derived from rubber tapping.</p> <p>Sometimes we would still try to look for forest produce or hunt. However, resources such as the agarwood, rattan, <i>kacip fatimah</i>, <i>tongkat ali</i>, various medicinal herbs and wildlife have declined significantly.</p> <p>The problem of the wild elephants which frequently approach the villages has also adversely affected our farming activities. At times, rubber and rice saplings would be destroyed or eaten by the elephants. In fact, the villagers have to exercise caution when going out during the dawn to carry out our rubber tapping activities. At times when we encountered the elephants, we would of course have to return home.</p>
5.	Loss of property: Farms, crops, farm huts, burial grounds etc.	<p>There were farms that had been destroyed by the elephants. Now many of us are facing difficulty to farm, including in cultivating rice, as a result of this conflict with wildlife.</p>

6.	Social: Health, security and welfare etc.	<p>There were incidents in which the elephants had actually roamed in close proximity to our houses at night, without us realising it. We would only discover this in the morning, upon seeing their footprints around the houses. Such incidents of course pose a dangerous threat to our safety.</p> <p>There was also an incident in which a villager had had his arm amputated as a result of his attempt to use firecrackers to scare away the elephants.</p> <p>In the last 5 years, 3 villagers have died as a result of being stomped on by the elephants.</p> <p>In addition, there were also villagers who suffered from malaria, dengue and typhoid.</p>
7.	Road damage	Road damage does occur.



## **SECTION D: CUSTOMARY TERRITORY AND PERMANENT RESERVED FOREST**

**Have any parts of your customary territory been gazetted as the permanent reserved forest under the National Forestry Act 1984?**

Temenggor Permanent Reserved Forest and Banding Permanent Reserved Forest.

**(i) If yes, please state the year the gazetting was undertaken. Do the villagers possess any documents on the gazetting process?**

We have no knowledge on the year the gazetting took place and do not possess any documents on it.

**(ii) If yes, please describe how the gazetting of the permanent reserved forest has adversely affected your rights?**

We have never been informed about this matter. Except for the claim that we are said to have no rights to the areas. We do not agree with such a view. We are still firm in continuing with the exercise of our rights and other activities within our customary territory.

**(iii) If yes, did the authorities conduct any consultation with the villagers to obtain their consent on the gazetting process? Please state any important information on how the consultations were conducted.**

No.

**(iv) If no consultations had ever been conducted, how did the people become aware of the existence of the permanent reserved forest?**

Only through the signboards and by word of mouth amongst the villagers.

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ORANG ASLI SEMENANJUNG  
MALAYSIA