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Press Release

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Support for Bar Council's call for the government to protect Orang Asli customary land rights

SAM would like to voice our support for the statement from the Malaysian Bar Council on February 26 for federal and state governments to take all the necessary actions to protect the Orang Asli customary land rights.

The statement illustrates the need for our policymakers to look at the law in its entirety. The law does not only comprise statutory law, it also includes common law, customs and usage having the force of law and judicial decisions. The fiduciary duty of states to protect the indigenous customary land rights is in fact trite law. Therefore, compliance to statutory laws does not negate the state's duty to sufficiently examine any possible overlapping common law land rights of the Orang Asli community.

The reported argument of the Perak chief minister that logging activities in Kampung Tasik Cunex were in compliance with the relevant laws is one that civil society groups like us have heard too many times, at the state, federal and international levels. We have also heard senior executive officers in Peninsular Malaysia ignorantly repeating that indigenous customary land rights do not exist in their states. This sadly only demonstrates the woeful state of their understanding of the law.

Further, the usage of phrases like *kawasan rayau*, which is offensive to many indigenous peoples, seems to continue in the new Malaysia. Such outsider-imposed terms erroneously paint a picture as if our indigenous peoples merely engage in 'foraging' activities in forested areas, without any sense of rights, planning and strategy. In truth, territoriality is a very important concept in the exercise of indigenous customary land rights. Indigenous territorial boundaries are strictly adhered to by the different adjacent communities while hunting, gathering and agricultural activities are sustainably planned and strategised.

In 2016, we published the report *Encroachment on Orang Asli Customary Land in Peninsular Malaysia*, which contains 12 case studies of logging and plantation impacted Orang Asli communities, available on our website. This publication discusses the inability of statutory law to fully protect the Orang Asli customary land rights. It explains how licensed logging, plantation and other resource extractive activities conducted in accordance with statutory laws must not be simply presumed to have obtained legal impeccability. 'Legal' logging may still encroach on forests customarily owned by the Orang Asli community, whose rights have been obtained legally through their customary laws, protected by the Federal Constitution and recognised by the judiciary. 'Legal' logging can still be destructive logging, damaging the Orang Asli lawfully owned forests and natural resources.

It is time for our highest executive officers, appointed or elected, to equip themselves with the correct legal information in respect of the indigenous customary land rights. They must also stop using outdated legal fictions and culturally offensive terms of the old Malaysia. They must take the legally correct approaches and actions.

Therefore, we support the calls made by the Malaysian Bar Council. The Perak state government and JAKOA must take the correct course of actions to protect the land rights of the Kampung Orang Asli Tasik Cunex in Gerik, Perak. The federal and state governments must also endeavour to do the same. These include ensuring the implementation of the 18 recommendations of SUHAKAM's Report on the National Inquiry into the Land Rights of Indigenous Peoples published in 2013 and the fulfillment of the United Nations' Declaration on the Rights of Indigenous Peoples (UNDRIP).

S.M. MOHAMED IDRIS

President

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