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Press Statement

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Violations of Orang Asli customary land rights caused by systemic conditions

Sahabat Alam Malaysia (SAM) would like to announce the release of the publication *Encroachment on Orang Asli Customary Land in Peninsular Malaysia: Causes and Solutions*, a result of a collaborative project undertaken with the Jaringan Kampung Orang Asli Semenanjung Malaysia (JKOASM).

Essentially, the publication argues that encroachments on Orang Asli customary land have been caused by systemic governance and legal conditions, as opposed to isolated incidents occurring as a result of the violations of legislative requirements or executive directives. The publication contains 12 in-depth reports involving 13 Orang Asli customary territories in Kelantan, Pahang and Perak. It also analyses the effectiveness of the legal and governance framework in Peninsular Malaysia in providing adequate protection for the Orang Asli customary land.

A main finding of the report is the absence of meaningful consultations with and consent from Orang Asli customary land owners, prior to the issuance of logging and plantation licences and at times, even prior to the commencement of the operations. Affected communities reported that they would only become aware of the issuance of such licences, either during the period when some form of preparatory activities were being undertaken prior to the felling operations, or when felling operations were about to commence or even when they had in fact already commenced. Although 'consultations' *might* be conducted by some companies, with or without the presence of authorities such as the Forestry Department, they would only take place after the licences had been obtained. Further, although such 'consultations' may appear to be a process to obtain consent, by and large, they tend to function more as a notification process only. Subsequently, communities would face many challenges in protesting against such licensed operations, as a result of their 'legal' status.

In light of this, a new understanding on the terms *illegal logging* and *destructive logging* is urgently needed. Logging operations carried out in compliance with statutory law in Malaysia but which encroach upon indigenous customary territories are clearly a form of destructive logging. At the same time, if such legal logging operations are still violating indigenous customary land rights, they have effectively failed to attain legal impeccability and must not be accepted as sustainable.

The publication also further highlights the problems surrounding the gazettement of the permanent reserved forests (PRF), which is supposedly done in order to ensure sustainable logging, but at the same time, greatly impinges on the full exercise of the Orang Asli customary land rights. Communities also confirmed that PRF gazettement has been carried out without any free, prior and informed consent process.

Equally important, communities still reported on adverse environmental and socio-economic impacts of logging and plantations, including the pollution of their water sources and the destruction of forest resources that they depend on for their food, medicines, income generation and the sustenance of their spiritual customs. In some cases, even farms and burial grounds were destroyed.

The publication concludes that among the systemic causes of the violations of such rights is the absence of land tenure security for the Orang Asli communities and the unilateral interpretation of the states on the size and boundaries of their customary territories, without any issuance of official maps and boundary demarcation on the ground. The communities are not certain as to how states have been able to decide on their territorial boundaries without community consultations and consent.

The publication therefore recommends immediate statutory reforms are undertaken in respect of 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, other state laws on conservation areas and state mineral enactments. In line with the judicial recognition that the indigenous customary land rights fall under the right to property protected by the Federal Constitution, it is no longer appropriate that they continue to be treated as a form of users' rights or rights that are no better than that of a tenant at will. In addition, the introduction of a participatory mapping and boundary demarcation process for such territories for the purpose of the issuance of a communal grant is also crucial.

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The publication (in English and Malay) can be accessed at:

http://www.foe-malaysia.org/encroachment_on_orang_asli_customary_land_in_malaysia_causes_solutions

http://www.foe-malaysia.org/pencerobohan_tanah_adat_orang_asli_di_semenanjung_malaysia_punca_penyelesaian