

A Wider Context of Sexual Exploitation of Penan Women and Girls in Middle and Ulu Baram, Sarawak, Malaysia



**An Independent Fact-Finding Mission Report
by the Penan Support Group, FORUM-ASIA and
Asian Indigenous Women's Network (AIWN)**

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The Penan Support Group, the Asian Forum for Human Rights and Development (FORUM-ASIA), and the Asian Indigenous Women's Network (AIWN)

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Glossary

BMF	The Bruno Manser Fund, a Swiss-based NGO campaigning for conservation of tropical rainforests and for the rights of people who inhabit the rainforests, with a particular focus on the Penans in Sarawak. See http://www.bmf.ch/en/
Bukit Aman	The headquarters of the Royal Malaysian Police Force, in Kuala Lumpur.
Bumiputera	This is loosely translated as “ <i>sons of the soil</i> ”. It refers to the ‘original’ people of Malaysia, which includes Malays and indigenous groups like the Penans.
CEDAW	The United Nations Convention on the Elimination of All Forms of Discrimination Against Women, which sets down the basic principles and rights to which all women are entitled.
IDEAL	Institute for Development, Environment and Alternative Living, an NGO based in Sibu, Sarawak
JPN	The Malaysian National Registration Department, amongst whose responsibilities is the issuing of identity cards, which all Malaysian citizens must carry
National Task Force	Set up by the Malaysian Ministry of Women, Family and Community Development in September 2008, to investigate allegations of sexual abuse of Penan women and girls in Sarawak, Malaysia. Produced a report published in September 2009. The Malay name is <i>Jawatankuasa Bertindak Peringkat Kebangsaan bagi menyiasat Dakwaan Penderaan Seksual terhadap Wanita Kaum Penan di Sarawak, Malaysia</i> , or National Action Council or National Action Committee in some news reports.

NCR	Native customary rights, a category of land recognised in the Sarawak Land Code but which has been hard to establish and is at the heart of the land invasion and dispossession of indigenous communities like the Penan.
NGO	Non-governmental organisation
NST	New Straits Times, a Peninsular Malaysia-based national English-language daily newspaper. Accessible online at http://www.nst.com.my/ .
PSG	The Penan Support Group, a coalition of NGOs in East and West Malaysia dedicated to advocating for the rights of the Penans.
PIBG	Parent-Teacher Association, found in schools in Malaysia.
The Star	A Peninsular Malaysia-based national English-language daily newspaper. Accessible online at http://thestar.com.my/
SUHAKAM	The Human Rights Commission of Malaysia established by the Human Rights Commission of Malaysia Act 1999. Information and reports available online at http://www.suhakam.org.my .
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples, setting out the basic principles and rights to which indigenous groups like the Penan are entitled.

Executive Summary

In September 2009, the report of the National Task Force, set up by the Malaysian Federal Ministry of Women, Family and Community Development, confirmed that sexual violence and exploitation of Penan women and girls in Sarawak was happening. This had followed an earlier September 2008 report by the Bruno Manser Fund, based in Switzerland, which itself echoed other reports dating back several years, asking state authorities to investigate similar possible sexual violence and exploitation experienced by Penan communities.

Despite the confirmation, actions to bring perpetrators to justice and to initiate appropriate actions to protect Penan women and girls from further sexual violence and exploitation continue to disappoint.

The issues are extremely serious and this Mission was formed to further investigate the situation in Penan communities in Sarawak, documenting incidents of sexual violence and exploitation and also at the wider issues that contribute to its existence and persistence. The Mission also set itself the task of highlighting the appropriate necessary action points for the relevant authorities and other stakeholders.

Visiting three (3) Penan communities and one (1) Kenyah community, and listening to evidence and experience from representatives of 13 Penan communities, the Mission recorded **seven (7) new allegations of sexual violence**. These are to be added to the instances documented by other earlier reports, including by the National Task Force.

The forms and patterns of violence are discussed in this report. They cover rape, assault, abduction, forced 'marriage', domestic violence and on-going harassment. The forms and patterns are indicative of a persistent situation relating to sexual abuse of Penan women and girls. There would seem to be no excuse for any authority either to deny the existence of such sexual abuse or to refuse to take appropriate action.

In documenting the sexual violence and exploitation perpetrated against Penan women and girls in Middle and Ulu Baram, the Mission also documented more general issues facing Penan women and children, and the Penan communities at large, as giving the wider contexts in which the sexual violence and exploitation exists.

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The wider issues discussed in this Report include:

- there is a large disconnect between state government claims that they have provided appropriate services and spent millions on the Penans, and the reality, which is that the majority of the Penans live in desperate poverty.
- the persistence of poverty amongst Penan communities continues to render them more vulnerable to dependency, exploitation and violence.
- central to their experience of poverty has been the loss of land and the denial of land rights, crucially affecting their security, autonomy, livelihoods, culture and sustainability.
- this loss of land, autonomy and ability to be self-sufficient follows from the ‘development policies’ of the state government, which encourage the exploitation of the land and the forest for commercial and private gain.
- logging and other land concessions are highly lucrative and are given to private companies closely tied to the ruling state government. The result is that there is little monitoring of logging and little enforcement of good practice, with the result that the land and forest claimed by groups like the Penans is being destroyed.
- attempts to protect their land and their land rights, culture and future sustainability has often brought the Penans into conflict with both state authorities and logging companies, such conflict being often conducted with threats and intimidation (against the Penans, including against Penan women and children) and on occasion with actual violence. This environment of violence gives an important wider context to the sexual violence perpetrated against Penan women and girls.
- this violence is rarely challenged by the state authorities, which give little respect to Penan rights of redress. Rather, the state authorities have consistently denigrated those Penans, including women and girls, who have attempted to raise land and community issues, and have attacked local and foreign NGOs who have attempted to support the Penans.

- the absence of positive support from state authorities in investigating and finding solutions to grievances has undermined the trust of communities like the Penans in the authorities, and has left them even more defenceless and vulnerable.
- this is linked to the fact that the Penan right to development, as underpinned by international covenants such as UNDRIP, has been undermined by the insistence by the federal and state governments that they, the government, know what is best for the Penans and other indigenous communities.
- the lack of respect for the Penan right to development is further evidenced by the denial of basic citizenship rights to a significant number of Penans, who continue to lack identification cards. This means that these Malaysian citizens cannot enjoy the basic rights of citizenship, including access to basic services and the right to vote. Lack of such cards increases the chances that state authorities like the police will not act on reports.
- there is considerable evidence of problems in service provision, not least health and education. Factors in high non-attendance and drop-outs rate include the lack of any support for Penan students in mastering Malay, with result that they struggle to follow classes. There is no indication that the curriculum is sensitive to this or to other Penan concerns. Prejudice and bullying are also reported, leading to loss of confidence and low self-esteem amongst Penan students. These are characteristics which do not help protect against violence and exploitation, including sexual violence.
- the 'development' path pushed by the state and federal authorities shows no evidence of any understanding of the particular challenges facing (Penan) women and children, and the often negative experience of 'development' by women. This includes the persistence of a power imbalance between men and women, one of whose symptoms is the prevalence of violence against women.
- the present situation facing communities like the Penans is that their land and their lives are increasingly being encroached on by outsiders, not least those working in logging camps. These outsiders exhibit little respect for the way of life of the Penans, or for the rights of women. All seven of the new allegations of sexual violence

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and exploitation had a logging company worker (or workers) as perpetrators of the violence.

This Report is not the first report to highlight the systematic manner in which the basic human rights of the Penans (in common with other Malaysian indigenous communities), and the rights of Penan women and girls in particular, have been undermined by the attitude and policies of federal and state authorities. In failing to uphold native customary rights to land, this Report argues that state authorities have robbed indigenous communities of a fundamental right and the basis of their culture, and severely impacted on both the security and sustainability of such communities. This includes safeguarding the rights and place of Penan women and girls. In failing to respect their overall right to development (in which the Penans control the definition of its direction and pace), and in failing to understand the gender dimensions of development, state and federal authorities have left both the Penans in general, and the Penan women and girls in particular, disempowered, displaced, dependent, and without sympathetic support - in other words, in a highly vulnerable situation. In failing to adequately provide services sensitive to the needs of communities like the Penans, they have missed a major opportunity for supporting the Penans and Penan women and girls in the difficult transition between the traditional and the modern, and specifically have missed a major opportunity to support and empower Penan women and girls in battling sexual violence and exploitation.

The Report documents the apparent indifference to Penan complaints and argues that this compounds the disrespect shown to the community and compounds the likelihood that sexual violence and exploitation will be tolerated rather than prosecuted and protected against. The Report notes that the lack of state response has left the Penans distrustful, a situation where any violence or exploitation is more likely to remain unreported because of such distrust. This vicious circle must be broken if any meaningful protection against (sexual) violence and exploitation is to be provided.

In making explicit the link between the sexual violence and exploitation experienced by Penan women and girls and the wider factors that help define and 'allow' it, this Report argues that positive steps to alleviate the violence and exploitation must necessarily include steps taken to address the wider issues. In other words, beyond the obvious need to properly investigate and resolve individual cases of sexual abuse and exploitation is the need to tackle the wider issues facing Penan women and girls and the Penan community.

The Report quotes one Penan woman, who simply says “The ultimate solution is to revoke the logging licences.” This, the report argues, is a starting point to tackle the wider issues of the dispossession, disempowerment, and impoverishment of the Penans. Moving beyond that, the Report argues that, to properly protect and nurture the Penan community, including the women and girls, state and federal authorities, and all other stakeholders, must fundamentally change their attitudes and approach. Acknowledging, valuing and committing to putting the Penans at the centre of their own development, complete with recognition of their rights to land and culture, will give a foundation on which appropriate policies, provision and support can be based. Added to this is the necessity for understanding and acting upon the way policies and attitudes impact on gender relations.

This basic principle of respect is in line with national and state government statements and commitments to the principles set out by internationally agreed conventions and declarations: for example, UNDRIP, CEDAW, and CRC. Malaysia has signed up to these basic principles, and their obligations need to be translated into positive practice. A series of recommendations are attached for consideration and action.

This Report argues that, if these recommendations are followed, there is every chance that the lives of the Penans, and the lives of Penan women and girls, will improve. We cannot afford to do nothing. The situation facing women and girls in Penan communities such as those we visited is extremely serious. Their vulnerability to sexual exploitation and violence is so well documented by so many different reports that something has to change if we are to protect them. Or are we simply looking at another report such as this one, in five years’ time, ten years’ time, documenting the same abuses, the same deterioration, the same violence? Let us work together to make sure this does not happen.

CHAPTER 1:

Introduction

1.1 Background to the Mission

In September 2009, the report of the Malaysian Federal Ministry of Women, Family and Community Development's National Task Force into allegations of sexual violence against Penan women and girls in Sarawak was made public. It confirmed the existence of sexual violence and exploitation as experienced by Penan women and girls.

This Mission was formed just two months later, in the context of a perception that, despite this confirmation, there was a rather unsatisfactory response from both federal and Sarawak state authorities.

Reports of sexual violence and exploitation of Penan women and girls have been made to the police and other authorities over many, many years. They include several reports made by the Penans themselves¹, as well as reports made by fact-finding missions². And the National Human Rights Commission, SUHAKAM, had also notified the Sarawak authorities in the year 2000 of the need to investigate incidences of sexual violence and exploitation of women and girls in Ulu Baram³.

The allegations of sexual violence and exploitation re-surfaced with a media release on 15 September 2008 by the Swiss-based Bruno Manser Fund (BMF). The release stated that there was evidence of numerous instances of rape and sexual abuse of Penan women and girls by workers from logging companies in the Baram district of northern Sarawak.⁴ This was taken further when, on 6 October 2008, the national Malaysian daily newspaper, *The Star*, ran a headline report and several articles on the issue, in which the allegations were given further substance.⁵ Two Penan survivors

1 For example, on 30 September 1994 a police report was made in Kuching alleging the rape of a Penan girl. On 22 March 1995, the family of a 12-year old girl lodged a police report at Miri, alleging she had been raped by two men while on her way to fetch rice for her family.

2 See IDEAL 2000, p. 25. This recorded how the headman of Long Lamai in Ulu Baram had lodged a report at the police station in Marudi alleging rapes committed against women by loggers in the area, in the mid-1990s.

3 See Dr Hirmon Ritam Abdullah, SUHAKAM's Sarawak-based commissioner, reported in *Malaysiakini* October 15 2008

4 See "Penan women denounce sexual abuse by loggers" *BMF*, September 15 2008

5 See "Penan girls claim abuse" *The Star*, October 6 2008.

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whose cases were reported by *The Star* lodged police reports at the Royal Malaysian Police Force headquarters in Bukit Aman, Kuala Lumpur.⁶

This gave rise to a series of responses. Four agencies promised that they would send investigation teams to the area. These were the Sarawak police, the Sarawak Ministry of Social Development and Urbanisation⁷, the federal Ministry of Women, Family and Community Development⁸, and SUHAKAM⁹.

At the same time, key figures in the Sarawak state government attempted to downplay the reports. Deputy Chief Minister Alfred Jabu, who was also the chairman of the steering committee on Penan Affairs, said that it would be a waste of time to investigate: "I have not heard of such complaints from the Penan communal leaders in my many visits to Ulu Baram".¹⁰ Datuk Daud Abdul Rahman, Assistant Minister in the Chief Ministers Office, said simply "The reports of the sexual abuse of Penans are not true."¹¹ Two of the major timber companies, Interhill and Samling, denied their workers were involved in sexual abuse¹². And initial promises of investigation seemed to run out of steam. For example, SUHAKAM claimed their investigations had to be rescheduled "due to adverse weather conditions."¹³ It also noted "a possibility that members of the community would be reluctant to divulge information in view of the massive publicity the cases have generated."¹⁴

This was a theme that informed subsequent discussions between the police and the NGOs. It was expressed, for example, in November 2008 when both Malaysian NGOs and the BMF noted their concerns about "the pace of police investigations," "police allegations [of non-cooperation from NGOs]¹⁵," and "the lack of a political climate that can restore the trust of the sexual abuse victims in the Malaysian legal system."¹⁶

6 National Task Force 2009, pp. 46.

7 See *The Star*, October 11 2008

8 See "Task force to protect Penans" *The Star*, October 8 2008

9 See "Suhakam to carry out own probe". *Borneo Post*, October 18 2008

10 Quoted in the *New Straits Times*, September 25 2008

11 See "Penan Sex Claim is baseless" *New Straits Times*, September 25 2008 and "Feel free to visit the Penans" *New Straits Times*, October 19 2008. Also see "Don't subvert Sarawak's interest: CM" *Borneo Post*, October 7th 2008 where Chief Minister Abdul Taib warns critics not to "sabotage Sarawak" with "underhanded tactics and false reports"

12 See "Undertake Fact-Finding Mission now", *Malaysiakini*, October 8 2008

13 SUHAKAM Annual Report 2008, pp. 118, available at <<http://www.suhakam.org.my/214>>.

14 See "Suhakam to carry own probe" *Borneo Post*, October 16 2008.

15 The BMF itself had been accused by the police in Sarawak of refusing to cooperate, and had to clarify that no one from any Sarawak or Malaysian police had contacted them. BMF affirmed its willingness "to come forward and make a statement to the police in Bukit Aman in order to bring about justice and help improve the victims' situation." See "BMF willing to help police probe Penan rape claim" *The Star*, November 15 2008.

16 *Ibid.*

On 10 December 2008, however, representatives of Malaysian NGOs stated that “the NGOs in Sarawak have good relationships with the Penans and are trusted by them. They are willing to take a team of women police officers from Bukit Aman into the Penan homelands for them to meet some victims.”¹⁷ This seemed to promise a better cooperation, and on 21 January 2009, the head of Sarawak’s Criminal Investigations Department, Huzir Mohamed, stated that police and NGOs had reached an agreement whereby the NGOs would locate alleged victims and gather details that would help police investigations into the alleged rapes.¹⁸

Unfortunately, this relationship subsequently and soon broke down, with the police stating that they were not getting the cooperation necessary. Added to this were reports that people in communities were being intimidated by state authorities¹⁹, all of which meant that the follow-through on both existing and potential allegations of sexual violence was largely stalled.

Meantime the National Task Force had completed its mission. This National Task Force comprised representatives from various government departments and ministries, officials from the Sarawak state government, the police, and representatives from Peninsular-based women’s NGOs.²⁰ Members of the National Task Force visited Baram as well as interviewing officials and NGOs in Kuching, Sarawak, from 10 to 15 November 2008. They submitted their report to Cabinet in January 2009 but the cabinet sat on it until public pressure led to its publication in September 2009 - almost a year after its formation. The Report confirmed that sexual abuse was happening, presented some seven actual cases, and linked the incidence of sexual violence to some of the wider issues faced by the Penans. A number of recommendations for action were made.

This gave rise to another flurry of activity. Although Sarawak’s Deputy Chief Minister Alfred Jabu on the one hand promised to study the National Task Force report and take action based on the report’s findings and recommendations,²¹ he also said that the Penans were manipulated by Western NGOs to tell lies to the National Task Force, and that “negative NGOs were strongly behind [the National Task Force report].”²² Datin Jumilah ak Madang claimed a mastermind was behind the allegations.

17 See “NGOs deny police allegations” *The Sun*, December 11 2008.

18 See “Police, NGOs team up in alleged Penan rape probe” *Borneo Post*, January 22 2009.

19 See report in *Malaysiakini*, November 27 2009

20 See “Task force to protect Penans” *The Star*, October 8 2008. See also Appendix 2 for a full list of participants in the National Task Force.

21 See “Sarawak government to study report on Penan women sexual abuse” *The Sun*, September 11, 2009.

22 “Jabu: NGOS used the Penans”, *New Straits Times* September 12 2009

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"The mastermind could either have a political motive or merely from the NGOs. Nevertheless, I do not believe the rape (story) involving Penan women ever happened."²³ Sarawak Minister for Land Development, James Masing, interviewed on BBC Radio 4's Today programme, said "They change their stories, and when they feel like it. That's why I say the Penan are very good storytellers."²⁴

The Sarawak police attempted to blame the NGOs for lack of cooperation: they alleged that the survivors and NGOs advocating the Penans' cause provided "zero cooperation" in police investigations.²⁵ A lawyer for the NGOs concerned responded by alleging that "Penans were not co-operating with the police because they did not trust them."²⁶ He claimed that "police were arranging transportation with the logging company, whom [the Penans] distrust."²⁷ He further stated that police cancelled joint investigation plans with the NGOs on the excuse that they "did not get enough funding to include the NGOs."²⁸

Further disquiet followed the retraction on 26 September 2009, by one of the two survivors who had lodged the police reports in Kuala Lumpur the previous year. This retraction was given large prominence in the Sarawak press, not least her claims that she was tricked into filing the original report.²⁹ NGOs noted that she was accompanied in making this withdrawal by her alleged assailant³⁰ and also noted that there were several other outstanding cases. Despite this, on 12 November 2009, Tan Sri Ismail Omar, the Deputy Inspector-General of Police, declared investigations into the rape cases closed because the police had reached a "dead end."³¹ Two days later, Datuk Mohamad Salleh, the Sarawak Police Commissioner, said, "I will not talk about this Penan issue anymore."³²

Incidentally, in the course of all this, it turned out that Bukit Aman and Sarawak police had formed a joint task force in January 2009 and had investigated 14 allegations dating back to 1995 in 9 settlements in Ulu

23 See Eastern Times, September 25 2009. Datin Jumilah is the wife of Datuk Hassan Sui, a Penan who has been used since the mid-1980s by the Sarawak state government to refute any international criticism about the State government's handling of the Penans.

24 See "Borneo Tribe Fights for Survival" BBC Radio, December 7 2009 and "Doubts over KL Penan rape report" Borneo Post, September 12 2009.

25 See "Cops hindered in rape probe" Borneo Post, October 22 2009 and "Cops: NGOs not helping" The Star, September 15 2009.

26 See "NGOs: Cops insensitive to plight of Penan rape victims" The Star, September 13 2009.

27 *Ibid.*

28 *Ibid.* See also "No budget so no to rape probe" in Malaysiakini, September 19 2009

29 See "Penan woman: I was not raped" The Star, October 1 2009 and "Cops to probe withdrawn rape report" New Straits Times, October 6 2009. But see "Penan rape: Sarawak government spreading disinformation" Malaysiakini, October 1 2009.

30 See "Penan rape: Sarawak government spreading disinformation" Malaysiakini, October 1 2009.

31 See "Investigations into Sexual Abuse of Penan Reach Dead End" The Star, November 15 2009.

32 *Ibid.*

Baram, of which 4 cases concerned Penan women.³³ The police statement said that one of the four cases had resulted in a charge, while the other three “have no witnesses to enable [the police] to take legal action.”³⁴

1.2 The Penan Support Group

It was in this atmosphere of denial, blame, argument and counter-argument that the formation of the Penan Support Group (PSG) and the organisation of this Mission took place. There was a real worry about whether justice for the victims of sexual violence and relevant initiatives for the betterment of Penan communities could or would be guaranteed or undertaken by the relevant agencies. As was noted at the beginning of this section, this was not the first time allegations of sexual abuse of Penan women and girls in Ulu Baram had been made, and yet there still seemed to be a reluctance on behalf of the federal and Sarawak authorities to take the complaints seriously and to effectively follow-up and prosecute.

The PSG was formed on 10 December 2008 and is a coalition consisting of 36 NGOs in Malaysia. It agreed to monitor the situation of the Penans and to document the abuses and human rights violations faced by Penan communities, including the sexual violence and exploitation experienced by Penan women and girls.

The PSG was and is anxious to ensure that the latest allegations of sexual violence and exploitation are thoroughly and fairly investigated by the authorities. The objectives and the itinerary of the Mission were developed through a careful process of consultation with the affected communities, in particular the families of the abused victims.

The members of the Mission comprised representatives from:

- Asian Forum for Human Rights and Development (FORUM-ASIA)
- The Center for Orang Asli Concerns (COAC)
- Malaysian Bar Council
- Sarawakians Access (SACCESS)
- Suara Rakyat Malaysia (SUARAM)
- Tebtebba and Asian Indigenous Women's Network (AIWN)
- Women's Aid Organisation (WAO)
- An advocate and solicitor of the High Court in Sabah and Sarawak with expertise in human rights and native customary rights land law

33 See Federal Criminal Investigations Department Mohd Bakri Zinin's claim in “Penan ‘rape victims’ refuse to talk, say police” *The Star*, September 12 2009. Note that “NGOs deny police allegations” *The Sun*, December 11 2008 places said police investigations at least a month earlier.

34 See “Cops hindered in rape probe” *Borneo Post*, October 22 2009.

1.3 Objectives of the Mission

The Mission aimed to further explore and document the incidence of sexual violence in the Penan communities of Middle and Ulu Baram, and to explore contributing factors to any violence in the contexts of the wider situations facing the Penans.

Specifically, the Mission aimed to:

- document allegations of sexual violence and exploitation faced by Penan women and girls in Baram
- identify any patterns and forms of sexual violence against Penan women and girls in Baram
- identify contributory factors that make Penan women and girls in and around timber concessions and/or plantations vulnerable to multiple forms of sexual violence and exploitation
- identify and recommend immediate and long-term measures to ensure the safety and security of Penan women and girls, including school-going children, in the villages as well as indigenous communities at large
- evaluate state responses in the context of gender-sensitive social, economic, emotional, psychological, legal, and other forms of support provided to survivors and their families and communities since the cases of sexual violence and exploitation first publicly surfaced
- suggest ways forward for indigenous communities, in particular women and girls, in protecting their rights and safety under customary, national, and international laws and standards
- suggest ways forward for federal and state authorities, in protecting the rights of Penans and other indigenous communities, to ensure their safety under customary, national, and international laws and standards, and
- share findings with the indigenous communities and other NGOs and advocates to be used as a guideline to planning and implementing programmes with and for the Penans and other indigenous communities in Sarawak that are in similar positions of vulnerability, and as a resource for other support groups.

1.4 Methodology

- The Mission conducted fieldwork in Baram from November 1 to 7, 2009.

- The Mission visited the communities of Long Lamam, Long Ajeng and Long Mobui.
- Representatives from the following communities (population estimates attached) attended interviews and discussions held at these sites.

Name of Village	Location	Population (approx.)
Ba Abang	Middle Baram	38 households; 100+ people
Long Bangan	Middle Baram	600 people
Ba Data Bila	Ulu Baram	18 households
Long Item	Middle Baram	30 households; 100+ people
Long Ajeng	Ulu Baram	30+ households
Long Lamam	Ulu Baram	52 households
Long Murung	Ulu Baram	18 households; 70 people
Long Kawi	Middle Baram	30 households
Long Melapeh	Middle Baram	15 households
Long Mobui	Ulu Baram	25 households; 100 people
Long Pakan	Middle Baram	46 households
Ba Pengaran Kelian	Ulu Baram	31 households; 125 people
Long Sebatu	Ulu Baram	15 households; 60 people

- Group discussions involved headmen and representatives from these thirteen (13) Penan settlements. Women and youth were represented. One session was held with women alone, involving 35 persons.
- Face-to-face (private) interviews were held in relation to the new allegations of sexual violence and exploitation. These were with the survivors and their families. Each interview took about 1 hour.

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Another six interviews were conducted (two short interviews to get other details; four full interviews) with family members, taking on average about 1 hour each. The team also conducted two interviews with the family who reported the case in KL (1½ hours each).

- Since most interviewees spoke only Penan, five Penan translators assisted the Mission and translated from Penan to Malay and vice versa.
- Sessions on education and land rights were held to explain details relating to educational aid and laws related to land issues, and to gather details on problems related to land issues and education.

1.5 Limits of the Mission

Logistics and time provided major constraints. Travel times were long, given the nature of the terrain and the location of the longhouses. This meant that the Mission was only able to visit three Penan settlements and one Kenyah settlement. Nevertheless, information was gathered from 13 different communities, through the contributions of their representatives.

Discussions also took considerable time, because of the need to translate.

The lack of demographic data from government statistics disaggregated by age, sex, civil status, school status, *etc.* further hampered the Mission's ability to better analyse specific problems and formulate recommendations.

CHAPTER 2:

Background to Middle and Ulu Baram, Sarawak

The State of Sarawak

Sarawak occupies 124,450 km² of Northwest Borneo, making it the largest of Malaysia's thirteen states. Kuching is the administrative capital and seat of government. Miri, Sibü, and Bintulu are other major cities. Sarawak's terrain encompasses wet swamplands, interior highlands, 1051 km of coastline, and, in theory, 82,000 km² (about 65% of total land area) of tropical rainforest.¹ The Baram district is located in the north-eastern part of the state, about a five-hour drive inland from Miri, and is the home of many of Sarawak's indigenous communities.

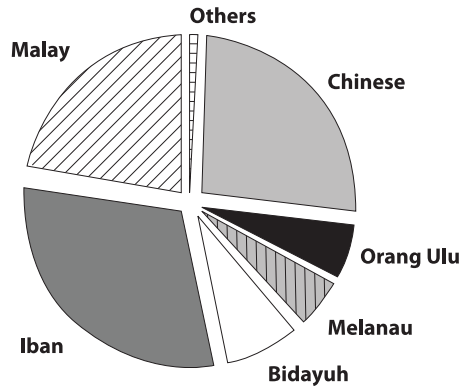
The nature of the terrain, especially in the interior, means that riverine transport has historically been crucial, with the Baram being one of the major rivers (others being the Rejang and Lupar). With the advent of logging, logging roads have opened up some land routes to the interior, but there is still a remoteness and inaccessibility about many longhouses in places like Ulu Baram.

Demographic Profile

The population of Sarawak is approximately 2.45 million or 8.67% of the total population of Malaysia.² About half the population live in urban areas. A distinctive feature of the state is the large percentage of indigenous peoples in a general population consisting of 27 different ethnic groups.³ The population breakdown by ethnicity is given below:⁴

- 1 Data from Sarawak Facts and Figures 2008, State Planning Unit.
- 2 Department of Statistics Malaysia: Demographic Indicators 2008 and Population by Age Group 1963-2009. <http://www.statistics.gov.my/portal/index.php?option=com_content&view=article&id=404&Itemid=14#8>, last accessed December 21 2009.
- 3 According to official statistics, <<http://www.sarawak.gov.my/seg.php?recordID=M0001&&sscontent=SSM0050>>, last accessed December 28 2009. Some sources give 28. Ethnologists debate about exactly how to categorise and sub-categorise: there are at least 40 sub-ethnic groups identified with distinct languages and cultures. Note that the Orang Ulu is a supraethnic designation that describes multiple different ethnic groups.
- 4 Population breakdown by ethnicity taken from *Deforesting Malaysia*, pp. 8.

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Source: Deforesting Malaysia

The Iban, who make up a third of the population, are mostly subsistence farmers who live along the Rejang and Saribas river banks. The Chinese, Malay, and Melanau (who make up 26.7%, 23%, and 5.6% of the population respectively) are mostly urban dwellers. The Bidayuh make up 8.3% of the population and are concentrated around the Kuching and Samarahan divisions in western Sarawak.

The Penans are part of the Orang Ulu (“upriver people”), consisting of Kenyah, Kayan, Kelabit, Penans, and several smaller groups who together make up 5.9% of the state’s population. These people live in rural and forested areas, relying on subsistence agriculture, small-scale farming, fishing, and hunting-gathering for food. Together with the Iban, Melanau, and Bidayuh, they are the indigenous peoples of Sarawak, often collectively referred to as the Dayak.⁵

It is important to note that the concept of land ownership for the indigenous groups differs radically from the ‘modern’ notion of individualised land title. For indigenous groups, land is held communally, and is seen as held in trust for future generations. The ownership of land, both farmed and forested, and the resources to ensure the productivity of the land, are crucial for their survival. Land also holds a deep social and spiritual significance. The notion of sustainability is an absolutely integral part of indigenous culture.

⁵ The term Dayak is more an administrative construct than a meaningful ethnic label. Nevertheless, all Dayak share Austronesian linguistic roots. On the contestations and preferences of the various indigenous communities with regards to the term, see Boulanger, C 2000, pp. 55-57.

The Penans of Baram

The Penan population in interior Sarawak numbers around 15,400 persons.⁶ They are categorised as either Eastern or Western Penans, depending on their geographic roots and socio-linguistic practices. The Eastern Penans can be found in the Baram and Limbang regions while the Western Penans live in the Upper Rajang region of the state. The Penans in Baram number some 69 settlements, with an estimated 9,223 persons.⁷

The Penans are generally an egalitarian, consultative, and non-violent community who highly value their autonomy and mobility.⁸ A small minority of Penans (current estimates are about 350) continue to lead a traditional nomadic lifestyle, often described as the last truly nomadic tribe in South-East Asia. The rest, the vast majority of Penans, now are settled or semi-settled, living in villages but still sourcing their food, housing, medicinal and cultural materials from the forest.

Food is obtained from hunting (wild boar, squirrel, and monkey more typically), fishing, and gathering wild fruits and greens (staples include sago, fern, and tropical fruits). Paddy and herbs are cultivated on a local, shifting scale. Traditional medication makes use of wild roots and plants. The Penans also source rattan and bamboo to weave into baskets and mats which, along with beadwork, are kept for personal use or sold for cash and to make blowpipes for hunting, and wood for building houses, boats, and household items.

Development Paths, State Choices and Impact on the Penans and Penan women

Where do the Penans and Penan women and girls fit in to the overall development strategies of the state? Important to understand is that the Sarawak state government has pursued a development strategy predicated on economic growth concomitant with urbanisation and industrialisation. The economic model is one of commercialisation of agriculture, exploitation of natural resources, and a waged economy 'modern' in its concept and individualisation. This model stands in stark contrast to the culture of indigenous communities like the Penans⁹. It also has failed to take into

6 Figure quoted by Sarawak Deputy Chief Minister Alfred Jabu, reported in *Malaysiakini* May 24 2007.

7 Data from State Planning Unit, cited in SUHAKAM 2007. pp. 15.

8 Needham, R 2007, pp. 58-9.

9 See for example Hong, E. 1987; Ideal 1999; Brosius, P 2000 and Hansen, E 2000.

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account any consideration of gender discrimination and the differential impact of 'development' on men and women.

As part of their 'development' path, the exploitation of forest resources has been high on the state agenda since at least the mid-1980s. This has first been through logging, but more latterly has included land conversion to oil-palm plantations and other large projects, including hydro-electric and tourist development initiatives. This exploitation has carried critical and severe impact on the lives and culture of indigenous communities like the Penans, with the forests and land on which their culture and livelihoods have depended for generations being concessioned to private companies and destroyed. The impact is both generally on the Penan communities, and specifically on the lives and responsibilities of Penan women.

However, the state makes no apology: the State government has long been adamant that indigenous people need to be brought into the 'mainstream of development', that this 'mainstream' does not need to be adjusted to be sensitive to gender, and that their development strategy is the most apt¹⁰. This strategy is epitomised by the allocation of RM13.44 billion by the Ninth Malaysian Plan (2006-2010) for Sarawak's development programmes, designed to lead to high growth, employment opportunities and the reduction of poverty.¹¹ The twin emphases have been on large-scale commercialisation of oil palm and rubber¹² and the development of an industrial corridor, the Sarawak Corridor of Renewable Energy (SCORE).¹³

With reference to the former, *Konsep Baru* has been promulgated since the 1990s as the way forward for indigenous communities like the Penans. This involves the collectivisation of native customary land into large-scale commercial schemes such as oil-palm plantations, where a joint venture needs to be signed between the local community and a government or private agency, to develop the land¹⁴. This epitomises the sort of 'modernisation' promoted by the state authorities, again one which carries dubious benefit to the communities generally, and negative implications

10 See for example Sahabat Alam Malaysia (SAM) 1987 or Colchester, M 1989. Also epitomised by quotes at the launch of *Konsep Baru* in 1996. For example, "*The people ... if left on their own, risked the possibility of being left out of the mainstream of development*" (Land Minister Celestine Ujang, Borneo Post July 18 1996) and "*The main factor is development and that is why the government's development efforts must have your full support*" (Chief Minister Abdul Taib Mahmud, New Straits Times May 21 1996)

11 Ninth Malaysia Plan, pp. 531. This figure amounts to 6.7% of the total budget. An additional RM1.671 billion will be channelled to the state through private finance initiatives.

12 Ninth Malaysia Plan, pp. 68, 365.

13 SEE <[HTTP://WWW.SARAWAKSCORE.COM.MY/](http://www.sarawakscore.com.my/)>.

14 See the official government website at <http://www.mlds.sarawak.gov.my/project.html>

for indigenous women in particular¹⁵.

SCORE meanwhile is aimed to develop Sarawak's central region, eradicate poverty, create some 1.5 million jobs, and raise the state GDP five-fold to RM118 billion by 2030.¹⁶ It will bring energy-intensive industries to Sarawak (including the highly controversial aluminium smelting), and there are plans to build at least three, and possibly as many as twelve, hydroelectric dams.¹⁷ Identified dam sites are at Murum, Limbang, Baleh, and Baram¹⁸ and they will lead to displacement and resettling of indigenous communities in a style reminiscent of the Batang Ai and, more recently, Bakun hydro-electric projects.¹⁹

Tellingly, resettling indigenous communities is seen as a positive step by the state government, not least because they argue that facilities can more easily be provided²⁰. There appears to be no indication that lessons from previous resettlement schemes, including the Batang Ai and Bakun schemes, are being considered. These demonstrate clearly that there would be considerable advantage in including resettled communities in the determination of their own futures, and that state-sponsored resettlement is particularly disastrous for women²¹.

15 Hew Cheng Sim (2006) discusses, for example, how it is the men who get paid for any compensation ('an abrogation of women's rights') and how contracts for joint-developed land may not honour women's equal right to ownership. There are many studies to show that generally modernisation of agriculture exacerbates gender differences and cements role differentiation and unequal access to resources, not least money.

16 See "1.5 million jobs by 2030" The Star, October 2 2009. SCORE will also exploit the state's vast hydro-power potential (estimated at 20,000-28,000 MW) and coal and natural gas reserves (1.46 billion tonnes and 1.16 trillion m³ respectively) to generate electricity for the whole country and for export to neighbouring countries. As part of this project, Malaysia's Ministry of Finance-owned company 1Malaysia Development Bhd. and China's state-owned State Grid Corporation of China have signed a deal to engage in joint-venture projects expected to be worth RM38.5 billion.

17 See "Taib: Sarawak projects score with investors" The Star, June 12 2009.

18 See SCORE Plans & Strategies, <<http://www.sarawakscore.com.my/modules/mbr/components/plan/?mainpageid=plan>>, last accessed December 26 2009.

19 See "Dam proposal raises fears" The Straits Times (Singapore), December 27 2009. Murum will displace some 1,000 Penan. *Empty Promises, Dammed Lives*, a 1999 report by the Coalition of Concerned NGOs on Bakun, documents the largely negative impact resettlement had on the nearly 10,000 indigenous people affected by Bakun. See also the SUHAKAM, 2009 Report on the Murum Hydroelectric Project, which already raises questions about how the Murum scheme is being handled vis-à-vis indigenous communities.

20 See for example, the recent 'peace deal' mooted by the Sarawak state government to placate Penan anti-logging protesters. An original promise to give Penan rights to the land was turned into a "We will build resettlement schemes for them. These Penans must accept this resettlement plan or the peace deal won't work". (Star, December 1 2009). Also exemplified by the Murum hydroelectric project, which will need to re-settle an estimated 1,000 Penan. The government claim that this will make sure that 'they have a better life', as they would have amenities like schools and health clinics. However, evidence from other resettlement is not so positive, as activist Raymond Abin observes: "The life of the Penans in Asap-Koyan (the Bakun resettlement) is worse than before". Star,.

21 See Coalition of Concerned NGOs 1999 and Hew Cheng Sim & Kedit F 1987

Logging and Its Impact on Indigenous Communities

This Report argues that the sexual violence perpetrated against Penan women and girls is integrally linked to the wider experience of women and men in those communities of intimidation, dispossession and disempowerment. This itself is closely linked to the advent of logging and the incursions of logging companies and other outsiders on indigenous land and into indigenous communities. But in offering no apology for its strategies, the state government have over the years been particularly harsh on local or foreign critics of the way logging (as for other land development) has been carried out in Sarawak²². It has claimed and continues to claim that the logging is sustainable and has brought huge economic benefit to the state (and to indigenous communities). This has framed their less than enthusiastic responses to Penan grievances, including the grievances of Penan women and girls, an experience that will be more fully discussed in Chapter 4.

For indigenous communities like the Penans, logging has resulted in the loss of land and land rights, which means the loss of something which completely underpins their existence and sustainability. This has been documented by many academic studies, for example: “The land tenure customs of the (Kelabit, Iban, and) Penans are an integral part of their community structure and more generally, their unique historical, cultural, and religious traditions. The customs underpin the native occupation of their lands, their territorial domains and their connection to their ancestral lands ... (and) govern relations among community members and between diverse communities.”²³

Any dispossession of their land and disenfranchisement of their land rights will therefore not just affect their cultural autonomy and their ability to sustain themselves, but will also impact on the relationships between persons in those communities, their social fabric. This includes the way roles and responsibilities are divided between women and men within indigenous societies, and the strength of both individual and societal self-respect, which includes the mutuality of respect between the sexes.

Yet this is the current reality. Critics refute any claim that Sarawak forestry is sustainable by pointing out that the issuing of logging licences

22 Indeed they often try to conflate the two, accusing local critics of being inspired and funded by western eco-imperialists. For a recent example, Sarawak Deputy Chief Minister Alfred Jabu quoted in the Borneo Post, February 11 2010, said the Penan are “fertile ground for some non-governmental organisations (NGOs) to concoct lies and inaccurate stories to tell the whole world ... Our nation is fast developing and not everybody is happy about it. The NGOs from all over the world are tools used to discredit our government.”

23 Suhakam 2008, p 44

and general management of the timber trade are enmeshed in political patronage and nepotism. The close relationship between timber companies and the ruling political elite - 'timber politics' - has long been acknowledged²⁴ and many have argued that this has meant that the political will to monitor and enforce the law, to ensure sustainable and legal forestry practices, is fatally compromised.

The Auditor-General's 2008 report, for example, criticises the poor monitoring of and standards on logging activities, and notes the lack of Environmental Impact Assessments (EIA) undertaken before the commencement of large-scale logging.²⁵ Others argue that low taxes and lack of incentives for loggers to engage in sustainable extraction practices coupled with poor monitoring and enforcement of logging regulations has encouraged "boom and bust" extraction practices instead of attendance to the need for reforestation and the responsible and ethical management of land.²⁶

Add to this the more recent targets for converting logged areas into plantations, and there is further curtailment of forest regeneration.²⁷ "Collateral" effects of dam construction have also contributed to deforestation.²⁸ And then there is the argument that tax evasion has diverted much of the resource exploitation proceeds from the state (which could then have been used for capital accumulation or poverty alleviation programmes) to the pockets of politicians and corporations.²⁹

These arguments combine to indicate that logging is extensive, lucrative and in the hands of a few companies close to the ruling political elite. It would seem that respect for sustainable logging does not happen in practice; respect for indigenous land rights would also seem to be a casualty of this commercial exploitation of Sarawak's natural resources.

24 Famously exposed by the politicians themselves, in the 1987 state election. Present Chief Minister Taib froze 25 logging licences of his rivals (including his uncle) covering an estimated area of 1.25 million hectares valued at between RM9 billion and RM 25 billion. The accusations and counter-accusations made it clear that logging licences were used as political favours. See *New Straits Times* 10 April 1987. Also see Asian Wall Street Journal. In Sarawak: A clash over land and power. February 7 1990; Colchester, M. *Pirates, Squatters and Poachers: The Political Ecology of Dispossession of the Native Peoples of Sarawak*. Survival International/INSAN, London 1992.

25 See "Sarawak on war path with AG" *Malaysiakini*, December 2 2009 and "Extent of damage to ecosystem" *The Star*, October 26 2009; the Auditor General's report (in Malay) is available at <<http://www.audit.gov.my/index.php?T2RFCC33=ZQ0bSZ2cCC33&S2gNSxqOCC33=Z2MmUNEb/9xC&Z2Xw/ZAT7CC3=c2rmSUd0CdC>>.

26 Jomo KS, Chang YT, Khoo KJ 2004 pp. 205-6, 208-9, 212-13.

27 Sarawak's goal is to double its palm oil coverage to one million hectares (2.47 million acres), an area 14 times larger than Singapore. (James Masing, in *Star*, August 24 2009).

28 Jomo KS, Chang YT, Khoo KJ 2004 pp. 180.

29 *ibid* pp. 209-10, 212-3, 30

Land Rights

The claims to land and forest areas by indigenous communities rest (legally) on the acknowledgement of the category of 'native customary land' in the Sarawak state land legislation. For most indigenous communities, land ownership is established in accordance with the concept of *pemakai menoa* (which translates to "land we eat from") where the land that supports a community's existence through providing food and shelter and ensuring its health and welfare is understood to belong to the community who serve as guardian and protector of the land. Therefore, under customary law, land ownership is not limited to land use in terms of cultivation or settlement alone but extends to include the surrounding areas that provide for the community's needs. This includes uncultivated areas like the forest and river, which combine to ensure that the *pemakai menoa* is productive.

The Penans have a particular, similar concept of communal native customary lands, *tana' pengurip*. Important too is their concept of *molong* that emphasises responsible land use and stewardship, where land is allowed to regenerate before being reused for planting or harvesting.³⁰

Yet there is huge difficulty in establishing claims, and in finding supportive avenues to exercise rights to redress. This is linked to the lack of sympathy shown by the state government, determined to push ahead with its own conception of how land should be used, and what native customary land should be used for. The way that the Sarawak Land Code was drafted and has been subsequently amended has meant that "it (is) impossible for natives to secure indefeasible rights and title to native customary lands", but does provide "the state with the power to use native lands or terminate NCR over lands, subject only to notice and compensation."³¹ In other words, the state authorities have considerable control over how land is allocated and/or used, and their lack of sympathy to indigenous claims is very apparent.

Take for example comments like Deputy Chief Minister Alfred Jabu's recent claim that NCR is "an outdated non-issue"³². Note too the fact that disputes often arise only 'after the fact'. In granting logging or other concessions, the state merely needs to gazette the land in question and provide a 60-day period of objection to those who would be affected.³³ Whether

30 Brosius, P 2007, pp. 312-3. Brosius notes that *molong* is much more prevalent among the Western Penan, but other writers like Jayl Langub et al. suggest that differences in social practices between the two groups are minimal.

31 SUHAKAM 2008, p8

32 Malaysiakini, April 29 2006. Critics immediately pointed out the insensitivity of this position, and added that, if it was a non-issue, why were there over 100 NCR court cases pending?

33 As follows the 1996 Forests (Amendment) Ordinance Part II on Forest Reserves. "Land, Rights, and Policy" Forest Monitor <<http://www.forestmonitor.org/en/reports/550066/550074>> last accessed December 28 2009.

the affected communities are aware of this seems immaterial. The fact is that the people who are affected often find out about the state's actions only when the logging companies show up at their doorsteps.³⁴

Trying to exercise rights to redress of course mean that communities have taken disputes over land to the courts. Until recently, this has not been particularly effective, but recent jurisprudence has been more positive in affirming the legitimacy of native customary rights. In *Nor Nyawai I*, for example, the local plaintiffs argued successfully that their customary rights were protected under common law. The court noted the long history of legislation recognising and protecting customary rights, and ruled that current legislation did not extinguish native customary rights.³⁵ Many other cases remain in courts.³⁶ One recently filed case is suing for land titles to mapped ancestral lands that plaintiffs argue fall within native customary rights provisions, the nullification of logging licences, and compensation for damage done by logging activities in the area concerned.³⁷ It remains to be seen what the practical implications of these cases might be.

One thing we might note is that the Penans face particular difficulties, since they have a unique system of establishing ownership and stewardship of land which does not fall easily even into the kind of categorisation set out in the Land Code³⁸.

Dispossession and impoverishment

Indigenous-claimed land and forest is therefore vulnerable to the incursions of logging companies and other commercial enterprise. And, as noted, the consequences can be devastating.

Documentation of excessive logging shows disastrous effects on the local environment, including destruction of habitat, loss of biodiversity, loss of fish and other food resources (including animals) and loss of medicinal plants. It creates soil erosion, which contributes to the pollution of rivers used by local communities for water, bathing and washing clothes. This affects not just the communities living at or near the pollution point, but all downstream riverine communities and their economy. Excessive

34 Endicott, Kirk 2003, pp.152.

35 *Nor Nyawai I* [2001] 6 MLJ 241, 284

36 See, for instance, "Penan take Samling and Government to court to defend land rights" Rengah, November 7 2002.

37 See "Penans sue Sarawak government over logging, plantations" BME, December 10 2009

38 *Ibid*, p6

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logging contributes to more frequent flooding³⁹ and it is also argued that it affects both local and global climate, with increasingly unpredictable (local and global) weather patterns. These all link to a fundamental impact on basic rights, social relationships and sustainability.

It might be noted that documentation has also alleged that the kind of unsustainable practices followed by Sarawak-based logging companies in their home state have been replicated by their activities in forests and countries around the world⁴⁰.

These arguments are very pertinent for the Penans of Middle and Ulu Baram because there has already been heavy logging and land development in the area, and the state government continues to identify Baram as a growth node for timber, oil palm, and tourism under current development plans.⁴¹ Timber companies reported to be operating in the Baram area include Samling, Interhill, Shin Yang, Rimbunan Hijau, and KTS.⁴² Concurring with many of the arguments above, one recent report, commissioned by the French tourism company ACCOR, reviewed the operations of Interhill, and concluded that the logging was not sustainable, lacked effective enforcement or monitoring, and gave no long-term benefit to the Penans⁴³.

Rather, and this ties to one of the key arguments of this Report, logging and other land exploitation has not just cost communities like the Penans loss of control over land, through the non-recognition of rights to land, but also loss of control over decisions affecting their present and future lives. The destruction of the forests has meant the destruction of the very resource which has supplied the Penans their food, materials, medicines and other needs for centuries. By default, they are expected to become part of the 'modern' world, a modern economy where money is essential for survival, irrespective of their wishes and irrespective of their ability to make the adjustments on their own.

Of course, the ability to participate is seriously compromised if one does not have an identification card (the case for a significant number

39 *"Auditors noted large deposits at the mouth of the Seduan River and Igan River in Sibü "as large as a football field," which it said caused frequent floods in the Sibü area during heavy rains. According to flood records, Sibü recorded a flood level of 0.9 metres in 1997 rising to 1.5 m in 2007. In December 2008, Sibü experienced its worst floods since 1963. The Sibü division of Sarawak had lost over 350,000 ha in permanent forest reserves between 1990 and 2008, the auditors recorded."* From <http://ipsnews.net/news.asp?idnews=49470>

40 See for example WRM/Forest Monitor 1998; Marchak M P, 1995; Greenpeace 1997

41 Sarawak Facts and Figures 2008, State Planning Unit.

42 These companies were identified in the following news reports: "Malaysia's Penan tribe ups anti-logging campaign" AFP, August 22 2009 and "Timber blockades: Sarawak government and Penans agree to deal" The Star, September 17 2009.

43 See http://news.mongabay.com/2009/0915-hance_penan_review.html. The company was pressured into conducting an independent review of Interhill after ACCOR announced it was partnering a project in Sarawak.

of Penans and other indigenous people). Further, research over the years indicates that indigenous access to and support in education (essential for the sort of qualifications to secure jobs and wages), health and other social services have been a cause of major concern. And there has been very little discussion about the differential impact of a modern economy on men and women, and what sort of responses would be appropriate to safeguard the position, rights and needs of women.

This is not quite what the state government argue. They point to the success of their development strategy as evidenced by, for example, the statistics that the overall poverty rate in Sarawak has been reduced, from 21% in 1990 to just 4.2% in 2007⁴⁴. They show how important the timber trade has been to Sarawak's economy - netting an estimated more than US\$25 billion since 1970⁴⁵. And they map out the programmes that have been put in place specifically for the Penans.

These include the programmes planned by the Special Cabinet Committee on the Penans, formed by the state government in 1987. Penan Service Centres were a crucial part of these programmes, as was the development of the Penan Volunteer Corps. They include a special development fund of RM1 million per year made available for short-term projects for the Penans, and other funds, including money from the Timber Development and Rehabilitation Fund and Training Fund. They apparently include provision for transportation and other services⁴⁶. There was a claim by the state government that they had spent over RM18 million on the Penan community by 2000⁴⁷. Since then, there has been a variety of promises and allocations. For example, allocations under the Ninth Malaysia Plan included RM139 million for poverty alleviation, with the Penan community specifically mentioned as one target community⁴⁸. The Ministry of Rural and Regional Development has allocated RM3.7 billion for rural development in Sarawak under the National Key Result Areas (NKRA) initiative to be implemented in three years starting 2010, and there would more in the remaining two years of the 10th Malaysia Plan.⁴⁹ All this has led people like the Deputy Chief Minister Alfred Jabu to refute

44 Data from Economic Planning Unit, Malaysia.

45 See http://www.asiasentinel.com/index.php?Itemid=178&cid=871&option=com_content&task=view. This is a huge amount. Further more recent figures indicate Sarawak's timber export value was RM6.6 billion in 2009, and RM8 billion the previous year (Bernama February 11 2010).

46 See the report that some RM230,000 had been allocated for Penan student management, including RM170,000 for transportation, in 2008, though it is unclear what happened to these monies. Borneo Post, October 19 2008.

47 See http://www.urwaldfreundliche-gemeinde.ch/action/blockage_2000/block2000_14.html

48 Ninth Malaysia Plan, Government Printers, Kuala Lumpur, para 16.46

49 Borneo Post 31/1/10

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accusations that the government has neglected the welfare of the Penans, by claiming that 97% of the some 15,400 Penans in 103 settlements were provided with social, medical and educational services⁵⁰.

Yet for investigators and for the communities of the Penans in Ulu and Middle Baram themselves, all these claims seem a little mysterious. According to the Department of Statistics, 63% of Penan households surveyed by a July 2008 Poor Household Income Survey were hardcore poor. Promised expenditure and projects seem not to have materialised. Penan community leaders have simply questioned "What happened to all the money? Are they really being used to help us? Where did the money go?"⁵¹. Or, as in the case of community leaders in the Bakun resettlement scheme, Lusong Laku Penan settlement and Long Tanyit and Long Lidem, they have questioned specific promises, like the pledge of a RM5 million trust fund for education made more than ten years ago, or to the promise of a 10-year masterplan to help the Penans announced by Deputy State Minister Abang Johari Abang Openg some five years ago⁵².

As SUHAKAM concludes: "While SUHAKAM recognises that logging and oil palm plantation activities contribute to the country's development, it appears that the Penans do not benefit from this. Rather, logging, oil palm plantation and forestry activities have added constraints on the development of the Penans and has further displaced this community given their distinct economic, social and cultural life"⁵³. The report starkly observes that "the survival, livelihood and development of the Penans is further stunted as a majority of them live in abject poverty."

Further, SUHAKAM argues that "As primary duty bearer, the Government is obligated to ensure its citizens enjoy human rights, including right to land. However, in the case of the Penans in Ulu Belaga, it appears that the task to settle NCR claims was transferred to the Company by the Government. In addition to right to land, the Penans are also deprived of their right to basic amenities. As the Penans found it hard to gain the Government's attention, they often turn to the Company operating in Ulu Belaga to provide them with those amenities."⁵⁴

50 Malaysiakini, May 24 2007

51 Mr. Ajang Kiew, Chairman of the Sarawak Penan Association, quoted in Utusuan Consumer, May 1 2002

52 "Rural folk in interior Sarawak claim many pledges not made good", The Star, September 7 2009

53 SUHAKAM 2007, p36

54 *Ibid*, p5

Conclusions

This is clearly an unsatisfactory and unacceptable state of affairs. Logging and other land development has not benefitted the Penans; instead it has brought dispossession, destruction, dislocation and impoverishment, both physical and cultural. They have lost their autonomy. Now outsiders, particularly in the form of management and workers of logging companies, bring a different economy, a different culture and different attitudes, not least towards indigenous cultures and indigenous women. The state authorities have promised much but delivered little, and, following SUHAKAM's findings, have actually given over a significant part of their responsibilities to the logging companies, the very incursors onto Penan land.

This has left the Penans, and Penan women and girls, highly vulnerable and insecure. In giving over their responsibilities, the state has failed to give protection against the trampling of indigenous rights and the destruction of indigenous land, with the likely accompaniment of intimidation, either explicit or implicit. Penan insecurity also follows from the state's failure to demonstrate a commitment to investigating and prosecuting offenders against the law (including those who have harassed or raped indigenous women).

All of these factors are crucial parts of the background in which this Mission conducted its investigations. In documenting seven more cases alleging sexual violence and exploitation of Penan women and girls, this Report argues that we need to understand the sexual violence and exploitation in the wider contexts of what is happening to Penan communities in general and to Penan women and girls in particular. The factors discussed above are therefore crucial; they will also be amplified when we report the experience of the communities we visited, especially in Chapter 4. They help explain an environment where sexual violence and exploitation is apparently allowed to flourish, and they help point to the kind of initiatives that need to be taken to stop it. This will not just mean that criminals are brought to justice, but also that the initiatives help set a future where Penan women and girls are part of Penan communities which are given the power to determine the direction of their development, and the pace of that development, secure in their land and respected for their culture.

CHAPTER 3:

More Cases Of Sexual Violence

As set out in Chapter 1, the Mission's starting point was the further exploration and documentation of sexual violence and exploitation experienced by women and girls in Middle and Ulu Baram. Further, an assessment of the patterns and forms of sexual violence and exploitation to which Penan women and girls are subject was also a Mission objective.

In the short time that the Mission spent in Baram, seven additional allegations of sexual violence and exploitation of Penan women and girls were documented. These are as follows:

3.1 The Seven Cases of Sexual Abuse and Exploitation

J's Case

J is the second child in her family and has never been to school. As she is the only daughter in the family, sometimes the family members would leave her at home while they went into the forests to hunt for food. Many loggers would come to the village, and sometimes they would be drunk and create chaos in the village.

In 2002, when J was 14 years old, a logger (Indonesian) in his thirties approached her to propose friendship and marriage. J refused. One night, the logger returned to J's house and raped her. J did not tell her family members about the rape. J was afraid this man would kill her and her family members.

A few days after the rape, the logger returned to J's house proposing to marry her. J's father did not agree to this marriage. However, the logger was persistent and kept returning to J's house. The logger told J, "*You sudah tidur dengan saya, lebih baik you kahwin saya.*" ("You have slept with me, so it is better for you to marry me.") The logger also said, "*Saya akan hidup dengan awak dan mati dengan awak.*" ("I will live with you and die with you.") As J felt the logger would harm her family members unless she married (customary marriage only) him, she managed to convince her father to let her marry this man.

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After marrying the logger, J stayed at the logging camp. Both of them occupied a small room in the camp. Whilst J was there, the logger would abuse her physically and psychologically. The logger would force J to have sex with him, and if she refused he would beat her (sometimes with a wooden stick). J could not run away from the camp as she did not know where it was located or the way back home.

When J became pregnant in 2003, the logger sent her back to her village so that her family could look after her. In the beginning, the logger used to visit her once a month. However, when her pregnancy reached seven months, he disappeared and never returned. According to J, the camp is still in existence but she never went there to look for the logger because she does not know how to get there and she does not want to see him again. (*"Saya tidak tahu macam mana pergi sana. Saya tidak mahu jumpa dia lagi."*)

J is currently staying with her family and her child, who is now 6 years old. She is worried about her child's education and expenses. She is entirely dependent on her parents who also struggle to meet their daily needs.

J is very angry with the logger and feels he has ruined her life. She has decided not to re-marry as she does not trust men anymore. She does not want to talk about it. She tries to focus on her child. She wants the child to go to school and then to help protect the Penan community from exploitation by outsiders.

N's Case

N's case was reported by her father. N is in her mid-to-late twenties. N has no birth certificate or identity card. N has received no schooling. N was previously abducted by a logger (Indonesian) and taken to his logging camp. N had two children by him. The logger never married N and he deserted her during her second pregnancy.

N then returned to live with her family until she met another logger (Indonesian). N's father did not like this logger, and he felt that his daughter did not either. However, the logger would drop by their house to visit N, and one day he brought some fruits and told N's father that he wanted to marry N. According to the father, the logger's words were, *"Saya memang suka anak kamu, nak kahwin sama anak kamu, sampai mati pun saya nak kahwin anak kamu."* ("I really like your daughter, I want to marry her, even to death I shall want to marry her.") N's father refused but the logger promised to settle nearby. N's father believes that his daughter agreed to

marry the logger because he had threatened to otherwise harm her family.

Following their customary marriage, N accompanied the logger to his camp and has not returned to the village since. N's children from her earlier rape and abduction sometimes visit their mother at the logger's camp. According to the children, the logger is always angry with N and abuses her. On two occasions, N's children witnessed the logger using a machete (*parang*) to smash things: first a mineral water bottle and then a door. Whenever N's father visited her at camp, she seemed scared yet she kept telling him that she was fine. He tried to persuade her to return to the village with him, but she was too scared. He once brought some friends with him to the camp to bring back his daughter, but the logger was there and prevented them.

N's father visited her before coming to meet the Mission. He would like to lodge a police report and rescue his daughter but he does not know how to do so and he does not have the funds to get to a police station. He is also afraid that the logging company will harass his village.

C's Case

C has only completed her studies until Standard 3. In 2003, C, who was then 17 years old, went to a logging camp to help her relative take care of her children. A worker (Malaysian Chinese) at the camp wanted to marry C, and persuaded her that he was not already married so that she would agree to marry him. They went to see the headman from C's village, and there the worker persuaded the headman that he was not already married. Convinced, the headman officiated a customary marriage between the two in October 2003. The aforesaid marriage was not legally registered. C does not know the worker's name.

Following their marriage, the worker's friends informed C that he was already married and had four children. C confronted the worker but he denied that he was already married. The worker paid monthly visits to C at her village and would stay over at her house. He did not contribute anything to her upkeep.

The worker disappeared around May 2004 when C was three-months pregnant. The camp has also since been transferred.

C's child's birth certificate only lists C's name as mother. When C's baby was around six-months old, the worker returned to the village and tried to take the baby away from C. However, C's village headman prevented this from happening. C has never seen the father of her child since.

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C is angry with the worker who cheated her into “marriage”. She repeated few times in the sessions that “*I kahwin dengan dia sebab dia kata dia belum kahwin.*” (“I married him because he said he was single.”)

C married a Penan in 2007 and has a one-year old daughter. Her husband treats her well but she is worried about having enough money to educate her children.

According to C, other women from her village have married camp workers and are living at camps. In addition, camp workers regularly visit and walk around the villages. They often come in groups of three or four. They like to “*main perempuan*” (Mission’s comment: connotes sexual harassment of women and girls) with women who are around 17 or 18 years old.

O’s Case

O has only completed her studies until Standard 3 and was staying in a logging camp. O was at the camp to look after her pregnant sister, who was married to a logger. Another logger (Iban) came to her and promised to marry her. O stayed with him after that, but they were never actually married, either by way of a customary wedding or legal registration.

Upon realising that O was pregnant, the logger claimed he needed to go back to his own village to visit his parents, and promised to return soon. However, the logger never returned. O was sent back to her own village by her sister. Even though the logger knew where O stayed, he never visited her. Although O told her parents that she was pregnant, they could not do anything.

Shortly after O returned to her village, a Penan man from another village approached to marry her. O did not like the man and refused his proposal few times. But since she was pregnant and needed financial support, her parents persuaded her to marry the Penan man. In her words, “*saya tidak suka Penan itu, tapi bapa mak saya paksa saya. Bapa mak cakap saya sudah mengandung.*” (“I do not like that Penan, but my parents forced me. They said I was already pregnant.”) The marriage was only recently legally registered, but the husband treats O and her first child well and they are still together. O also has another three children with her Penan husband.

O and her family have never thought of lodging a police report as according to O, she was too young when the incident happened and she had “no feelings” at that time. But O is now angry with the logger for cheating her and deserting her and their child.

T's Case

T is 24 years old, the eldest of three siblings. She has neither a birth certificate nor an identity card. She has never been to school. Her case was reported by her parents.

In 2001, T met a logger (Iban). Whenever T's father was not home, the logger would come by the house. The logger kept visiting T even though T's mother tried to stop him. Despite T's parents' objections, the logger insisted on marrying T and promised to take care of her. T kept crying when the logger tried to take her to the camp. T's mother believed the logger had some sort of influence over their daughter so that she would be forced to accept his proposal. Later, the parents found out that T had been raped by the logger prior to his proposal.

The logger did not marry T, either through customary marriage or through legal registration. After T became pregnant, the logger abandoned her at the camp, leaving T no choice but to find her own way back to her village. While pregnant, T fell seriously ill and even contracted malaria.

In 2007, T married a Penan man. Her child, who is now seven years old, studies at Sekolah Long Kevok and stays at the hostel there. Although her current husband treats her well, T's parents feel that she is unhappy with her life. They feel she merely pretends to be happy to keep them from worrying for her. Since contracting malaria, she has been very weak.

T's parents were of the opinion that loggers would visit Penan villages purportedly to buy food and products but in reality were present probably to stake out the area and identify possible victims.

A's Case

A's parents passed away a long time ago, and she lives with her two younger sisters. Her elder sister who is married stays in another house with her family. A does not have an identity card and does not know her exact age.

In the middle of the night sometime in 2001, two loggers (either Iban or Indonesian) broke into A's house. One of them said he would take care of A while the other man said he would take care of her sister. However, the loggers did not propose marriage. The loggers promised that they would take care of them once they were living together. Despite their refusal and cries, A and her sister were forced into a car the next morning and taken to the logging camp. The villagers were aware of the incident.

At the camp, the sisters were separated from each other. A did not know which camp she was staying in, but she remembered that the camp

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was just beside the main road. A was kept in the camp for a week, and she was badly beaten and scolded by the logger the whole time. She was repeatedly raped almost daily by the logger.

A person-in-charge at the camp sympathised with A's suffering and sent her back to her village. A then found herself pregnant. A told the headman what happened, and the villagers were very angry. The headman and the villagers went to the camp to look for the logger, but failed to find him. They were also unable to locate A's sister who is still missing.

Currently, A's elder sister helps take care of A's child after she gave birth. A is sick with tuberculosis and cannot work. She has not seen the logger since escaping from the camp and has remained single after the incident. She is in need of medical assistance and financial support for her child to go to school. She is still very angry with the logger. She considered lodging a police report but did not do so in the end because she simply did not know how to and did not even have the money to go to the police station.

A's sister, who was taken to the logging camp with her, is still missing. No one knows exactly where she is, but A and her elder sister believe she is still in the camp.

E's Case

The incident involving E happened in 1996 and was reported by a witness from her village. Many loggers used to come to the village, and they were often drunk and would harass the young girls. One evening, while E was making her way back to the village, two loggers (Iban) stopped her and offered her some chips (*keropok*) to eat. After she had taken some and eaten, she tried to continue on her way but was prevented from doing so by the men. They asked her to join them for a ride, but she refused. They insisted, arguing that since she had eaten their chips, she was obliged to follow them. They forced her to get on their motorcycle and then rode off.

After learning of what had happened, the villagers searched for E but failed to find her. The following day, they went to the nearby camp and found her there. She had been raped by both men. They took her and the two loggers back to the village and locked the loggers in a house, expecting that the camp leader (*mandur*) would come looking for the loggers. The villagers wanted to talk to the camp leader. However, the camp leader came with some men and they broke the lock and took the loggers with them. Since then, the villagers have not seen the loggers.

E did not lodge a police report. According to the witness, most of the villagers were angry with the loggers but they could not do anything. They

felt the loggers and logging companies were too powerful and the police would always take their side. The witness also noted that loggers often came by looking to “marry” young Penan girls, some of whom were forced by loggers into marrying them.

3.2 Summarising the cases

The table below summarises the nature of the alleged forms of sexual violence and exploitation in the seven cases documented.

Table A: Allegations of sexual violence and exploitation, Middle and Ulu Baram, December 2009

No.	Case	Age of Survivor (Current Age/ Age at time of incident)	Location of Incident/s	Forms of Violence and Exploitation
1.	J	22 (14)	Village & Logging camp	Rape, Physical, emotional and sexual violence during marriage Desertion upon pregnancy
2.	N	25-30	Village & Logging camp	Abduction Desertion upon Pregnancy Domestic Violence
3.	C	23 (17)	Village & Logging camp	Rape Desertion upon pregnancy
4.	O	51 (30)	Logging camp	Desertion upon pregnancy
5.	T	24 (16)	Village & Logging camp	Rape; Desertion upon pregnancy
6.	A	E 30 (22) (E = estimated age)	Village & Logging camp	Abduction Rape Physical assault
7.	E	30 (17)	Village & Logging camp	Abduction Rape

The stories documented show several offences (Chapter XVI of the Malaysian Penal Code) allegedly committed and these include hurt and grievous hurt, wrongful restraint and wrongful confinement, criminal force and assault, kidnapping & abduction and rape.

Definition of Rape: Sexual intercourse which takes place (i) against a woman’s will, and (ii) without her consent (sections 375(a) and (b)) is an offence; Even where consent of the woman is purported to have been given, the law does not consider as a valid consent when her consent has been obtained by putting her in fear of death or hurt to herself or any other person. Or if the man knows or has reason to believe that the consent was given in consequence of ‘a misconception of fact’, e.g. that he said he was not married when in fact he is (section 375(c)). Sexual intercourse with a girl below the age of 16 is an offence (section 375(g)). Consent is not an issue for under-aged girls.

3.3 Patterns of sexual violence and exploitation

The alleged sexual violence and/or exploitation perpetrated against Penan women and girls follow a pattern. These are:

- The alleged violations consisted of one or more of the following forms: abduction, rape, physical assault, emotional abuse, sexual violence in a marriage,
- In each and every case, the alleged perpetrators were men from logging camps.
- These men were outsiders i.e., Chinese Malaysian, Iban and Indonesian. None of them were local to the area.
- The alleged violations generally took place in two sites: in the logging camps and in the villages. The cases illustrate a common practice of loggers entering the villages in order to sexually harass, use criminal force, assault and prey on the village women as evidenced in the cases of J and N.
- Logging camp authorities were reported to be generally indifferent to the situation facing the women. They did not hold their workers accountable when women are brought to the camp or when women were violated on camp premises. The logging camp authorities protected their workers as evidenced in the cases of A and E.
- In almost all the allegations of sexual violence, there were reports of overt threats, intimidation and/or the use of criminal force and assault. This served not only silence the reporting of the incidents, but further perpetuated the women's vulnerability to abuse.
- In five of the seven cases, the women were deserted when they became pregnant. In each of the cases, the men have neither provided any maintenance towards the upkeep of the children nor fulfilled their obligations and responsibilities as fathers.
- In each of the alleged violations, no report was lodged and no perpetrator has yet to be brought to justice.

Earlier reports of sexual violence and exploitation, including those documented by the National Task Force's report of September 2009, show similar forms and patterns, which indicate that these incidences of sexual violence are more systematic in nature and not just a periodic phenomena.

The stories from the seven survivors of the alleged sexual violence relate incidences of direct assault and rape (the stories of A and E, for example). They illustrate how loggers attempt to coerce Penan women, especially teenage girls, into 'marital' (and therefore sexual) relationships

which seem to be predicated on lies. For example, epitomised by the stories of J and C (below), assurance may be given to the girls that the logger is not already married (when he actually is). Or girls may be given the impression that a customary marriage establishes a legality (as in the allegations of C). Some have been forced into marriage following rape, as in J's and T's cases. The stories of J and N also indicate domestic violence.

3.4 Contributory factors to sexual violence and exploitation

i) Encroachment, dependency and vulnerability

We noted in Chapter 2 that the advent of logging in the Baram area (as elsewhere) has been both controversial and negative for indigenous communities like the Penans. One major change has been the 'invasion' of strangers (logging camp workers) into Penan communities, and the loss of Penan autonomy over their lands and lives. They are disempowered and live in abject poverty. This just adds to their vulnerability to exploitation sexual or otherwise.

ii) Lack of respect towards indigenous women and customs

We heard evidence of how one of the results, or scenarios, resulting from this invasion is that loggers would enter the village and "disturb" or harass local women. In the words of one of the parents: "*Jika mereka nak masuk kampung kita, tidak apa. Tapi jangan kacau anak-anak perempuan kita*" ("If they come into our village, that's okay. But don't harass our daughters.") Or, as another parent said: "Some of the loggers love to come to the village and drink, when they drunk, they disturb the villagers." In T's case, her parents also noted that many loggers would visit Penan villages purportedly to buy food and products but in reality to stake out the area and identify possible victims. 'C' said loggers like to "*main perempuan*" (connotes sexual harassment of women and girls) with women who are around 17 or 18 years old. Other stories are of loggers visiting the girls when the family members are not around.

It is apparent that there is a clear lack of respect towards indigenous women and girls and a predatory attitude that indigenous women and girls are there 'for the taking'. These stories tell us that the loggers behave as they please and get away with it. We heard of some of the women and girls getting 'married' to the loggers. However, none of the women and girls who were reportedly "married" had registered their "marriages".

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While the indigenous custom of marriage may be a traditional one of honouring one's word, it has been abused by irresponsible men who take this responsibility lightly and instead sexually exploit these women and girls and discard them when they become pregnant or when the logging camp shifts location. The logging companies turn a blind eye to the 'marriages', despite the prevalence of the situation (as C claims, there are many Penan women and girls 'married' and living in the logging camps). The isolation and the lack of any government initiative to provide information (e.g., what constitutes legal marriage under the law and therefore legal protection, and what not) and support on basic issues relevant to Penans, including Penan women and girls and their children, increases their vulnerability.

iii) Use of force, fear and threats

In almost all of the seven allegations, there is report of overt or implicit threat or use of force. The power of these threats and force needs to be understood in the context of the more general power relationship between the Penans and the logging companies. As was noted in Chapter 2, the State authorities have increasingly given over their obligations for protection and service provision to these logging companies, meaning that, over the years, the Penans have found themselves more and more dependent on the logging companies. This is exacerbated by their poverty and need for basic provisions and materials. The uneven power relationship, the geographical isolation, the lack of presence or response of state authorities such as the police (see Chapter 4), have rendered the Penans vulnerable to promises, manipulation and threats. Penan women and girls may then be in a desperately poor situation with few options, rendering them unprotected and particularly vulnerable to exploitation, not least sexual exploitation and worse still, often made dependent on the logging companies. Furthermore, the sexual violence and the use of fear and intimidation perpetrated against the women and girls is yet another form of violence their communities face daily in defence of their lands against encroachment. Violence, whether from state or non-state actors (see Chapter 4) is a powerful tool used to perpetuate the communities' vulnerability to exploitation, sexual and otherwise.

iv) Poor access to justice

Why has nothing been done about the allegations? Why have no reports been made? The answer to this involves an examination of the uneasy

relationship which seems to exist between the Penans and the state authorities, including the police. This brings us squarely into a need to understand the wider factors and contexts, which has been touched on earlier and will be discussed in greater detail in the next chapter. They importantly include:

- **lack of trust in the police.** This relates to the history of response of state authorities to the grievances of the Penans, discussed in the next chapter. The Mission was also informed about the tremendous pressure by the police that has been put on those families who have made police reports against two perpetrators made during the 2008 exposé on the issue of Penan women and girls being raped by loggers while at school or journeying between school and home. This pressure has resulted in driving those families who had made the report into hiding, with nothing done by the authorities to bring the alleged perpetrators to justice. The Mission was also informed that in the 2008 cases, after the cases were reported to the police, far from providing supportive action, the police went to the villages and told the villagers “not to create trouble”.
- **no identity cards:** The lack of identification cards has meant that for many Penans, including Penan women and girls, options to report are closed. This also applies to registration of marriage and registration of births.
- **language barrier:** Many Penans either do not know or are very unfamiliar with Malay, the national language used by officials and authorities. This puts them at further disadvantage and may dissuade them from making reports
- **prohibitive cost and distance:** Even where there is an awareness and confidence in the process of registering or reporting events like marriage or enticement, and even if the necessary documents are held (identification cards, for example), Penans, including Penan women and girls, still reported that the cost and the distances of getting to authorities can be prohibitive.

What all this means is that the loggers can carry on sexually exploiting Penan women and girls as there is little chance of a police report being made against them. And even if a police report is made, past experience has shown that very little is done to bring the alleged perpetrators to justice. Hence, loggers may rape with impunity.

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v) Unilateral action difficult

Without police support, it becomes difficult to take any appropriate action. Unilateral rescue missions to, for example, free abducted women and girls from logging camps are both expensive and high risk. From the interviews, the families stressed the cost, as well as the lack of a support system, after the rescue mission. Villagers reported that even if they mounted a successful rescue mission, the girl and possibly her family might have to be taken from the village for security reasons. This is obviously highly unsatisfactory.

Further, the Penans reported how they had managed to rescue one survivor and detain the alleged perpetrator in their settlement, only for the logging company workers to arrive in a show of force, and take the alleged perpetrator back with them. Nothing was done beyond this.

vi) Support system lacking

The lack of any State support system for either abused women and girls, or the community more generally, compounds the seriousness of the situation. The Mission heard evidence that there have been no opportunities for counselling; no State initiative to provide information about personal safety issues to Penan and other indigenous communities; no State support when abandoned with children to look after and no State initiative to provide information about the rights of women and girls in relation to marriage and maintenance¹.

In other words, following the violation, which may have been followed by abandonment by, or rescue from, the perpetrators of the sexual violence from the logging camps, the survivors have had to deal with the trauma and raise their children from the rapes or “marriages”, often as single mothers, and with severe difficulties. For example, in the case of N, she suffered not once but twice and is still currently living in a violent situation.

3.5 Consequences of the sexual violence and exploitation

The stories of the women and girls allege serious and continuous sexual violence and exploitation, a serious breach of their basic human rights.

¹ There is some promise that this might change, following the present publicity about the situation. For example, a Sarawak NGO has begun a programme on Empowering Rural Women and other programmes are under discussion.

The stories of J, T, A and E, for example, allege rape. The stories of J, N, T and A allege continuous and severe sexual violence and intimidation, while with their 'husband' in the logging camps. All seven had been taken to the logging camps, under circumstances of deception, threats and/or fear, as described above. All the women and girls, except N (who remains in the camp), were subsequently deserted, usually upon pregnancy, and their 'husbands' have failed completely to provide any maintenance or support.

Following the violation, which may have been followed by abandonment by, or rescue from, the perpetrators of the sexual violence from the logging camps, the survivors have had to deal with the pain, the anger and trauma of sexual violence and exploitation. They have had to raise their children from the rapes or "marriages", often as single mothers, and with severe difficulties often facing abject poverty in their villages. The stories also indicate the possibility of failure to register marriages and/or births hence also impacting directly on the rights and future of their children.

3.6 Conclusions

These stories paint a grim picture, of a state of **peculiar lawlessness**. There seems to be little or no regard for laws or for personal integrity; loggers and logging companies seem to be completely unaccountable for their actions; and the villagers are seemingly powerless to stop harassment and violence, with state authorities nowhere to be seen.

And it is the case that these allegations of assault, abduction, forced marriage and desertion - serious allegations - may not necessarily be surprising. They simply echo similar experiences noted in other earlier reports and Missions. This makes it even more worrying that there appears to be still a lack of official action, legal enforcement, increased police presence and investigations, and support for the Penan women and girls and their families.

Why does the situation persist? What needs to be done? Before making our recommendations, we need to look at the bigger picture in which the allegations of sexual violence and exploitation are situated. Is there a link, for example, between the apparent powerlessness of the Penan women and girls in stopping sexual violence and exploitation, and the more general dispossession, disempowerment and dependency of the Penans noted briefly in the last chapter? Chapter 4 presents the evidence on the wider factors and issues relating to sexual violence and exploitation, as presented to the Mission.

CHAPTER 4:

Wider Contexts to the Sexual Violence and Exploitation

It is the opinion of this Mission that the incidence of sexual violence and exploitation experienced by Penan women and girls does not exist in a vacuum. The Mission took and takes seriously the contention that the systematic exploitation and disenfranchisement of indigenous people is “the single greatest risk factor for gender-based violence.”¹ So, in addition to taking evidence about specific allegations of sexual violence and exploitation, the Mission also listened to evidence concerning the wider contexts in which the sexual violence and exploitation was taking place, contexts which help to define and explain it.

This chapter presents this evidence. It should be understood as showing that the lack of respect and lack of protection afforded to Penan women and girls in their experience of sexual violence and exploitation is importantly tied to the lack of respect and protection shown to the Penan community as a whole.

In sketching the background to the Penans in Chapter 2, we reported how others had documented the undermining of the autonomy and sustainability of the Penans through

- the denial of their land rights,
- the denial of basic citizenship rights for many Penans through failure to register and issue identification cards to them,
- state neglect of their welfare including a failure to guarantee adequate access to basic facilities such as education and health, and
- the failure to provide a supportive right of redress.

All of this, it was suggested, has combined to leave the Penans dispossessed, disempowered, impoverished, dependent on logging companies, and highly vulnerable. It was also suggested that this is a situation where sexual violence and exploitation is more, not less, likely to happen. The

1 See Tauli-Corpuz, V. 2008.

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connections should not be underestimated, and in this Chapter we present the evidence as given to the Mission.

4.1 Protection and respect of land rights

Crucial to the autonomy of a community like the Penan is control over land. In our earlier discussion, we noted the centrality of land to the Penans, how their control over land, including their rights to land, has been severely compromised, and the devastating consequences that have followed.

In its visit to Baram, the Mission observed the lack of primary forests, the preponderance of timber camps and plantations, the murky waters of the Baram and its tributaries, and the far-reaching network of dusty logging roads as signs of the dominant economic activity in the area and its effects on the natural environment. The Mission was informed that logging activities and associated problems have intensified since 1989, with tractors and helicopters used to log lands inhabited and relied upon by the Penans. The Mission was informed that many workers come from outside Baram: Indonesians, Ibans, and Chinese.

The Mission saw several logging camps that house workers and store timber in the lower reaches of the Baram river basin. There were also several plantations in the area.

The Mission further noted that the only roads in interior Baram are owned and operated by timber corporations. Trucks carrying timber were a common sight, and people were seen waiting by the roadside to hitch a ride. There is an increasing ease with which outsiders can access local communities, meaning an increasing contact between Penans and outsiders.

Loss of land and disrespect

The Mission held several discussion meetings with the Penans, and at these meetings it was reported how logging companies are issued licences by the state government to log certain areas. Each company would then present these government-issued licenses as proof of their right to enter native customary lands and would ignore the protests of the Penans. Where the Penans put up signs to demarcate customary rights forests and lands, these would be ignored by the logging company. Where the Penans tried to negotiate, either companies would refuse outright to dialogue, or, where this happened and even an agreement signed, the company would then

break it. As a last resort, the Penans have resorted to blockades, but this results in either the company 'waiting them out' or the company calling the police. This may result in the kind of heavy-handed action and/or arrests, as reported by previous research².

It has been argued that logging licences do not, in fact, bestow any proprietary rights on logging companies, and furthermore, require them to determine and stay clear of these native lands.³ Further, where licences cover native customary rights lands, it is a requirement that the licensee obtains written consent from native customary rights claimants or furnish written evidence to show that such rights have been extinguished under written laws before proceeding.⁴ However, the evidence given by the Penans to the Mission indicated that this is not a feature of present practice of the logging companies, and in no case was it reported that the state authorities have intervened to insist on better respect for, and protection of, native customary rights. By giving lucrative logging concessions to companies without clear, enforceable guidelines designed to ensure the protection and security of communities like the Penans, the government has left such communities completely vulnerable to encroachment, land loss, and the undermining of autonomy and self-sufficiency. A major consequence of this is a loss of individual and communal confidence, at a time when there is an increasing 'invasion' of Penan land and settlements by outsiders.

Effect on livelihoods and sufficiency

Besides the fundamental loss of security through the loss of land rights, the Mission also heard how logging activities have gravely affected the livelihoods of villagers. Villagers complained about diminishing food supplies. Deforestation has resulted in a decrease in their main source of protein and fats: wild animals like wild boar, deer, monkey, and porcupine. Penan children are most vulnerable to these effects and, according to local news sources, increasingly suffer from diarrhoea, fits, and influenza.⁵ The Mission noted also that the children appear to be malnourished.

The Mission heard and observed how the Penans have been thoroughly dependent on the forest to provide food. The loss of land rights

2 Not Development but Theft, IDEAL, 2000

3 Khoo, KJ. "Briefing on the Penan and the EIA for the Shin Yang Forest Plantation." SUHAKAM. *Penan in Ulu Belaga*. 2007. pp. 101-2.

4 *Ibid.* pp. 101.

5 See "More Penan kids suffer from ill health" The Star, September 14 2009.

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obviously has severely impacted the ability of the Penans to sustain themselves from the forest. Further than this, the destruction of the forests has also meant that the resulting scarcity generates a competition amongst indigenous communities. The Mission heard how, besides encroachment by logging companies, other local communities whose lands were lost to “development” projects in turn encroach upon Penan lands. Some Kenyahs, for instance, were reported to have entered and set up new settlements on Penan lands and then prohibited Penans from entering and using certain areas or levied fines on “trespassing” Penans. This makes it even more difficult to survive from the forest.

Loss of self-reliance and self-confidence

As presented earlier, the development path mapped by the Sarawak state government is one which stresses (and is based on) individualised wage-earning, commercial exploitation of natural resources, generation of growth through profits, and an economy whose success or failure is measured by increased GDP. These are the parameters guiding the path told to the Penans to follow. Unfortunately, the Mission heard, the Penans are ill-equipped to do so.

In a meeting with some 35 Penan women, the Mission heard how the priorities now for the Penan women were land, implements and equipment, and money. The first two priorities were integrally related to food production. On all three counts, they are facing serious difficulties.

Land is of course key to food production as it is used to plant rice, tapioca, corn, and vegetables. But land, as we have noted, is increasingly being lost and destroyed. Increasingly, the provision of these necessitates purchase, meaning money. But, as the women reported, money is in very short supply.

Local resources which might earn some money are not protected. Villagers reported how outsiders target their Belian trees, which locals use to build houses and boats. They were unsure whether the loggers were individuals collecting timber to then sell to companies or were loggers working for the companies themselves. When villagers tried to talk to these loggers, they were reportedly ignored and some loggers were alleged to have tried to run villagers over with their trucks.

Present income-generating activities for the local communities are largely limited to weaving baskets and handicraft and collecting wild food crops and sandalwood for sale to Kenyah middlemen who visit the settlements. But raw materials like rattan and sandalwood that can be used to

make saleable items are also diminishing as a result of deforestation, as are medicinal plants. A medium-sized basket which may take a week to make, from getting the raw materials to finish, fetches RM10. Villagers are not aware of how much such a basket would be sold for in the market⁶.

All this indicated how the lives of Penan women and Penan communities as a whole are in a state of very uneasy transition. As reported by the Penan women in the discussions, there has been a serious erosion of self-reliance. Things that were taken for granted in earlier times (enough land to grow food; use of forest resources for implements, materials, and medicines; clean water) have now changed. Forced by circumstance to earn money to compete and survive in the modern, monetarised economy into which they have been thrown, communities like the Penans are struggling.

It should be noted that the Penans referred with trepidation to the example of the Penans of Lusong Laku in Belaga district. There, similar conditions had been experienced: logging and other companies had taken much of their land, food self-sufficiency was destroyed, the environment dramatically changed, and they had little means of earning money. Come a time of drought and the result was, quite literally, famine. Appeals for help were launched and it was only by such outside assistance that the 3,000 or so Penans affected were saved from starvation.⁷ This is hardly an example likely to fill the Penans of Middle and Ulu Baram with any confidence.

Conclusions

The evidence presented to the Mission, as related to land rights and the consequences of their loss, concurs with the experience presented by others. The advent of logging and logging companies has introduced a new relationship to the Penans, whereby there have had to 'exchange' a situation in which they were relatively self-sufficient and self-reliant for one where they are no longer self-sufficient and are now dependent on the logging companies and other outsiders. These are the very companies disrespecting their land rights and way of life. It is a very uneasy and uneven relationship, and one which of course will have ramifications for issues like sexual violence and exploitation.

6 A visit to a store in a nearby Kenyah village found such baskets were priced at RM20, and it will sell for a lot more in urban centres like Kuching.

7 See "Famine report among Penans ignored by all" *Malaysiakini*, August 5 2009. In another report, it was claimed that *"the food shortage is caused by a combination of drought, poor harvest and dwindling forest resources due to logging."* *The Star*, August 28 2009

4.2 Right to development

The Sarawak Chief Minister has said of his concept of development:

“For much of the decades of the 1980s and 1990s, the State development agenda has been guided by the philosophy of the Politics of Development (POD). As a concept, it is based on the overriding principle of equality and socio-economic justice and the exercising of the political will towards the achievement of that end.Development in this context is a total concept, involving at its core, the people, not just as beneficiaries of development but as active participants and motivating force in the development process. The need to inculcate such positive values and attitude as self-worth and self-reliance is fundamental for until there is a transformation of the mind, no real development can be effected.”⁸

This theoretically aligns the Sarawak state’s development concepts with such principles as espoused by UNDRIP, which talks of the right of indigenous communities “to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions” and their right to “freely determine their political status and freely pursue their economic, social and cultural development.”⁹ The Malaysian government is of course a signatory to UNDRIP.

However, the evidence presented to the Mission does not give any indication that these sorts of principles are respected, protected or promulgated. Instead, the Mission’s evidence on specific issues demonstrates a denial of respect and denial of services to the Penans. And more generally, the evidence concurs with those government statements which tell the Penans what they should do, and offer a prescription for their future which is at odds with the Penan culture, and certainly undermines their autonomy and their rights. This importantly includes the rights of Penan women and girls.

Specific areas on which the Mission heard evidence included the right to citizenship, the right to education, the right to health and clean environment, and the right to redress. As well as listening to the situations as important issues in their own right, the links to the existence of sexual violence and exploitation were always borne in mind.

8 Chief Minister’s Office <http://www.cm.sarawak.gov.my/cm/cmweb.nsf/All/5C3D0E387AC63A46482-57037001227AC?OpenDocument&deco1> last accessed December 16 2009.

9 UNDRIP, Articles 4 and 3, respectively.

4.2.1 Right to Citizenship

Absolutely basic to one's identity and right to development is the recognition of one's citizenship. Yet the Mission was informed that about one third to one half of Penan villagers lacked identity cards and/or birth certificates. Many applicants have had to apply several times before finally obtaining their identity cards or giving up. For example, the headman from Long Ajeng reported having to apply for an identity card four times, each time having to pay RM60. Others reported being made to pay a higher application fee, going up to several hundred ringgit, or being asked by JPN counter staff to pay RM200 to RM300 in order to collect their readied identity cards. Villagers who could not afford these fees would leave their identity cards uncollected. The Mission notes that no additional payment needs to be made beyond the initial application fee. Villagers also reported the use of different, unnumbered receipts issued upon application.

In addition, villagers complained about the high costs and the distance involved in travelling to the JPN office in Miri or JPN centres in Marudi or Long Lama. Several village headmen reported having written to the JPN to ask for mobile units to visit the settlements and register villagers, but received no response. One headman stated that he tried to get identity cards for some of his fellow villagers using an official letter from the District Office but his attempted application was dismissed.

The lack of identity cards has major impact on rights and access and respect in other crucial areas. They include

- It affects interaction with any authority, including the police. The Mission heard how Penans, in cases where they have no identification card, may be accused of being migrants, and treated with disdain. We noted this in talking about why allegations of sexual violence and exploitation were not reported, and why marriages and births may not be registered.
- Penans without identity cards have to pay a significantly higher fee at public hospitals instead of the nominal sum charged Malaysian citizens. Again, one headman reported that villagers who lacked identity cards were accused of being foreigners whenever they sought treatment at government hospitals and were charged the higher prices as a result.
- Penans without identity cards cannot vote, apply for housing grants from the government, and/or travel to other states.

These are basic rights of citizenship.

Again, this is something that has been reported by many other

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reports, over the last two decades, but to little apparent effect. The Mission does note that the Federal Minister of Home Affairs, Hishamuddin Tun Hussein, visited the Baram area in early December and stated his desire that this problem be resolved by the end of 2009.¹⁰ The Mission hopes this is not just another empty promise. Ensuring that all Penan women and girls have identification cards (as for all Penans) is an absolutely basic first step in advancing their protection against sexual violence and exploitation, and allowing them to fully participate in decisions and options relevant to them.

4.2.2 Right to Education

A further area on which the Mission heard evidence was education. It has long been known that the Penans have faced major difficulties in this area. In common with other reports and research¹¹, the Mission heard evidence about

- the lack of pre-schools,
- difficulty with the curriculum and, crucially, the language (Malay),
- the cost of attending school, including school materials,
- an uncomfortable school environment (including denigration and bullying),
- a lack of inclusion of Penan input into discussions, for example at PIBG level, and
- the difficulties and cost related to transport to and from the schools.

All of these have combined to result in high drop-out rates and lack of performance of Penans at schools.

The Mission heard how Penan students from Middle and Ulu Baram attend fully government-assisted public schools where they board at school and usually come home only when there are long holidays (about 2-3 times a year).

The Mission also heard that only one village had a preschool in the works, set up and sponsored by an NGO, leaving most Penan students relatively ill-prepared when they start their primary school. Students who were interviewed demonstrated poor oral ability in Malay and English, with many unable to comprehend basic Malay, the language of instruction at

10 See "Penans to receive birth certificates and MyKads" The Star, December 7 2009.

11 See "A Look at Penan School Children in Long Lamai" Bernama, November 23 2009.

school. The Mission found that this lack of fluency put the Penan students at a disadvantage in the school environment as students found themselves both unable to articulate their needs and problems and unable to follow classroom lessons. One youth reported dropping out of school in the midst of her very first year after a traumatic experience with corporal punishment for falling asleep in class. She stated that she had fallen asleep because she could not understand what was going on around her as she had not been previously exposed to Malay. She believed herself not smart enough for school. There were no reports of any extra help or remedial classes to empower Penan students in Malay. Lack of language skills are clearly a major factor in the poor performance and drop-out rates of Penans in the education system, but apparently they are still left to either sink (usually) or swim (exceptionally). The lack of preparedness for school, coupled with the lack of Malay language skills, then help create a profoundly isolating environment, where trust, camaraderie and positive self-esteem are that much harder to inculcate.

Prejudice and discrimination

The Penans also told the Mission how the school environment is rendered more alienating still, especially in schools where Penan students form a small minority of students¹², due to the prejudices of and discrimination by their teachers and their fellow students. Penan students reported being scolded for being “stupid” (*tak pandai belajar*) and “lazy” (*malas*). The Mission noted that this discrimination might encourage other students to see their Penan classmates as natural targets to pick on for bullying, ragging, and name-calling and for Penan students to absorb a poor self-image from the classroom and develop an inferiority complex in school.

The Mission noted that bullying was an issue for Penan students. One youth reported being hit on the head on two occasions by students from other communities. He has not referred the matter to his teachers because he does not know how to talk to them about it. (He speaks and understands very little Malay and is a particularly reticent youth.) Other villagers confirmed that bullying was a widespread issue and indicated that they were at a loss of how to handle this problem. Again, the impact on self-confidence and self-esteem should be of concern.

12 In most schools, Penan students are a distinct minority. For example, one youth noted that about four out of every thirty students in a class at Long San secondary school are Penan while the rest were Kenyah, Kayan, Iban, or Chinese.

Transport

In terms of transportation to school, the Mission was informed by the women in group discussions that school-going children are normally escorted to school (although it should be noted that the capacity to provide such escort varies among families and settlements) but parents have trouble organising escorts for their return because they seldom know when their children will return next. Therefore, these children often make the journey home on their own. A further constraint on the parents is the additional expense required to send and fetch the children to and from school. Most villages rely on road transportation to send their children to school. That entails either hitching a ride with a logging truck or taking paid transportation. About 30 people can be accommodated in a company truck, although students often have to wait for days for a truck willing to take them to school. Paid transportation was reported to cost upwards of RM100 per way for the usual journey of about 2 hours for accompanying adults. Children are charged less. According to villagers, cars sometimes do not come by for days or they stop part way, causing students to be late to school by several days. The children are then scolded for their lateness. They may also be forced to stay overnight in the forests, sometimes unescorted, due to the irregular transportation.

When taking the boat, parents must pay for fuel costs. The high incidence of river rapids further upstream means that the river can only safely be navigated at certain times.

The following table shows the distance and costs involved in getting to school for students from each settlement:

Cost of schooling

In addition to transportation costs, parents reported having trouble paying for their children's schoolbooks and school uniform. Penan women informed the Mission that students who lack schoolbooks are punished by their teachers, but unfortunately these books are not available second-hand or borrowed. The Mission notes, however, that parents should not have to fork out money for their children's schooling needs as they are supposed to be covered by the government, through the federally funded trust fund for poor students, the Kumpulan Wang Amanah Pelajar Miskin (KWAPM). This scheme covers all Sarawakian families who earn less than RM585 a month and provides RM500 a year to primary school students and RM700 a year to secondary school students. This amount is meant to

Table 2: Location of schools and related issues

Village	Primary Schools Attended	Secondary Schools Attended	Distance, method of transportation, costs (PS= primary school; SS=secondary school; h=hours)
Ba Abang	Long San	Long San	5h boat (RM100) ¹³
Long Bangan	Long Bedian	Long Lama, Long Barai, Marudi	To PS: 1h car, To SS: 2+ h car (Lama); 2+h car and then 3-4h, express boat (Marudi)
Ba Data Bila	Long Lellang	Long San	To PS: 4h foot + boat To SS: 7-8h foot + car
Long Item	Long Lutim, Long Kevok	Long San, Long Lama	To PS: 2h car (Lutim); 3h car (Kevok) To SS: 3h car (San); 5h car (Lama)
Long Ajeng	Long Moh	Long San	To PS: 5h boat (RM75) To SS: 1.5h foot + 1.5h car
Long Lamam	Long Moh	Long San	Similar to Long Ajeng
Long Murung	Long Moh	Long San	Similar to Long Ajeng
Long Kawi	Long Lutim	Long Lama	To PS: 2h car or 1 day foot To SS: 5h car
Long Melapeh	Long Kevok	-	To PS: 2h car
Long Mobui	Long San	Long San	2h car
Long Pakan	Long Lutim, Long Kevok	Long Lama	To SS: 2-3h car
Ba Pengaran Kelian	Long Lellang	Long San	To PS: 7h foot or 3h foot + 4-5h boat (RM100) To SS: 13-14h foot + car
Long Sebatu	Long Lamei	Long San	To SS: 2h car

cover schoolbooks, school fees, school equipment including uniforms, and basic living costs.¹⁴

Uncertainty re scholarships and allowances

On the matter of scholarships and allowances, several villagers noted grave inconsistencies in the amount of financial assistance provided for their children. Deductions (ostensibly for the purchase of goods for the

¹³ Prices for boat rides quoted are per boat and one-way. Each boat can take 4 to 5 children.

¹⁴ Community Portal, Pejabat Pendidikan Daerah Kerian at <<http://www.ppdkerian.edu.my/portal/modules.php?name=News&file=article&sid=315>> last accessed December 16 2009.

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student) differ among students and seem arbitrary, while receipts issued lack detail that could clarify the financial aid amount for parents. Furthermore, parents reported that the teachers often control the funds provided and do not explain anything to them. In 2007 and 2008, for the first time, the school paid families in Ba Abang RM25 per child per year for petrol. However, parents were expected to pay for books, uniforms, and other necessities, even though these items are supposed to be covered under KWAPM. In 2006, parents from Long Item were asked to prepare some documents in order to receive money from schools for school transportation, but to date parents have not received any money.

The Mission observed that parents do not understand the actual government policy in regard to how much they are entitled to receive from schools in transportation and other allowances. They are ill-prepared to support their children's schooling, and the PIBG appears to do a poor job helping Penan parents. These parents reported that, oftentimes, PIBG meetings are not held or held without their knowledge. Furthermore, PIBG meetings are conducted in Malay, despite the fact that many parents cannot speak the language. Parents also stated that teachers are often unresponsive to the needs of Penan students and their parents. For instance, when parents informed teachers that they have no way of collecting their children from school during holidays and were therefore reliant on the teachers to arrange for them to be sent home, the teachers have done nothing to help.

Consequences of poor provision and support

Given the crucial importance of education, acknowledged as such by the state government¹⁵, the Mission is disappointed that there are so many problems facing the Penans in accessing and fully benefiting from educational opportunity. These problems have serious consequences, including

- the compromising of probably the major avenue for Penans to move away from their traditional lifestyle into the 'modern' economy;
- related to this, the high non-attendance and drop-out rates mean those Penans will continue to be isolated, both because of (lack of Malay) language and because they will not have the qualifications necessary to get jobs;
- this isolation is a major factor in 'allowing' sexual violence and exploitation;

15 See "Government makes education a top priority for Penans" Borneo Post, October 19 2008.

- high non-attendance and drop-out rates (coupled with bullying and denigration of the Penans at school) will inevitably have negative consequences on self-confidence and self-esteem, factors known to contribute to difficulties in fighting against sexual violence and exploitation;
- school carries an array of opportunities, which at the moment are being missed. As well as potentially supporting positive self-esteem and confidence, these include opportunities for imparting information about reproductive rights; about what is a crime; about what is harassment; about the procedures for registering marriages and births, and the rights that go with these; about where to go for help. Empowering women and girls is a major step in combating the crimes of sexual violence and exploitation, and the school environment potentially offers a major venue for doing this. But this means that Penans need to be not just at school but their backgrounds and needs valued in and for themselves and incorporated into the curriculum.
- the transportation problem again is a major factor in 'allowing' sexual violence and exploitation. The Penan women told the Mission that it is the return journey which is particularly problematic; the National Task Force highlighted the vulnerable situation Penan girls face because of it¹⁶.

4.2.3 Right to Health and Clean Environment

We have noted earlier the huge and negative impact logging has had on the Penan's ability to feed and sustain themselves. In addition, the Mission observed that villagers were heavily reliant on the river for water to drink, cook, and wash. However, villagers complained about logging activities polluting the river to the point where they fall sick when using river water for their daily needs. The pollution is caused by soil erosion and siltation that follows logging and that renders river water murky and unfit for drinking after heavy rainfall. Also, contaminants from logging camps have entered the rivers. Downstream from the Ba Kabang logging camp, villagers from Long Item claimed to have found used batteries, oil, and other pollutants in their river. In 2001, when the Ba Kabang camp reportedly began operations, many villagers complained of ailments like stomach aches and body itch.¹⁷ In Pengaran Kelian, villagers were forced

16 Laporan Jawatankuasa Bertindak Peringkat Kebangsaan Bagi Menyiarat Dakwaan Penderaan Seksual Terhadap Wanita Kaum Penan di Sarawak, p 91

17 A similar problem faced by villagers in Long Bangga was highlighted in the local media. See "Draught-stricken rural folk in Sarawak now suffer severe skin problems" *The Star*, August 13 2009.

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to use water stored in large, rusty jars when rains caused siltation of river water. These claims that logging activities in the area have been polluting the rivers require urgent redress. Many villages now need clean water to be supplied to the village.

Article 25 of the Universal Declaration of Human Rights guarantees the universal right to clean water and basic amenities. The non-fulfilment of this right further compounds the precariousness of the Penans' way of life and increases their dependence on outsiders and on the cash economy for when they fall sick or need clean water that can no longer simply be collected from the river. This is one aspect of an increased dependency which this Mission argues is a major factor in 'allowing' sexual violence and exploitation to occur.

Health clinics

More generally, the Mission also found limited, inadequate, and inaccessible healthcare services for the local communities of Middle and Ulu Baram. The local communities' rural and isolated location put them at an especial disadvantage. There are few government clinics in the area, and these clinics are poorly supplied and lack full-time doctors.¹⁸ The clinics are located in Long Moh, Long Seridan, Long Teran, Long Bedian, Long Kevok, Long Lellang, Long San, Long Lama, Lio Matoh, Long Banga, Long Bemang, Pa'Dalih, Long Jech, Long Jegan, Long Miri, Long Naah, Long Panai, Long Pillah, Long Loyang, Long Teru, Ulu Teru, Bareo, Beluru, and Taman Negara Mulu.¹⁹ There is also a public hospital in Marudi. The Mission was informed that there are no public dental clinics in the area.

Erratic 'Flying doctor' service

Locals indicated a high level of dependence on "flying doctor" services for serious health issues. These services bring doctors into remote settlements on a monthly basis, removing the need for trips by ill villagers to

18 See "Better medical care for Ulu Baram Penans" *The Star*, December 14 2009 and "A letter from the Sarawak forest" *Malaysiakini*, November 15 2008. Similar problems have been documented in other remote areas, e.g., "Longhouse headmen up in arms over lack of medicine" *Malaysiakini*, July 16 2009.

19 List of Government Clinics, Ministry of Health, at <http://www.moh.gov.my/MohPortal/govclinicPublic.jsp?startPage=1&search=&search3=11> > last accessed December 15 2009.

local clinics that are difficult to access and short on supplies and expertise. However, locals also reported that these services have been extremely irregular in past years and have been missing altogether in the past two years. The Mission noted that the Ministry of Health hires private aviation firms to run the programme but the firm currently under contract has failed to provide timely service.²⁰ This problem has not stopped the state government from seeking political mileage by highlighting this “flying doctor” service.²¹

Consequences of poor provision and support

In relation to the existence of sexual violence and exploitation, the dependency on the Penan community on logging companies for water, medicines and other health help adds to their dependency and therefore vulnerability. The lack of state health services also deprives the Penans (including importantly women and girls) of one potential avenue whereby appropriate support and information can be given, relating to health concerns and including sexual violence. For many Penans, it is possible that access to health services may provide an alternative avenue for reporting incidences of sexual violence and exploitation. Not having this access is not just a denial of a fundamental service and right but also adds to the isolation and neglect of Penan women and girls. This, we argue, is a major factor in their experience of sexual violence and exploitation.

4.2.4 Right to be Heard: Government Responses

Crucial to the protection of individuals and groups in our society is the guarantee of an independent avenue(s) through which right to redress of grievances can be pursued. Protection against sexual violence and exploitation will mean that allegations of such are taken seriously, fully investigated, appropriate action taken against perpetrators, and appropriate action taken to safeguard against future incidence. The respect of an effective right to redress, however, is not obvious in the case of the Penans of Middle and Ulu Baram.

20 See “Solve flying doc woes” *The Star*, September 24 2009.

21 See “Two new copters for flying doctors” *The Star*, April 13 2009.

Avenues attempted for redress

In response to the various issues faced, Penans in Middle and Ulu Baram have tried a number of avenues to seek support, assistance, protection or redress from state and federal authorities. These avenues have included:

- writing letters to local district authorities
- writing to, petitioning and/or attempting to meet state government leaders
- making police reports
- mapping native customary rights lands and seeking endorsement of such community maps from the state government
- attempting to negotiate with logging companies
- writing to, petitioning or meeting federal government leaders
- writing to the National Human Rights Commission (SUHAKAM)
- writing to timber-purchasing countries and various monitoring and advocacy bodies
- filing court cases, and
- making announcements, such as the establishment of a Peace Park²²
- as a last resort, putting up blockades

Poor response

The Penans reported that the responses have been less than encouraging. Letters often go unanswered. They also reported multiple instances where they had attempted to seek redress from the logging companies or government officials only to be rebuffed or to receive unkept promises.

For example, when they complained about the pollution of their water source, company officials promised water tanks and asked for a list of households, but nothing was ever done. Or, when Long Ajeng's headman complained about the water pollution caused by logging activities to the District Officer, he reported being told that the District Office did not ask the company to enter and log in the area. The Sarawak Health Department was also informed about the siltation of the water source, but logging continues and, according to villagers, no action has been taken to prevent further pollution or provide villagers with clean water. The Mission was also told that a request for endorsement of Long Bangan's community map was refused by state authorities.

²² See "Penans declare 163,000ha in Baram their peace park" The Star, November 30 2009.

Similarly, the Mission was informed that when companies signed agreements promising not to encroach on native customary rights lands, they would not honour the terms of the agreement. For example, one company signed an agreement with the villagers of Long Pakan not to enter native lands and to build and repair houses and roads reaching the village. Nevertheless, bulldozers and tractors were brought in, and the villagers were helpless to prevent them. As a result, villagers indicated their wariness of signing agreements with companies.

Out of pure frustration with the futility of any other action, blockades of logging roads have been resorted to in some instances. This action was made illegal by a change in the law in 1987 and is an action that rarely achieves much. Loggers might move to other areas and wait out the locals, or call the police. This may result in arrests and charges²³. Evidence from other fact-finding missions describe the possible harsh crowd control methods utilised by state authorities against Penan blockaders, including the use of tear-gas²⁴.

Threats of violence

Active headmen have also reported being threatened with violence. For his attempts to prevent logging companies from encroaching on his community's land, Long Ajeng's headman was accused of being anti-government by the Pemanca. One headman reported that he had been identified by loggers as having spoken to the National Task Force about some rape cases and was subsequently accused of lying about the rapes. He also reported that the alleged perpetrator in one of the two police cases had threatened to kill him. The headman stated that he was similarly targeted when loggers found out about villagers carrying out activities to defend their rights.

In the background was also the experience of the Penans, Kelesau Naan, ex-headman of Long Kerong and an outspoken Penan rights advocate, who disappeared and was later found dead in October 2007.

23 Over the last decade, the Penan have suffered almost 500 arrests, trials and imprisonments ranging from one day to nine months. Court hearings and trials may take considerable time (up to two years), with many postponements, adding to the costs and harassment of the Penans involved. http://www.urwaldfreundliche-gemeinde.ch/action/blockage_2000/block2000_14.html

24 See IDEAL 2001. The testimonies documented in that fact-finding mission highlighted the collusion between logging companies and state agencies, including the police force. There was a complete lack of respect or protection for the position of indigenous communities whose basic livelihoods were being threatened by aggressive logging practices and their rights abrogated by the companies and their cronies. The report also documented the para-military tactics and excessive force used by state authorities on the Penan involved in setting up and guarding the blockades.

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Although there is widespread suspicion that he was murdered, the police closed the case, without interviewing the Penan community.

Given the subject matter of this report, the existence of an atmosphere where threats of violence seem relatively common should be ringing alarm bells in reference to the allegations of sexual violence and exploitation.

Disconnect between promises and reality

All this means that the Mission observed a disconnect between claims and reports of government assistance for the Penans and on-the-ground reality where Penan villagers lack basic protection, amenities and services. The disconnect takes two main forms.

Firstly are the claims by the state authorities that there is protection and provision for the Penans. As discussed in Chapter 2, it is claimed that there are allocations for the Penans; they are recipients of programmes; there is state intervention to help them. The evidence to this Mission, however, suggests that the Penan villagers find the state (as well as companies involved in logging and carrying out other development programmes) to be more willing to pledge assistance than to actually deliver it. It should also be noted that offers of state ‘help’ are often conditioned upon the Penans agreeing to resettle or support logging activities. Tellingly, the Mission was also informed that villagers were on occasion asked to approach logging companies instead of government officials for help, exactly the situation the SUHAKAM report noted with dismay²⁵.

Secondly, are the many examples of official government statements are negative about the Penans and their way of life. The Penans themselves are denigrated, for example being told they have no rights and are liars and anti-government troublemakers.²⁶ They are portrayed as ungrateful, for example in the recent statement by Sarawak Chief Minister Taib Mahmud: “the timber people have fed the Penans” and that, in terms of forestry conservation, “Sarawak has done the best; no developing country has done as much.”²⁷

Supporters of the Penan are also attacked. Local organisations and individuals who call for better protection of indigenous rights, a different type of development, and/or environmental protection are labelled as “anti-development,” “anti-government,” and under Western influence. Typical examples would include the statement by Dennis Ngau, Telang

25 SUHAKAM: Report on the Penan in Ulu Belaga, p5. See our earlier p 16.

26 See, for instance, “Malaysia’s Penan tribe ups anti-logging campaign” AFP, August 22 2009.

27 See “Don’t fight in disguise, says Taib” Borneo Post, November 14 2009.

Usan PBB Youth branch chief, who said: “We in the (PBB) youth movement will not tolerate the efforts of NGOs in painting a bad image of the state government”²⁸. Or Deputy Chief Minister Alfred Jabu, who pointed his finger at non-governmental organisations and opposition politicians alleging that “they try to wreck our state’s reputation, harm our economy, deter investors, including foreign banks from doing business with our local companies, or investing in Sarawak.”²⁹ Or, more recently, Sarawak Chief Minister Taib Mahmud accused SUHAKAM and NGOs of “fighting in disguise [as NGOs]” and making misleading statements about the state’s forestry management practices.³⁰ Federal and state authorities may also attempt to link any local opposition to manipulation by foreign “eco-imperialists”.³¹

Consequence of denigration and lack of response

All this leaves the Penans disempowered, isolated, mistrustful of authorities, and as a consequence, increasingly vulnerable to abuse and exploitation. It has also denied them of their basic rights to redress.

Article 1 of the Declaration on Human Rights Defenders states that, “Everyone has the right...to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels.” Article 9 guarantees the right to remedy and protection in the event of human rights violations and requires states-parties to “conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.”

The Mission has determined that the Penans of Middle and Ulu Baram do not enjoy these rights to access to justice, understood in terms of protection of rights and remedy in the event of rights violations.

The whole situation then becomes a vicious circle. The lack of respect between state authorities and the Penans has resulted in a culture of blame, counter-blame and denial, which continues to spiral without apparent

28 *New Straits Times*, November 12 2007

29 *Malaysiakini* May 24 2007

30 See “Don’t fight in disguise, says Taib” *Borneo Post*, November 14 2009 and “Taib: Suhakam should enter politics” *New Straits Times*, November 15 2009.

31 Brosius, P 1999, pp. 36-57.

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end. Threats and alleged actual acts of violence against the Penans are part of this. Meantime protection and provision for the Penan community continues to suffer. Not only has this continued to deprive them of their basic rights to land, to adequate food, education, healthcare, and basic amenities and services, it has helped foster a situation where Penan women and girls lack protection against sexual violence and exploitation.

The situations are connected: a lack of positive action on Penan grievances, the further isolation, marginalisation and disempowerment of the Penan community in general, increase the risks of sexual violence and exploitation. The increased vulnerability and the increased dependency on logging companies and camps brings us back to the specific allegations of sexual violence and exploitation. This is the context in which the allegations of sexual violence and exploitation are located.

CHAPTER 5:

Conclusions

The findings of this Mission demonstrate the integral link between the allegations of sexual violence and exploitation in the Penan communities and the larger issues of dispossession and disempowerment of indigenous communities. This dispossession and disempowerment can be argued to be contingent on a lack of respect for such communities and their culture, not least by federal and state authorities charged with responsibility for their protection. The lack of protection and vulnerability that has resulted has made Penans liable to violence and exploitation, including sexual violence and exploitation.

By seeing that specific issues and problems affecting a particular group need to be examined within the wider contexts, one sees that how, for example, the exclusion of the wider community from their right to citizenship (denied to many Penans) and their right to development (importantly meaning the ownership of control over the path of that development) and from social services such as health, education, security and basic information about legal rights, help create the sort of environment in which Penan women and girls are vulnerable to sexual violence and exploitation.

Moreover, the confluence of events that render Penan women and girls vulnerable to sexual violence and exploitation affect the whole community and leave them unable to provide the survivors of sexual violence and exploitation with the support they need.

So the Mission argues that the allegations of sexual violence and exploitation, including rape and domestic violence, should not be separated from issues like land encroachment, land dispossession, general intimidation and threats of violence, river pollution, inadequate healthcare, inadequate transportation to/from school, bullying, and/or drop-out rates at school, and lack of response to grievances. Rather, they should be seen as all connected in a causal web, at the heart of which is a people whose basic rights and fundamental freedoms have been, and are being, denied.

The way forward is simply to reverse the lack of respect and protection. A starting point is suggested by the remark by one of the women from Long Item: “The ultimate solution is to revoke the logging licences.”

Beyond that, the federal and state governments, their agencies and all other stakeholders should take cognisance of expressions such as “*The*

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Penan do want developmentbut their response to development will depend on a number of factors.....the nature of the change itself (such as the complexity of the programmes and whether they are in conflict or conformity with the Penan value, skills and needs), the speed at which it was introduced and the manner by which the change is introduced.”

Further, “the cultural peculiarities of these societies must be taken into consideration..... They must be respected first and foremost in order that the people may be enabled to change in accordance with their innermost feelings and values about human dignity, relationships and morals. Only in that way can modern socio-economic change constitute a development, and only thus can these people avoid feeling inferior and ending up as losers.”¹

Instead of isolation, dispossession, disempowerment, dependency, and impoverishment, the way forward is to place the Penans at the centre of their own development, through respecting basic principles and rights. If one needs reference points, these are set out in the various international and regional declarations and conventions, to many of which Malaysia is a signatory. These include:

Principle 22 , Rio Declaration: *‘Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.’*²

Agenda 21, 26.3 (b): *‘Establishment, where appropriate, of arrangements to strengthen the active participation of indigenous people and their communities in the national formulation of policies, laws and programmes relating to resource management and other development processes that may affect them, and their initiation of proposals for such policies and programmes’*³

Further, Articles 18, 23, 26, 27 & 32 of the UNDRIP all cover development and participation; Article 14 deals with education; Article 24 health and Article 21 on socio-economic development which also touches on education and health.

1 Nicolaisen, Pride and progress, Kajang response to change, ms. 1986 p40

2 Rio Declaration on Environment and Development, UNCED, 1992 at <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=78&ArticleID=1163>

3 <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=52&ArticleID=74&cl=en>

Other international human rights instruments upholding equality of all peoples in health, education, and development include CERD, UN Convention of the Rights of the Child (CRC), and UN Convention on the Elimination of Discrimination Against Women (CEDAW), among others.

For example, several of the survivors of the alleged sexual violence were minors at the time they were sexually violated. Article 34 of the UN Convention of the Rights of the Child requires states-parties to protect children from all forms of sexual abuse and exploitation and to work to prevent, among others, “*the inducement or coercion of a child to engage in any unlawful sexual activity*” and “*the exploitative use of children in prostitution or other unlawful sexual practices*”.

While the state has not directly sanctioned the sexual violence and exploitation experienced by Penan women and girls, its actions, as described in this report and others, have rendered the women and girls more, rather than less, vulnerable to such violations. It has failed to take steps to protect the communities from violence and exploitation, has failed to provide adequate protection and support to Penan women and girls at risk from sexual violence and exploitation, and has seemingly allowed perpetrators of crimes to walk free. This is a situation which has to change if Penan women and girls are not to suffer further violence and exploitation, and it is with the federal and state authorities that much of the responsibility for remedial and positive remedial actions lie. We look forward to an immediate start.

CHAPTER 6:

Recommendations

In view of the above findings, the Mission proposes the following recommendations to address and rectify the issue of sexual abuse and exploitation faced by Penan women and girls in Middle and Ulu Baram as well as, and more importantly, the root causes of this problem, as set out in this report in terms of (i) land rights, (ii) citizenship rights, and (iii) access to justice:

6.1 To the Federal Government of Malaysia

- 1) Noting the failure of the Sarawak government to ensure that NCR lands are protected, the Mission calls upon the Federal government to institute a Royal Commission to resolve long-standing land issues and the problems faced by indigenous people in Sarawak as a consequence of their dispossession and loss of control over their lands.
- 2) The Mission notes the government's fiduciary responsibilities to the Penan communities, as set out in international and domestic laws and standards. This entails:
 - a.* Full and effective enforcement and domestication of its obligations to human rights laws and commitments to standards, including those set out in the CEDAW and CRC, namely Article 34 of the CRC.
 - b.* Noting that Malaysia has voted for the adoption of UNDRIP, fulfilment of its commitments, specifically with respect to Articles 6, 10, and 22 of UNDRIP
- 3) The Mission recommends a close review of any Federal Government development programmes to ensure a genuine and transparent process as well as the full and effective participation of all segments of the Penan communities in decision-making processes that affect their lives.

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4) The Mission calls on the Federal Government to conduct a thorough information-gathering study with the aim of getting to the root causes of Penan problems and with specific programs to tackle problems, with the full participation of the people, and with adequate resources allocated to ensure their implementation. This includes:

a. Government to expand and upgrade existing educational and health services and utilities, *i.e.*, public transportation, electricity, and water works.

b. Health Department to be proactive in ensuring that water sources for the Penans and other rural communities are protected from logging, plantations and other “development” projects.

c. Mobile units of JPN to send advance notice of arrival to Penan settlements in the area, to receive applications for identity cards and birth certificates, and to distribute readied documents.

d. Ministry of Education to collect full data on how many students there are from each village and how many dropouts and why they have left school in order to aid the drawing up of better education policies; also to study how to equip the students and their parents with ways of dealing with the issue of discrimination and enhance their self-esteem

e. Ministry of Education should further ensure that schools have sessions to demystify the technicalities of government-provided financial aid for poor, indigenous, and specifically Penan students.

f. Ministry of Education to plan and build schools within larger Penan settlements, to support the operation and maintenance of community-run pre-schools, and to explore and implement education solutions using new information and communication technologies that allow schooling to be conducted at community settlements.

g. Ministry of Education should also set up an effective Penan PIBG in each of the rural schools, so that culturally appropriate educational goals can be institutionally implemented with the involvement of Penan families.

- b.* Ministry of Education to further institute regular PIBG meetings and to ensure that school officials inform the parents and students of the school calendar and school activities and also consult with parents on other school concerns or student matters.
 - i.* Government to allocate resources for schools to be equipped with appropriate vehicles and drivers to transport schoolchildren, safely supervised by accompanying teachers or parents, on all trips to and from schools. All such transportation arrangements should be run in agreement with parents and with their input on frequency and other issues.
- 5) The Mission further recommends adequate monitoring of previous recommendations to ensure their swift and full implementation:
 - a.* Government to establish a Federal body that would involve Penan communities and NGOs to serve as a formal monitoring body and to formulate detailed programmes to address all issues reported in the National Task Force report.
 - b.* The Ministry of Women, Family, and Community Development to ensure that the recommendations from the National Task Force report be implemented in close consultation and partnership with concerned Penan communities and NGOs through a decision-making and monitoring committee at the Federal Women, Family and Community Development Ministry level. The committee must put in place sufficient financial resources and operational mechanisms, and develop immediate, medium and long-term plans, strategies, programmes and projects to ensure that actions go beyond the limited Task Force recommendations.
- 6) The Mission advocates that immediate support be provided to survivors identified in the National Task Force report as well as by this Mission, *e.g.*, ensuring that identity cards and birth certificates are issued and that health and financial support is provided to the survivors, especially the single mothers.
- 7) The Mission calls on the government to respect, promote, and ensure peoples' participation in all processes and levels of development intervention, including capacity building for people to be able to participate in development.

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a. Federal Development Agencies (such as FELDA and Tabung Haji, both involved in plantations on Native Customary Rights Lands, and Petronas, which has a pipe-line project linking Bintulu with Sabah that will slice through much native customary rights land) to immediately reconsider their programmes and projects in light of the recommendations made by the Task Force.

8) The Mission counsels the government to identify legislation and/or policies to be implemented within a specific time frame to ensure that logging, plantation, and other large-scale companies are held accountable for conduct that undermines the social, cultural, and economic rights of indigenous communities.

9) The government should require an independent police base, *i.e.*, one that is not stationed in a logging camp, and compulsory police training for officers stationed there.

6.2 To the Sarawak State Government

1) The Mission strongly recommends that the state government ensures the full and effective respect, protection, and fulfilment of native customary rights.

2) The Mission further urges the Sarawak Government to review all its logging, plantations, and dam construction in line with the National Task Force recommendations and to withhold funding for projects which do not conform to these recommendations.

3) The state government ought to recognise Penan leaders who are elected by majority vote by their communities and who thus should be allowed to represent their own communities.

4) The Mission calls for concrete action to be taken to strictly regulate logging companies, their workers and other outsiders who seek to gain profit through exploitative means.

a. Put into place stricter mechanisms to control the operation of loggers.

- b.* Set up a mechanism by which complaints from communities against logging companies and their workers are effectively addressed.
- 5) The Mission recommends that the Sarawak government debate both the National Task Force report and other fact-finding reports on the situation of the Penans and other indigenous communities in similar situations, including this report.

6.3 To the Federal Parliament and the Sarawak State Assembly

- 1) The Mission calls on the parliamentary select committee to monitor the implementation of government and SUHAKAM recommendations to resolve the grave problems facing Penans and other indigenous communities.
- 2) The Mission also recommends that the parliament and state assembly debate both the National Task Force report and other fact-finding reports on the situation of the Penans and other indigenous communities in similar situations, including this report.

6.4 To Intergovernmental Bodies

- 1) The Mission calls for the United Nations Special Rapporteur on Violence Against Women, Its Causes and Consequences, Ms. Rashida Manjoo, to address the multiple and intersecting violence among the Penan women of Sarawak, Malaysia by initiating an independent and impartial investigation of all forms of discrimination and violence that Penan women and girls have experienced since the advent of the logging industry in the area.
- 2) The Mission further recommends that the Special Representative of the United Nations on Business and Human Rights, Mr. John Ruggie, look into the corporate accountability of the logging and palm oil plantations in Sarawak, Malaysia and ensure that:
- a.* access to redress and justice be given to the Penan survivors and other victims of human rights violations;

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- b.* due diligence and accountability to human rights, including its gendered dimensions are integrated in corporate policy and practice;
 - c.* state accountability in the protection from all forms of human rights violations by corporate and other interests is ensured.
- 3) The Mission recommends that the Special Rapporteur on Human Rights Defenders address:
 - a.* threats by alleged perpetrators or loggers on individuals who expose cases of sexual violence and exploitation
 - b.* arrests or threats of arrest by the police, or threats of harm by loggers, on individuals for their actions in defending their lands against encroachment.
- 4) With reference to the EU Guidelines on Violence Against Women, the Mission urges the European Union:
 - a.* to identify forms of violence against women and girls in Middle and Ulu Baram, Sarawak, and analyse the relevant data and indicators; and
 - b.* noting the shortcomings of the government in response to these cases, as well as the failure of the government to fulfil its international obligations with regard to these, to take action to combat violence against women by encouraging the summoning of the UN Special Rapporteur on violence against women in as such cases of violence are very widespread and goes largely unpunished.

6.5 To SUHAKAM

- 1) The Mission calls on SUHAKAM to facilitate meetings between the Penan communities, NGOs, and government departments with the view to draw up a road map with concrete time frames.
- 2) The Missions recommends that SUHAKAM include previous recommendations made regarding Penan issues and land rights, etc. in the National Human Rights Action Plan to be proposed to the

government. SUHAKAM should also monitor and publish progress reports on the implementation of past recommendations concerning the Penans.

- 3) The Mission recommends that s provide training to the communities in partnership with NGOs.
- 4) The Mission urges SUHAKAM to invite the Special Rapporteurs on Violence Against Women and on Business and Human Rights to visit Sarawak.
- 5) SUHAKAM should accelerate efforts to encourage the removal of reservations on CEDAW and CRC and the ratification of the CEDAW Optional Protocol.

6.6 To NGOs

- 1) The Mission calls on NGOs to help Penans create and facilitate more spaces for Penan women to discuss and systematically act on their situations including gender sensitive matters.
- 2) The Mission recommends NGOs work with Penan communities to enhance and develop local practical strategies to combat sexual violence and abuse as their engagement with the outside world, and with it new threats posed by outsiders, increases.

6.7 To Bursa Malaysia

- 1) The Mission calls upon Bursa Malaysia to investigate subsidiaries of companies listed on Bursa Malaysia for their possible involvement in activities that violate human rights of the Penan communities. Their activities can be considered a failure of good corporate governance and could constitute a breach of listing requirements. Bursa Malaysia should ensure that companies with poor human rights records should not continue to enjoy listing on Bursa Malaysia.

Undertaking of the Penan Support Group

The Mission finds it imperative to take immediate steps to remedy the situation of Penan communities and particularly of Penan women and girls in Middle and Ulu Baram. The Penan Support Group is committed to doing the following:

- 1) Work with the Penan community (in a way that means they are partners and not simply beneficiaries) to develop empowerment programmes for Penan women and girls and to identify and assist in the provision of appropriate basic services such as health and education.
- 2) Engage appropriately with relevant government departments to bridge gaps in policy and information pertaining to the health, education, and provision of identity cards, for the Penans, for example. This might also mean lobbying departments to carry out more detailed studies into the situation of the Penans and develop concrete and holistic programmes that serve their needs and ensure their rights are respected.
- 3) Monitor the implementation of recommendations of the National Task Force.

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APPENDIX 1:

Penan Support

Press Statement:

NGOs Counter Police Allegations of Non-Cooperation in Penan Sexual Abuse Cases

It has been three months since the Swiss-based NGO, the Bruno Manser Foundation (BMF) released the press statement on the rape and sexual abuse of young Penan women by logging company workers.

It has been two months since The Star followed up the BMF press statement and provided details of rape and sexual abuses in Middle Baram in Miri Division, Sarawak.

Two young Penan mothers had since been sheltered by NGOs and friends in Kuala Lumpur and they had made two police reports with Bukit Aman.

NGOs are cooperating with Police

KL-based NGOs continue to cooperate with the Sexual Assault Unit of the Police Headquarters in Bukit Aman. The NGOs have facilitated the presence of the Penan women at Bukit Aman each and every time such requests were made by the unit for the Penan women to provide statements and clarification. Such cooperation has been progressing well on a professional level, with the last session taking place yesterday, 9th December 2008.

Under such circumstances, it is highly inappropriate for the IGP and the Bukit Aman CID head to make public statements contrary to such co-operation and its on-going investigation.

No case again?

We are puzzled by statements from the police suggesting that the police's initial investigations show that there is no case to prosecute.

This seems like a repeat of what happened to the 1994 NGO-facilitated rape report of a 12-year-old Penan girl which gave more than sufficient details and information to enable the police to nab the rapist and the other perpe-

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trators. Yet we were only informed recently that that case had been thrown out by AG's chambers due to insufficient evidence gathered by the police.

We are providing copies of the police reports made in 1995 regarding this case to demonstrate the leads and names mentioned that should have led police to at least an arrest.

Sarawak media not reporting the full truth

We also condemn the outright attempts at white-washing the latest rape and sexual abuse cases by the Sarawak-based The Borneo Post newspaper on numerous occasions. The Borneo Post's reporting on the issue reflects blatant biasedness and lack of journalistic professionalism.

NGOs hiding the victims?

We take objection to the police's insinuation that we hid two victims in KL for 9 days before making the police reports as we wanted to coax them as to what to say to the police.

This further demonstrates the insensitivity and lack of understanding of the police top brass in handling rape and sexual abuse victims, especially those from isolated, marginalized and long-abused communities.

Why we sought help from Bukit Aman?

The original intention of the victims and the Penan communities to seek support in KL was to avoid the biased Sarawak police that they had come accustomed to. However, the statements and actions coming out of Bukit Aman are of increasing concern to us. And raises questions about where the Penan victims can go to now.

Our offer

The police have said that they are unable to meet the people from the community as part of their investigations. This is not surprising as the Penans do not trust the police or anybody from the authorities.

The NGOs in Sarawak who have a good working relationship with the Penans and who are trusted by the Penans, are willing to take a team of *women* police officers from Bukit Aman into the Penan homelands for

them to meet the other victims and whoever else they need to interview. But only women police officers from Bukit Aman are to be in the team.

In conclusion, we call upon the police to be professional and free of bias in its investigation into the latest allegation of rape and sexual abuses of Penan girls and women. And for them to see to it that such crimes are not perpetuated in Sarawak or elsewhere.

10 December 2008

APPENDIX 2:

Summary of the National Task Force Report (Ministry of Women, Family and Community Development, published September 2009)

The significant public focus on the Penan communities following the news reports led to the formation of the Jawatankuasa Bertindak Peringkat Kebangsaan bagi menyiasat Dakwaan Penderaan Seksual terhadap Wanita Kaum Penan di Sarawak, Malaysia (National Task Force to Investigate Allegations of Sexual Abuse of Penan Women in Sarawak, Malaysia; hereafter, the task force) by the Ministry of Women, Family, and Community Development on 8 October 2008. The task force comprised representatives from various government departments and ministries, officials from the Sarawak state government, the police, and representatives from Peninsular-based women's NGOs. The task force conducted an investigation in Baram from 10 to 15 November 2008, visiting several villages and schools attended by Penan children to investigate the allegations of sexual exploitation and abuse of Penan women and girls and to report on their findings to the Federal Cabinet. The task force report findings was only made available to the wider public on 8 September 2009, a full year after the cases of rape and abuse were first disclosed.

The National Task Force was headed by Dr. Noorul Ainur from the Department of Women's Development and comprised the following individuals:

1	Ivy Josiah	Women's Aid Organisation
2	Noorul Ainur Mohd. Nur	Department of Women's Development
3	Hasan Sui	Government appointed representative of the Penan
4	Abu Bakar Mat	National Registration Department Sarawak
5	Rosnah Ramly	Ministry of Health
6	Chief Inspector Solimant Nyian	Royal Police Force
7	Sidek Rashid	National Registration Department Sarawak
8	Elfian Satria Yaacob	Department of Women's Development
9	Naemah Ibrahim	Department of Women's Development
10	Mastika Matair	Department of Social Welfare
11	Annie Liaw	Ministry of Rural Development
12	John Fery Jame	Miri Resident's Office
13	Norfirdaus Mois Sapien Suri	Department of Women's Development
14	Siti Fatimah Ismail	Department of Social Welfare
15	Hamizah Hassan	National Population and Family Development Board
16	Masniah Zamhari	Ministry of Education

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17	Prema E Devaraj	Women's Centre For Change
18	Herlina Ajaib Jamhari	Sarawak Women's Bureau
19	Junainah Che Ali	Ministry of Unity, Culture, Arts, Heritage
20	Abang Rabae Abang Muhi	Ministry of Rural Development
21	Norsalina Salim	Department of Women's Development
22	Ramzi Ibrahim	National Registration Department Sarawak
23	Devadasan Manickam	Department of Women's Development

The task force split up into two groups. The first group visited the following villages: Long Item, Long Kawi, Long Luteng, Long Belok, and Kampung Ugos, Jambatan Suai, Niah. The second visited these schools: SK Long Lapok, SRK Long Kevok, SRK St. Pius, Long San, SRK Long Bedian, SMK Temenggong Lawai Jau, Long San, and SMK Long Lama.¹ Visits were also made to Penan settlements in Long Mobui and Ba' Keluan.

The task force noted the lack of infrastructure to meet the community's needs and to connect them to the outside world. A key finding was that the distance between most villages from schools, clinics, and government offices forced villagers to rely heavily on transportation from logging companies and made it difficult for them to register for birth certificates and identity cards. The report confirmed that the rapes and sexual abuse cases had indeed taken place.

The task force interviewed two survivors whose cases were reported in the media and who had both filed police reports. The survivors, given the pseudonyms Cindy and Bibi, were interviewed at a women's shelter in Kuala Lumpur on 5 November 2008. Cindy was 17 at the time of the interview. She was first raped at age 12 while walking around her school area during the holidays. She was raped again in another instance where she hitched a ride to school from a logging car. She became pregnant and dropped out of school. Cindy noted that her school used to provide transportation to take students to and from their villages during school holidays, but that service had since ceased, leaving students like her no choice but to hitch a ride from loggers.

Bibi was 21 at the time of the interview. She was raped twice by a logger who she had first met when he gave her family a ride home after dropping her sibling off at school. Both times, he broke into her house and forced himself on her, and each time she got pregnant. The logger would occasionally bring food for Bibi and her family, and he claimed her for his wife but she refused to accept him as he had two other wives already. Bibi is illiterate and was too scared to tell anyone about the rapes when they happened. It is important to note that both women were minors when they were raped.

Six other interviews were conducted in Baram and revealed similar patterns in terms of the perpetrator's access to the survivor (giving her a ride or visiting her village supposedly in order to make purchases), her lack of a proper support system, and her continued vulnerability to abuse and exploitation due to poverty, isolation, and a high reliance on loggers for transportation. The task force noted the role of development in facilitating the rape and sexual abuse cases by leaving survivors dependent on and vulnerable to outsiders and unanimously concluded that the sexual violence faced by the Penan was closely connected to poorly planned and piecemeal development programmes. Its recommendations identified what was needed from the government in terms of basic infrastructure and services. However, the report did not recommend a review of these development programmes and nor did it place any responsibility on the logging companies and their workers.



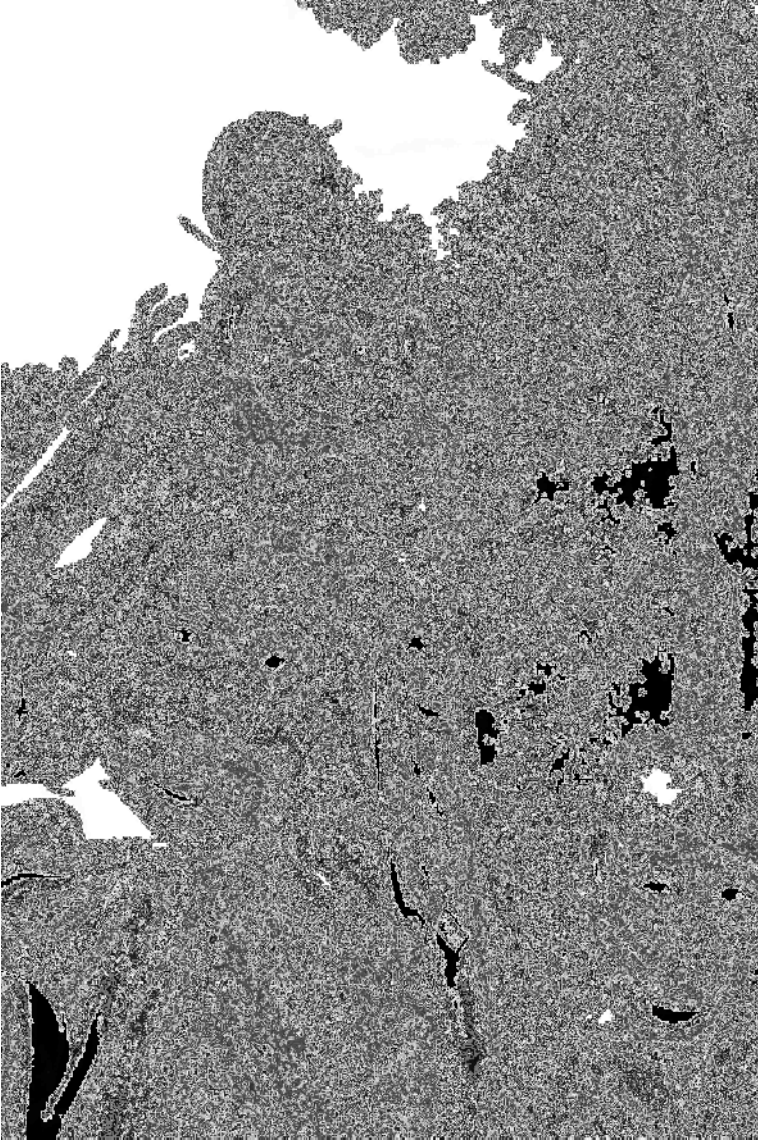
General briefing for the villagers on the fact-finding mission.



Penan children outside the village church.



Several Penan women and children listening to members of the fact finding mission.



Penan children by the river.



Penan children learning to draw and sketch using materials provided by the mission members.



Villagers preparing for a trip outside the village by boat. Boats such as these are one of the main modes of transportation for the Penan villagers in Middle and Upper Baram.



Villagers being briefed on the interviews scheduled by the mission members.



Some villagers looking on while others were being interviewed by the mission team.



An elderly Penan man inside the village church.



Villagers outside the village church. The village church is the centre of the villagers' social activities.



A Penan villager on the way out of the village for a hunting trip.



A Penan villager returning to the village from a hunting trip.



Unlike in some forests still left untouched where they are defended by some Penans, this elderly Penan has to travel far and wide without any certainty of finding wild games as forest destruction threatens the livelihood of the people.



Villagers by the river to send off the mission members on the last day of the mission.



Entrance to one of the camps of logging company Samling in the Baram area.



Piles of felled logs on the way out of Baram.



Felled logs being transported out on a truck.



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