

JARINGAN ORANG ASAL SEMALAYSIA

INDIGENOUS PEOPLES NETWORK OF MALAYSIA

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24 July 2015

THE STATE SECRETARY FOR INFRASTRUCTURE AND THE ENVIRONMENT,
Honorable Wilma J. Mansveld

and

THE STATE SECRETARY FOR ECONOMIC AFFAIRS
Honorable Sharon A.M. Dijkema

Through
HE Harry Molenaar
Netherlands Ambassador to Malaysia
Royal Netherlands Embassy
218, Jalan Ampang, Kampung Datok Keramat,
55000 Kuala Lumpur

Honorable Secretaries of State,

Your letter to the Netherlands House of Representatives on “Developments regarding international sustainable forest management and more sustainable wood trading practices”, dated 13 July 2015, has been brought to our attention and to which we, the Jaringan Orang Asal SeMalaysia or Indigenous Peoples Network of Malaysia (JOAS) feel the need to comment on.

Consulting Indigenous Peoples

JOAS was quoted in the letter to have confirmed that all indigenous communities are carefully consulted by the MTCS-certified forest managers before, during, and after any forestry activities. As a result of these consultations, our user rights as well as other interests are carefully considered. And therefore, no logging activities are carried out in places that are of importance to indigenous communities, such as burial grounds and religious sites.

JOAS categorically denies any such confirmation. On the contrary, JOAS rejects the MTCS as many of our 89 members comprising indigenous or Orang Asal organisations from all over Malaysia have continuously complained about the flawed or non-existent consultation process under the MTCS.

JOAS has never supported the MTCS and should our position change, we will send a formal letter to the MTCS or to any other formal body stating clearly such position.

JOAS also reiterates that we disagree that the quality of the MTCS standards or their implementation in the field is very satisfactory as mentioned in the letter, nor do we consider that the criterion of ‘free and prior informed consent’ is properly integrated into the MTCS guidelines and is correctly implemented in practice. These were among pressing issues raised at the

technical meetings on 19 January 2015 with both ministries, and are evident in the Report of the National Inquiry on the Land Rights of Indigenous Peoples by the National Human Rights Commission of Malaysia (SUHAKAM) and through numerous court cases.

We also wish to reiterate our stand that it is the lack of strong indigenous rights protection mechanisms/provisions within the MTCS Guidelines which makes us reject the MTCS and not because of our views on the rivalry between the MTCS and FSC systems. In particular, the MTCS still does not recognise the concept of ancestral territory or *wilayah adat*. The system, and more so, its implementation, uses the present legislation and narrow interpretation of Orang Asli or Native Customary Rights (NCR) to land, where the Malaysian superior courts have already recognized the legal continuity of the pre-existing rights of Indigenous Peoples to their ancestral and customary lands under common law.

This limited interpretation of recognition and respect of customary rights substantially limits the scope and applicability of FPIC as interpreted by MTCC in its Guideline for the Interpretation of Requirements in MC&I (Natural Forest) GD-NF 2/2014 published on 6 June 2014 ("the Interpretation Guideline") to only those rights consistent with existing written laws.¹ For example, while most of the MTCS certified forests are still actively used by the Orang Asli for collecting forest products, fishing, hunting and are important water catchment areas for Orang Asli communities, only a very small part of their ancestral and customary lands have received fuller legal protection under some form of reservation or individual titling in Malaysia.² In effect, this leaves most ancestral and customary land rights of Orang Asli in Malaysia still largely unprotected by MTCS.

We also wish to shed some light on the other two organisations that were mentioned in the report namely, the Persatuan Orang Asli Perak (POAP) and the Federation of Orang Ulu Associations Sarawak (FORUM).

POAP has very limited scope of representation (confined to a only few Orang Asli villages in the state of Perak). It is closely linked with the Yayasan Orang Asli Perak (YOAP) which has been involved in the logging industry and should therefore, not represent the environmental and NGO community in any consultation process.

FORUM is in the Board of Trustees of the MTCC³ and therefore their representation in the consultation would be considered a conflict of interest. In any case, the Orang Ulu constitute a very small indigenous group in Sarawak, and should therefore not be taken to represent indigenous groups in Sarawak.

Reliance on the sole involvement of POAP and FORUM to suggest effective consultation with the 13.8% indigenous peoples or Orang Asli in Malaysia is misplaced. In addition, the use of POAP and FORUM as representatives of the Orang Asli disrespects and disregards the traditional and decentralized decision-making structures of the Orang Asli and raises questions as to the credibility the MTCS consultation process.

¹ Yogeswaran Subramaniam (PhD), Legal Opinion Malaysian Timber Certification Council Guideline for the Interpretation of Requirements in MC&I (Natural Forest) GD-NF 2/2014 published on 6 June 2014 ("the Interpretation Guideline"), 15 December 2014

² As of December 2011, only 15.84 per cent of Orang Asli territories have received fuller legal protection under some form of reservation or individual titling, while the remaining 84.16 per cent of the territories are without any of such protection, Source: JAKOA. Available from the website of the Ministry of Rural and Regional Development [<http://www.rurallink.gov.my/>].

³ Represented by Mr. Gerawat Gala. See <http://www.mtcc.com.my/board-of-trustees>

Public availability of maps

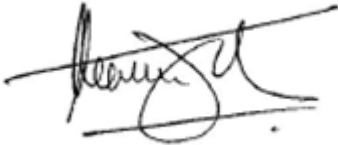
JOAS and our members have been doing community mapping, organising work and providing legal assistance to many indigenous communities for many years. While cartographic or district maps are easily available, JOAS can confirm to you that official topographic maps scaled 1:50,000 and above as well as aerial photographs are not easily accessible to members of the public. These are the maps necessary for forest certification. Such topographic maps and aerial photographs are accessible only to government agencies and timber companies but not for NGOs nor Orang Asal communities. These maps are considered restricted and can be made available only with a police permit or approval by the authorities are obtained.

Conversions and Assessment process for certification systems

On the conclusion that the indigenous peoples and the forests are much better off with than without MTCS certification based apparently from indigenous peoples from your consultations, JOAS has expressed in many fora and at the SUHAKAM National Inquiry that the certification system in Peninsular Malaysia is flawed as it considers an entire individual state as a single FMU.

Thank you for your kind attention and should you have any questions, please contact me or Ms. Jannie Lasimbang from our JOAS Secretariat.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Thomas Jalong', written over a horizontal line.

Thomas Jalong
JOAS President