MEMORANDUM

"THE ENVIRONMENTAL IMPACT ASSESSMENT PROCESS IN SARAWAK MUST BE RECONSIDERED AND REVIEWED"

Submitted by:

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I Introduction

This memorandum is written to express a selection of our long-held concerns on the Sarawak Environmental Impact (EIA) process, specifically on its lack of mandatory public participation and its inadequacies in addressing particular activities such as logging operations.

The need to revamp the EIA process in Sarawak becomes even more urgent today with the Sarawak State Government's plan to develop a host of intensive large-scale development plans and projects that include large monoculture plantations, hydroelectric dam projects and the Sarawak Corridor of Renewable Energy (SCORE), among others.

We consider public participation as a fundamental component of any EIA process as it ensures that principles of transparency and accountability are upheld by our governance system and the private sector, allowing for all views pertaining to any project to be deliberated on. Without proper planning and adequate consultations with a wide range of stakeholder groups, the adverse impacts from such projects may far outweigh their benefits.

II Controversies surrounding the enactment of the Sarawak EIA law

The enactment of the Natural Resources and Environment (Prescribed Activities) Order, 1994, a subsidiary legislation to the Natural Resources and Environment Ordinance, 1993 (NREO) set forth the EIA process for certain categories of development projects to be undertaken at the state level in Sarawak. We understand that since then up until 1996, more than 700 EIA reports have been processed by the Sarawak Natural Resources and Environment Board (NREB).[1] Prior to this, the legislative authority for environmental governance including the prevention, abatement, control of pollution in Malaysia was under the central authority of the Federal Department of Environment, which enforces the Environmental Quality Act 1974 (EQA).

In 1995, SAM along with other civil society groups and concerned legal practitioners in this country were severely shocked after it was discovered that Sarawak had been authorised by the Federal Government to enact its own environmental legislation, retrospectively. The objections were then subsequently brought to the judiciary.[2] Despite the decision of the Appeals Court that allowed Sarawak the constitutional right to legislate its own environmental law, many parties today continue to raise criticism on this decision.

Here we would like to re-capture some of the concerns on the matter:

First and foremost, it is still widely held today that the primary motive in allowing the Sarawak state exclusive jurisdiction on environmental governance for certain development activities was directly linked to the authorities' intention to facilitate the construction of the Bakun Hydroelectric Project in Belaga, despite fierce local, national and international criticisms.

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[1] Justine J.J. Imang (2006) *Public Participation in the Sarawak EIA process: Any Room for Improvement?* Paper presented at the Fourth Sabah-Sarawak Environmental Convention 2006.

[2] Kajing Tubek & Ors v. Ketua Pengarah Jabatan Alam Sekitar & Anor.

Credence to this view was suggested by the manner in which the amendments to the Federal EQA was undertaken **with retrospective effect**, to exclude the EIA process of particular development projects in Sarawak from its jurisdiction, of which hydroelectric projects was one of them, in order to legally sanction the Sarawak EIA law.[3] The Sarawak EIA law, unlike its Federal counterpart, excludes mandatory public participation in the process, relegating the matter to the discretion of individual project proponents.

Prior to these legal moves, the government authorities back then had also made several assurances to public interest groups that the Bakun EIA process would certainly incorporate public participation. This resulted in a temporary public confusion when the Bakun project proponent announced that the project EIA report had been approved when no feedback collection process had in fact taken place.

Based on this chronological background, it is difficult to justify the transfer on a pure technical ground. Clearly, the jurisdiction transfer had the effect of misleading the public as well as significantly decreasing the quality of the EIA process in Sarawak.

Secondly, we also would like to highlight several issues in relation to the judicial decisions in *Kajing Tubek & Ors v. Ketua Pengarah Jabatan Alam Sekitar & Anor.* At the High Court, the Amendment Order was treated as the focal point of the case. The High Court then declared the approval of the Bakun EIA, made pursuant to the Sarawak legislation as invalid as it ruled that the Minister of Science, Technology and Environment had no right to amend the Federal EIA Guidelines and transfer the authority for EIA approval from the Department of Environment at the Federal level to State level retrospectively.

At the Appeals Court however, the focus was subsequently changed to deliberations from the validity or otherwise of a Federal or State law to a much narrower *question of interpretation of the Federal Constitution in relation to the applicability of the EQA to Sarawak*.[4] The Appeals Court then quashed the High Court decision, ruling that since under the Constitution land is a state matter and since the construction of the dam involves the elements of land-use, water, rivers, soil, forests etc, the 'environment' in relation to the project legally lies within the state legislative authority.

This Appeals Court decision has been described as narrow and erroneous:

> "(The decision utilises) unrealistic compartmentalisation of the environment into neat geographically-limited units, dependent on the kind of activity, and then identifying which list in the Constitution the activity related to, may well become, with respect, an error of major proportions with possibly serious and lasting repercussions on the management of the environment in Malaysia. In this case, the issue related to the *impact* of the project. Environmental impacts do not stop at territorial boundaries. To say therefore that the

[3] The amendments were passed on March 27, 1995 at the Federal level but it was to take effect from September 1, 1994. The Sarawak Natural Resource and Environment (Prescribed Activities) Order 1994 meanwhile was enacted in August 1993. For further details, please see Nijar, Gurdial Singh (1997), The Bakun Dam Case: A Critique. *The Malayan Law Journa*l: 3. Kuala Lumpur & Ali Menon Devolution of Environmental Regulation: EIA in Malaysia. (undated) *EIA Training Resource Manual, Case Studies from Developing Countries*. Case No. 6. United Nations Environment Program. Available at http://www.unep.ch/etu/publications/13)%2045%20to%2061%20doc.pdf.

[4] Please see Ali Menon (undated).

'environment' *belongs* to a State id to misunderstand the basic and fundamental construct on which environment laws are based and environmental impacts assessed."[5]

Based on this decision, the Sarawak EIA Guidelines Handbook then justifies the state EIA process by reiterating that while jurisdiction on 'Environment' is neither under the Federal List nor the State List nor the Concurrent List in the Ninth Schedule of the Federal Constitution, the NREO was passed at the Sarawak State Assembly in pursuance to Article 77 of the Federal Constitution, which bestows residual powers to the state to make laws on matters which are not listed in the Ninth Schedule.[6]

Despite this argument, other contextual questions must still be posed as to the accuracy of such a legal opinion. The fact remains that at the Federal level, the country has already enforced a federal legislation addressing a particular scope of governance area. By the Sarawak Handbook's own admission, the requirement for EIA in the state legislation is in fact 'similar' to that of the EQA's, the federal legislation.[7] Thus, such a position does not provide justification for this exercise in redundancy.

This is a fundamental question since such a legal position implies that all Malaysian states today have the authority to enact their own environmental legislation, which to date has in fact been exercised by Sabah. This position has grave implications to the authority of the Federal EQA – if it means that every state government has the power to enact its own environmental law, what will become of the EQA? We believe this constitutional issue must be re-visited by both the Federal and State Governments.

III Principles in Impact Assessment

The International Association of Impact Assessment defines Environmental Impact Assessment as the process of identifying, predicting, evaluating and mitigating the biophysical, **social**, and other relevant effects of development proposals prior to major decisions being taken and commitments made.[8]

In its *Principles of EIA Best Practice*, it states the following objectives of an EIA:

(i) To ensure that environmental considerations are explicitly addressed and incorporated into the development decision making process;

(ii) To anticipate and avoid, minimise or offset the adverse significant biophysical, social and other relevant effects of development proposals;

(iii) To protect the productivity and capacity of natural systems and the ecological processes which maintain their functions; and

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[5] Please see Nijar, Gurdial Singh (1997).

[6] The Ninth Schedule of the Federal Constitution is the list which defines the division of jurisdiction between the Federal and the State Governments, of which no direct reference to 'Environment" is listed. Article 77 describes the residual power of a State Legislature to enact laws which are not set in the Ninth Schedule, "not being a matter in respect of which the Parliament has power to make laws."

[7] *Handbook of the Policy and Basic Procedure of Environmental Impact Assessment (EIA) in Sarawak* (1995) Natural Resources and Environment Board, Kuching. p. 3

[8] International Association of Impact Assessment in cooperation with Institute of Environmental Assessment, UK (1999) *Principles of EIA Best Practice,* Fargo.

(iv) To promote development that is sustainable and optimises resource use and management opportunities.

Among its 14 *Basic Principles* are the following:

(i) Purposive: the process should inform decision-making and result in appropriate levels of environmental protection and community well-being.

(ii) Relevant: the process should provide sufficient, reliable and usable information for development planning and decision making.

(iii) Participative: the process should provide appropriate opportunities to inform and involve the interested and affected publics, and their inputs and concerns should be addressed explicitly in the documentation and decision making.

(iv) Interdisciplinary: the process should ensure that the appropriate techniques and experts in the relevant bio-physical and socio-economic disciplines are employed, including use of traditional knowledge as relevant.

(v) Credible: the process should be carried out with professionalism, rigour, fairness, objectivity, impartiality and balance, and be subjected to independent checks and verification.

(vi) Transparent: the process should have clear, easily understood requirements for EIA content; ensure public access to information; identify the factors that are to be taken into account in decision making; and acknowledge limitations and difficulties.

(vii) Systematic: the process should result in full consideration of all relevant information on the affected environment, of proposed alternatives and their impacts, and of the measures necessary to monitor and investigate residual effects.

We thus view that the lack of mandatory public participation in EIA is in violation of all the principles above, leading to possible compromises in the quality of the output of the process and increasing the risks of adverse impacts to affected communities and the public at large.

Meanwhile, in describing the participants to the EIA process, the Sarawak EIA Handbook has reproduced Principle 2 of basic procedures for developing countries in EIA implementation from the United Nations Environment Programme (UNEP):

(i) those appointed to manage and undertake the EIA process.
(ii) **those who contribute facts, ideas or concerns to the study.**
(iii) those who have direct authority to permit, control or alter the project i.e. project proponent/developer, aid agency/investors, competent authorities, regulators etc.

The second category (in bold, emphasis ours) however, omits the entire UNEP version, which continues to say “including scientists, economists, engineers, policymakers and

representatives of interested of affected groups". With the omission of this part, a clear statement of public involvement has been removed.[9]

Public participation in the EIA process is extremely crucial because involvement of all concerned stakeholders in the decision-making process ensures a higher degree of transparency in the project needs assessment and approval, promotes the strict adherence to all laws and regulations by all the concerned parties, legally bind stakeholders to promises and pledges that are made within the process and possibly other consultation outlets related to the project and provides impacted people with better safeguards for negotiations on issues that may affect them.

Thus, without this key component incorporated into the Sarawak legislative process, impact assessments of development projects in Sarawak cannot be considered as to have been operating under maximum effectiveness and efficacy all these years.

IV Absence of Mandatory Public Participation in the EIA process: Adverse Consequences

1. Lack of information to impacted communities and other stakeholders

Without obligation to invite public participation in the EIA process, it has become very difficult for impacted peoples and civil society groups to freely obtain information on projects that can potentially generate grave environmental and social impacts. As a result, in Sarawak, instead of the state authority and project proponents being compelled to inform, consult and negotiate with impacted communities and the public on such issues as a matter of legal and ethical duty, it is often the case that it is the latter group that will have to work extra hard to request for information on projects that are of concern to them. Even when information is sought, there is no guarantee that the information requested will be given to them.

This also implies that prior to their information request, groups or individuals must have had the fortunate opportunity to have at least learnt on the development of particular projects, which can be a matter of chance under current governance circumstances. In many cases, communities are kept in the dark on development plans that may affect them by project proponents and the state, from the drawing board to its execution.

In this climate, the little information dissemination process, if undertaken at all, will often be done in such an informal and unsystematic manner. Sometimes the only opportunity for impacted communities to obtain early information on projects that may affect them is through oral communications from the limited visits of the representatives from the EIA consultants during their socio-economic data collection. It must be stressed that such visits cannot be considered as meaningful consultations and they do not in any way establish any processes leading to precisely that.

Thus the absence of mandatory public participation in the EIA process not only will result in the failure of the process to adequately address all the relevant issues surrounding a project and to take into account views, objections and alternative recommendations from

[9] Rajeswari Kanniah (2000) Public Participation in the Environmental Impact Assessment Process in Malaysia. *Malayan Law Journal.* #3.

impacted communities and the public, it can in fact be used to hinder the free and transparent process of information dissemination.

2. Compromised quality of the EIA

When there is absence of public involvement in the EIA process, both the project proponent and the state authorities are effectively shielded from constructive public views and criticisms. Without external and independent feedback and scrutiny, we are actually risking the process to produce lower quality reports. A lower standard of reporting may provide us with poor impact predictions and mitigation measures, inadequate baseline data and may even contain glaring mistakes, inaccuracies and deliberate false information. On the other hand, project proponents will directly benefit from the shortening of project processing and approval, which in itself may pose other problems as a result of the sheer acceleration of development projects, at the expense of other stakeholders.

Sarawak has argued elsewhere that the "NREB implements the EIA process in consultation with other agencies and as such it is a concerted effort of not only NREB but also other agencies as well" in response to the criticisms of the lack of public participation in its EIA process.[10] This is as if to imply that inter-government agency review of EIA reports is sufficient and able to replace a wider base of feedback, which is clearly is not the case.

The following is based on the recent report by Friends of the Earth on oil palm plantations in Sarawak, which further elaborates on the compromised quality of numerous EIA reports on monoculture projects in Sarawak and how the existence of the EIA process does not necessarily ensure that development projects will be carried out in a wise manner.[11]

(i) Flaws in the identification of land under Native Customary Rights (NCR) claims

In the case of the Planted Forest EIA reports, most studies do not adequately describe how many communities in the project areas were consulted, who was consulted, when, how and in the presence of whom. This leaves questions about whether the EIA findings can be considered representative or if they are even accurate. A poor assessment has major consequences for the people living in the project areas.

Field work community consultations which often consist of superficial interview sessions conducted during the data gathering stage of an impact assessment study, cannot be a substitute for subsequent public participation in the EIA approval process, or other independently set up consultation processes that incorporate Free, Prior and Informed Consent (FPIC) procedures. Many Planted Forest EIA reports mention that local communities were unaware of the (already licensed) project at the time that the consultants approached them. Only when the communities' opinions are needed about the project, the EIA consultants end up explaining the projects to the communities. For example, for LPF 11 Tutoh Forest Plantation in the Miri Division, the EIA consultant

[10] *Third Stakeholder Consultation of the Malaysia-European Commission on FLEGT and VPA – Responses to Comments/Submissions from Stakeholders*, dated February 15, 2008. Distributed during the Fourth Stakeholder Consultation Meeting in Kuala Lumpur on March 17 & 18, 2008.

[11] Friends of the Earth (2008) *Malaysian Palm Oil - Green Gold or Green Wash? A Commentary on the Sustainability Claims of Malaysia's Palm Oil Lobby, with a Special Focus on the State of Sarawak*. October. Amsterdam.

surveyed only 10% of the local population. Yet, the EIA report simply concluded that although none of the respondents initially were aware of the project, "a*fter explaining the project to them, 64.5% were generally agreeable (jobs and general development in the region); 19.1% were against and 16.1% had no opinion*." Most Sarawak EIA reports also do not provide details on information given to the communities prior to their questions.

Further, none of the EIA studies analysed by the FOE report makes it clear if local communities were requested to give their official consent to draft maps of their territorial boundaries or if the communities were shown copies of the final version of those maps. This is indeed a serious concern, given that the Sarawak State Government's interpretation on NCR has been shown to be in direct conflict with its indigenous communities' and in fact, even our recent judicial decisions. While the state maintains that such rights are limited only to cultivated farms (*temuda*), the people's own customs assert that the rights extend to their communal higher forests (*pulau galau*). The latter's interpretation has in fact been supported by several judicial decisions.[12] Without proper procedures and a concerted effort during the EIA study to incorporate a higher quality of participation from affected communities, despite their approval, land conflicts continue to flame in Sarawak between local communities and project proponents.

(ii) "Copy and paste"

It has been pointed out that out of 37 EIA reports of the Sarawak Planted Forest projects, 24 had been produced by a single consultant, while another 5 consultancy groups had written the remaining 13. As a result, there is a risk that earlier reports to be used as template for future studies, leading to a habit of "copy & paste" that does not provide meaningful and high-quality impact assessment of the projects at hand.

The report points out to merely one example of one paragraph (on the receptivity of affected peoples towards the project) being repeated in the summaries of 10 other reports from the same consultant, with another six essentially stating the same with minor variations. As a matter of fact, the occurrence of such an incident is far more widespread in Sarawak EIA studies. Such a blatant disregard for due diligence in such an important process is certainly assisted by the fact that the public has not been invited to freely access and comment on the studies.

(iii) Poor quality maps and overlapping land use categories

Several EIA reports have been found to contain overlaps between large licence areas and other land-use categories. It appears that the EIA consultants are left to identify these overlaps and recommend appropriate measures to address such overlaps.

It is presumed that many maps found in the EIA, especially those that provide land-use information is obtained largely from the Sarawak State Government. If this presumption is true, then the manner in which the state identifies the size, shape and location of logging, oil palm and tree plantation license areas and other land-use categories is in serious need of improvement in terms of its accuracy and transparency.

[12] Please see decisions on *Borneo Pulp Plantation & Ors v. Nor Nyawai & Ors*, High Court, Kuching (2001), Court of Appeal, 2004 and *Superintendent of Lands & Surveys, Miri Division & Anor v. Madelli Salleh,* Federal Court, 2007.

In some instances, the Planted Forest concessions even overlap with proposed *Totally Protected Areas*. For example, the proposed Kalamuku National Park and Ulu Sebuang Nature Reserve were found to be located within the project area of LPF 5 Kanaya Forest Plantation in Limbang. Although the EIA consultant noted the overlap, the EIA study did not pursue this issue further, merely concluding that "*it is inevitable that increasing areas under natural forest will have to be cleared for land development*". In LPF 1 Planted Forest (Pulp and Paper) in Bintulu, the project area even overlaps with another monoculture licence.

Further, some EIA reports provide maps that are severely amateurish, without geographical coordinates and some even incorporate free-hand sketches to indicate particular land-use categories. Such practices show a severe lack of competence on the part of the consultants.

(iv) Substandard mitigation measures

Most of the reports identify "protected" or "totally protected" animal and plant species within the project areas under the Sarawak Wildlife Protection Ordinance 1990. Generally, land clearing in stages is suggested as a mitigation measure, providing an opportunity for wildlife to migrate to adjacent forest areas although this is of little value to immobile species, however endangered or protected. Further, as concession maps show, those adjacent areas are also often developed into plantation projects, where the report may again recommend that wildlife "moves on".

For instance, the EIA of LPF 10 Pasin & Tekalit Forest Plantation reported that there was orang utan population in Block F of its project area, near the Indonesian border. The EIA report recommends no specific mitigation actions to protect the animal, which is a "totally protected" species in Sarawak, other than for the company to educate its workers not to hunt them. The EIA report hinted that the remaining orang utan population would be displaced but could either find refuge in Lanjak Entimau wildlife reserve, or perhaps move to the Indonesian territory.

Many of the EIA studies also recommend that forests on steep slopes should be set aside and that riparian buffers be retained along rivers. Although this is good in theory most of the reports remain vague and do not specify how the retention areas should be managed.

All of the above show that many of the recommendations are unable to provide adequate insight on the impact issues at hand and provide effective mitigation procedures.

(v) Lack of neutrality on the part of consultants

The report also points out to the lack of neutrality on the part of the consultants. There is a tendency for the consultants to take on the position of the state and the project proponent, with one study actually reporting "like it or not, change is the modern way forward" on the subject of the concerns voiced by impacted communities.[13]

[13] PSS Resources (1997) *Preliminary Report on Environmental Impact Assessment for the Proposed Development of Rinwood Pelita Oil Palm Plantation at Long Tabeng, Tinjar, Miri Division, Sarawak*. March. Kuching.

3. Deforestation of the Bakun Hydroelectric Project catchment & the case of LPF 18

In an effort to counter mounting criticisms against the Bakun Hydroelectric Project, from 1995 to 2001, several of our Federal ministers had promised that the 1.5 million ha Bakun Catchment Area, a mostly forested region, would soon be gazetted in order to protect the dam. However, instead of making good of this promise, between 1999 and 2002, the Sarawak State Government had actually licensed out three huge plantation projects that are largely located within the Bakun catchment – the *Shin Yang Forest Plantation* located in the Murum river basin (155,930 ha), the *Bahau-Linau Forest Plantation* (108,235 ha) and the *Merirai-Balui Forest Plantation* (55,860 ha).[14] The EIA reports for the projects meanwhile were approved between 2000 and 2003, without public participation.

The reports themselves provide weak environmental impact assessments. Although all three reports mention their close proximity to the dam, they do not devote serious attention to the matter other than offering some mitigation measures. Reports for both of the Rimbunan Hijau projects while confident that their mitigation measures will be able to reduce sediment load to the dam, also casually notes that it would be almost impossible to accurately predict the magnitude of soil erosion that will occur when the plantation is harvested in 15 to 20 years. The reports also briefly mention that the question of allowing plantation developments in the catchment area is a policy matter that only the Sarawak Chief Minister, who is also the Minister of Planning and Resource Management, could decide. Thus, it is then assumed that if the projects have been approved, then all such concerns must have been adequately considered, in spite of the flawed EIA process mentioned above.

Equally disastrous was the EIA study of the Shin Yang project, located only 13 km above the dam, which made the gross error of boldly stating that there are no permanent settlements within their project area when there are at least eight settlements within the area that have been documented by numerous government documents and anthropological records. The project proponent must have been well aware of this, as one of the villages lives beyond a gate set up by the company, and another village had its longhouse constructed by a subsidiary of the company, also a timber operator in the area, around 1992.[15] A briefing note by an independent contributor to a SUHAKAM report on the matter concluded that the project proponent and/or his appointees have:

1. Failed to conduct a competent EIA, specifically on the social component;
2. Failed to observe the native customary rights of the people, specifically the Penan, in the area; and
3. *Effectively dispossessed the Penan of their basic human, social and economic rights.*[16]

Despite all the grave misjudgement and absence of transparency, the response from NREB had only made things worse when it was implied that public participation could

[14] Both Bahau-Linau and Merirai-Balui, owned by a subsidiary of Rimbunan Hijau, will be establishing pulp and wood tree monocultures while Shin Yang, owned by Shin Yang Forestry, is also undertaking oil palm cultivation. For further information please see SAM Press Release (2007) *Approval of Plantation Projects in the Bakun Catchment Area between 1999 and 2002: SAM Calls for Transparency and Accountability in Sarawak.* June 21.

[15] Viability of Bakun Dam project threatened. *Aliran*, October 11, 2007. Penang.

[16] Suruhanjaya Hak Asasi Manusia Malaysia (2007) *Report on Penan in Ulu Belaga: Right to Land and Socio-economic Development*. Kuala Lumpur.

lead uneducated rural communities to be manipulated by certain non-governmental organisations to oppose development plans and that the existing system was satisfactory and adequate.[17]

All of the above are indicative of the grievous implications of the absence of information and transparency in development plans, including the absence of mandatory public participation in the EIA process. In this case, it has allowed the breach of promise by the highest level of Federal Government without wide public knowledge and resulted in EIA studies with such a low quality that it contains downright false information. It should be noted that information on the issue was fortunately discovered by SAM as a result of deliberate research. The information was never divulged voluntarily by the Sarawak State Government. As a matter of fact, until today, despite our further inquiries, no adequate response has been given by the relevant authorities on this matter.

V Logging and the EIA Process

For the EIA of logging activities, the following Section 11 A(1) of the NREO may apply:

(i) 11A(1)(c) – the carrying out of logging operations in forest areas **which have been previously been logged** or in respect whereof coupes have been previously been declared to have been closed by the Director of Forests under the provisions of the Forests Ordinance; and

(ii) 11A(1)(g) – activities which may cause pollution of inland waters of the state or endanger marine or aquatic life, organism or plants in inland waters, or pollution of the air, or erosion of the banks of any rivers, watershed or the foreshores and fisheries.

Under the First Schedule of the Natural Resources and Environment (Prescribed Activities) Order 1994, it is further elaborated that logging activity will require mandatory EIA if it is falls into:

(i) areas exceeding 500 hectares; and

(ii) areas declared to be a water catchment area under the Water Ordinance 1994.

Our first criticism against the EIA law in Sarawak will obviously be on the way it perversely puts limitation to the law by categorising forests into logged-over areas and virgin areas, something which is not found in the Federal EIA law. It is even preposterous to demand an EIA for the logging of secondary forests but not untouched pristine forests.

Further, the breaking up of project area into package sizes less than 500 hectares to avoid having to conduct an EIA, is a well-known strategy practised by project proponents from a host of commercial development schemes. Licence holders also obviously have the option of packaging logging coupes into blocks of less than 500 hectares each and operate them under different subsidiary companies.

[17] Still beneficial? When completed, will the Bakun hydroelectric scheme be able to produce the power expected of it? *The Star*, October 30, 2007.

The Sarawak Ministry of Environment and Public Health had in fact divulged its discovery that some giant timber companies had by-passed the EIA requirements by splitting their projects into very small packages, during the government's investigations on the mass fish deaths in Sarawak inland rivers earlier this year.

"These companies split their projects into small packages in order to escape the EIA. For example, some companies with licence to open 10,000 hectares of land had split their project into small ones measuring 499 hectares each... By doing this, they escape the need to carry out EIA. This happened in the upstream of Bakun. That is why these projects had caused excessive siltation and killed a lot of fish. These fish were washed down by the rivers during the floods."[18]

Therefore the legal requirement of EIA for logging in Sarawak is fairly narrow, citing mandatory EIA only if one, the size of the proposed area is above 500 hectares and if the area has been previously logged over and two, if the area falls under gazetted catchment areas.

VI Recommendations

Taking into account of all the above, SAM would like to make the following recommendations to both the Federal and the Sarawak State Governments:

(i) The EIA process in Sarawak must follow the exact standards and procedures as those established at the Federal level. The Sarawak State Government must amend its environmental law to ensure that public participation in the EIA process is made mandatory and not subject to the project proponents' discretion. This is in line with the content of its legislative counterpart at the Federal level as well as with all internationally accepted principles and practices on impact assessment of development projects.

(ii) The Federal Constitution should be amended to ensure that the country is governed by a single environmental legislation. This will require 'environment' to be included under the Federal list.

(iii) The Sarawak State Government must strictly monitor the quality of consultancy companies offering and engaging in EIA services and their EIA reports. The companies must be required to demonstrate that they:

a. possess the technical competence and resources to carry out genuine and authentic impact assessment research in an interdisciplinary context;
b. are willing to invest sufficient financial and human resource in the course of their consultancy service;
c. are able to maintain and display strict neutrality, independence, discipline and integrity in carrying out their service; and
d. adhere to a strict code of ethics that are intolerant of the employment of legally and ethically questionable research and reporting procedures, such as copying previous reports to be inserted into newer reports and engaging in the spread of misinformation.

[18] *The Star* Logging, land clearing caused mass fish deaths in S'wak. February 20, 2009.

(iv) The Sarawak EIA process must be made to pay more vigorous attention to the plight of impacted communities than it currently does. Engagement with impacted communities in order to seek out their views on the project must incorporate large and encompassing samples and the Free, Prior and Informed Consent process in ascertaining their traditional territorial boundaries and NCR claims. All these must be documented and reported with greater detail and precision.

(v) The Sarawak EIA process must also be made to pay more vigorous attention on other technical areas, from the production of maps that are of acceptable professional quality to providing meaningful recommendations on mitigation measures. Assessment must be supported by accurate data and information, impacts must be anticipated with greater precision and recommendations to avoid, minimise or offset negative consequences must propose clear and practical procedures.

(vi) Legal procedures must be in place and enforced to provide for preventive and punitive measures for project proponents and consultants that have been discovered to provide misleading or false information in their EIA studies.

(vii) The Sarawak State Government must also amend the EIA laws pertaining to logging operations in order to make the EIA process mandatory for all logging operations in virgin forests and in areas under 500 hectares.

(viii) The Federal and Sarawak State Government must make more concerted efforts to ensure that development plans and environmental governance in Sarawak incorporate a higher level of transparency and accountability as well promote greater public access to information.

VII Conclusion

We must utilise the EIA process as a planning tool as well as an opportunity to solicit greater public participation in evaluating development plans and projects. The EIA process must cease to be perceived as a stumbling block to development by both the government and private project proponents, and instead it must be seen as a tool to ensure that development projects will neither result in unacceptable impacts on the environment on communities nor encourage wasteful financial expenditures. In the light of the planning of more large-scale development projects in Sarawak, it is imperative its EIA process is greatly improved and be technically equipped to ensure a disciplined and neutral impact assessment process.