

Dear Friends, Campaigners,

Warm greetings from Sabah, Malaysia.

I am seeking your support on behalf of the Action Committee Against Kaiduan Dam which was set up by communities potentially affected directly by the Kaiduan dam. A number of NGOs are also helping us in our campaign and I hope you/your organisation could support by writing a letter to the Sabah government to reconsider the building of this dam.

In short, the dam will be built in an one of Sabah's most beautiful area, preserved because there was no road access to our villages until recently and because of our ways of life that maintain a healthy respect for the environment. The 150 metres proposed dam will mean about 350 square kilometers of our traditional lands will be taken as a water catchment reserve, including the flooded area of 12 square kilometres where 9 villages are currently located. There are confusing information from the government that the dam project has not been approved yet eventhough the contractor already strated to enter the affected villages to conduct an EIA. Interviews with the community were far from satisfactory. Please also see attached, the background on the proposed dam. We will keep you updated on activities that the Action Committee has done so far.

The next few weeks are crucial as the government considers what to do next after complaints from the communities that the Environmental Impact Assessment has not followed procedures prescribed by the State. This period will also coincide with heightened campaigns locally against the dam.

We therefore hope that you/your organisation will join other groups/individuals all over the world to take a few minutes to print, sign and fax/email the attached letters to the Sabah Chief Minister, the Minister for Infrastrucure Development and the Minister for Tourism, Culture and Environment on **Friday, April 9, 2010.**

We also respectfully ask your continued support by requesting further follow-up to your letter, and to continue to press for the cancellation of the Kaiduan dam and instead request the government to take several other measures including improving the management of its water supply, doing a public campaign to save water and exploring other cheaper and safer options for water supply.

Thank you for your time and support.

Yours sincerely,



Nousi Giun  
Chairperson,  
Action Committee Against Kaiduan Dam

HE Datuk Seri Panglima Musa Aman  
Chief Minister's Office  
18th Floor, Wisma Innoprise,  
Jalan Sulaman, Teluk Likas,  
88817 Kota Kinabalu,  
Sabah, Malaysia  
Fax: +60 88 435 350

Honorable Minister,

RE: KAUDUAN DAM

Sabah has received many accolades for its concern for the environment, and has positive laws for the protection of indigenous peoples' rights to land and identity. The proposed building of the Kaiduan dam has therefore heightened our concerns in what we understand as submerging a pristine environment and displacing a number of indigenous communities in the Ulu Papar area of Sabah.

Your Excellency, your decision to go ahead with the Kaiduan dam will affect the environment and the lives of many communities, and this will potentially give a bad name to your government. We are in support of the affected communities who are struggling to maintain their traditional lands and their right to continue living in the area, and therefore to reconsider the construction of the Kaiduan dam.

We commend the State government's caution by first doing a feasibility study on water supply needs in Sabah. However, the appointment of the consultant to do the feasibility study by the contractor responsible for the Kaiduan dam construction may not have given you the most transparent answers and options. We respectfully request your office to get another opinion through the upcoming nationwide study on water resources.

We are also concerned that the process to conduct an Environmental Impact Assessment has already been started despite the fact to the communities and the general public that the Kaiduan dam project has not received a final approval from the government. We believe that this could be misleading and recommend that sufficient consultations, ensuring full and effective participation, and respect for the rights, of these affected communities and the general public will be made prior to making a decision. We also think that this will provide an opportunity to get input on other alternatives to resolve projected water supply shortage for Kota Kinabalu and surrounding areas.

We respectfully request your office to consider all possibilities and alternatives in order to avoid the building of the dam and therefore the destruction of the homes of these indigenous communities, and this biodiversity-rich area.

Thank you for taking time to consider our concerns and would appreciate your response to our letter.

Yours sincerely,

Name  
Organisation  
Contact address

HE Datuk Sri Panglima Joseph Pairin Kitingan  
Minister of Infrastructure Development  
KPI Building, Sembulan Road  
88999 Kota Kinabalu, Sabah, Malaysia  
Fax: +60 88 268 858

Honorable Minister,

RE: KAUDUAN DAM

Sabah has received many accolades for its concern for the environment, and has positive laws for the protection of indigenous peoples' rights to land and identity.

The proposed building of the Kaiduan dam has therefore heightened our concerns in what we understand as submerging a pristine environment and displacing a number of indigenous communities in the Ulu Papar area of Sabah.

Honorable Minister, your decision to go ahead with the Kaiduan dam will affect the environment and the lives of these communities, no matter how few they may be, and this will potentially affect the good name that you have stood for and also that of your government. We are in support of the affected communities who are struggling to maintain their traditional lands and their right to continue living in the area, and therefore to reconsider the construction of the Kaiduan dam.

We commend the State government's caution by first doing a feasibility study on water supply needs in Sabah. However, the appointment of the consultant to do the feasibility study by the contractor responsible for the Kaiduan dam construction may not have given you the most transparent answers and options. We respectfully request your office to get another opinion through the upcoming nationwide study on water resources.

We are also concerned that the process to conduct an Environmental Impact Assessment has already been started despite the fact to the communities and the general public that the Kaiduan dam project has not received a final approval from the government. We believe that this could be misleading and recommend that sufficient consultations, ensuring full and effective participation, and respect for the rights, of these affected communities and the general public will be made prior to making a decision. We also think that this will provide an opportunity to get input on other alternatives to resolve projected water supply shortage for Kota Kinabalu and surrounding areas.

We respectfully request your office to consider all possibilities and alternatives in order to avoid the building of the dam and therefore the destruction of the homes of these indigenous communities, and this biodiversity-rich area.

Thank you for taking time to consider our concerns and would appreciate your response to our letter.

Yours sincerely,

Name  
Organisation  
Contact address

HE Datuk Masidi Manjun  
Minister of Tourism, Culture and Environment  
10<sup>th</sup> Floor, Block B, Wisma MUIS  
88999 Kota Kinabalu, Sabah  
Fax:+60 88 240 533

Honorable Minister,

RE: KAI DUAN DAM

Sabah has received many accolades for its concern for the environment, and has positive laws for the protection of indigenous peoples' rights to land and identity.

The proposed building of the Kaiduan dam has therefore heightened our concerns in what we understand as submerging a pristine environment and displacing a number of indigenous communities in the Ulu Papar area of Sabah.

Honorable Minister, your decision to go ahead with the Kaiduan dam will affect the environment and the lives of these communities, and this will potentially affect your good name as a caring Minister of Environment and also that of your government.

We commend the State government's caution by first doing a feasibility study on water supply needs in Sabah. However, the appointment of the consultant to do the feasibility study by the contractor responsible for the Kaiduan dam construction may not have given you the most transparent answers and options. We respectfully request your office to get another opinion through the upcoming nationwide study on water resources.

We are also concerned that the process to conduct an Environmental Impact Assessment has already been started despite the fact to the communities and the general public that the Kaiduan dam project has not received a final approval from the government. We believe that this could be misleading and recommend that sufficient consultations, ensuring full and effective participation, and respect for the rights, of these affected communities and the general public will be made prior to making a decision. We also think that this will provide an opportunity to get input on other alternatives to resolve projected water supply shortage for Kota Kinabalu and surrounding areas.

There are now numerous examples all over the world on how decisive public campaigns and government intervention has helped reduce water wastage and therefore avoided costly construction of dams and we respectfully request your office to consider all possibilities and alternatives in order to avoid the building of the dam and therefore the destruction of the homes of these indigenous communities, and this biodiversity-rich area.

Thank you for taking time to consider our concerns and would appreciate your response to our letter.

Yours sincerely,

Name  
Organisation  
Contact Address

**Background Information on the Kaiduan Dam Project,  
Sabah, Malaysian Borneo  
11 February 2010**

The government of Sabah has granted approval in February 2008 to carry out a feasibility study and submit technical proposals for the implementation of the Kaiduan Dam Project, situated at Ulu Papar in Sabah, Malaysian Borneo. A similarly named project, but of a smaller scale, is listed as one of the 16 proposed dams<sup>1</sup> under the Sabah Water Resource Management MasterPlan as announced in the 1990s by the then Sabah Chief Minister Datuk Osu Sukam. Under the Water Resources Management Plan (WRMP) for Sabah, a Water Resources Council is to be established to advise the Minister and co-ordinate and oversee that the State's water resources are planned and managed in an equitable, efficient and sustainable manner<sup>2</sup>. However, to date, this Council still does not exist formally, although there is an interim *de facto* Council that sits under the Pejabat Hasil Bumi (Natural Resources office).

**Transparency & due process**

Concern stems from the lack of transparency in the process leading up to the government's appointment of WCT Bhd (the Contractor), a publicly listed company, to carry out the Kaiduan Dam Project. Further concern rests with the Contractor's subsequent appointment of SMHB Sdn Bhd (the Consultant) to conduct the preliminary Feasibility Study. The Water Resources Council was not consulted on the plans for the Kaiduan Dam Project, neither were the elected representatives<sup>3</sup> or relevant government agencies – who claimed to be unaware of the plans for the dam.

According to SMHB Sdn Bhd, the Feasibility Study was completed and submitted to the Sabah State Government in early 2008. Based on the results of the Feasibility Study, a Letter of Intent (LOI) together with a Need Statement were subsequently issued to WCT Bhd on 15 May 2009 requesting WCT Bhd to carry out detailed feasibility studies, full environmental impact assessment (EIA) and preparation of detailed technical proposals for the construction of the Kaiduan Dam. Based on an inside source<sup>4</sup> the cost of doing this preliminary Feasibility Study and preliminary EIA was RM7.6million, for a 5 month study. There is no confirmation as to whether this amount has been paid out to WCT or SMHB Sdn Bhd upon the completion of the Feasibility Study. Based on unverified sources, a former Sabah State Government department Director has links to the Consultant, SMHB Sdn Bhd.

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<sup>1</sup> Fig. 39.1 "Priority Dam Sites for Investigations for Development", Sabah Water Resources Master Plan

<sup>2</sup> [http://www.did.sabah.gov.my/eng/wrm\\_1.asp](http://www.did.sabah.gov.my/eng/wrm_1.asp)

<sup>3</sup> <http://www.dailyexpress.com.my/news.cfm?NewsID=68238>. Daily express Online. 17 October 2009. Dompok Queries Dam

<sup>4</sup> Scanned copy of a Table entitled "Prioritised Dam Sites of Study" received anonymously via email.

Subsequently, and based on the merits of the Feasibility Study, WCT Bhd prepared a proposal with recommendations for the Kaiduan Dam to be implemented and to gazette the Kaiduan catchment. This will involve an area of about 350 square kilometres that will become a water catchment reserve with immediate effect, including an area of 12 square kilometres that will be flooded. The flooding of this 12 square kilometre area includes the flooding of a government primary school, 3 community preschools, churches, graves, *tamus* (village markets), houses, fruit and vegetable gardens, suspension bridges, rice mills and rice fields. There was no mention of financial, socio-economic and environmental consequences and requirements associated with management of the catchment area<sup>5</sup> as required under Section 34.1 of the Sabah Water Resources Enactment 1998.

As announced in May 2009<sup>6</sup> by the outgoing Sabah State Infrastructure Development Minister Datuk Raymond Tan, it was reported that the Kaiduan Dam will ensure sufficient water supply to Kota Kinabalu and its vicinity until the year 2050. Further, it was reported that the plan for the construction of the Maang Water Treatment Plant and the upgrading of two existing plants had been approved by the Sabah State Cabinet on 13 April 2009. Together, the Kaiduan Dam and the Water Treatment Plant would cost RM2.8billion. Once completed, it is estimated that an additional 1,200 million litres of water a day (MLD) will be available for Kota Kinabalu. The dam will be three times larger than the existing Babagon Dam which is also situated in the Penampang District. The Kaiduan Dam is additionally expected to generate 37MW of hydroelectric power<sup>7</sup>.

At present, the existing water supply to Sabah is 760MLD. The claim that Sabah requires an additional 1,200MLD as stated by WCT Bhd remains an unsubstantiated figure with no justification being offered as to why Sabah needs a Mega-Dam of this size. The lack of empirical justification is compounded by a series of contradictory and misleading statements issued in local media, one article quoting the Minister as saying that the Kaiduan Dam will supply 20MLD to Sabah. Based on a statement by the Sabah Water Department Director, under the 9<sup>th</sup> Malaysia Plan (year 2006 to 2010), the total water supply for the whole of Sabah is expected to increase to 1,180 MLD from 760MLD<sup>8</sup> in the 9th Malaysia Plan.

### **Problems with the Feasibility Study**

Under the Sabah WRMP, the Kaiduan Dam catchment area is 233 hectare<sup>9</sup>, but we have seen this modified to 320 hectares<sup>10</sup> with the completion of the Feasibility Study. This modification

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<sup>5</sup> 6<sup>th</sup> SITE Research Seminar, 13-14 September 2001. Status and Challenges in Catchment Management in Sabah. Margaret Chong, Water Resources Management Section, Department of Irrigation and Drainage

<sup>6</sup> <http://thestar.com.my/metro/story.asp?file=/2009/5/25/southeast/20090525070256&sec=southeast>

<sup>7</sup> Daily Express, 29 October 2009 Error on Dam Report Claim

<sup>8</sup> <http://www.dailyexpress.com.my/news.cfm?NewsID=55437> Daily Express Online. 22 January 2008. 9MP plants to raise water Supply to 1,180MLD.

<sup>9</sup> <http://www.usaep.org> Department of Commerce <http://strategis.ic.gc.ca/eic/site/imr-ri3.nsf/eng/gr-89513.html>

<sup>10</sup> Table entitled "Technical Feasibility Studies and Preliminary Environmental Impact Assessment on the Potential Dam Sites Identified Under the Sabah Water Resources Master Plan - Prioritised Dam Sites of Study" provided by an anonymous person via email

was done without consultation with stakeholders, not even the elected representatives of the Penampang District where Kaiduan Dam will be built.

To build the Kaiduan Dam, it is expected that the biomass from the 12 sq km impounded area will be burnt. A massive influx of foreign workers into the Penampang District is also expected as almost all construction projects in Sabah rely on foreign labourers. According to SMHB Sdn Bhd, the Kaiduan Dam will be a rock-filled dam with a dam height of 150m. There is no information about where the Contractor will source the materials for the dam. A quarry will probably be needed, which in itself will require an EIA and other associated studies, which entails additional financial and socio-economic considerations,

According to the Consultant, the dam will be connected by a 3.75m diameter tunnel to channel water to a Water Treatment Plant proposed in Maang village. The tunnel runs through the territories of an additional 8 indigenous communities including the villages Timpangoh, Sugud, and Limbanak, a densely populated area, until it reaches Maang. From Maang, the water will travel by tunnel to Lok Kawi where it will then be channelled by pipe to houses in Penampang, Kota Kinabalu and other areas.

It is undisputed that the said Feasibility Study was conducted solely by SMHB Sdn Bhd without any consultation with stakeholders, ranging from the elected representatives, peoples' representative, affected communities and relevant government departments, all of whom remained unaware of such an undertaking. Furthermore, the Feasibility Study gives no evidence or mention of consideration of factors such as life cycle cost of the dam, maintenance required, cost-benefit analysis, social impact assessment, legislation and enforcement, monitoring measures, and mitigation measures should unwanted events occur. A copy of the Feasibility Study was not available for reference by the affected communities or their elected representatives.

The Feasibility Study failed to evaluate alternative water supply solutions or comparative studies on water resource availability for Sabah. It failed to take into account the high incidence of non-revenue water (NRW) in Sabah. Of the 760 MLD<sup>11</sup> supplied in Sabah, an average 67% is lost due to leakage, pilferage, poor materials and construction methods<sup>12</sup>. A sustained effort for a state-wide campaign to reduce water wastage has also never been carried out.

In late 2009, the Federal Government of Malaysia awarded a contract to carry out a nationwide study on water resources. This will lead to the revision of the National Water Resource Masterplan that will enable the Federal and State Governments to plan for water resource needs based on current maps, current demographics and an updated needs analysis. This is a solid justification to freeze the Kaiduan Dam project until the national review is completed.

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<sup>11</sup> <http://www.dailyexpress.com.my/news.cfm?NewsID=55437> Daily Express Online 28 January 2008 9MP plants to raise Sabah water supply to 1,180mld

<sup>12</sup> <http://www.dailyexpress.com.my/news.cfm?NewsID=68238> Daily Express Online. 17 October 2009. Dompok queries dam

## **Forced relocation of indigenous peoples**

Affected communities from nine villages (Terian, Babagon Laut, Timpayasa, Tiku, Buayan, Pongobonon, Kalanggaan, Timpangoh and Longkogungan) have decided to form the **Action Committee Against Kaiduan Dam** in September 2009. The Action Committee said that the government did not obtain the free, prior and informed consent of the communities and has not seriously considered environmental and social costs. The State does not appear to value indigenous peoples' traditional lands, heritage and livelihoods, and the biodiversity and ecotourism industry in this area where they have been caring for. Impacts on other settlements outside the affected areas in terms of loss of hunting and fishing grounds, changes in the properties of the soil, have not been considered and may force them to resettle elsewhere without any forms of compensation. The movement against the Kaiduan Dam is gaining support from many organizations, communities in and the area and some political leaders. The Committee has also started a public campaign against the dam.

According to data provided by Global Diversity Foundation, an organisation working in the area, approximately 1,400 indigenous Dusun people live in the Ulu Papar villages of Kalanggaan, Pongobonon, Longkogungan, Terian and the Buayan-Kionob hamlets of Timpayasa, Tiku, Buayan and Kionob. Most of these villages fall within the proposed water catchment reserve. They are subsistence swidden farmers, relying principally on hill rice, animals and freshwater fish, as well as gathering of forest products for their daily needs. Over generations in these ancestral lands, they continue to transform the surrounding anthropogenic landscapes into a living cultural landscape that sustains a diversity of plants and animals, which in turn, provide them with the food, medicines and materials they need.

These villages are situated inside and at the periphery of the Crocker Range Park. Historically, the Crocker Range has long been recognised as a primary centre for plant diversity and endemism, and is included in the WWF Global 200 highpriority ecoregions. The Crocker Range was first designated as a forest reserve in 1968 and later converted to the Crocker Range National Park in 1984 to protect the water catchments and biodiversity. It was renamed Crocker Range Park in 1996 and is managed by Sabah Parks, under the Sabah State Ministry for Tourism, Culture and Environment. Despite having a vast part of their ancestral lands incorporated into the Crocker Range Park, the communities nevertheless developed joint management mechanisms with Sabah Parks and other government agencies to protect this area. In 2009, the Sabah State Government launched an initiative to nominate the Crocker Range Biosphere Reserve under the United Nations Educational, Scientific and Cultural Organization's (UNESCO) Man and the Biosphere (MAB) Programme.

In early December 2009, a police report was made by the Chairman of Kg Buayan Village Community and Security Committee, Albert Sipanis Lojima after he and the Chairman of the Kaiduan Dam Protest Committee, Nousi Giun were shadowed by two unknown characters. Verbal advice from Amnesty International Malaysia was sought with regard to the rights of the community members and activists who are involved in the movement against the Kaiduan dam project and were confronted with intimidation and fear. The community is in fear that

intimidation may come from the Developer of the Kaiduan dam project. The community is not aware of any progress in official investigations into the police report made by Albert.

In its recommendation, WCT Bhd stated that it is the government's role to assure affected villagers and to ensure fair compensation and proper resettlement of those affected by the dam. However, no evidence of the cost for compensation and resettlement has been outlined so far. Based on past track records, former Chief Minister of Sabah, Yong Teck Lee said the government failed to provide adequate compensation and proper resettlement of people affected by government development.<sup>13</sup> It should be noted that compensation procedures of the government do not take into consideration the long-term indigenous livelihood strategies inbuilt within indigenous socio-economic systems.

Proper resettlement of more than 1,000 people requires lengthy process and with high financial implications to the government. When questioned by the community representative during SMHB Sdn Bhd's presentation in October 2009 at the Penampang District Office, the Consultant could not come up with detailed information as to where the location of resettlement would be, except that it will be in Penampang. Penampang is already a densely populated area. Based on experience from the Babagon Dam in the same Penampang District, the resettled community experienced an increased social, economic, cultural and psychological stress that affected their quality of life. Problems such as alcoholism, criminal offences such as rape, theft and housebreaking cropped up in these resettled community.<sup>14</sup> The inadequate facilities combined with loss or low income levels, caused further marginalization of the community.

The Feasibility Study failed to address the time, financial, and socio-economic considerations of resettlement as well as forms of compensation that is fair and equitable for the loss of the communities ancestral land, social harmony, fruit trees, rice fields, rivers, forests, and the communities' traditional livelihoods. Considerations which will allow the communities and their future generations to live by a holistic and sustainable way of life and integrate that values into future development based on indigenous peoples' development concept which includes cultural and environmental integrity, environmental sustainability, economic and health sufficiency as well as the communities' empowerment and self-governance.

In deciding to implement the Kaiduan Dam the government failed to fulfil its commitments to the United Nation Declaration on the Rights of Indigenous Peoples (UNDRIP). Articles 32 and 10, among others, assert the right of indigenous peoples to determine their own development or use of their lands and resources and that they should not be forcibly removed from their lands or territories without their free, prior and informed consent (FPIC). In this light, the government has failed to meet the requirements of participation, consultation and consent in its

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<sup>13</sup> Daily Express, 25 October 2009. Yong Teck Lee stated that monetary compensation to those affected by the Petagas Bridge project was meagre and inadequate to even buy a village house. The Sepangar naval base displaced hundreds of fishermen from their villages. These fishermen were relocated to 'longhouses' which lacked sanitation, piped water supplies and community facilities. Numbak village in which the fishermen were relocated to became too congested and their water source polluted.

<sup>14</sup> Daily express, 23 October 2009 Resettling can be Tough on Villagers.

development plans carried out on indigenous peoples' territory. The government is also urged to refer to the basic principles and guidelines on development-based evictions and displacement as presented in a report published in February 2007<sup>15</sup> by the UN Special Rapporteur on the right to adequate housing. These guidelines, which are based on existing international human rights law, present a useful guide on standards related to evictions.

## **The EIA**

On 8 February 2010, nine representatives from Envsolve Sdn. Bhd. (a private Consultant appointed by WCT Bhd to undertake the EIA) and two representatives from the Penampang District Office met with some of the community members in Kg Terian. According to Envsolve Sdn Bhd the purpose of their visit was to undertake an EIA study. The community meeting between Envsolve Sdn Bhd and the residents of Terian was launched with the inadequate and misleading explanation given by Envsolve Sdn Bhd about their identities, the purpose of their study, and the background of their researchers. Questionnaire forms that were circulated to the community stated that the study was a Social Impact Study. However, representatives of Envsolve Sdn Bhd informed the community that the purpose of the study was for an EIA. Community members observed that Envsolve Sdn Bhd's researchers failed on several occasions to accurately interpret the answers provided by the community members, and was not recorded properly on the questionnaire form by said researchers. Community members also expressed concern over the language barrier, which may affect the accuracy of the study and bring its results into questionable light. It was also revealed that no parallel or comparative study would be done by in the other affected areas of Longkungan, Kalanggaan and Pongobonon, which are located further upstream of the Papar River.

The community is concerned that human rights are at risk in the preparation and implementation of the Kaiduan Dam Project. In particular, the lack of full, accurate, accessible and impartial information; the lack of opportunities for genuine participation in developing plans for the dam and for mitigating the social impact of the dam; the manipulation of data by the implementing agents; and the risk that impending displacements may amount to mass forced evictions. The community hopes that the government will halt the Kaiduan Dam Project and its associated infrastructure implementation in surrounding areas, and address the many human rights issues which include cultural, economic, social and environmental concerns associated with the project. These manifestly include the need to improve the processes of consultation on development projects, genuine participation of the people, and take steps including through legislation to ensure effective safeguard against forced evictions and adopt effective protection measures against other human rights abuses in this and similar projects.

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<sup>15</sup> [http://www.hic-net.org/article%20attachments/miloon\\_kothari\\_unhabitat.pdf](http://www.hic-net.org/article%20attachments/miloon_kothari_unhabitat.pdf). Implementation of General Assembly Resolution 60/251 of 15 March 2006, Entitled "Human Rights Council" - Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari.