

# Sarawak Energy Publishes “Facts” About the Murum Dam

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## Summary

In October 2012, Sarawak Energy distributed a Factsheet on the Murum Dam in response to public criticism about ongoing human rights violations at the project site. In this Factsheet, Sarawak Energy claimed that it has followed international standards in building the Murum Dam, including the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the Equator Principles, and the Performance Standards of the World Bank’s International Finance Corporation (IFC).

A closer look reveals that the Factsheet is misleading and inaccurate. Sarawak Energy has failed to meet the fundamental requirements of all of these standards. Key violations include:

**Lack of free, prior and informed consent.** Contrary to what the Factsheet claims, Sarawak Energy has not provided indigenous communities with an opportunity to grant or withhold their free, prior and informed consent for the project. Sarawak Energy claims that the communities agreed to the new resettlement sites, and that this is proof of consent. Several communities dispute this claim. Even in cases where there was agreement, however, it was neither *free* from coercion, nor *prior* to the start of the construction, nor *informed* by access to information about the project’s impacts.

**Flawed social and environmental impact assessment (SEIA).** International standards—including the Equator Principles and the IFC Performance Standards—universally require that the SEIA must be completed during the design phase, *before* the government approves the project and *before* construction begins. This was not the case with the Murum Dam Project. The Sarawak government has not yet disclosed the Murum Dam Project’s SEIA to the public or to the affected communities. To the contrary, Sarawak Energy’s factsheet indicates that the SEIA is not even finished, although the project is only months away from being completed. Because the affected communities did not have access to information about the project’s impacts, they were placed in an unfair and uninformed situation when the Sarawak government asked them to negotiate a resettlement package.

**Failure to allow the indigenous communities to choose their own development path.** Sarawak Energy’s factsheet highlights a number of ways that the government plans to modernize the affected indigenous communities and improve their lives. The UN Declaration on the Rights of Indigenous Peoples explicitly recognizes that indigenous communities should have a voice in their own development, including the design of any housing, economic, and social programs on their behalf. By selecting these types of programs without the communities’ consent, the Sarawak government is again violating their rights.

As construction on the dam is nearly completed, urgent measures are now required to remedy the human rights violations that have occurred. The indigenous communities affected by the Murum Dam Project have already issued a memorandum describing how the government could still remedy the situation.<sup>2</sup> However, the Sarawak government has thus far refused to meet these requests.

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<sup>2</sup> For more details, please see <http://sarawak.s3.amazonaws.com/murum/Memorandum%20Terbuka%20Masyarakat%20Penan%20Murum.pdf>.

**Note: The entire text of Sarawak Energy's October 2012 Factsheet is reprinted below in its original form. We have included additional commentary in the shaded text boxes and in footnotes.**



## **MURUM DAM - Fast Facts**

- The communities directly affected by the proposed Murum Dam Project consists of 353 households with 1,415 people (as of August 2011) comprised of 335 Penan households with 1,304 Penan and 18 Kenyah Badeng households with 113 Kenyah.

**Commentary:** All of the international standards used by the Sarawak government – including the UNDRIP, Equator Principles, and IFC Performance Standards – require companies to take special precautions in projects that affect indigenous peoples.<sup>3</sup> Throughout this commentary, we will measure Sarawak Energy's compliance with these standards.

- There has been extensive consultation with the people directly affected by the Proposed Project. Since 2008, there have been nearly 40 planned community consultations and nearly 80 in informal meetings. All of the formal meetings have been recorded on video as part of the comprehensive Social Impact Assessment process.

**Commentary:** The IFC Performance Standards and the Equator Principles have specific requirements for what can be considered an appropriate "consultation" with indigenous people. Most notably, the company must take several steps to obtain the free, prior and informed consent of indigenous peoples.<sup>4</sup> Simply informing communities that a dam will be built and that they will have to leave their lands is not considered a "consultation". A fundamental principle of "consultation" is that affected people have an opportunity to provide meaningful input into the design of the project. As discussed in more detail below, Sarawak Energy failed to meet all of these steps when it began construction in 2008.

<sup>3</sup> The 2012 version of the IFC Performance Standards reflects current best practice in corporate responsibility, including explicit recognition of indigenous people's right to free, prior and informed consent. The Equator Principles is a standard used by commercial banks that is based on the IFC Performance Standards. For projects affecting indigenous people, the Equator Principles follows the IFC Performance Standard #7 on indigenous peoples. Since construction on the Murum Dam began in 2008, we measure compliance in this document against the 2006 version of the IFC Performance Standards and the 2006 Equator Principles. Presumably, the Sarawak government's future projects will meet the requirements of the updated 2012 IFC Performance Standards.

<sup>4</sup> According to the 2006 version of Performance Standard 7, companies are required to "enter into good faith negotiation with the affected communities of Indigenous Peoples, and document their informed participation and the successful outcome of the negotiation." (see paragraph 13) This is functionally equivalent to seeking their free, prior and informed consent. The consent requirement is made more explicit in the 2012 version.

- Since January 2010, Sarawak Energy (Project Proponent) and the State Government (Regulator) have consulted the Penan starting on the resettlement sites. By the end of 2010, the seven directly affected communities had identified and confirmed their choice of their respective resettlement sites at Metalun and Tegulang. In August and September 2011, the sites for the seven new longhouse communities in the two resettlement sites were pegged by the communities themselves with the participation of the State Government including the Land and Survey Department and Sarawak Energy.

**Commentary:** The UNDRIP specifically says that “Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.” (UNDRIP, article 10)

Several indigenous communities dispute Sarawak Energy’s claim that they agreed to the new resettlement sites. However, even if some communities did give their consent to Sarawak Energy to be resettled, it was not “free”, “prior” or “informed”.

- **Free.** Forced removal from lands can take many forms. In the case of the Murum Dam Project, communities were coerced into negotiating over new resettlement sites. Construction began on the project over two years before resettlement negotiations began, and by this point the affected communities were left with no choice but to agree to move. Many communities indicated that the best land was not available because it was already concessioned to timber and oil palm companies.
- **Prior.** The resettlement planning process was not “prior” because it began several years after construction was already underway.
- **Informed.** Affected communities were not “informed” either. They were not provided the details of the project’s environmental and social impact assessment, nor did they see the proposed resettlement action plan. In fact, affected communities did not see the details of the resettlement action plan until it was leaked to them in September 2012, four years after construction began. Thus, Sarawak Energy required the communities to make decisions about resettlement without full knowledge of how the dam would affect them.

- The Social and Environmental Impact Assessment (SEIA) Study was carried out in consultation with the directly affected local communities as guided by international standards for resettlement, particularly the Equator’s Principles of the International Finance Corporation of the World Bank. The proposed Resettlement Action Plan (RA) was prepared by taking into consideration, among other factors, the United Nations Declaration for Rights of Indigenous Peoples (UNDRIP) particularly the heavy reliance of indigenous people on land and land-based activities for their daily livelihood.

**Commentary:** The Murum Dam’s SEIA does not meet the basic requirements of the Equator Principles. The fundamental first step of the IFC Performance Standards is for the company to conduct a “thorough assessment of potential social and environmental impacts and risks from the early stages of project development...” (2006 IFC Performance Standard 1, paragraph 1) Sarawak Energy did not even meet this threshold step, so it cannot claim to comply with the Equator Principles or IFC Performance Standards.

After the SEIA is completed, it is expected that it will be publicly disclosed. According to the Equator Principles, disclosure should take place “before the project construction commences, and on an ongoing basis.”<sup>5</sup>

As discussed above, the preparation of the Resettlement Action Plan is not at all consistent with the UN Declaration on the Rights of Indigenous Peoples. Affected communities did not provide their free, prior and informed consent to the resettlement plan, and did not even see the plan until it was leaked to them in September 2012.

On a technical note, Sarawak Energy has incorrectly described the Equator Principles in this paragraph.<sup>6</sup> In the future, we recommend that Sarawak Energy reads the IFC Performance Standards and Equator Principles more closely to gain a better understanding of international corporate responsibility standards.

- The SEIA Study and the proposed RAP will be publicly disclosed as soon as they are complete.

**Commentary:** As discussed above, the SEIA and resettlement action plan should have been completed prior to the start of construction in 2008. The SEIA document is intended to be completed at an early stage so that it can help inform a better designed project. It is already too late for Sarawak Energy to redesign the Murum Dam. Nevertheless, disclosure of the SEIA will be useful to better understand the types of impacts that the Murum Dam might cause.

<sup>5</sup> Equator Principles, Principle #5 (2006 version).

<sup>6</sup> The Equator Principles are an initiative of private commercial banks, not the International Finance Corporation (IFC). The IFC is the private sector lending arm of the World Bank Group, and its Performance Standards are widely considered to be best practice for corporate responsibility. The Equator Principles commit the banks to voluntarily follow the IFC’s Performance Standards.

- The directly affected communities at Murum will be significantly better off as a result of their resettlement. The Murum Penan communities were originally fully hunter-gatherers but have since the 1960s become semi-settled in permanent longhouse and cultivation while continuing to practice their traditional livelihood of hunting and gathering. Wage-earning employment among the Penan people is low. The average cash incomes (from wages and allowances) vary between RM49 and RM272 per household per month.

**Commentary:** Sarawak Energy’s statement here demonstrates the company’s fundamental lack of understanding of the UN Declaration on the Rights of Indigenous Peoples. According to the UNDRIP, “Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.” (UNDRIP, Article 23)

In the case of the Murum Dam Project, the Sarawak government has attempted to determine by itself what is best for indigenous communities rather than letting the communities decide for themselves. This is a clear violation of the UN Declaration on the Rights of Indigenous Peoples.

- Sarawak Energy has taken major steps in the past two years to embed good Corporate Social Responsibility (CSR) practice in its business. These include a very successful literacy programme with Penan women, the preservation of sites of significant cultural importance to the Penan, food aid and the construction of a kindergarten at Long Wat.

**Commentary:** If these benefits are provided in a manner that is acceptable to the indigenous communities, then Sarawak Energy’s efforts to provide these programs are welcome. However, providing benefits does not give Sarawak Energy a license to violate these communities’ human rights. Sarawak Energy has already caused harm by failing to complete the SEIA and resettlement action plan before construction began, and failing to disclose these documents to affected communities.

- In addition to this, Sarawak Energy has committed to embed and use the International Hydropower Association’s Sustainability Assessment Protocol and the IFC Performance Standards in its Project Development Model. Training of our Project Design and Project Execution teams (Engineers) in the use of these two standards to guide issues around sustainability in our projects has already commenced.

**Commentary:** The International Hydropower Association’s “Hydropower Sustainability Assessment Protocol” is a voluntary and untested standard. It is worded vaguely enough that companies can score themselves however they choose. The IHA has used the Murum Dam Project as a pilot test of this new protocol and has not disclosed the results of its assessment to the public. Without seeing the results of this assessment, it is impossible to know if it helped to improve the project in any way.

As noted throughout this document, Sarawak Energy has also failed to meet the requirements of the IFC Performance Standards (to which the Equator Principles are linked).

## MURUM DAM - FREQUENTLY ASKED QUESTIONS

### 1. What is the proposed Murum dam?

The proposed Murum dam is a hydroelectric power (HEP) dam that uses the power of the flow of water through turbines to generate electrical power.

**Commentary:** The Murum Dam Project is no longer “proposed” but “approved.” Many of the basic steps described in this factsheet, such as the SEIA, should have been completed and disclosed to the public while the project was still being proposed over four years ago.

### 2. Who is building this dam?

Sarawak Energy as the project proponent is building the Murum dam using contractors from the Three Gorges Dam Company (Malaysia)

**Commentary:** Four state-owned companies are involved in the Murum Dam Project. Sarawak Energy is acting as project proponent. The China Three Gorges Corporation, which built the controversial Three Gorges Dam in China, is managing the construction of the project. Sinohydro, a Chinese company and the largest dam builder in the world, is constructing the project. Although both of the Chinese companies have established offices in Malaysia, they remain accountable to the companies’ headquarters in Beijing. Hydro Tasmania of Australia is providing managerial and advisory support for the project.

### 3. Isn't the government building the dam?

No. Although Sarawak Energy, at present, is 100% owned by the Sarawak State Government, it is being operated as a business enterprise which has a profit objective. Sarawak Energy is raising funds from the private sector and the market to build the Murum Dam.

**Commentary:** Sarawak Energy Berhad is 100% owned by the Sarawak government. The company is being used by the government to implement the highly politicized SCORE initiative. Indeed, throughout this factsheet, Sarawak Energy does not distinguish between its own position and that of the Sarawak government’s. Both have shared responsibility for the human rights violations taking place at the Murum Dam site.

#### 4. What is the role of the government?

The role of the Sarawak state government is that of the regulator to ensure that the Murum dam will be developed properly. It is also the role of the government as regulator to ensure that the local Penan communities who will be directly affected by the proposed project will be properly compensated and resettled and that their livelihood and well-being will not be worse off than before the proposed project or, if resources permit, better than before.

**Commentary:** The Sarawak government plays conflicting roles in the Murum Dam Project. As the state's Minister of Resource Planning and Environment, Chief Minister Taib is responsible for regulating the environmental and social quality of the project. At the same time, Taib acts as the leading proponent of the SCORE dams. The Sarawak government has not put in place any safeguards to ensure that Taib's conflict of interest does not affect the environmental and social performance of the project. Indeed, the lack of a publicly available SEIA indicates that the conflict of interest has already harmed the project.

#### 5. How many people will be affected by the Murum HEP and who are they?

Based on the Household Register carried out as part of the Contemporary Ethnography Study of the Murum Social and Environmental Impact Assessment (SEIA) Study by the Study Consultant, Chemsain, a total of over 1400 persons from 353 households representing 6 Penan and 1 Kenyah Badeng communities will be affected.

## **Rationale**

### **6. Why is Sarawak Energy building this dam?**

Sarawak Energy is building the Murum dam because Sarawak Energy has a commitment to the Sarawak state government to ensure that Sarawak has enough electricity to support the economic development of state in the immediate future.

### **7. Isn't there sufficient electricity for the needs of Sarawak already?**

There is sufficient electricity for the needs of Sarawak today, but not for tomorrow. The Sarawak government has a plan to develop the Sarawak economy rapidly in the immediate future with industrialisation and the development of new industries so that the people of Sarawak can enjoy a high income. These new industries will need more electricity.

**Commentary:** There are many questions about whether SCORE is economically feasible. Details of the plan have not been made available to the public, and there was little or no public awareness when the Sarawak government first began to implement SCORE. Evidence exists of high level corruption in SCORE. In particular, many SCORE contracts have been given to companies owned by members of Chief Minister Taib's family.

With such a large development scheme, international best practice calls for a "strategic environmental and social assessment." Such an assessment looks at the overall impact that a large development scheme can have. In Southeast Asia, the Mekong governments conducted a strategic environmental assessment of the impacts of building 11 proposed dams on the Mekong River. The Asian Development Bank is also conducting a strategic environmental assessment of its proposed "Greater Mekong Subregion" energy network.

No strategic environmental and social assessment was conducted for SCORE. Rather, the initiative has proceeded without knowledge of the economic, social and environmental impacts. The people of Sarawak are instead forced to rely on the political promises of the Sarawak government.

### **8. Where are all these projects coming from? Is there a need for all these projects?**

All these projects are coming from both local and foreign investors and these projects are needed to build the new industrial base for Sarawak which will raise the incomes of Sarawakians working at home in Sarawak.

**Commentary:** As mentioned above, there is no evidence that the SCORE dams are needed beyond the political statements of the Sarawak government. If economic feasibility studies were conducted, they have not been made available to the public. The Sarawak government's energy demand forecasts appear to be based more on wishful thinking than economic reality. If the projects fail, the debt burden on the Sarawak public may cause more economic harm than growth.



**9. Why does the government not consider using solar energy instead of hydropower?**

The government has considered solar energy. Surprisingly, Sarawak does not have a better comparative advantage in solar energy than hydro because despite being in the tropics we have constant cloud cover so that solar capture is not optimal.

**Commentary:** There are a number of energy alternatives that exist beyond large hydropower and solar—such as small-scale hydropower, energy efficiency measures, and retrofitting existing power plants, among others. Often, governments will choose a variety of energy sources when planning ways to meet growing electricity demand. In contrast, the Sarawak government appears to have selected a single form of high risk energy and has not justified use of large hydropower to its citizens. As of now, all indications suggest that this decision was driven more by corruption than economic feasibility. The Sarawak government would benefit from an independent, publicly available study that considers all energy alternatives available and proposes a mixed solution to best meet the needs of the Sarawak people.

**Consultation: The SEIA Process**

**10. Some Penan and outsiders allege there has been little or no consultation with the affected community with regard to the proposed project?**

This is not correct. The first round of community consultation on the dam took place in November 1994 as part of the then Murum Hydroelectric Project feasibility study. Once the proponent decided to proceed with the project in 2008, active community consultation commenced in August 2008 involving the State, the District Office and the directly affected communities. Subsequently village to village dialogue sessions were held.

Since then we have recorded nearly 40 planned community consultations and nearly double this number in informal meetings with the project affected communities, and these engagements continue on a monthly basis with the SEB Community Relations Team and State officials.

**Commentary:** The UNDRIP, Equator Principles, and IFC Performance Standards all require that consultations result in the free, prior and informed consent of indigenous peoples. For example, the UNDRIP requires that “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.” (UNDRIP, article 32, section 2)

This did not happen with the Murum Dam Project. As the factsheet itself indicates, “active community consultation” did not proceed until after the project was already approved in 2008.

**11. Some Penan allege that they have been pushed into these resettlement sites and they were given no choice as to where they would be resettled?**

Contrary to this allegation, the Penan were consulted starting from January 2010 on the resettlement sites. By the end of the same year the 7 directly affected communities had identified and confirmed their choice of the two resettlement sites at Metalun and Tegulang. In August and September 2011, the sites for the seven new longhouse communities in the two resettlement sites were pegged by the communities themselves with the participation of the State Government including the Land and Survey Department, and Sarawak Energy.

Not only did the Penan and the Kenyah get to choose the sites for the construction of their longhouses, but they have also been actively involved in the design of their new longhouses. A lot of the design guidelines for the new longhouses have come from the directly affected communities themselves.

**Commentary:** As discussed above, the affected communities were placed in a coercive situation where they were given no choice but to accept forced resettlement. This does not meet the basic conditions of free, prior and informed consent as described in Article 10 of the UNDRIP.

**12. What is the SEIA study?**

The SEIA study is an impact assessment of the Murum dam on both the environment and the people, and is called the “Social and Environmental Impact Assessment (SEIA) for the Proposed Murum Hydroelectric Power project.” It was carried out by Chemsain Consultants who were appointed by the State Government. The ultimate purpose of the SEIA Study is to identify mitigating measures for all major impacts identified in the study.

The SEIA Study composes of three major reports: (a) the SEIA on the Proposed Murum HEP, (b) the Contemporary Ethnography Study and (c) the Proposed Resettlement Action Plan, were produced.

**Commentary:** The Murum Dam Project’s SEIA violates the Equator Principles, IFC Performance Standards, and UNDRIP. The factsheet indicates that the SEIA and resettlement action plan have not yet been completed. As of October 2012, the SEIA has not been disclosed to the public. The resettlement action plan has not been made officially available to the public, although a copy was leaked in September 2012.

As a result, the affected indigenous communities were not informed about the project’s basic risks and benefits before they were forced to negotiate resettlement deals. According to the Equator Principles and IFC Performance Standards, companies are expected to provide communities with details “such as proposed mitigation measures, the sharing of development benefits and opportunities, and implementation issues” *before* negotiations begin. (2006 IFC Performance Standard 7, para. 9)

### 13. What is “the SEIA process”?

The SEIA process is a phrase that has been coined in Sarawak to describe the process of close consultation which the Sarawak government has committed to undertake with the directly affected communities with regard to big development projects, which in recent years have been the hydroelectric power projects.

**Commentary:** This phrase is misleading and is not the standard use of the term “SEIA.” As discussed throughout this document, the SEIA is intended to be completed before to the approval of the project and before the start of construction. Consultations with affected communities should continue throughout the life of the project, but are not generally referred to as the “SEIA process.” This appears to be an attempt by Sarawak Energy to divert attention from the fact that the SEIA was not completed or publicly disclosed before construction on the project began.

### 14. When was the SEIA Study carried out?

The SEIA Study was carried out in October 2009 by Chemsain Consultants Sdn Bhd of Sarawak. While the bulk of the study has been completed, the report is being finalised and will soon be ready for release for public disclosure and comment.

**Commentary:** All international standards—including the Equator Principles and IFC Performance Standards—require SEIAs to be completed during the design phase of the project and certainly before construction begins. (See e.g., Equator Principles paragraph 5). Affected communities and the public should have the opportunity to participate in the creation of the SEIA, review a draft of the SEIA, and provide input that can be used to improve the design of the project. By being involved in the design of the project, experience shows that indigenous people are more likely to grant their free, prior and informed consent for the project.

This paragraph of Sarawak Energy’s Factsheet indicates that the SEIA process did not even begin until after construction on the project was already underway.

### 15. Why has it taken so long for this study to be carried out?

To ensure accuracy and to go from village to village and carry out such studies can be a time consuming process.

The study has taken a long time to complete because of the importance that is placed by the study on the process of free, prior and informed consultation leading to consent which is time consuming especially from going from village to village. The study is also very comprehensive and detailed in its coverage and time is needed to ensure accuracy.

**Commentary:** Indeed, SEIAs can be time consuming process. According to international best practice, project developers are also expected to set aside adequate time so that indigenous peoples do not feel rushed when deliberating whether to provide their free, prior and informed consent for activities that affect them. If construction has already begun, they cannot provide consent that is “free” or “prior”. In the Murum Dam Project, Sarawak Energy did not meet any of these standards.

#### 16. When will the SEIA Study and the proposed RAP be made public?

The key findings of the SEIA Study will be made public before the end of this year.

**Commentary:** At the beginning of the factsheet, Sarawak Energy indicates that the entire study will be made available to the public. Here, the company only promises to release “key findings” to the public. Hopefully Sarawak Energy will not just release a censored version of the SEIA that only highlights the positive aspects.

#### 17. What kind of consultation was involved?

The consultation involved visits to the directly affected longhouses in order to brief each of the affected persons about the proposed project and consult with them with regard to all aspects of their proposed resettlement in order to reach amiable consent for the affected communities, the government and the project proponent.

This involved multiple trips by the Chemsain consultation team in order to fully engage with the affected people and communities. Chemsain have a detailed record of all such meetings

**Commentary:** This paragraph indicates that Sarawak Energy primarily consulted with affected communities on the terms of their resettlement, rather than on the design of the project as a whole. In doing so, Sarawak Energy violated international standards in several ways.

**Quality of consultations.** According to the Equator Principles and IFC Performance Standards, the process of “consultation” involves much more than seeking indigenous communities’ input on resettlement.

According to IFC Performance Standard 7, a company should take the following steps to engage effectively with indigenous peoples:<sup>7</sup> “establish an ongoing relationship with the affected communities of Indigenous Peoples from as early as possible in the project planning and throughout the life of the project. In projects with adverse impacts on affected communities of Indigenous Peoples, the consultation process will ensure their free, prior and informed consultation and facilitate their informed participation on matters that affect them directly, such as proposed mitigation measures, the sharing of development benefits and opportunities, and implementation issues.” (2006 IFC Performance Standard 7, paragraph 9)

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<sup>7</sup> Please note that the 2006 IFC Performance Standards no longer reflect international best practice on community engagement. The 2012 version is now considered to reflect best practice and is being used by companies worldwide for projects that are implemented from 2012 onwards.

Furthermore, the company is expected to “provide sufficient time for Indigenous Peoples’ collective decision-making processes” and “facilitate the Indigenous Peoples expression of their views, concerns, and proposals in the language of their choice, without external manipulation, interference, or coercion, and without intimidation.” (IFC Performance Standard 7, paragraph 9) A grievance mechanism should also be in place so that the affected people can have their concerns addressed throughout the process.

There should also be a clear outcome of these discussions. The Equator Principles and IFC Performance Standards require that the company “enter into good faith negotiation with the affected communities of Indigenous Peoples, and document their informed participation and the successful outcome of the negotiation.” (IFC Performance Standard 7, paragraph 13).

***Lack of free, prior and informed consent for the resettlement.*** As discussed above, the recognized international standard is “free, prior and informed consent” before resettlement takes place, rather than “amiable consent.” In the case of the resettlement negotiations, agreements were not made in a way that was free, prior, or informed.

#### 18. How transparent is Sarawak Energy on the construction of the Murum HEP?

Sarawak Energy has been as transparent as we can be with regard to the construction of the Murum dam and the subsequent resettlement. We have nothing to hide. Sarawak Energy and the State Government have consulted with directly affected communities and will continue to consult with the communities through every stage of the project.

**Commentary:** The Murum Dam is not a transparent project. The Sarawak government did not even disclose that it was building the project until over 2 years after construction already began. Then the government only disclosed the project after information about it was leaked to the public.

The Sarawak government also did not disclose the SEIA or the resettlement action plan to affected communities or the public. Disclosure of this information is a fundamental part of the Equator Principles, IFC Performance Standards, and other international standards.

For example, the 2006 IFC Performance Standards (and Equator Principles) states that: “Disclosure of relevant project information helps affected communities understand the risks, impacts and opportunities of the project. Where the [company] has undertaken a process of Social and Environmental Assessment, the [company] will publicly disclose the Assessment document. If communities may be affected by risks or adverse impacts from the project, the client will provide such communities with access to information on the purpose, nature and scale of the project, the duration of proposed activities, and any risks to and potential impacts on such communities. For projects with adverse social or environmental impacts, disclosure should occur early in the Social and Environmental Assessment process and in any event before the project construction commences, and on an ongoing basis.” (2006 IFC Performance Standard 1, paragraph 20)

### 19. What about the UN Declaration of the Right of Indigenous Peoples (UNDRIP) and their right to Free, Prior and Informed Consent (FPIC)?

The SEIA process for Murum incorporates key elements of internationally accepted consultation which are “free, prior and informed” consultation leading to consent, as well as the rights of indigenous people to have access to land on which they can work to sustain their livelihood.

UNDRIP is a major document which is seriously taken into consideration by the Murum SEIA Study. There are many provisions in UNDRIP; the major provision is the importance of land to the daily livelihood of the indigenous people to which serious consideration has been made in the proposed Resettlement Action Plan (RAP) to ensure that there is sufficient land for the daily survival of the directly affected communities.

The rationale behind “free, prior and informed” consultation is to arrive at consent so that significant development projects can be implemented for the improvement of the affected communities and the economy as a whole. Where possible, resettlement should be voluntary. If voluntary resettlement cannot be achieved, a compromise is called for with the end result that the livelihood of the directly affected communities are restored or, within the resources of the government, improved.

In promoting the SEIA process, the Sarawak government wishes to assure the directly affected communities and interested communities in the world at large that the implementation of significant development projects in Sarawak is done with due respect and regard to the welfare of the affected communities and the people of the State. The Sarawak government welcomes positive suggestions as to how the SEIA process can be improved.

**Commentary:** This is an untrue and inaccurate portrayal of the UN Declaration on the Rights of Indigenous Peoples. As discussed throughout this document, the Murum Dam Project is characterized by a lack of consent from affected indigenous communities. Where consent exists, it has been coerced rather than “free, prior and informed”. For example, the Murum Dam Project has not followed these three, key provisions of the UN Declaration on the Rights of Indigenous Peoples:

**Article 10:** “Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.”

**Article 23:** “Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.”

**Article 32(2):** “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.”

**20. How can we be sure that the SEIA Study was of international standard?**

The SEIA study was conducted by a team of experienced people and experts who were guided by international standards on impact assessments and mitigation measures. In addition to following local rules and regulations, the SEIA study and the proposed RAP were guided by the Equator Principles and the IFC Handbook on preparing a Resettlement Action Plan. The SEIA and RAP have also been reviewed by an international expert as third party reviewer.

**Commentary:** As discussed throughout this document, the Murum Dam Project does not come close to meeting international standards. Rather, the human rights of affected indigenous people have already been violated. At this point, there is an urgent need for the Sarawak government to enter into negotiations with affected communities to determine acceptable remedies.

**21. Has Sarawak Energy learn from what have transpired at other local dam projects in terms of the benefits, shortcomings and disadvantages to the affected communities?**

Yes, Sarawak Energy has learnt from past projects and experiences of the state and other countries and we think we have significantly improved our current projects. In fact, we strive to develop our own standards through the SEIA process which incorporates international standards and local rules and regulations as well as local sensitivities and care for our own indigenous peoples.

**Commentary:** The Murum Dam Project highlight the ongoing human rights violations in the way that the Sarawak government treats indigenous peoples. At this time, construction on the project should be suspended until all necessary remedies are in place for the communities who have already been impacted. No other SCORE projects should advance until these legal protections are in place for all of Sarawak's indigenous peoples, and until the government has conducted a strategic environmental and social assessments of the SCORE initiative in a transparent and participatory manner.

## **Resettlement, compensation and benefits**

### **22. How will the development of the Murum dam benefit the people affected by the dam?**

The development of the Murum dam will benefit the communities who are directly affected by the dam. The government and Sarawak Energy are fully aware that the development of the Murum dam has caused some difficulties for people directly affected by the dam development. The government is concerned that such hardship should be minimised if not avoided and where possible restitution should be made as quickly and as completely as possible.

In order to minimise the impact on the people the government has plans to use the opportunity of the proposed resettlement to eradicate poverty from the affected communities and improve their livelihood far better than they are currently undergoing.

**Commentary:** All benefits from development projects should be designed in collaboration with the affected indigenous communities. The UNDRIP recognizes that indigenous peoples have the right to determine their own development pathways:

“Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.” (UNDRIP, article 23).

### **23. Some people say that the Penan have a healthy lifestyle now. Why is the State trying to change this?**

Our contemporary ethnography study of the communities shows that the Penan communities are living under very trying conditions, as their population is outgrowing the ability of the forests to sustain them and the remoteness of their settlements makes it expensive and physically difficult to obtain modern services such as healthcare and education. As a result, the Penan find themselves in need of cash which they have difficulty in obtaining because of their lack of linkage to economic opportunities.

The State recognises that the Penan people are still very much tied to the forests which they need for their comfort and happiness. This is why the State is providing the Penan people with access to the nearby Protected Forest.

The proposed RAP will introduce the Penan communities to take small but steady steps into the modern market economy.



**Commentary:** This is not a true statement. According to the Murum Dam Project’s resettlement action plan, the Sarawak government only intends to provide temporary access for affected communities to protected forests.

Section 7.4.1 of the resettlement plan says “it is likely that many of the Project Affected Communities (PAC’s) will continue to rely to some degree on traditional forest-based activities to support their families. As such, access to a forest area that can provide the necessary resources is needed during the transition to the new agriculture based cash economy in the resettlement area.”

However, Section 7.4.2 says “Community collecting rights do not imply ownership and the affected communities are only allowed to have access to the forest for hunting, gathering of forest products and fishing. These rights can be reviewed at a later date when farms have come into production and once members of the community have remunerative employment in the wage-earning sector of employment.”

Furthermore, Sarawak Energy’s factsheet does not recognize the pressures that have been placed on Sarawak’s indigenous communities from the granting of concessions on their traditional lands to timber and oil palm companies. Stronger regulation of these concessions is well within the control of the Sarawak government, and needs to be remedied to assure real protections for indigenous communities.

#### 24. How can the affected people be sure that the resettlement will be successful?

The best way for the affected people to be sure that their resettlement will be successful is to take active participation in the proposed resettlement action plan with realistic programmes which the communities can undertake. Enhancement can be made to their proposed resettlement action plan by incorporating all major government technical assistance that they can get in order to raise the standard of skills and education in their communities.

The success of the proposed resettlement depends very much upon the vision of the affected communities themselves, while the government and corporate entities such as Sarawak Energy can support and facilitate the efforts of the people. This is why we envisage a participatory approach to the Murum resettlement exercise and have kept the Penan informed during the various stages and also given them the opportunity to choose their own resettlement sites for the individual longhouses.

**Commentary:** The UNDRIP requires the free, prior and informed consent of indigenous peoples before they are relocated. (UNDRIP, Article 10). It is already too late to involve indigenous communities in the design of the current resettlement plan, unless it is rewritten.

At this time, urgent measures are needed to repair the mistakes and harm caused by Sarawak Energy. The first step is for senior Sarawak government officials to meet with the affected communities to meet the demands of their memorandum issued in September 2012. This could potentially lead to agreement on the appropriate remedies. The next step is to put in place legal protections for indigenous peoples throughout Sarawak before any other dam building proceeds.

**25. What sort of compensation will you be offering the people who will be resettled?**

The compensation will be guided by existing policies of the government. Among other, land-related issues will be guided by the Sarawak Land Code on land, crops and fruit trees by the Land and Survey Department, and graves and cultural heritage by the Museum Department.

The compensation will mostly be replacement in kind, such as housing and land. Compensation in cash will be made when the lost assets cannot be immediately replaced, such as crops and fruit trees.

**Commentary:** This paragraph of the factsheet indicates that the Sarawak government has no real intention of negotiating with the affected indigenous communities. In their September 2012 memorandum, the communities identified numerous concerns with the government's proposed compensation package. According to international standards, a compensation package should be negotiated with the indigenous communities with the aim of reaching a mutually acceptable agreement.

**26. What are the types of properties that are going to be compensated?**

The properties that are eligible for consideration of compensation or ex-gratia payments are:

1. House including longhouse
2. Crops including fruit trees
3. Graves
4. Community hall, church
5. Land.

**27. How much land is going to be allocated to the affected communities at the resettlement area?**

Each household will be allocated 14 hectares of land.

**Commentary:** As discussed above, any compensation packages should be negotiated with affected communities. According to UNDRIP, the communities have the right to withhold their consent to be relocated until an acceptable compensation package has been offered.

**28. Is there any deal for payment of royalty, bonus, and commissions from the yearly profits of the Murum dam to be given to the affected people in the future?**

No, there is no such consideration.

**Commentary:** Payments of royalties, bonuses, and commissions from yearly profits are a common form of benefit sharing throughout the world. By closing this option off, Sarawak Energy has further reduced the possibility of negotiating a fair and mutually acceptable resettlement deal with the affected indigenous communities.

## **CSR activities at Murum**

### **29. What opportunities were made available for the local community to get jobs in this project?**

Unfortunately, there were very few opportunities made available to members from the directly affected communities in Murum. One of the key learnings for SEB and the State is that in all such future HEP developments, we need to write into the contracts a requirement for our contractors to ensure that a percentage of local people are offered jobs.

### **30. What measures or benefits, both short and long-term, will be taken by the government to ensure that people affected by the project will be well taken care of after the construction of the dam?**

After the construction of the dam, it is important that the directly affected people are well-prepared to take care of themselves and be self-sufficient in order for them to maintain their desired well-being. With that preparation, the people will be in a good position to take advantage of the new opportunities which could be created after the construction of the dam, such as aquaculture, tourism and plantations.

**Commentary:** This paragraph is vague. It appears as if the Sarawak government has no real plans for how to provide short and long-term benefits to the affected communities. As discussed throughout this document, any plans that do exist have not been made in collaboration with the communities themselves.

### **31. What CSR initiatives has SEB carried out in Murum?**

In addition to the community relations activities as per attached, SEB has carried out the following CSR activities in Murum:

#### ***Women's literacy programme in partnership with SAWF***

Early in 2012, Sarawak Energy in partnership with the Society for Advancement of Women and Family in Sarawak commenced the The Murum Adult Literacy project which is aimed to build capacity of the community in particular empowering women to bring transformative improvement to the family and the wider community.

The purpose of this literacy program is to empower women through acquiring learning skills, reading, writing and arithmetic so that they can develop their potential and to effect transformation and assume responsibility in the development of their families and the communities who will be impacted by the resettlement.

To date, 30 Penan women have been trained as facilitators to carry out the programme in their villages and over 300 participants have attended the training.

Due to the programmes success, we have commenced the second phase of our partnership with SAWF. Stage 2 of the partnership with SAWF is to ensure continuous learning and development of the

community. The following programmes with their objectives are proposed to be carried out from September 2012 to December 2013.

1. Literacy programme will simultaneously continue and be supervised as long as necessary within the same time frame. Both the quick and slow learners will be grouped according to the learning pace and be given special attention. Based on the assessment made by SAWF programme coordinator/trainer, additional lessons on numeracy will be provided to improve their basic arithmetic skill.
2. Training on Module 1 - Personal Development consists of five topics – Motivation, Vision, Values, Communication and Change. This 3-day course will be conducted in conjunction with the facilitator's refresher course and later to be conducted for all women in the communities with the help of the trained facilitators.
3. Training on Module 2 - Good Health Begins at Home – This will be conducted in conjunction with the facilitator's refresher course and later to be conducted for all women in the communities with the help of the trained facilitators.

It is proposed to be conducted in 2 days and the third day will be utilised for consultation and planning about their communal vegetable garden.

4. Monitor progress of the Women's activities especially their vegetables garden which has just started and to progressively guide them on how they can improve their livelihood through handicraft making. It may be possible to work together with the Agriculture Department and relevant agencies or individuals dealing with handicraft. The vegetable planting activity was the wish of the women conveyed through the newly formed Women's Committee and was initiated with the vegetable seeds provided by SAWF in July 2012. The four communities that have requested for support on this are : Long Malim, Long Wat, Long Singu and Long Wat community in Sg Asap.

#### **Toilet and shower stall facility for displaced Murum Penan community in Sg Asap**

The purpose of this project is to address the public health needs and to reduce the health risks of the community due to lack of sanitation, by providing this basic facility. SEB sponsored RM15,000 for the project by Peng Doh Belaga (Belaga Women Organisation) SEB also funded a project by Peng Doh Belaga (Belaga Women Organisation) to address the public health needs of the displaced Long Wat Penan community at a chicken farm at Sg Asap. Under this partnership, Peng Doh Belaga engaged the Penan in the construction of toilet and bath facility and to facilitate communal efforts for the cleaning and maintenance of the facility.

#### **Beneficiary Group**

About 83 Penan from Long Wat community who are affected by the Murum hydro electric dam will directly benefit from this project. This project is also a preventive measure to reduce disease risks for all the other communities in Sg Asap.

#### **Other programs**

- Construction of kindergarten at Long Wat, Murum
- Refurbish the kindergarten in Long Wat to fulfill the KEMAS's requirements.
- Uniforms & stationery sets for Murum Penan Students at SK Batu Keling, Sg Asap
- Donated iron windows grill to SIB Church at Uma Kelap, Sungai Asap
- Identity Card and Birth Certificate registration with Unit Khas Bergerak, JPN
- Community support - food assistance for the affected communities in Murum
- Organising the Annual Ritual Ceremony for Penan Sacred Rock (Batu Tungun) at Murum
- Provide assistance for the construction of kindergarten at Long Malim, Murum
- Soil investigation at Metalun and Tegulang, Murum
- Contribution for Christmas and Bungan's prayer to each settlement
- Donation for the deceased

**Commentary:** These are potentially beneficial development programs. However, according to UNDRIP article 23, development benefits should be identified in collaboration with affected communities rather than imposed by the government. In this way, the communities can determine their own development priorities and path forward.