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Orang Asli = Indigenous Minority Peoples of Peninsular Malaysia

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SAGONG TASI CASE REMAINS A PRECEDENT FOR LAND RIGHTS



The Federal Court on 26 May 2010 recorded a settlement that sealed the recognition of native title rights for Orang Asli. The Senior Federal Counsel representing the Federal government, the Malaysian Highway Authority (LLM) and United Engineers Malaysia Bhd (BHD) in the landmark Sagong Tasi land rights case agreed to withdraw their appeals on terms.

The terms included LLM paying the Temuan plaintiffs a lump sum of RM6.5 million for the acquisition of 38.47 (15.57 hectares) of their land in 1995.

In return, the Orang Asli lawyers, with consent of the Temuan plaintiffs, agree not to claim the court-awarded special, aggravated and exemplary damages, as well as costs.

This brings to conclusion a 14-year battle by the Temuans of Kampung Bukit Tampoi for the 26 families whose land was taken for the construction of the Nilai-KLIA highway and compensated only for their crops and orchards.

It also firmly sets the Sagong Tasi case as an important precedent for Orang Asli claims to their native title rights over their customary or adat lands.

**Press Brief on
THE SAGONG TASI CASE**
Compiled by Center for Orang Asli Concerns

Plaintiffs (in the High Court):

Sagong Tasi
Kachut Tunchit (replaces Tunchit Penjak, decd)
Dabat Chabat
Kepal Kepong
Sani Saken
Ilas Senin (replaces Senin Angin, decd.)
Tukas Siam

Defendants

Selangor State Government (withdrew in April 2009)

United Engineers (Malaysia) Bhd (UEM)
 Lebuhraya Malaysia (LLM)
 Federal Government

Plaintiffs who died in the course of the 14-year case:

Tunchit Penjak
 Senin Angin
 Kachut Tunchit
 Batin Tukas Siam

Dec 1994	The Temuans of Kampung Bukit Tampoi are told by LLM that a highway will be built across their land. 38.47 acres (15.57 hectares) are affected. Land belongs to 26 families. Contains oil palm, rubber, fruits trees and other crops. Also 13 dwellings affected apart from the Balai Adat and Balai Raya. The status of the land involved covers all 3 categories: gazetted Orang Asli Reserve, land approved for gazetting as an Orang Asli reserve, and land being applied for an Orang Asli reserve.
January 1995 - March 1996	Various meetings and negotiations are then held in the ensuing months with the district office, JHEOA, ADUN, LLM, and other state authorities. LLM does not back down. The Temuans are told the project will go on and they will be compensated for their crops and dwellings but not for the land, as it is deemed to be state land. Temuans reject the compensation cheques for the dwellings and crops.
21.3.1996	The authorities enter the area and forcibly destroy dwellings, crops and force the affected Temuans of the land. Operations done in the presence of 2 trucks of FRU personnel, 30-plus police personnel (including those from the CID), the District Land Officer, the Member of Parliament for Sg Pelek, the Director of JHEOA Selangor, JHEOA officers from Sepang and Kuala Langat.
April 1996	The Temuans seek assistance from the Bar Council which sets up a team to help the Temuans seek redress in the court. Team members included Raja Aziz Addruse, K. Chandra and Koo Patrick. Case filed in the Shah Alam High Court.
3.2.1999	Case comes up for hearing for just one day. Judge is then transferred. New court dates sought.
5.12.2000	Case starts afresh in the Shah Alam High Court. Justice Mohd Noor presides. Legal team from the Bar Council now consists of Dr. Cyrus Das, Jerald Gomez, Rashid Ismail, Shamila Sekaran, Leena Ghosh. Steven Thiru and David Matthews join the team at the Court of Appeal and Federal Court stages. COAC assists in the evidence-collection. Trial involves 25 days of hearings, 9 plaintiff witnesses and 7 defence witnesses.
12.4.2002	Justice Mohd Noor delivers decision in favour of the Temuans. He held that, based on the evidence provided and supported by the tenets of Common Law and the Federal Constitution, the Temuans had interest in and on the said land i.e. they native title to the land. And any acquisition of it had to be done in accordance with the Land Acquisition Act as if the said lands were titled lands. The judge also held the State and Federal Governments negligent in their fiduciary duty to protect and advance the interests of the Orang Asli in this case. Apart from ordering that LLM pay adequate compensation in accordance with the LAA, the judge also awarded the Temuans damages for trespass, illegal eviction, and special damages.
2002	The defendants file an appeal to the Court of Appeal.
13-14 June 2005	Court of Appeal sits to hear the appeal. Justices Gopal Sri Ram, Arifin bin Zakaria and Nik Hashim bin Nik Ab. Rahman preside.
19.9.2005	Court of Appeal rules in favour of the Temuans and upholds the high court decision. The Court also awards costs to the Temuans' lawyers.

5.4.2006	Defendants apply for leave in the Federal Court. The late Justice Malik Ahmad, Alauddin Mohd Sheriff and Richard Malanjum preside. Malanjum recuses himself. The late Augustine Paul replaces Malanjum. Tan Sri Malik himself dies not long after.
21.11.2006	Justices Augustine Paul and Alauddin Mohd Sheriff grant leave to the defendants to appeal in the Federal Court.
8.3.2008	Pakatan Rakyat takes over Selangor State Government.COAC, on instruction from the lawyers and with the help of YB Elizabeth Wong, engages with the Selangor MB with a view to get him to withdraw the Federal Court appeal.
14.4.2008	Federal Court hearing resumes. The MB instructs the state legal advisor to ask for postponement pending a study on the state's position in the case. Hearing postponed.
May 2008 - April 2009	Negotiations continue with Selangor MB with help of EXCO member Elizabeth Wong. Selangor Orang Asli Land Task Force (BBTOAS) set up. Dialog held between MB and about 500 Orang Asli from Selangor. MB seeks opinion of progressive lawyers on Orang Asli land rights. Selangor EXCO eventually agrees to withdraw from the Federal Court appeal.
22.4.2009	Hearing resumes in the Federal Court. Selangor State Government withdraws as an appellant.
January-May 2010	Lawyers for the Temuans discuss settlement of the case. The Temuans seek compensation at the current rate of RM200,000 per acre. The Temuan lawyers are willing to forego all claims to costs and all other awards by the court re damages. The Attorney-General's Chambers pleads inability to accommodate the Temuans' rate citing the poor financial situation of the government. The Temuans agree to a lower quantum, due in part of the fact that the case has dragged on for too long. Besides, many of the plaintiffs and other land-owners have already died, and several are still destitute and living in poverty.
26.5.2010	Federal Court sits with coram comprising Tan Sri Arifin Zakaria, Tan Sri Richard Malanjum and Datuk Seri James Foong. Senior Federal Counsel Datuk Kamaludin Md. Said represents the appellants and requests to withdraw the appeal 'on terms'. LLM agrees to deposit RM6.5 million with the Shah Alam High Court for distribution to the Orang Asli plaintiffs and other affected land-owners. The Orang Asli lawyers are to waive all awards for special and aggravated damages, including costs. Case closed after 14 years!

Photos taken by COAC on 26 May 2010.



Sagong Tasi (right) and Kepal Kepong pointing to their case name being shown on the court's information monitor.



Lawyer Rashid Ismail checking with the Temuan plaintiffs on their agreement to the terms of the settlement before the court sat.



Lawyer Jerald Gomez briefing the Temuans on the outcome of the court proceedings after the settlement order was recorded.



Sagong Tasi speaking to the press.



State EXCO member Elizabeth Wong speaking to the press.



At the same time, Jerald continues to brief the Temuans.



Sagong with some of the Temuans' lawyers. From right: Rashid Ismail, Dr. Cyrus Das, Jerald Gomez, Steven Thiru.



Photo-op for the press.



Another photo-op of the jubilant crowd.



Yusri, Jah Hut from Kuala Krau with Jerald and Sagong.



Lawyer David Matthew, at left, with Rashid, Sagong, Elizabeth and Jerald pose for posterity.



Lawyers from Jerald's office pose with Sagong.



For the record ...



Datuk Dr Cyrus Das (second from left).



With some of the 50+ people who turned up to witness the historic settlement. .



However, the oldest plaintiff in the case, Dabak Chabat, 84 yrs, did not attend court as he was weak and not quite mobile.



Jenita and Roz pose with Dabak in his house. We visited him after

the court proceedings to check on his health, which has deteriorated a lot the past few months, especially after the death of his wife.



Dabak demonstrating how he used to catch *biawaks* (monitor lizards) with this bamboo snare.

Some related links from the mainstream newspapers:

<http://thestar.com.my/news/story.asp?file=/2010/5/27/nation/6344083&sec=nation>

<http://thestar.com.my/news/story.asp?file=/2010/5/27/nation/6350068&sec=nation>

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