SARAWAK NATIVE RIGHTS MEMORANDUM

1st Submission November 2025
2nd Submission October 2026

SARAWAK NATIVE RIGHTS MEMORANDUM 2025

To: Government of Sarawak

From: Jaringan Hak Tanah Adat Bangsa Asal Sarawak (TAHABAS)

Subject: Addressing Structural Challenges Facing the Natives or Indigenous Peoples of Sarawak and Strengthening Their Role as the Best Forest Protector

Dates: First Submission - 24th November 2025
Second Submission - 10th October 2026

Introduction

This memorandum outlines key challenges faced by the Natives or Indigenous Peoples (IPs) of Sarawak relating to landgrabs, corporate capture, the lack of meaningful Free, Prior and Informed Consent (FPIC), and the state's greater leaning towards profit-driven development. These issues not only undermine our rights but also weaken Sarawak's ability to address the climate crisis, biodiversity loss, and long-term ecological sustainability.

We also recognize that the challenges and issues stated here are interconnected, and that the various recommendations are also cross-cutting. We strongly urge the authorities to exercise a level of sensitivity and empathy to the plights and concerns of the Natives of Sarawak as stated herein.

This is the 2nd submission of the memorandum. The first submission was on 24th November 2025 submitted to the Speaker of the Sarawak Legislative Assembly, Tan Sri Datuk Mohamad Asfia Awang Nassar, who received it on behalf of the Assembly[1].

I. Challenges Faced by the Natives of Sarawak

A. Landgrabs and Insecurity of Tenure Rights

A.1 Encroachment by private companies:

1. Logging, oil palm plantations, resource extraction, and now emerging projects like forest carbon trading continue to expand into Natives or Indigenous territories without proper consultation or consent.

A.2 Weak legal recognition of Native Customary Rights (NCR):

1. Despite historical settlement and traditional land-use systems, NCR lands remain insufficiently mapped, inconsistently recognized, and vulnerable to unilateral government alienation.

[1]Tuah, Y. (2025, November 26). *S'wak Indigenous Peoples hand over memorandum to Assembly, highlight land-grabs and plight of Natives*. DayakDaily. https://dayakdaily.com/swak-indigenous-peoples-hand-over-memorandum-to-assembly-highlight-land-grabs-and-plight-of-natives/

2. Although the mechanism provided under Section 6A of the Sarawak Land Code for the recognition of the native territorial domain exists, its application has been little or non-existent.
3. The burden on the Natives to prove Native Customary Rights over land is overtly unreasonable and unachievable.

A.3 Intimidation against Indigenous defenders:

1. Community leaders or defenders protecting ancestral lands often face intimidation, legal charges, or harassment from both private actors as well as from government agencies, deepening distrust between the communities and the authorities.

B. Corporate Capture and Imbalanced Power Dynamics

B.1 Influence over policy decisions:

1. The government's preference toward corporate interests often shape land-use planning and resource decisions more strongly than community voices.

B.2 Lack of transparent public participation:

1. Social and Environmental Impact Assessments (SEIAs) or studies may be commissioned or influenced by the same corporations whose projects are under scrutiny, undermining impartiality.
2. Sarawak also does not mandate public participation in the input and auditing process of SEIAs.

B.3 Limited community benefit:

1. Many projects promise economic development but deliver minimal tangible improvement to the livelihoods of Indigenous communities.
2. There is also no full disclosure of financial gains through the projects. Most company financial reports are not trickle down to the community.

C. Lack of Respect for Free, Prior and Informed Consent (FPIC)

C.1 Procedural shortcomings:

1. FPIC processes, when conducted, are often rushed, incomplete, or lack full disclosure of potential impacts.

C.2 Consultation ≠ (is not) Consent:

1. Communities are frequently only "informed" without being genuinely offered the choice to approve or reject a project.
2. Selective consultation is also practiced where only agreeable parties, or the various members of the ruling class who were politically appointed, are consulted.

C.3 Language, literacy, and accessibility barriers:

1. Meetings, documents, and negotiations are not always provided in culturally appropriate forms or in languages that are easier for the impacted communities. Copies of these documents are also not left with affected communities.

C.4 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

1. Malaysia agreed to the adoption of the UNDRIP 2007 but has not implemented it effectively domestically.
2. Article after article in the UNDRIP affirms the rights of Indigenous Peoples to their lands, territories, and resources; their right to Free, Prior, and Informed Consent (FPIC); and their right to redress for lands taken without consent.
3. But as of today, we have yet to see strong implementation of these rights within the Sarawak state legislative framework.

D. Indigenous Interests as Inferior Priority

D.1 Development-first mindset:

1. Priority is given to rapid economic growth, frequently sidelining Indigenous worldviews, customary land governance, and environmental stewardship.

D.2 Politically influenced Indigenous representation or Customary Leaders:

1. Indigenous representatives and Customary Leaders on platforms for formulating land-related policies are mostly political appointees.
2. Hence, there is a sense of political coercion and influence placed upon these Indigenous representatives, where they are not able to fully represent the interests of Indigenous communities.

D.3 Loss of traditional ecological knowledge:

1. By disregarding Indigenous stewardship practices, Sarawak risks losing knowledge essential for biodiversity conservation and climate resilience.

E. Lack of Access to Information

E.1 No copies of documents are left with communities:

1. Most project consultation and engagement sessions do not leave copies of the documents, slides, or maps presented in those sessions with the communities.

E.2 Mode of information platform:

1. Most information is accessible only online or placed in the offices or agencies that are not easy to access.

II. How Strengthening Indigenous Rights Supports Climate and Biodiversity Goals

A. A secure Indigenous tenure protects forests:

- Studies worldwide show that Indigenous-managed territories store more carbon and maintain higher biodiversity.[2]

B. FPIC ensures socially responsible development:

- Projects aligned with community consent tend to be more sustainable and conflict-free.

C. Traditional ecological knowledge enhances resilience:

- For example: Indigenous fire management, watershed protection, and agroforestry practices are key assets in climate adaptation.

III. Recommendations and Solutions

A. Strengthen Legal Recognition and Protection of NCR Lands

1. **Accelerate** the official mapping and gazetting of the NCR or Indigenous territories.
2. Reform legislation to **harmonize NCR recognition** across administrative and judicial systems.
3. **Remove the arbitrary hectare cap** on Native Customary Rights (NCR) land under Section 6A. NCR lands must be fully recognised.

B. Implement Robust and Genuine Free, Prior and Informed Consent (FPIC) Mechanisms

1. **Adopt and institutionalize FPIC guidelines** consistent with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

   **Malaysia must recognize and adopt UNDRIP into law and ratify the International Labour Organisation (ILO) Convention 169.*
2. Ensure consultations occur in **local languages,** are documented transparently, and include women, youth, and marginalized groups.
3. Require that Social and Enviromental Impact Assessments (SEIAs) include **independent community assessments**, not solely corporate-hired consultants.

[2] *New study reveals how indigenous knowledge protects Earth's richest ecosystems | Conservation International*. (n.d.). Conservation International. https://www.conservation.org/press/new-study-reveals-how-indigenous-knowledge-protects-earths-richest-ecosystems

C. Increase Natives' Rightsholders and Civil Society Participation in Decision-Making

1. Create **formal multistakeholder engagement procedures** to ensure that the public interest is considered at the various levels of policy or law-making.
2. Create **funding pathways** for Indigenous-led environmental monitoring and sustainable livelihood programs.

D. Ensure Full Access to the Information Necessary to Exercise to Land Rights and Decision-Making

1. State should adopt and align with the **National Freedom of Information Act** to enable the public to access all relevant information of public interest across Malaysia.
2. **Declassify the aerial photographs** taken during and prior to 1958 and make them available to the public online and at physical government offices.
3. Create and maintain a **publicly accessible database of Native Customary Rights** or Indigenous territories that have been surveyed by the Sarawak Land and Survey Department, as well as pending applications.

E. Address Corporate Influence and Ensure Transparency

1. Strengthen **anti-corruption and procurement oversight** in the land and resource sectors.
2. **Mandate public disclosure** of concession agreements, EIAs, and social impact reports. The State should adopt the Federal EIA regulations and require that EIA reports and public participation must be made mandatory.
3. Establish **grievance mechanisms** accessible to rural communities.
4. Sarawak must **align** itself with the National Action Plan on Business and Human Rights (NAPBHR).

F. Promote Indigenous-Led Conservation and Real Climate Solutions

1. **Recognize and support** Indigenous community forest rehabilitation and protection projects, eco-tourism initiatives, agroecology projects, and livelihood strengthening efforts.
2. Integrate **traditional ecological knowledge** into state climate and biodiversity strategies.

Conclusion

Protecting the rights of the Natives of Sarawak is not only a matter of justice—it is a strategic action to ensure Sarawak's environmental sustainability, climate resilience, and global reputation.

By strengthening NCR land security, implementing genuine FPIC, curbing corporate capture, and empowering Indigenous leadership, the Sarawak Government can align development with ecological stewardship and long-term prosperity.

A rights-based, inclusive approach will help Sarawak address land conflicts, restore trust, protect biodiversity, and contribute meaningfully to global climate solutions. This will also enable *Sarawak to emerge as a leader with solutions that are uniquely Sarawak* and that fully incorporate the Indigenous peoples' role as the world's best forest protector.

Our Hope:

TAHABAS and its partners call on the State Government to recognize that the Sarawak Natives or Indigenous Peoples are a unique solution for climate resilience, forest protection, and ecosystem health. For the wellbeing of future generations and our planet, the rights of Sarawak Natives must be reinforced, respected, and fully integrated into State-level sustainability strategies.

TAHABAS and its partners stand ready to work collaboratively with the Sarawak Government to ensure that Indigenous Peoples' perspectives and rights are meaningfully embedded in policy, legislation, and development planning.

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Versi Bahasa Malaysia

MEMORANDUM HAK-HAK ORANG ASAL SARAWAK 2025

Kepada: Kerajaan Sarawak

Daripada: Jaringan Hak Tanah Adat Bangsa Asal Sarawak (TAHABAS)

Perkara: Menangani Cabaran Struktur yang Dihadapi oleh Masyarakat Orang Asal Sarawak dan Memperkukuh Peranan Mereka sebagai Pelindung Hutan Terbaik

Tarikh: Penyerahan Memorandum Pertama - 24hb November 2025

Penyerahan Memorandum Kedua - 19hb Oktober 2026

Pengenalan

Memorandum ini menggariskan cabaran utama yang dihadapi oleh Masyarakat Orang Asal Sarawak berkaitan rampasan tanah, pengaruh korporat, kekurangan pelaksanaan Konsultasi berdasarkan hak Izin Maklum Awal Bebas dan Telus (IMABT), serta kecenderungan negeri terhadap pembangunan berasaskan keuntungan. Isu-isu ini bukan sahaja menjejaskan hak kami, tetapi turut melemahkan keupayaan Sarawak untuk menangani krisis iklim, kehilangan biodiversiti dan kelestarian ekologi jangka panjang.

Kami juga mengakui bahawa cabaran dan isu yang dinyatakan saling berkait, dan pelbagai cadangan yang dikemukakan turut merentasi pelbagai aspek. Kami menggesa pihak berkuasa untuk menunjukkan kepekaan dan empati terhadap penderitaan dan kebimbangan masyarakat Orang Asal Sarawak seperti yang dinyatakan.

Ini merupakan penyerahan memorandum kali kedua. Penyerahan pertama telah dibuat pada 24 November 2025 kepada Speaker Dewan Undangan Negeri Sarawak, Tan Sri Datuk Mohamad Asfia Awang Nassar, yang menerimanya bagi pihak Dewan[1].

I. Cabaran yang Dihadapi oleh Masyarakat Orang Asal Sarawak

A. Rampasan Tanah dan Ketidaktentuan Hak Pegangan Tanah

A.1 Pencerobohan oleh syarikat swasta:

1.1. Pembalakan, ladang kelapa sawit, penerokaan sumber dan kini projek baharu seperti perdagangan karbon hutan terus berkembang ke dalam wilayah Orang Asal tanpa perundingan atau persetujuan yang sewajarnya.

[1] Tuah, Y. (2025, November 26). *S'wak Indigenous Peoples hand over memorandum to Assembly, highlight land-grabs and plight of Natives*. DayakDaily. https://dayakdaily.com/swak-indigenous-peoples-hand-over-memorandum-to-assembly-highlight-land-grabs-and-plight-of-natives/

A.2 Pengiktirafan undang-undang yang lemah terhadap Native Customary Rights (NCR):

1.1. Walaupun telah lama meneroka dan mengurus tanah secara tradisi, tanah NCR masih belum dipetakan dengan mencukupi, diiktiraf secara tidak konsisten dan terdedah kepada pengambilalihan sepihak oleh kerajaan.

1.2. Walaupun mekanisme di bawah Seksyen 6A Kanun Tanah Sarawak disediakan untuk pengiktirafan wilayah adat, permohonan adalah sangat sedikit atau hampir tiada.

1.3. Tanggungjawab membuktikan hak adat ke atas tanah diletakkan sepenuhnya kepada masyarakat Orang Asal, dengan taraf pembuktian yang tidak munasabah serta sukar dicapai.

A.3 Intimidasi terhadap pembela hak Orang Asal:

1.1. Ketua komuniti dan pembela hak yang mempertahankan tanah nenek moyang sering berdepan intimidasi, tindakan undang-undang atau gangguan daripada pelaku swasta mahupun agensi kerajaan, sekali gus meningkatkan jurang ketidakpercayaan.

B. <u>Pengaruh Korpokratik dan Dinamik Kuasa yang Tidak Seimbang</u>

B.1 Pengaruh dalam keputusan dasar:

1.1. Keutamaan kerajaan terhadap kepentingan korporat sering membentuk perancangan guna tanah dan keputusan sumber melebihi suara komuniti.

B.2 Kekurangan penyertaan awam yang telus:

1.1. Penilaian Impak Sosial dan Alam Sekitar (SEIA) atau kajian lain sering ditugaskan kepada atau dipengaruhi oleh syarikat yang berkepentingan, menjejaskan ketelusan.

1.2. Sarawak juga tidak mewajibkan penyertaan awam dalam proses input dan audit SEIA.

B.3 Manfaat komuniti yang terhad:

1.1. Banyak projek menjanjikan pembangunan ekonomi tetapi gagal memberikan peningkatan taraf hidup yang bermakna kepada komuniti Orang Asal.

1.2. Laporan kewangan syarikat juga tidak didedahkan sepenuhnya kepada komuniti bagi pemahaman manfaat berkongsi yang lengkap.

C. <u>Kekurangan Penghormatan terhadap Izin Maklum Awal Bebas dan Telus (IMABT)</u>

C.1 Kelemahan prosedur:

1.1. Proses IMABT yang dijalankan sering tergesa-gesa, tidak lengkap atau tidak memberikan pendedahan penuh mengenai kesan projek.

C.2 Konsultasi ≠ (bukanlah) Keizinan:

1.1. Komuniti sering hanya “dimaklumkan” tanpa diberikan pilihan sebenar untuk meluluskan atau menolak projek.

1.2. Amalan konsultasi terpilih juga berlaku, di mana hanya pihak yang bersetuju atau pihak berkepentingan politik sahaja dipilih untuk berunding.

C.3 Halangan bahasa, literasi dan aksesibiliti:

1.1. Mesyuarat, dokumen dan tawaran rundingan tidak selalu disediakan dalam bentuk atau bahasa yang sesuai dengan budaya komuniti. Salinan dokumen juga tidak diberikan kepada komuniti terkesan.

C.4 Deklarasi Pertubuhan Bangsa-Bangsa Bersatu mengenai Hak-Hak Orang Asal (UNDRIP):

1.1. Malaysia bersetuju menerima pakai UNDRIP 2007 tetapi belum melaksanakannya secara berkesan di peringkat dalam negara.

1.2. Malaysia mengesahkan UNDRIP pada 2007 tetapi pelaksanaannya masih lemah dalam kerangka perundangan negeri.

1.3. UNDRIP mengiktiraf hak masyarakat Orang Asal terhadap tanah, wilayah dan sumber mereka; hak kepada IMABT; serta hak kepada pemulihan jika tanah dirampas tanpa persetujuan. Namun pelaksanaannya tidak jelas di Sarawak.

D. Kepentingan Orang Asal Sebagai Keutamaan yang Rendah

D.1 Pendekatan pembangunan dahulu:

1.1. Keutamaan diberikan kepada pertumbuhan ekonomi yang pesat, sering mengabaikan pandangan dunia Orang Asal, tadbir urus Adat, dan penjagaan alam sekitar.

D.2 Perwakilan Orang Asal yang dipengaruhi politik:

1.1. Wakil Orang Asal dalam platform penggubalan dasar berkaitan tanah kebanyakannya dilantik secara politik.

1.2. Perincian perbincangan antara wakil ini dengan pihak berkuasa tidak didedahkan sepenuhnya kepada komuniti terkesan.

D.3 Kehilangan pengetahuan ekologi tradisional:

1.1. Dengan mengetepikan amalan penjagaan Orang Asal, Sarawak berisiko kehilangan pengetahuan tradisi penting untuk pemuliharaan biodiversiti dan daya tahan iklim.

E. Kekurangan Akses kepada Maklumat

E.1 Tiada salinan dokumen diberikan kepada komuniti:

1.1. Kebanyakan sesi konsultasi dan libat urus tidak memberikan salinan dokumen, slaid atau peta yang dibentangkan.

E.2 Saluran maklumat yang sukar diakses:

1.1. Kebanyakan maklumat hanya terdapat dalam talian atau di pejabat yang sukar dikunjungi komuniti luar bandar.

II. Bagaimana Pengukuhan Hak Orang Asal Menyokong Matlamat Iklim dan Biodiversiti

1. Hak tanah Orang Asal yang terjamin melindungi hutan:
   1.1. Kajian global menunjukkan wilayah yang diurus masyarakat Orang Asal menyimpan lebih banyak karbon dan mempunyai biodiversiti lebih tinggi[2].

2. IMABT memastikan pembangunan yang bertanggungjawab secara sosial:
   2.1. Projek yang selaras dengan persetujuan komuniti lebih mampan serta kurang konflik.

3. Pengetahuan ekologi tradisional meningkatkan daya tahan:
   3.1. Amalan pengurusan api, perlindungan tadahan air dan agroforestri Orang Asal merupakan aset penting dalam adaptasi iklim.

III. Cadangan dan Penyelesaian

A. <u>Mengukuhkan Pengiktirafan Undang-Undang terhadap Tanah NCR</u>

1. Mempercepat pemetaan rasmi dan penggazetan wilayah NCR.

2. Menyelaraskan undang-undang untuk mengharmonikan pengiktirafan NCR antara sistem pentadbiran dan kehakiman.

3. Menghapuskan had hektar yang arbitrari bagi tanah NCR di bawah Seksyen 6A. Tanah NCR mesti diiktiraf sepenuhnya.

B. <u>Melaksanakan Mekanisme IMABT yang Kukuh dan Tulin</u>

1. Mengguna pakai garis panduan IMABT yang konsisten dengan UNDRIP.
   - *Malaysia mesti menerima pakai UNDRIP sebagai undang-undang dan meratifikasi Konvensyen International Labour Organisation (ILO) 169.*

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[2] [2] *New study reveals how indigenous knowledge protects Earth's richest ecosystems | Conservation International*. (n.d.). Conservation International. https://www.conservation.org/press/new-study-reveals-how-indigenous-knowledge-protects-earths-richest-ecosystems

2. Memastikan konsultasi dijalankan dalam bahasa tempatan, didokumenkan secara telus dan melibatkan wanita, belia serta kumpulan terpinggir.

3. Memastikan SEIA merangkumi penilaian komuniti secara bebas, bukan hanya laporan oleh perunding yang dilantik syarikat.

C. Meningkatkan Penyertaan Masyarakat Orang Asal sebagai Pemegang Hak dan Masyarakat Sivil dalam Pembuatan Keputusan

1. Menubuhkan prosedur libat urus pelbagai pemegang taruh bagi memastikan kepentingan awam dipertimbangkan dalam semua peringkat dasar dan penggubalan undang-undang.

2. Menyediakan dana untuk program pemantauan alam sekitar dan pembangunan sara hidup mampan yang diketuai komuniti Orang Asal.

D. Memastikan Akses Penuh kepada Maklumat untuk Hak Tanah dan Pembuatan Keputusan

1. Kerajaan negeri mesti menerima pakai dan menyelaraskan dasar dengan Akta Kebebasan Maklumat Kebangsaan/Freedom of Information Act.

2. Menyahklasifikasi gambar udara yang diambil sebelum dan semasa tahun 1958 serta menjadikannya tersedia secara dalam talian dan di pejabat kerajaan.

3. Mengekalkan pangkalan data awam bagi tanah NCR atau wilayah Orang Asal yang telah disurvei oleh Jabatan Tanah dan Ukur Sarawak, serta permohonan yang masih dalam proses.

E. Menangani Pengaruh Korporat dan Memastikan Ketelusan

1. Mengukuhkan pemantauan antirasuah dan tatacara perolehan dalam sektor tanah dan sumber.

2. Mewajibkan pendedahan awam terhadap perjanjian konsesi, laporan EIA dan laporan impak sosial. Sarawak mesti menyelaraskan diri dengan peraturan EIA Persekutuan serta mewajibkan penyertaan awam.

3. Menubuhkan mekanisme aduan yang mudah diakses komuniti luar bandar.

4. Sarawak mesti menyokong National Action Plan for Business and Human Rights (NAPBHR).

F. Mempromosikan Pemuliharaan yang Dipimpin Orang Asal dan Penyelesaian Iklim Sebenar

1. Mengiktiraf dan menyokong pengurusan hutan komuniti, ekopelancongan dan agroekologi oleh komuniti Orang Asal.

2. Mengintegrasikan pengetahuan ekologi tradisional dalam strategi iklim dan biodiversiti negeri.

Kesimpulan

Melindungi hak masyarakat Orang Asal Sarawak bukan sekadar isu keadilan – ia adalah pelaburan strategik dalam kelestarian alam sekitar, daya tahan iklim dan reputasi global Sarawak. Dengan memperkukuhkan keselamatan tanah NCR, melaksanakan IMABT yang tulen, menangani pengaruh korporat dan memperkasa kepimpinan Orang Asali, Kerajaan Sarawak dapat memastikan pembangunan sejajar dengan penjagaan ekologi dan kesejahteraan jangka panjang.

Pendekatan berasaskan hak dan inklusif akan membantu menyelesaikan konflik tanah, memulihkan kepercayaan, melindungi biodiversiti dan menyumbang kepada penyelesaian iklim global. Ini juga membolehkan Sarawak muncul sebagai peneraju dengan penyelesaian yang unik, sepenuhnya mengiktiraf peranan masyarakat Orang Asal sebagai pelindung hutan terbaik di dunia.

Harapan Kami

TAHABAS dan rakan-rakannya menyeru Kerajaan Negeri Sarawak untuk mengiktiraf bahawa masyarakat Orang Asal adalah penyelesaian unik bagi daya tahan iklim, perlindungan hutan dan kesihatan ekosistem. Demi kesejahteraan generasi masa depan dan planet kita, hak-hak masyarakat Orang Asal Sarawak mesti diperkukuh, dihormati dan diintegrasikan sepenuhnya dalam strategi kelestarian peringkat negeri.

TAHABAS bersedia bekerjasama dengan Kerajaan Negeri Sarawak dan Malaysia bagi memastikan perspektif dan hak masyarakat Orang Asal benar-benar dihayati dalam dasar, undang-undang dan perancangan pembangunan.

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