

# **Terian Dusun Community Protocol**



**Water Catchment Area Management Practices of  
the Dusun Community in Terian, Ulu Papar**

**2018**

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Water Catchment Area Management Practices of the Dusun Community in Terian, Ulu Papar

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A long period of time was taken in the production of this Terian Village protocol because it requires discussions that are important to achieve consensus to produce a water catchment protocol that is accepted holistically.

NGOs, community members and individuals were heavily involved in the production of this protocol book to ensure that it can be published and is able to give vital benefits to the Terian community.

Heartfelt appreciation and thanks is given to all involved who have contributed their energy, time, money, ideas and expertise in the realization of this protocol.

**Thank you, *kotoluadan, terima kasih* is given to;**

**PACOS TRUST**

**TONIBUNG**

**ULU PAPAR COMMUNITY**

**TERIAN VILLAGE COMMUNITY**

**TERIAN VILLAGE LEADERS**

**And all individuals who were involved directly or indirectly**

## FOREWORD

Sabah is blessed with incredible cultural and biological diversity as well as legal pluralism. As the Chief Judge of the High Court of Sabah and Sarawak and the Chairman of the Native Laws, Materials and Cases Committee, respectively, and as proud Indigenous people ourselves, we know first-hand that respect for this diversity requires recognition of the deep connections between Indigenous peoples, our customary laws and the environments upon which we depend. It also requires recognition of the diverse worldviews, rights and responsibilities of Indigenous peoples, including to protect and maintain our customary territories and ways of life and to define our own development paths.

This community protocol, developed through an intensive participatory process over more than three years, is an embodiment of this cultural, biological and legal diversity. It showcases how closely the community's identity, culture, *adat* and ways of life depend upon their territory and natural resources, and how much they want to sustain them for current and future generations. The protocol also does not shy away from the realities on the ground. The community is facing challenges, but they set out how they would like to address those challenges in a respectful manner, drawing on customary, state and international law.

As lawyers and judges, we know that procedural rights of access to information, participation in decision-making and access to justice are also crucial to upholding the rule of law and achieving sustainable development. Under international law, all stakeholders have the responsibility to respect Indigenous peoples' right to provide or withhold free, prior and informed consent before any activities that may affect them or their territories. In any situation of disagreement or conflict, it is incumbent upon all parties to listen respectfully and seek a fair, equitable and culturally appropriate resolution.

Every living being on Earth depends on a healthy environment for survival and well being. Indigenous peoples are often on the frontlines of efforts to protect, conserve and restore the environment. However, they are also increasingly under threat for the same efforts. Everyone has a responsibility to defend and support those who are defending the environment - for their sake and ours, and for the sake of the planet.

Overall, this community protocol illustrates the strength and resolve of Sabah's Indigenous peoples and the importance of supporting them to share in their own voices their plans, priorities and visions for the future. Through the participation of community representatives in meetings of the Native Laws, Materials and Cases Committee, we have heard their story personally and commend them for their efforts. They are leaders not just within their communities but also in Sabah and Malaysia as a whole. We acknowledge and applaud this community and others in Sabah who have taken the time and care to document their *adat* and protocols. They are a source of pride and strength for our people and we encourage all fellow Sabahans and Malaysians to join us in supporting them.



Tan Sri Datuk Seri Panglima Richard Malanjum  
Chief Judge of Sabah and Sarawak



Datuk Douglas Cristo Primus Sikayun  
Retired High Court Judge of Sabah and Sarawak  
Chairman of Native Laws, Materials and Cases Committee

## BACKGROUND

Protocols for the management and care of important resources such as water catchments, forests, rivers, as well as forest and aquatic life have already existed in Terian since a long time ago, but only in oral form. Fortunately, the younger generation in this village have been exposed to environmental issues that are becoming critical in Malaysia and hotly discussed globally. The younger generation has seen this unwritten protocols as an important heritage that should be documented and practised in the management and protection of water catchment areas.

This Terian Community Protocol on water catchment protection practices has been produced through the cooperation of the Terian community with guidance from PACOS Trust. The production of this protocol is very important to the Terian community in our efforts to ensure the continuity of our management and protection of our water catchments that will be continued by the next generations to come.

This protocol will be used and put to practice, and will serve as a guide to the Terian community and other communities who are fighting for the sustainability of water catchment areas through management and protection based on traditional knowledge and practices or more commonly known as the '*Gompi Guno*' concept by village folk. In addition, this protocol that has been made into a book, will benefit the younger generation as a reference and additional knowledge in the care and management of this very precious treasure, and as step in passing down knowledge to future generations.

The Terian community really hope that the government will start to realize the important contribution of the community in the care and management of nature that has contributed greatly to forest sustainability especially water catchment areas in Sabah and has given a positive impact to environmental issues such as global warming, preservation of flora and

fauna as well as helped in the recognition of the Ulu Papar region as a 'Biosphere Reserve' by UNESCO. Therefore, it is the responsibility of the government and other related parties to start paying attention and take action as well as recognize community protocols as a legitimate law, specifically in Sabah and generally in Malaysia.

The controversial plan to build the Kaiduan Dam which has been a hot topic since its announcement by the government through the local newspapers in 2009, has not been given any final decision to this day. Through the production of this protocol into a book, it will be proven that the Terian community have their own system and protocols that are based on traditional knowledge and practices that have been harmonized with conventional water catchment management in the care of water catchment areas. It is hoped that relevant parties will see this as an important practice and change by taking more environmentally-friendly alternatives to obtain clean water supply and rescind the construction of Kaiduan Dam.

# 1. Introduction

## 1.1. Identity and History of the Dusun Community in Terian, Ulu Papar

Terian is a village located around Crocker Range in the district of Penampang. This village is one of nine villages found upstream along Papar River that is famous for the tourist attraction known as the Salt Trail.

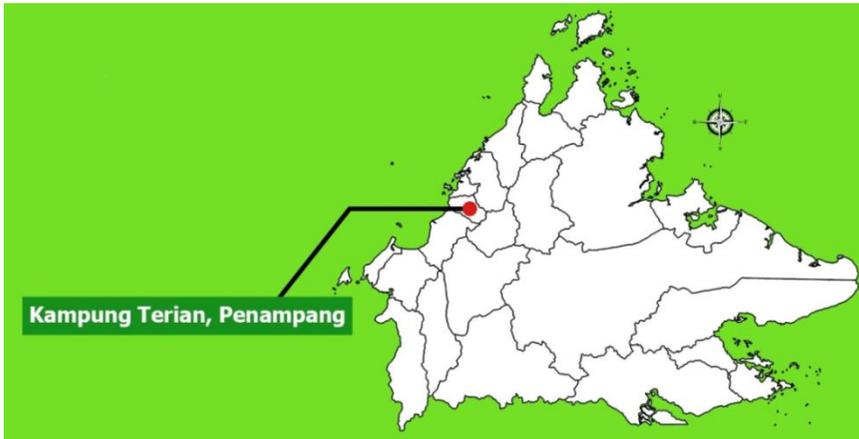
Terian Village got its name from an event that happened in the past like the following story as told by Mrs. Sulimi Matanjou: A long time ago Terian was once known as **“Solimbang”**. Solimbang was the name of a river found in this village and the name of the village was taken from that river. The history behind the name Solimbang is not known but it was later changed to **“Terian”** following a long drought that had occurred.

Solimbang is a beautiful village surrounded by thick forests. At that time, there wasn't anybody in the village who was formally educated which made them unknowledgeable of the outside world. One day, a long drought occurred in Sabah. Solimbang River became shallower and shallower as time went by until only puddles of dirty water remained. Those puddles were filled with all sorts of aquatic and land life that died from starvation and thirst. Solimbang villagers at that time also couldn't find clean water. This caused a great number of villagers to die of starvation and thirst.

One day, a villager cruised along Solimbang River searching for water. His search led him to water dripping (*titisan*) from between rocks. With the discovery of this source of water, the villagers of Solimbang were able to continue living.

Actually **“titisan”** in the Dusun language means **“miri-tiri”**. Eventually *miri-tiri* was shortened to **tirian** (Terian). Solimbang River was renamed

Terian River and the same with Solimbang Village. This catastrophe that happened in the past which resulted in the name Terian is a true story.



Location of Terian, Ulu Papar.

## **1.2. Economy and Resources of the Dusun Community in Terian, Ulu Papar**

Our community in Terian rely heavily on land and forest as our source of food, building materials, handicrafts and income. We have a close relationship to the land and forest because without them, our culture, traditional practices and knowledge will be lost. Eighty percent of our population work as farmers and practice rotational agriculture in cultivating hill paddy as our main source of rice. In addition, we also plant vegetables and fruits as additional income and cultivate rubber as a main source of income. Being far from the city, our life in the village is based on self-sufficiency and we rely fully on the natural resources available to us.

Natural resources are a vital asset to the Terian community in terms of healthcare because use of traditional medicine is still widespread due to our remoteness and distance from hospitals. Although we now have a

village clinic, this clinic has a very limited supply of medicine and is rarely visited by doctors. The elders' knowledge of herbs and herb use has been documented for the reference of future generations.



One of our economy is agriculture.

The forest provides various types of plants which are very useful to our community such as rattan, bamboo and wood to make handicrafts, tools for building, hunting, farming, decorating and others. The forest, river as well as our community life has also become a product of tourist attraction that has contributed to the increase in economy for our village.

A 180 hectare community water catchment has been gazetted as a source of clean water and electricity through a micro-hydro system. Our community has been given the awareness to gazette individual/private water catchment areas for clean water and paddy field irrigation.



Handicrafts made from forest resources.

## 2. Resource Management Systems of the Dusun Community in Terian, Ulu Papar

For the Terian community, without productive land and natural resources, the existence of our culture, practices and traditional knowledge will be affected. Therefore, the sustainability of our management of resources available is important. *Gompi-Guno* is one key practice in the management of resources based on traditional knowledge. The *Gompi-Guno* concept means "use" and "protect", where resources are used systematically and taken only when needed. Resources that have been used or taken will be replanted or given time to regenerate, while available resources are conserved to ensure continuity of the resource for community use.

### 2.1. Protection of Water Catchment Areas

The *Gompi-Guno* concept practiced by our community in Terian has also been incorporated in our water catchment protection and management system. For example, when an individual violates a rule such as polluting the river, it is believed that the river spirit will retaliate. This is based on the belief that springs and rivers in water catchment areas have spirits that act as guardians of the area and will give retribution to individuals who disturb or damage the area.

Every main tributary found in the water catchment area cannot be disturbed. Our community has a holistic community protocol for the protection and management of the water catchment based on our traditional knowledge that is in line with conventional water catchment management systems.

The *Tagal* system is also integrated into the water catchment management protocol because the main tributaries also flow into the main river that has been placed with *Tagal*. For example, river *Tagal* rules prohibits throwing of waste that can pollute, and also fishing methods that are dangerous

such as use of chemicals and electricity that violates the rules that have been set. *Tagal* is the responsibility of the community together and is governed and carried out by the community based on mutual agreement and discussion.

## **2.2. Offenses**

When someone is found and accused of violating the rules, the individual will be brought to the *Tagal* committee together with the village chief. The individual will be given a fine/*Sogit* if found guilty. The offender will be required to pay a fine amounting to RM500 and a pig that is at least 50kg in weight as *Sogit* to the community.

## **2.3. Customary Institutions**

Management of water catchments in Terian Village is communal where there is mutual ownership as well as consultations and decision-making. Our community has also established a special taskforce to monitor the water catchment to ensure the area is free from pollution and disturbances.

### 3. Challenges and How to Overcome Them

#### 3.1. Community Challenges, Initiatives and Hopes

**Challenges:**

The primary forest that functions as a water catchment area for the Terian River is partly located within the Crocker Range Park (CRP) and the other part is privately owned land. Although the community has gotten permission from Sabah Parks authorities to use and protect the water catchment, the community has not been given written acknowledgement from Sabah Parks. There have been incidents of encroachment in the past by outsiders who entered the community forest to gain profit from the sale of agarwood and exotic animals.

**Initiatives:**

So far, we have continued our cooperation with Sabah Parks to care for and protect the CRP area, including reporting any encroachment for collection of valuable wood and exotic animals to Sabah Parks authorities and illegal fishing in the upstream of Terian River.

**Hopes:**

Sabah Parks will give their trust, cooperation and recognition to the community in protecting and managing the water catchment area that is included in the CRP. We also hope that Sabah Parks authorities will continue their Community Use Zone initiative in Terian Village.

**Challenges:**

Climate change that is hard to predict has also affected agriculture yield such as paddy, fruits and commercial crops like rubber. However, the biggest threat for our community at the moment is the proposed construction of Kaiduan Dam that has been announced by government authorities in 2009. The communities of Ulu Papar, including Terian, are faced with the risk of forced displacement and loss of customary land, customs, culture, and traditional knowledge when the connection of the community to the land and its resources is severed.

**Initiatives:**

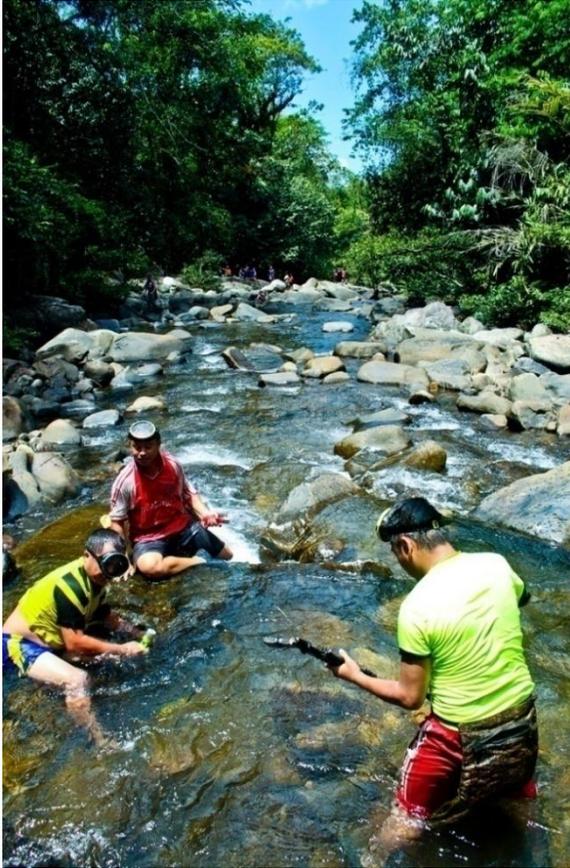
1. Our community has been using the *Gompi Guno* practice in our protection and management of resources to ensure the sustainability of available resources and agriculture in our daily life. Our community has also been encouraged by village leaders to gazette our own water catchment in the privately owned land to increase knowledge in land use management in order to decrease the effects of climate change and unplanned land clearing.
2. Documentation of traditional knowledge and practices on management and protection of natural resources to be passed down to the next generation.
3. For the proposed dam, our community has taken several measures such as suggesting alternatives including the use of micro-hydro generators for water supply, rainwater harvesting, improving and increasing water intake plants at the Papar River and Mandalipau River as well as decreasing the high non-revenue water (NRW) in Sabah. Besides that, our community has also erected blockades and held demonstrations, sent memorandums, held workshops with NGOs, and met with as well as held dialogues with government agencies to lobby and, share views and suggestions from the community.
4. The Terian community has also worked with NGOs, academic institutions and government agencies such as Sabah Parks in conducting bio-cultural and biodiversity research in Ulu Papar to document the relationship between community life and nature. The outcome from this research has contributed to the recognition of Ulu Papar as a World Heritage Site in 2014 (*'Sabah's 350,854ha Crocker Range has been approved as a biosphere reserve by the International Coordinating Council for Biosphere Reserve (CRBR), a programme under UNESCO'* - Muguntan Vanar in The Star, 17 June 2014). Our community's efforts in protecting natural resources based on traditional knowledge is our main weapon in the struggle to protect against the construction of the dam so that we can convince the government to reconsider their decision to build the dam. In line with this, our community has also tried to document the heritage and resources that are available as well as promote our community's management practices in Terian.

**Hopes:**

The government should understand and recognize Indigenous knowledge in the management and protection of biological resource diversity as stated in the UNDRIP, CBD, ILO 169 and other mechanisms that can tackle climate change. Kaiduan Dam should be cancelled because this is actually a main contributor to climate change and destruction of biodiversity.



Our hope is to be able to continue our life in our village.



Respecting customary law is important to the continuity of our resources.

## 4. Rights of the Dusun Community in Terian, Ulu Papar

### 4.1. International Laws

#### 4.1.1. United Nations Declaration on the Rights of Indigenous Peoples, UNDRIP

##### **Article 25**

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

##### **Article 26**

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the Indigenous peoples concerned.

##### **Article 27**

States shall establish and implement, in conjunction with Indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to Indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of Indigenous peoples pertaining to their lands, territories and resources,

including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

### **Article 28**

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

### **Article 29**

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for Indigenous peoples for such conservation and protection, without discrimination.

### **Article 31**

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
2. In conjunction with Indigenous peoples, Malaysia and the state of Sabah specifically, shall take effective measures to recognize and protect the exercise of these rights.

## **Article 32**

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
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.

### **4.1.2. Convention on Biological Diversity**

#### **Article 8(j):**

Malaysia and the state of Sabah specifically, shall respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge innovations and practices.

#### **Article 10(c):**

Malaysia and the state of Sabah specifically, shall protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements.

## **4.2. Sabah State Laws**

- a) **Sabah Biodiversity Enactment - Section 9(1)(j):** The Sabah Biodiversity Centre shall establish or cause to be establish a system for the protection of biological resources or associated relevant knowledge so that the native and local communities shall, at all times and in perpetuity, be the legitimate creators, users and

custodian of such knowledge, and shall collectively benefit from the use of such knowledge.

### 4.3. Terian Village Water Catchment Area Protocol

#### **Community Water Catchment Management Protocol**

1. Opening plantations in the water catchment area is strictly prohibited.
2. Burning in the water catchment area whether intentional or not is prohibited.
3. Throwing or leaving rubbish in the water catchment area is prohibited.
4. The community is allowed to take natural resources in the water catchment area only according to needs such as medicine, vegetables and game.
5. Rearing livestock in the water catchment area is prohibited.
6. The community is strictly prohibited from applying for land in the water catchment area that has not been owned or applied for by anyone.
7. Building any structures in the water catchment area is prohibited.
8. The Water Catchment Committee is responsible in carrying out monitoring activities to ensure there is no encroachment in the water catchment area.
9. Outsiders are not allowed to enter and take any resources in the water catchment area.
10. Outsiders that wish to enter the water catchment area for the purpose of research, education or others, must have a letter explaining their purpose and asking approval from the Water Catchment Committee. They must also be accompanied by the caretakers of the water catchment area.
11. It is mandatory for outsiders and community members to comply with this protocol.

#### **Protocol for the Privately Owned Water Catchment Included in the Community Water Catchment Area**

1. Any resource collection (rattan, building materials) is not allowed without the land owner's permission.
2. The land owner can plant long-term crops in stages. (rubber, fruits and

useful trees that do not use chemical substances)

3. The land owner is responsible in ensuring the water catchment area is not damaged and in reporting any activities by outsiders or community members that can affect the water catchment area to the Water Catchment Committee.

### **Fines and *Sogit* to offenders:**

1. Every offence or violation of this Terian Village Water Catchment Protocol will be referred to the Village Chief and the Water Catchment Committee.
2. Offenders will appear before the Village Chief and charged with *Sogit* in the form of 1 pig or chicken, according to customary law and based on the offense committed according to discretion.
3. Offenders will also be fined, to be paid in cash in the amount agreed upon, according to the offense. This money will be put into the Water Catchment Committee's fund for conservation purposes.
4. If the water catchment area is cleared, individuals or agencies responsible are obliged to replant the destroyed trees until the area is restored to the condition it was before it was cleared.
5. Violation of the water catchment protocol three times by the same individual will result in the individual appearing before the Native Court.

# MAP OF THE TERIAN VILLAGE MICRO-HYDRO WATER CATCHMENT PETA TADAHAN AIR MIKRO HYDRO KG. TERIAN

