
Community- Led Collective Protection through Community Protocols

Sabah, Malaysia

PACOS TRUST

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COMMUNITY-LED COLLECTIVE PROTECTION THROUGH COMMUNITY PROTOCOLS IN SABAH, MALAYSIA

INTRODUCTION

The purpose of this write up is to contribute to an effort to compile resources helpful in increasing community resilience and protection. The more resilient a community, the better they can respond and recover from their adversities. Ideally, these resources aim to strengthen community resilience so that they may be able to hold economic and State actors into account better and better protect themselves and their members from threats, incursions, intimidation and criminalization. This write-up will focus on the community protocols of indigenous communities in the State of Sabah, Malaysia.

COMMUNITY PROTOCOLS

The identities and way of life of Indigenous peoples are closely connected to their territories. However, many have been forced to separate from their lands. Often, "development" or "conservation" is used as justification, the instigators being either external private or public entities. This situation is due, among others, to a lack of recognition of their indigenous rights and customary institutions, leading to the exclusion of Indigenous peoples from decision-making processes in issues affecting their rights and territories. Despite a growing international awareness towards recognizing, valuing, and including indigenous systems into sustainable conservation and development paradigms, this awareness has yet to reach many indigenous communities. This lack of awareness further results in indigenous peoples losing out when engaging with other relevant stakeholders.

As a response to this situation, some indigenous communities have begun to adopt "Community Protocols". *The term encompasses a broad range of practices and procedures, both written and unwritten, developed by indigenous peoples and their communities and other local communities (ILCs) in relation to their traditional knowledge (TK), territories, and natural and other resources.*¹

*Community protocols articulate community-determined values, procedures, and priorities. They set out rights and responsibilities under customary, state, and international law as the basis for engaging with external actors such as governments, companies, academics, and NGOs.*²

Community Protocols provide a form of collective protection as they cover communal resources. These include water catchments, communal forests, riverine systems and territorial hunting grounds within indigenous territories. By allowing indigenous communities to set out on their terms on how external actors may engage with them and their territories, community protocols provide a basis to

¹ <https://www.cbd.int/doc/meetings/tk/wg8j-09/other/wg8j-09-community-protocol-underlying-principles-en.pdf>

² <https://naturaljustice.org/community-protocols/>

demand inclusion in relevant decision-making processes. This situation offers a safeguard against threats to collective rights such as land grabbing, pollution, poaching, encroachment and state pressure.

Community protocols are naturally community-led, as the community themselves determines the procedures and methods for interventions and engagements. Community protocols require the cooperation of the whole community and not just specific individuals. The community protocols noted in this write-up have a shared theme: they centre on localized traditional knowledge or customary practice. It provides external actors with a framework to meet the communities on a respectful and constructive platform. It also justifies community intervention should external actors choose to breach the terms of the protocols.

CASE STUDIES

This write-up will note several case studies of community protocols. These are community protocols adopted by several indigenous communities in the State of Sabah, Malaysia. This write-up will note nine case studies; six will be specific community protocols of individual communities. The seventh and eight are community protocols created by a group of communities working together to produce a collective community protocol for their particular group. The ninth will focus on a form of community protocol which has received state government endorsement and has been semi-formalized into the state legislature.

CASE STUDY 1: “NAUFASAN TAVOL” – COMMUNITY PROTOCOL OF THE MURUT TAHOL OF ALUTOK VILLAGE



Alutok village (Alutok) is located in the district of Tenom, Sabah. Part of the village is situated in a state forest reserve, the Sipitang Forest Reserve. The traditional territory of Alutok includes an area of primary forest located next to the village, within the Sipitang Forest Reserve. This forest is an essential source of forest produce, water and game for the community.

The State legislation governing state forest reserves prohibit any human activity within a forest reserve unless permitted by the government. The state government has given external private companies licenses as concessionaires to conduct controlled

timber extraction in Sipitang Forest Reserve. This situation has become a threat to the Alutok community's territories, and they have had conflicts with concession holders in the past. The Alutok territory also faces encroachment from other external parties who have been known to start fires within their forest in an attempt to clear or open up the area for farming.

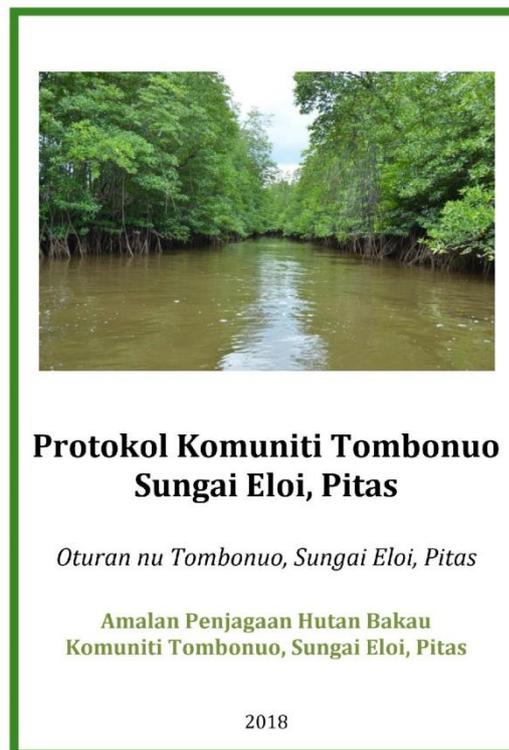
The Alutok Community Protocol is formed around the community's traditional resource governance system known as the Taval system. It revolves around a temporary prohibition of resource gathering over a particular area (usually hunting grounds, water catchments and community foraging areas) in anticipation of a resource-intensive community event (such as weddings). However, Taval areas do not include swidden farming areas, areas used for daily food gathering and regions used to extract medicinal herbs and handicraft materials. The community selects a Taval site through consensus. The village head or Ketua Kampung is responsible for notifying their community members, neighbouring villages and outsiders of the Taval.

CASE STUDY 2: "OTURAN NU TOMBONUO" - COMMUNITY PROTOCOL OF THE TOMBONUO OF SUNGAI ELOI VILLAGE

Sg. Eloi village (Sg. Eloi) is located in the District of Pitas, specifically the mangrove areas at the mouth of the Pitas River. The mangroves that surround Sg Eloi forms part of their customary territory. It is an integral part of the community's cultural identity. The mangroves are a source of their livelihood and are tied to their cultural heritage.

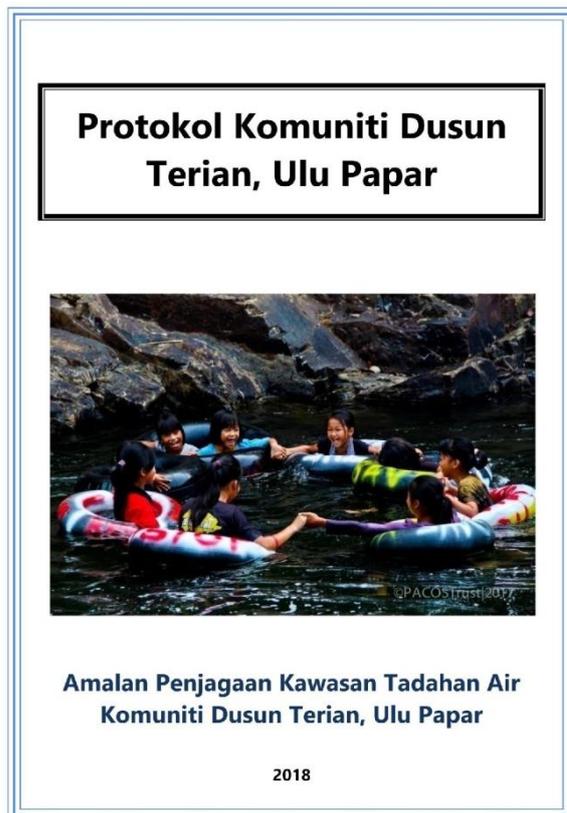
The Sg. Eloi community territory is being threatened with destruction by a large shrimp farm. The mega project, which is linked with the state government, lacks transparency and good governance. The State-linked company implemented the project before the company completed its environmental impact assessment. When environmentalists reported this in the media, the state environmental department responsible for approving these assessments immediately issued its approval. The shrimp farm has destroyed a sizable portion of the mangrove forest in the area, and the state-linked company has planned to increase the farm size further.

The Sg. Eloi community protocol incorporates their customs and prohibitions to ensure the sustainability of the mangrove forest that surrounds their village. There are practices regarding the extraction of resources like herbs, aquatic life and timber from the mangrove area. The protocols also



include practices relating to sacred sites within the territory and details of customary sanctions should these practices be broken. Among the practices is the Momokan ritual conducted to awaken the spirits of nature within the mangrove forest. These spirits are then petitioned to aid the community in protecting the mangrove forest against trespassers.

CASE STUDY 3: COMMUNITY PROTOCOL OF THE DUSUNS OF TERIAN VILLAGE



Terian Village (Terian) is located in the district of Penampang, on the mountains along the Crocker Range. They are located adjacent to the boundary of the Crocker Range State Park. The customary territory of Terian encompasses an area of hilly primary forest which serves as a water catchment for the Terian River. Some parts of this forest are located within the Crocker Range Park boundaries, while the rest are located on privately owned land. The river provides a source of food, fresh water and even electricity (via micro-hydro generator). As the Terian community also practice wet padi planting, the river is a vital part of their irrigation system.

The planned construction of a massive water reservoir dam threatens Terian. Government officials revealed plans for the

dam in 2009 and the community has been campaigning against it ever since. The external proponents of the dam have attempted to misinform and mislead the community regarding the project. Politicians have claimed to community members that the project was still an unapproved proposal while saying otherwise to the media. The community has also alleged that consultants conducting the social impact assessment deliberately write 'no comment' when receiving an unfavourable response to the dam. Roads have started being built to the area leading to the planned dam site, though there has not been any official statement that these roads were related to the dam.

The Terian community protocol includes customs related to the management of water resources. There are strict conditions in opening up any land in the surrounding area. The protocol also integrates the Tagal system of fish conservation. It also includes the management of the tributary which runs the community's micro-hydro generator. The protocol also cites the United Nations Declaration on the Rights of Indigenous Peoples and the Convention on Biological Diversity; specifically their international law rights to self-manage their natural resources.

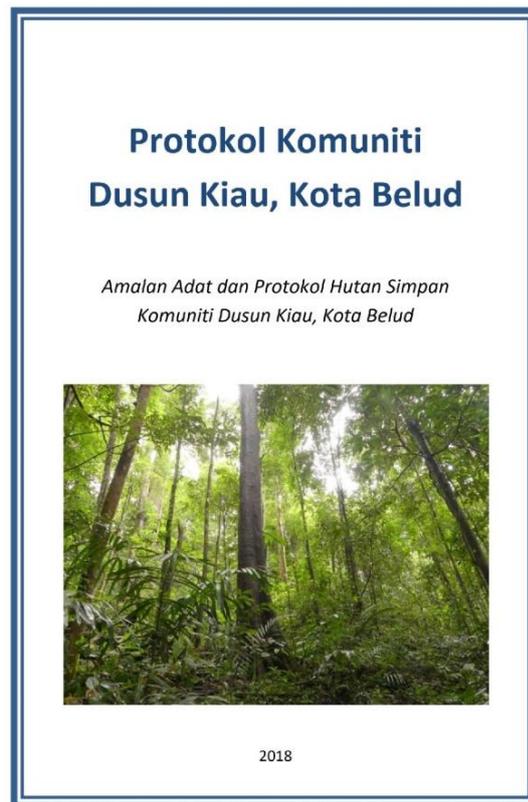
CASE STUDY 4: COMMUNITY PROTOCOL OF THE DUSUNS OF KIAU VILLAGE

Kiau Village ("Kiau") is located in the district of Ranau, at the foot of Mount Kinabalu. Part of their territory is a forest placed within the Mount Kinabalu State Park when the State Government created it. In 1997, that forest was excised out of the park boundaries. Despite no longer in the activity restricted park zone, the Kiau community collectively agreed not to clear or farm in the forest.

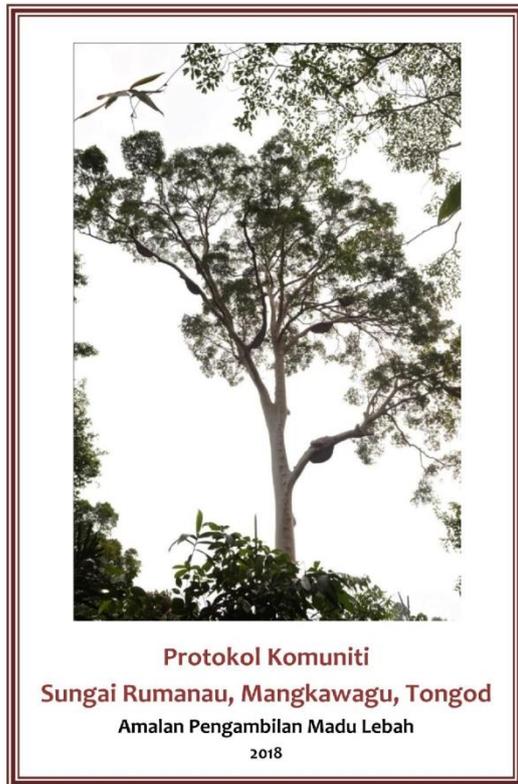
Because the forest was excised from park boundaries without any conditions, the Kiau community forest was vulnerable to land applications and encroachment from external parties. At least one attempt by an outside company to grab the land by applying to the State for the land as a private leasehold. However, the Kiau community objected to the application at the land office, and the attempt failed.

Kiau community has pushed the State to gazette the area as land reserved for community use under the state land laws. While that is pending, the community has also sought cooperation with the State Park authorities through the ECOLINC initiative. The initiative aims to improve the two neighbouring parks' ecological connectivity, the Kinabalu State Park and Crocker Range State Park by maintaining the forests joining them together, the Kiau Community Forest being one of these forests.

The creation of the Kiau community protocol was spurred by the need to protect the forest from encroachment and interest to revive customs related to forests. The community protocol combines these practices which govern activities and entry into the Kiau forest. It centres around a traditional ritual conducted before entering a forest, the "Mamatang" ceremony. The ceremony requires those entering the forest to use a unique language within the forest, "Boros Puru". The purpose of the Mamatang ritual is to inform the forest "guardian of nature" of the intention of entry and obtain permission to enter the forest. This ritual is a precaution to ensure safe passage while within the forest. While within the forest, travellers must communicate using the Boros Puru. This practice ensures that the "guardian of nature" of the forest continues to 'understand' the traveller's intentions and prevent any ill-fortune due to 'miscommunication'. They must also adhere to many customs and practices that prevent them from causing damage while inside the forest.



CASE STUDY 5: COMMUNITY PROTOCOL OF THE SUNGAI RUMANAU OF MANGKAWAGU VILLAGE



Mangkawagu village ("Mangkawagu") is located in the district of Tongod, within a state forest reserve, the Mengkawagu Forest Reserve. The Mangkawagu territory also includes a stretch of forest currently situated within the same forest reserve boundaries. In this forest grows rare Mengaris (*Koompassia excelsa*) trees.

The village and the forest with the Mengaris trees are located within the Mengkawagu Forest reserve. Similar to the situation in Alutok village, human activities within the forest reserve are prohibited without a state-issued license.

The State Forestry Department has attempted to implement a community forestry project in an effort to co-manage the forest area with the surrounding communities, with

Mangkawagu being one of these villages. However, the Mangkawagu community feels that the project is one-sided, where the government department is only giving communities token representation and without actually taking into account the community's opinion. The State Department has also attempted to implement an agroforestry project with these communities. In this project, communities are encouraged to clear their forest territories and plant rubber trees or oil palm instead of hill padi.

The community protocol of Mangkawagu revolves around their traditional knowledge of collecting wild honey from the hives of the *apis dorsata* honeybees. These bees make their hives on the branches of the Mengaris trees growing in the Mangkawagu community territory's forests. The customs and traditions cover the various stages of honey collection. These include the periods in which the community may harvest honey, the specific tools to be used, and the prohibitions involved in the collection process.

The practices emphasize on sustainability. The simple tools used so not to harm the trees. Harvesting is prohibited if the honey is deemed insufficient for the bees. The harvesting method also specifies to collect only the part of the hive that contains honey, while avoiding pieces that have the larvae.

CASE STUDY 6: COMMUNITY PROTOCOL OF THE DUSUNS OF MALANGKAP VILLAGE

Malangkap Village (Malangkap) is located in the district of Kota Belud. Historically, the Malangkap community tells that the territory was initially five related villages in the past, surrounded by four mountains and four rivers. These five villages were unified administratively when the State introduced modern government systems. Despite having one village head in this new system, the village head is assisted by four other assistants or "pengapit" who are well-versed with their customs and traditions.

The Malangkap territory is partially within a state park; the Kinabalu Park, while the rest of the territory is adjacent to the park boundaries. This situation has created friction between Malangkap

and state park authorities because the community's livelihood activities often conflict the priorities of the park authorities. There have also been plans by park authorities to develop an area along the park boundaries for tourism. This matter has caused the Malangkap community concerns. Such a development would lead to other development projects in the area due to wanting to capitalize on being close to the park tourism area. The community foresees an increase of pollution and encroachment attempts by external parties in their territory.

The Malangkap community protocol includes their traditional practices relating to the sustainable management of forests and rivers in their territory. For forests, the main customs and traditions are under the umbrella term "Tagal Hutan", while for riverine systems, the community grouped the collection of customs and practices as "Bombon Sungai". Besides this, the protocol also contains the community accepted interpretation of the concept of Free, Prior and Informed Consent. The protocol provides processes that external actors must follow to engage the community and outline how they will proceed with these engagements.



CASE STUDY 7: THE JGPT COMMUNITY PROTOCOL – THE COMMUNITY PROTOCOL OF 7 VILLAGES IN THE TONGOD DISTRICT

Seven villages in the Tongod District gathered together to form a joint committee to manage and protect their customary territories. This committee, known as the "JGPT" is the abbreviation of "*Jawatankuasa Gabungan Pengurusan Tanah 7 Kampung*" or Land Management Collective Committee of 7 villages. These seven villages were the villages of Maliau, Minusoh, Liupampang, Namukon, Mananam, Napagang and Lanung.

**PROTOKOL
PEMILIK DAN PENTADBIRAN
TANAH ADAT (NCR) DALAM KES SAMAN NO : SK 22-245-OF 2002 JAWATANKUASA
GABUNGAN PENGURUSAN TANAH (JGPT) 7 KAMPUNG
(Kg. Malau, Kg. Minneh, Kg. Lupsampang, Kg. Namukon, Kg. Mananam, Kg. Napagang & Kg. Laming)
Daerah Tongod**

1. BORANG KEAHLIAN

- A. Setiap ahli dikehendaki mengisi boring keahlian yang di sediakan JPT/JGPT.

2. TARAF KEWARGANEGARAAN

- A. Seorang ahli mestilah penduduk asal (Orang Asal Sabah)
B. Taraf kewarganegaraan seseorang ahli yang menimbulkan keraguan walaupun mempunyai dokumen seperti kad pengenalan tidak akan di pertimbangkan.
C. Warganegara asing (PTI) yang berkahwin atau di kahwini oleh orang tempatan hanya satu pihak sahaja yang layak mendapat keistimewaan.

3. PENGURUSAN DAN PENTADBIRAN

- A. Setiap pemilik/penuntut tanah adat (NCR) dalam kawasan kes saman No: SK 22-245-OF 2002 adalah bertanggungjawab dan wajib terlibat dengan aktiviti-aktiviti JPT/JGPT, sekiranya tidak dapat mengikuti sebarang aktiviti haruslah menulis dan menghantar surat sebab tidak dapat hadir kepada pihak JPT/JGPT (surat tunjuk sebab)

4. YURAN

- A. Setiap pemilik/penuntut bertanggungjawab dan wajib membayar/menyumbang sebarang kos yang telah di putuskan oleh pihak JPT/JGPT.

5. HAK MILIK TANAH ADAT

- A. Pemilik tanah adat (NCR) dalam kawasan kes saman No: sk 22-245-OF 2002 adalah berdasarkan kepada senarai ahli/penuntut yang telah dihantar ke mahkamah.
B. Pemilik Tanah Adat adalah kekal selamanya dan boleh diwarisi oleh anak-anak dan generasi selanjutnya.

6. MENJUAL DAN MEMBELI

- A. Tiada sebarang aktiviti penjualan atau pindah milik Tanah Adat (NCR) kepada pihak luar atau individu yang tiada kaitan pertalian keluarga yang dibenarkan.
B. Sebarang penjualan dan pembelian tanah pembahagian individu yang berkenaan akan di bincangkan / ditentukan oleh JGPT dan JPT sama ada dibenarkan atau sebaliknya selepas dibincang diputuskan dalam mesyuarat JGPT.

7. GANTI RUGI

- A. Seseorang Penuntut / ahli yang telah mendapat pampasan dari dependant (keistimewaan, surat Aku Janji Penyerahan Tanah) hilang kelayakan dalam pengagihan tanah kelak.

8. PLANTIF DAN PENERUSI JPT

- A. Plantif dan pengerusi JPT / Timbalan Pengerusi JPT dan mereka yang layak selepas dinilai oleh pihak tertentu akan mendapat 20% hasil keluasan tanah tuntutan di kawasan masing-masing atas daya usaha dan jasa dalam tuntutan.

The JGPT was formed in response to a massive land-grabbing attempt by a state-linked company. The seven villages pooled their resources and campaigned against the project, culminating in a class action court case which lasted more than a decade in courts.

The JGPT Community Protocol was created when the communities were pushed into filing a court action to defend their territories. The court case was a representative class action, which meant that a representative of each village was named a plaintiff in the court case who represented themselves and their community members. Should the representatives succeed, the court order's effects will also benefit those community members who were represented.

The community leaders had predicted that some community members might choose to side with the encroaching company during the court proceedings and sabotage the JGPT's efforts. This prediction

was a practical concern as the communities were facing the company and the state government who supported the company. The JGPT community protocol was created based on the consensus of the communities' leaders and members to mitigate this risk. Any members from the seven villages who deemed themselves a member of the class of people represented in the JGPT court case must adhere to the community protocol. If a person disregards the protocol, they imply that they do not support the JGPT and are not part of the group represented in the court case.

The protocol outlines the responsibilities of members of the JGPT and declares their rights to participate in the JGPT's decision-making processes. It also provides for terms on how the court case's benefits should be distributed among the seven villages, should the class action succeed. This arrangement allows the community leaders of the JGPT to manage the expectations of their numerous community members. It would also prevent any internal conflicts or opportunistic attempts by external parties to land-grab the community territories once the court case is complete through proxy community members. As the terms of the protocol would bind all members of the JGPT, and non-members would not be able to intervene as they are not part of the class represented in the court case and cannot be used as proxies to grab land for the benefit of outsiders.

CASE STUDY 8: BIOCULTURAL COMMUNITY PROTOCOL OF THE ULU PAPAR COMMUNITIES

The Ulu Papar communities consist of several villages near a state park, the Crocker Range Park, with one village located within the park boundaries. These are villages of Buayan, Kalanggaan, Kionop, Longkogungan, Pongobonon, Terian, Tiku and Timpayasa.

Due to their proximity to the park area, the Ulu Papar communities often conflict with park authorities, as their livelihood practices were considered detrimental to the park. Perhaps acknowledging that the Ulu Papar communities existed before the creation of the state park, the state government attempted to create a compromise with the implementation of Community Use Zones (CUZ) within the park boundaries. The CUZs were zones where communities were permitted to access and to use resources and land. However, the CUZs had too many limitations imposed by park authorities and did not relieve tensions between them and the communities.

The Ulu Papar Biocultural Community Protocol described the way of life, culture and unique management and conservation practices of the Ulu Papar communities based on their traditions, customs and culture. The protocol also functioned to showcase that the priorities of the communities and the parks could align, and could serve as a basis to engage with the state authorities to work out a more holistic arrangement for the communities to continue their livelihoods in and around the park area. The protocol



CASE STUDY 9: THE TAGAL SYSTEM – A STATE ENDORSED COMMUNITY PROTOCOL

The Tagal System is an umbrella term used by the state fisheries department to identify an indigenous fish resource management practice that has been practised by indigenous communities in Sabah for generations. Different communities have different names for the practice; however, the more widespread are either "Bombon" or "Tagal", with the latter the term preferred by the fisheries department.

The effective results produced by communities who practised the system convinced the state fisheries department to endorse and support communities implementing the Tagal System officially. The state department would provide fisheries management advice and even monetary support for committees wishing to erect signposts warning outsiders of Tagal Zones. The department also actively encourages communities with rivers to practice the Tagal system if they do not have traditional management practices. In 2003, the State Government legislated the Tagal system into the Sabah Inland Fisheries and Aquaculture Enactment, calling them as "Community Fisheries Management Zones" in the enactment. The Tagal system is now replicated in many more communities with riverine systems due to state endorsement and encouragement.

Declaration of a Community Fisheries Management Zone.

35. (1) If the Director considers that it is expedient or necessary to involve members of a village or local community in the management and conservation of the fisheries resources or the fishery of an area or part of an area in riverine waters, he may place a proposal before the Minister recommending that such an area be declared a Community Fisheries Management Zone.

(2) The declaration of the Community Fisheries Management Zone shall be made by the Minister by notification in the *Gazette*, which shall state the date upon which the declaration shall come into effect.

Committee to administer a Community Fisheries Management Zone.

36. The Director may appoint authorised officers or members of the village or local community in the Community Fisheries Management Zone, to form a Community Fisheries Management Zone Committee to administer and undertake the management and conservation of the fisheries resources or the fisheries of the said Community Fisheries Management Zone.

Offences in the Community Fisheries Management Zone.

37. Any person who contravenes the regulations made under this Enactment for the purpose of the Community Fisheries Management Zone shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty thousand ringgit.

Though there are minor differences due to each community's local circumstances, the Tagal system as promoted by the fisheries department operates by designating rivers within a community's territory

into zones. These zones are usually identified by a committee set up in the village. The Tagal zones become non-fishing zones until the Tagal committee allows it for a limited time, for example, a few days of fishing every two years. This period is usually decided with the rest of their community members. Parts of the river not under the Tagal zones remain usable all year round. However, all destructive forms of fishing such as fish-bombs, electrocution and poison are no longer allowed within the rivers in the community territory. Any breaches by either community members or outsiders are heavily fined, often requiring a customary fine of livestock like a whole pig besides also monetary fines. These fines are used to support the community in managing their river resources; if the fine is monetary, it usually used as operating funds for the Tagal committee. If the fine is livestock, then it is distributed to every household in the community.

CONCLUSION

Community protocols provide an avenue for indigenous communities to set their stage when it comes to external engagement. By being fundamentally rooted in indigenous practices, customs and traditional knowledge, community protocols are home-grown and naturally must be community-led. These protocols cannot be written for or on behalf of communities by third parties.

Legitimacy is an essential factor to provide communities necessary weight in their voices for effective, respectful and constructive engagement with external actors. For community protocols to exert legitimacy against outside interests, they must be seen to protect collective rights and not any specific individual interest. Only then can community protocols be used to facilitate dialogues on issues involving the community's group rights.

The above community protocols are examples of protocols developed and fleshed out by the respective communities. There should be other community protocols in use, consisting of short declarations of rights by communities in response to specific and localized events. These protocols can be further developed to add details to facilitate and equalize interactions between communities and outside parties.

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