



JARINGAN ORANG ASAL SEMALAYSIA
INDIGENOUS PEOPLES NETWORK OF MALAYSIA

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1. In accordance with the Information and Guidelines for Relevant Stakeholders regarding the Universal Periodic Review mechanism (July 1, 2008), the **Indigenous Peoples Network of Malaysia (JOAS)** submits this report to the Human Rights Council in relation to the 2008 Universal Periodic Review of Malaysia.
2. The Indigenous Peoples Network of Malaysia (or Jaringan Orang Asal SeMalaysia, JOAS) is the umbrella network for 21 organisations throughout Malaysia that represents different indigenous peoples' organisations and communities. As the focal point for indigenous rights and advocacy in Malaysia, JOAS provides the indigenous communities with representation nationally, regionally and internationally.
3. The Orang Asal or indigenous peoples of Malaysia consist of more than 80 ethno-linguistic groups, each with its own culture, language and territory. Together we number about 4 million, or about 15 per cent of the national population. Collectively, also, our peoples count as among the most poor in Malaysia, a manifestation of our marginalisation and disenfranchisement from the mainstream society on account of the non-recognition of our rights as contained in both national and international customary law.
4. Malaysia's system of governance incorporates a two-tier system of government – federal and state – with both having legislative powers. The apex national law nevertheless is the Federal Constitution which provides guarantees to life and livelihood for the Orang Asal as it does for other citizens. Additionally, the Malaysian government has also gone one step further in openly declaring its support for indigenous rights, histories and territories by endorsing the UN Declaration on the Rights of Indigenous Peoples (UN-DRIP) twice: the first, on 30 June 2007, when it was a member of the Human Rights Council which supported the original draft to be submitted to the General Assembly, and the second on 13 September 2007 when it joined the majority of countries to adopt the Declaration.
5. Against this commitment of the Government of Malaysia to recognise indigenous rights, this report assesses the human rights situation of the indigenous peoples of Malaysia – the Orang Asal – vis-à-vis the UN-DRIP and as espoused, or otherwise, by local legislation.

Right to self-determination

6. The UN-DRIP acknowledges that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights¹ and the International Covenant on Civil and Political Rights as well as the Vienna Declaration and Programme of Action,¹ affirm the

¹ A/CONF.157/24 (Part I), chap. III.

fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development. Article 3 in particular of the UN-DRIP state that indigenous peoples have the right to self-determination and by virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development.

7. In the context of Malaysia, however, no law or policy was found that mentions the right to self-determination for indigenous peoples, let alone accord us that right.

8. On the contrary, various laws, actions and programmes of the government directly oppose the principle of self-determination and violates the human rights of our people. This violations include the non-recognition of our customary lands, forced resettlement, non-recognition of cultural rights, policies of assimilation and integration, and even outright disregard for judicial decisions.

Non-recognition of customary lands

9. Article 26 of the UN-DRIP states that indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired, and that States shall give legal recognition and protection to these.

10. Malaysian courts have in fact endorsed this in several judgments that essentially accord native title to our traditional lands, territories and resources. These include the judgments in the cases of Adong Kuwau², Nor Nyawai³, Sagong Tasi⁴, Rambilin⁵, and Madeli Salleh⁶.

11. These judgments attest that native title arises out of native customs and that these customs, which define the content of native title, are part of the law of Malaysia and are protected under the Federal Constitution. The implementation of customs is also consistent with common law, which directs our courts to define native title with reference to native customs.⁷

12. However, despite these decisions of the local courts, the Malaysian government and its agencies choose not to accept these judgments as legal precedents and instead require indigenous communities to treat each native title claim as a fresh legal argument.

13. A former state attorney-general had even stated in a public forum that judgments by the apex court in Malaysia, such as that of Madeli Salleh cited above, which recognizes and uphold native title, do not determine how his state treats the rights of indigenous peoples to their traditional lands.

14. In the current Federal Court appeal submission in the Sagong Tasi case cited above, the Malaysian government has rejected the notion of native title. Further the government, citing sections 3 and 6 of the Civil Law Act, is also asserting that if a local, appropriate law is available, there is no necessity for it to be subjected to the articles of the Federal Constitution or to any international customary law or instrument.

² Adong bin Kuwau & Ors v Kerajaan Negeri Johor & Anor, No. 24-828-1994 (High Court, Johor Bahru, November 21, 1996).

³ Nor Anak Nyawai & Ors v Borneo Pulp Plantation Sdn. Bhd. & Ors, No. 22-28-99-I (High Court of Sabah and Sarawak, Kuching, 12 May 2001).

⁴ Sagong Tasi & Ors v Kerajaan Negeri Selangor & Ors, No. MTI-21-314-1996 (High Court of Malaya, Shah Alam, April 12, 2002).

⁵ Rambilin binti Ambit v Assistant Collector for Land Revenue, Pitas, No. K 25-02-2002 (High Court of Sabah and Sarawak, Kota Kinabalu, July 9, 2007).

⁶ Superintendent of Land & Surveys Miri Division & Anor v Madeli Salleh, No. 01-1-2006 (Q) (Federal Court, Putrajaya, October 8, 2007).

⁷ Ramy Bulan and Amy Locklear, *Legal perspectives on Native Customary Land Rights in Sarawak*, Human Rights Commission of Malaysia (Suhakam), Kuala Lumpur, 2008, p. 160.

15. Clearly, as such, the Malaysian government rejects the right of indigenous peoples to our traditional lands, territories and resources.

No Free, prior and Informed Consent (FPIC)

16. With such non-recognition of native customary title, the Federal and state governments have acted maliciously against the indigenous Orang Asal by forcibly appropriating, acquiring and taking Orang Asal lands, territories and resources without their free, prior and informed consent.

17. In the state of Selangor alone, about 7,000 hectares of indigenous Orang Asli reserves have been degazetted as such without the Orang Asli knowing when, where and how these areas were lost to them. In Sabah and Sarawak, an increasing number of communities are now finding out the hard way that their native customary lands have been given to oil palm plantation companies or leased to logging companies – again with out their prior consent, let lone their free and informed consent, and frequently with adequate compensation as required by Article 28 of the UN-DRIP and the Land acquisition act.

18. Many of these cases involve the forced and violent eviction of indigenous Orang Asal from their native customary lands, as happened in the case of Ruman Nyawin in Sarawak.⁸

19. And plans are afoot in Sarawak to build 12 more dams on the lands and territories of our peoples – again without knowledge and consent and in violation of Article 32 of UN-DRIP.

20. The establishment of so-called Growth Corridors that are designed to spur the economic growth of the country will also severely affect our land rights position.

Forced resettlement

21. In line with the government's non-recognition of native title and the disregard for obtaining free, prior and informed consent, the indigenous Orang Asal have also been subjected to forced or involuntary resettlement.

22. A case in point is the forced resettlement of the Chewong-Orang Asli community in the Kelau dam project in Pahang where the Orang Asli were intentionally misrepresented by agents of the government in order to carry out the forced resettlement of the Orang Asli. To make matters worse, the indigenous community concerned need not have to be resettled as their village were not be affected the by the project at all.⁹

23. This is in direct violation of Article 10 of the UN-DRIP which state that indigenous peoples shall not be forcibly removed from their lands or territories and that no relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned.

Violation of right to self-governance

⁸ The Borneo Project, Rumah Nyawin demolished by Sarawak Government. 5 January 2007.

⁹ COAC, *Damned Forest and Damned Lives: The Orang Asli and the Kelau Dam Project*. Video documentary. 2008.

24. Article 20 of the UN-DRIP gives indigenous peoples the right to maintain and develop their political, economic and social systems or institutions. However, the government has increasingly interfered in our traditional systems, especially in the selection and appointment of our customary leaders.

25. For example, the *Guidelines on the Procedure for the Appointment of Orang Asli Headmen*¹⁰, dictates that the government has the final say in who becomes the community head and has the right to prescribe the procedure for his election.

Pressured assimilation & Right to freedom of religion

26. We have our own unique cultures, spiritualities and institutions which we want to continue and pass on to our future generations. However, some of us face extreme pressure to convert to the state religion, especially when missionary-proselytizing programmes are conducted with state largesse and infrastructure. This is clearly in violation of Article 12 of the UN-DRIP.

27. This coupled with the stated objective, especially for the Orang Asli of Peninsular Malaysia, of integrating us into the ‘mainstream society’ has overtones of a policy of pressured assimilation.

28. Furthermore, some of us who chose to adopt a mainstream religion other than the official state religion, have found our religious structures demolished by local authorities on the weak and untenable argument that these religious structures were constructed on state land.

The consequence of Non-Documentation

29. A disproportionate number indigenous Orang Asal are not documented (i.e. having proper identification papers). This is mainly due to their lack of access to the government infrastructure and machinery responsible for documenting citizens.

30. However, the onus should be on the agency that is entrusted by law to carry out its function rather than blame the marginalized and impoverished indigenous individuals for their failure to be documented.

31. An undocumented citizen cannot enjoy several rights that are accorded to citizens, including social and economic benefits and the right to citizenship.

Conclusion and Recommendation

32. Because Malaysia endorsed the UN Declaration on the Rights of Indigenous Peoples, the government should be held to its good intention by ensuring that the Declaration is fully implemented and enforced.

33. Article 38 of the UN-DRIP in fact requires that “States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of the Declaration.”

¹⁰ JHEOA, *Garis Panduan Prosedur Perlantikan Penghulu dan Batin Orang Asli*. Kuala Lumpur, 1998.

34. This is further reinforced by Article 42 that calls on States to “promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.”

35. Many of the human rights violations facing the indigenous Orang Asli of Malaysia can be resolved if the UN-DRIP is fully applied and if the court decisions and the principles of our Federal Constitution are upheld.


36. This is especially so in the case of native customary land rights – which is now a well-established right in Malaysian jurisprudence, provided by explicit provisions in the law and elaborated on by court judgments. From these, it is clear that undocumented native customary rights are equally valid as registered titles. The State must recognize this.

37. Doing so would also be consistent with upholding the Federal Constitution – as the abolition of native customary rights is to be regarded as violating the right to livelihood of an indigenous group. And this right is protected under Article 5(1) of the Federal Constitution which states that “no person shall be deprived of his life or personal liberty save in accordance with law.”

38. Thus, in merely being consistent with the provisions of the Federal Constitution and in applying the articles of the UN-DRIP in full, we can be assured that our rights will be recognised and upheld.

39. In this regard we call upon the Government of Malaysia to follow our national laws with regard to upholding indigenous rights and at the same time honour the rights we are entitled to under international customary law.

Thank you.



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