

Introduction¹

1. Orang Asli is a collective term (which means original or first peoples in the Malay language) for some 18 ethnic groups comprising 209,575 persons in total. They are regarded as the original inhabitants of Peninsular Malaysia (pre-dating the arrival of the Malay ethnic group). Orang Asli are generally divided into three distinct groupings: the Negrito, Senoi and Proto-Malay.
2. In 2018, the Government of Malaysia (GoM) supported four out of eight recommendations concerning the well-being, economic and social status of the indigenous peoples and took note four recommendations related to native/customary land rights, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the International Labor Organisation (ILO) Convention No. 169.

Methodology

3. JKOASM conducted consultations with Orang Asli communities who provided updates on the current situation and the implementations of recommendations on indigenous rights received by Malaysia in the previous UPR cycles.

Issues on the Rights of Orang Asli

A. Laws and Policies

4. Provisions in the Aboriginal Peoples Act 1954 (known as Act 134), an act to protect the well-being and advancement of Orang Asli, had not resulted in better protection of Orang Asli and their lands, but increased State control over them, limiting their self-determination and control over their lives and lands. In fact, in one section of this act, it states that only the minister can determine whether a person is Orang Asli or not.
5. Wildlife Conservation Act 2010 (Act 716) stated and decided for Orang Asli that Orang Asli can only hunt and consume 10 animal species. It also stated that Orang Asli will be fined for a maximum of RM10,000.00 and jailed for a maximum of 6 months if the law is broken.
6. There are also amendments in the National Forestry Act (Amendment 2022) which will impose heavier penalties and higher fines on people who use forest products for any purpose. Orang Asli are also not exempt from this amendment, although they suffer a larger impact from this amendment compared to other peoples because they still depend on forest resources and products for survival.
7. The Department of Orang Asli Development (JAKOA), an agency entrusted to oversee the affairs of the Orang Asli, failed to carry out its responsibilities, with their officers acting in a manner prejudicial to Orang Asli interests, and a general culture of disrespect and condescension towards Orang Asli pervading JAKOA.²
8. Up to 2023, there are at least 37 Orang Asli cases in deadlock that have to be taken to court as last resort. In these cases, the GoM including JAKOA is on the opposing side against Orang Asli. In addition, Orang Asli must appoint a lawyer to help their case and bear all the trial

costs of the case. Most of the court cases include native customary land disputes – Orang Asli are forced to file court cases against the government and companies, or they are sued by the government and companies. Other recorded court cases are related to forced conversion to Islam, killing wild animals that kill the Orang Asli and the destruction of the property and crops of Orang Asli. There is also a court case where an Orang Asli was accused of murder.

Recommendations

9. Amend Act 134 to be on par with international human rights standards (UNDRIP). Other laws such as the Forestry Act and the Wildlife Act should also be amended by enlivening the UNDRIP and supplementing the amendment of Act 134 to make it more holistic. Said amendment must also refer to ILO 1989 (No 69), the 18 recommendations in the SUHAKAM National Inquiry Report on Indigenous Rights and the precedent of court cases (common law) in favour of Orang Asli.
10. Adopt the FPIC approach and involve Orang Asli from various walks of life in consultation for the amendment of laws mentioned above, while taking into account Sustainable Development Goals (SDG) 2030 Goal 16: Peace, Justice and Strong Institutions.

B. Rights to Native Customary Land

11. The definition of native customary land and area has been sufficiently documented and explained in the National Inquiry into the Land Rights of Indigenous Peoples 2013.³ However the GoM failed to take into account the entire perimeter of native customary land area in its surveys of Orang Asli land, focusing only on settlement areas.
12. While the GoM had included Orang Asli rights in the National Human Rights Action Plan (NHRAP), with specific mention to complete demarcation and gazettement of Orang Asli customary land within three to five years, the GoM has not provide any updates and information on its implementation.
13. As of 2018, official records state that the entire area of Orang Asli land is 134,440.99 hectares. Of these officially-acknowledged lands, 32,779.37 hectares have been gazetted. Another 19,870.08 hectares have been approved but not yet gazetted while 74,838.86 hectares are pending application for gazettal. Occupied land without any official application was stated to be 5,142.73 hectares while 1,809.95 hectares of officially acknowledged Orang Asli land have been granted individual property titles.⁴
14. In 2023, the Deputy Minister of Rural and Regional Development announced that the GoM will survey and gazette Orang Asli reserves but limited for settlement areas, to protect the government land from encroachment by non-Orang Asli into Orang Asli land as well as encroachment by Orang Asli into government land. The latter type of encroachment mentioned, however, is unacceptable to Orang Asli as historical facts and common law have proven that they have existed, occupied, used, conserved and controlled their native customary land since time immemorial, before the formation of Malaysia and the

categorisation of any of their land as ‘government land’. This announcement also contradicts the manifesto of the political party that currently forms the current GoM.⁵

15. Several land disputes between Orang Asli, the GoM and developers/companies are still ongoing. The following are cases which occurred during reporting period (2018-2023):
- a. The State Government of Johor had supported the proposal for all Orang Asli land in the state to be placed under the Sultanate Land Enactment,⁶ supported by the Johor Chief Minister and JAKOA.⁷ In response, more than 200 Orang Asli from Johor protested peacefully at Johor Chief Minister’s office and submitted a memorandum objecting the Sultan’s proposal out of concern that native customary land will become the absolute property of the Sultan, further restricted from seeking justice over their land rights in court.⁸ After the protest, the state government posted eviction notices in Orang Asli native customary land.
 - b. The construction of the Nenggiri Dam Project had commenced, despite concerns expressed by Orang Asli of them being forced to relocate and the loss of their historical and ancestral places.⁹ The Orang Asli network in Kelantan (JKOAK) plans to take up their case to court.¹⁰
 - c. The older Temenggor dam project in Gerik, Perak continues to affect the Orang Asli negatively. Orang Asli had to change their way of life and forced to adapt to the changed environment, e.g., they are prohibited to fish beyond a certain limit, have to travel by boat which is costly to reach their villages, forced to relocate to areas where resources are scarce, and have to deal with the threat of hostile wildlife animals due to habitat conflicts. There have been several elephant attacks on Orang Asli which were fatal.¹¹ The GoM and its agencies have not taken any initiative to resolve the issues in Gerik.
 - d. Despite frequent objections by Orang Asli, the developers, state governments and forestry department continue to pursue logging projects near Orang Asli villages, which have led to landslides and loss of lives.¹²
 - e. In Negeri Sembilan, seven villages reported that their native customary land has been proposed for logging projects. Roads leading to logging areas are being built without free, prior and informed consent (FPIC) by Orang Asli on the project. The community involved has started a campaign protesting this project using pictures of meetings they had with JAKOA and the logging company as evidence.

Recommendations

13. Implement the recognition of Orang Asli native customary land rights in line with the manifesto of the ruling party (that is government now), UNDRIP and common law.
14. Impose an immediate moratorium on Orang Asli-claimed native customary lands and resources to ensure that such areas are not encroached, alienated, appropriated and destroyed

pending the official demarcation of Orang Asli native customary lands.

15. Conduct demarcation of Orang Asli native customary lands in accordance with the actual native customary land area claimed as determined by the local Orang Asli community through state-wide community mapping exercises. If the Orang Asli community concerned does not possess a community map, the federal and state governments should engage in joint mapping exercises in consultation with the relevant Orang Asli communities to determine the precise customary area for demarcation.

B. Freedom of Religion or Belief

16. Outsiders consider Orang Asli to be animist or have no religion, which makes Orang Asli a target for various organised religion groups.
17. The Temiar tribe in Gerik, Perak have complained that when they change or apply for an identity card for themselves or their children, their religion status on the card was changed to Islam even though they have never converted to Islam before. Children were also taught Islamic subjects in school without parental permission even though they were not Muslim.¹³
18. The Registration Department would refer cases of Orang Asli wanting to revoke the Islamic status from their identity card to other departments – JAKOA, the State Department of Islamic Religion and the District Department of Islamic Religion – who do not want to revoke the Islam status in the identity card for fear of the repercussion of apostasy, although it is the officer's intent or negligence that led to this conundrum.
19. 137 Orang Asli of Bateq-Mayah tribe in Pahang were forcedly converted to Islam in 2018. In 2023, the community filed a lawsuit against JAKOA, JAKOA's director and officer, the state religious authorities as well as the federal and state government for their forced conversion to Islam.¹⁴

Recommendations

20. Respect the freedom of religion among Orang Asli, by recognising and officially acknowledging that the traditional belief system of Orang Asli is a form of religious belief.
21. Stop the activities and preaching of Islam and other organised religions against the Orang Asli community, without their knowledge or consent. The policy of assimilating Orang Asli into Islam and the Malay section of the society is unethical and wrong, and should be stopped immediately.
22. Stop the indoctrination of Islam to Orang Asli children in schools. Religious indoctrination or preaching of any organised religion must obtain FPIC from Orang Asli who are at least 21 years old and above.
23. Respect the right to freedom of religion as enshrined in the Universal Declaration of Human Rights (UDHR) 1948 and the Federal Constitution.¹⁵

C. Cultural Rights and Identity in Malaysia

24. The existence of Orang Asli, including identity, culture and language, is still not reflected meaningfully in Malaysian mainstream media, which frequently only focuses on the majority races in Malaysia. No emphasis and visibility are given to educate the mainstream society about the identity of the distinct Orang Asli community in Malaysia. World Indigenous Peoples Day is not celebrated in Malaysia with a public holiday or even any commemorative official public event for the occasion.
25. The identity, culture and mother tongue of Orang Asli are not taught in the curriculum of public schools, making Orang Asli a foreign concept to other students. Orang Asli students themselves also find the mainstream school environment foreign as the subjects are unfamiliar against their lifestyle and background. Many Orang Asli children become bully victims of other children, contributing to the high dropout rate among Orang Asli children.¹⁶ Initiatives by the government, e.g., the 9-Year Comprehensive Special Model School Concept (K9), is still not enough, because the other Malaysians are not educated to accept and have empathy towards Orang Asli.¹⁷

Recommendations

22. Incorporate information on Orang Asli identity, culture, histories and languages into the national education curriculum to develop a community rich in knowledge about Orang Asli community history and culture in Malaysian society.

D. Basic Amenities and Healthcare

23. Some Orang Asli villages still do not have complete and quality basic facilities and infrastructure. There are villages that still do not have bitumen roads; do not receive water supply infrastructure; some only have pipes but no running water or receive polluted water; no electricity; poor or absent telephone network/signal; very limited and/or no internet access, and no full-time community health clinic in rural outposts/villages.^{18 19}

Recommendations

24. Comply with acceptable standards on the provision and maintenance of basic amenities for Orang Asli communities and introduce an effective monitoring system to ensure that:
 - a. Orang Asli communities without basic amenities are provided amenities of acceptable quality;
 - b. Orang Asli communities with basic amenities are of an acceptable quality and maintained regularly;
 - c. Said facilities and amenities aids must meet the standards and goals of SDG 2030, especially Goal 6: Clean Water and Sanitation, Goal 7: Affordable and Clean Energy and Goal 15: Life on Land.

E. Education

25. Schools for Orang Asli children are located far from their village, requiring schooling children (some as young as 7 years old) to be separated from their families and relocated in

boarding schools. This causes Orang Asli children to grow up without safety, love, attention and guidance of their parents, while forcing them to be independent at a very young age. This has a negative impact on children's mental and emotional growth,²⁰ and makes Orang Asli children especially vulnerable to bullying and Islamic indoctrination and conversion.

Recommendations

22. Improve the quality of formal education for Orang Asli from pre-school to tertiary levels.
23. Establish new community kindergartens or support existing ones in Orang Asli villages.
24. Use the Orang Asli native language as medium of instruction for Orang Asli children in early childhood curriculum to facilitate smooth transition from pre-school to the national or other mainstream school systems.
25. Ensure fairness, consistency and transparency in the enforcement of policies and procedures for financial assistance to Orang Asli students for all levels of education, i.e., The Poor Students' Trust Fund (KWAPM).
26. Extend scholarships for Orang Asli students enrolled in private tertiary education institutions and not just those in public institutions.
27. Build more schools close to Orang Asli villages, especially in the interiors, and ensure teachers are qualified, passionate and have empathy for Orang Asli values, customs, cultural practices and ways of life.
28. Ensure that the standard of education for Orang Asli meet the goals of SDG 2030, especially Goal 4: Quality Education.

G. Economy and Poverty Eradication

29. Various programmes have been created to upgrade Orang Asli economy, such as the Technical and Vocational Education and Training programs (TVET).²¹ However, this programme only benefits individuals selected by JAKOA.
30. Ongoing agricultural projects, e.g., commercial oil palm plantations,²² fail to elevate the income of most Orang Asli. The income and dividends are in the range of MYR 100 to 400 per month, which has not changed over the years while cost of living has soared.²³

Recommendations

31. Use Multidimensional Poverty Index (MPI) 2022 as a more holistic measurement of poverty which takes into account dimensions of health, education and standard of living.
 32. Plan and implement poverty alleviation programmes that will increase Orang Asli income and standard of living by referring to case studies and best practices of successful programmes in other countries.
 33. Ensure that economic programmes and poverty eradication for Orang Asli meet the standard and goals of SDG 2030, especially Goal 1: No Poverty, Goal 2: Zero Hunger, Goal 8: Decent Work and Economic Growth and Goal 10: Reduced Inequalities.
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¹ Orang Asli has distinct customs, cultural practices, and way of life when compared to the mainstream or

general population in Malaysia. But as Indigenous Peoples, Orang Asli's customs, cultural practices and way of life are closely related and highly dependent on customary land inherited, used, preserved, managed and governed by the local community for generations. The Orang Asli population is the smallest but Orang Asli hold the highest rate of poverty. The UN report released in 2016 states that 34 percent of Orang Asli households are poor, despite the official figure that states only 0.6 percent. The Orang Asli were mostly ignored during the Portuguese and Dutch occupation. However, the British paid more attention towards the Orang Asli during their colonization. The Orang Asli had become subjects to anthropological studies and were targeted by Christian missionaries until the year Emergency (1948-1960) was declared in Malaysia. As part of the war strategy to fight the communists, the Orang Asli were relocated to new settlement areas. This has caused the Orang Asli to lose their lives, lands and resources which defines their distinct culture. Since 1961, the Malayan government then adopted a policy to integrate the Orang Asli to the wider society in order to improve the socio-economic status of the Orang Asli. This continues since then in modern Malaysia. However, the policy is seen to emphasize on the assimilation of the Orang Asli community to the Malay community. Furthermore, the policy is also an attempt to Islamize the Orang Asli in Malaysia. Until today, the Orang Asli continues to be subjugated and discriminated by the dominant society in Malaysia. They have continuously defended and protected their culture and the ownership of their customary land. However, attempts to defend their ancestral and cultural land rights were met with hard actions by the government. Sadly, the threats towards the Orang Asli defenders have reached a new height of seriousness within the community. Despite the international call to recognize the importance to protect the rights of all indigenous people through the "United Nations Declaration on the Rights of the Indigenous People" (UNDRIP), minimal government support and legal protection were given to the Orang Asli. In fact, the Human Rights Commission of Malaysia (SUHAKAM) has received many complaints on the various land encroachment, land grabbing and land developments that has affected the Orang Asli communities here.

² Joint Memorandum on the Reform of the Aboriginal Peoples Act 1954 and Orang Asli Policy and Administration – Towards better Orang Asli Self-Determination, available at: <https://komas.org/wp-content/uploads/sites/16/2019/07/joint-memorandum.reform-of-Aboriginal-Peoples-Act.Bar-Council-and-Pusat-Komas-English.18-May-2019-1.pdf>

³ National Human Rights Institution of Malaysia (SUHAKAM), Report of the National Inquiry into the Land Rights of Indigenous Peoples, 2013, available at: <https://suhakam.org.my/ms/publications/national-public-inquiry-reports/>

⁴ Malay Mail, Ismail Sabri: 80pc of needs of Orang Asli community fulfilled, 4 March 2018, available at: <https://www.malaymail.com/news/malaysia/2018/03/04/ismail-sabri-80pc-of-needs-of-orang-asli-community-fulfilled/1590257>

⁵ eCentral, Manifesto PH 2022 : Tawaran Pakatan Harapan Untuk PRU15, available at: <https://ecentral.my/manifesto-ph-tawaran-harapan-pru15/>

⁶ Malaysiakini, Johor ruler wants state Orang Asli reserves converted to 'sultanate land', 16 March 2023, available at: <https://www.malaysiakini.com/news/658897>

⁷ Free Malaysia Today, Sultanate land doesn't mean sultan owns them, Johor MB clarifies, 5 April 2023, available at: <https://www.freemalaysiatoday.com/category/nation/2023/04/05/sultanate-land-doesnt-mean-sultan-owns-them-johor-mb-clarifies/>

⁸ Sinar Daily, Orang Asli object to converting reserve land as 'Sultanate land', 8 May 2023, available at: <https://www.sindaily.my/article/195469/malaysia/national/orang-asli-objects-to-converting-reserve-land-as-sultanate-land>

⁹ The Sun Daily, Orang Asli protest Nenggiri dam, 9 June 202, available at: <https://www.thesundaily.my/local/orang-asli-protest-nenggiri-dam-DD9306324>

¹⁰ Malay Mail, Kelantan Orang Asli group disappointed over govt's decision to proceed with Nenggiri hydro dam project, plans to go to court, 22 July 2023, available at: <https://www.malaymail.com/news/malaysia/2022/07/22/kelantan-orang-asli-group-disappointed-over-govts-decision-to-proceed-with-nenggiri-hydro-dam-project-plans-to-go-to-court/18879>

¹¹ The Star, Orang Asli woman in ICU after an attack by elephant while looking for durian, 1 August 2022, available at: <https://www.thestar.com.my/news/nation/2022/08/01/orang-asli-woman-in-icu-after-an-attack-by-elephant-while-looking-for-durian>

¹² Malaysiakini, Orang Asli folk submit memorandum to stop logging on Perak customary land, 18 July 2022, available at: <https://www.malaysiakini.com/news/628711>

¹³ Malay Mail, Orang Asli demand to be left alone by Islamic preachers, 9 July 2019, available at: <https://www.malaymail.com/news/malaysia/2019/07/09/orang-asli-demand-to-be-left-alone-by-islamic-preachers/1769761>

¹⁴ Free Malaysia Today, 137 Orang Asli file suit to nullify Muslim status, 27 March 2023, available at: <https://www.freemalaysiatoday.com/category/nation/2023/03/27/137-orang-asli-file-suit-to-nullify-muslim->

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¹⁵ SUHAKAM, Freedom of Religion, 13 January 2022, available at:

<https://suhakam.org.my/portfolio/freedom-of-religion/>

¹⁶ Malaysiakini, Bullied, separated - national education failing Orang Asli children, 17 April 2019, available at:

<https://www.malaysiakini.com/news/472558>

¹⁷ The Sun Daily, Implementation of K9 can address Orang Asli student dropout issue: Mah, 26 August 2022,

available at: <https://www.thesundaily.my/home/implementation-of-k9-can-address-orang-asli-student-dropout-issue-mah-DA9727647>

¹⁸ Astro Awani, Hampir 1,000 masyarakat Orang Asli di Pos Gob perlu bekalan elektrik (Almost 1,000 Orang Asli persons in Pos Gob need electricity supply), 25 March 2021, Malay version available at:

<https://www.astroawani.com/berita-malaysia/hampir-1000-masyarakat-orang-asli-di-pos-gob-perlu-bekalan-elektrik-289905>

¹⁹ Malaysiakini, Fifth time's the charm? Bidor Orang Asli get another water-supply project, 17 November 2022,

available at: <https://www.malaysiakini.com/news/644590>

²⁰ Refer to the study of Child Development Theory, especially referring to Bowlby's Attachment Theory.

²¹ Berita Harian, Orang Asli ditawarkan ikuti program TVET secara percuma (Orang Asli offered free admission to TVET programme), 27 April 2019, Malay version available at:

<https://www.bharian.com.my/berita/nasional/2019/04/557786/orang-asli-ditawarkan-ikuti-program-tvet-secara-percuma>

²² Plantation projects include: Ladang Tanaman Semula Komersial (TSK), Tanaman Semula Berkelompok (TSB), Rancangan Orang Asli (ROA), and Rancangan Pengumpulan Semula (RPS)

²³ Free Malaysia Today, Pendapatan tak setimpal keluasan, senator Orang Asli gesa kerajaan perhati ladang TSK (Income not on par with field area, Orang Asli senator urges government to review the TSK project), 12 February 2023, available at:

<https://www.freemalaysiatoday.com/category/bahasa/tempatan/2023/02/12/pendapatan-tak-setimpal-keluasan-senator-orang-asli-gesa-kerajaan-perhati-ladang-tsk/>