



MASA'S SUBMISSION TO THE HUMAN RIGHTS COUNCIL FOR MALAYSIA'S 4TH CYCLE IN THE UNIVERSAL PERIODIC REVIEW, 2023

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INTRODUCTION

1. Institut Masa Depan Malaysia (MASA) was established in 2019 as an independent think tank that brings together experts in government, civil society organisations (CSOs), non-governmental organisations (NGOs), industries and academia to provide quality research, data-driven policy recommendations and analysis on a full range of public policy issues, guided by shared prosperity values.
2. In 2019, MASA was commissioned by the Government of Malaysia to author and develop the Shared Prosperity Vision 2030 (SPV2030) as the new socio-economic plan for Malaysia, and later the SPV2030 Strategic Plan in 2021. SPV2030 is a 10-year plan to localise the Sustainable Development Goals (SDG), aimed at making Malaysia a nation that achieves sustainable growth, along with fair and equitable distribution across income groups, ethnicities, regions and supply chains.
3. In this process, MASA co-organised the Consultation on Malaysia's Second Voluntary National Report (VNR) 2021 on SDG Implementation Progress with the All-Party Parliamentary Group Malaysia on SDG (APPGM-SDG) – a bipartisan initiative driven to ensure the economic, social and cultural rights (ESCR) by localising the implementation of SDG in all Parliamentary constituencies, in partnership with the Economic Planning Unit (EPU) of Malaysia, the Malaysian CSO-SDG Alliance and the UN Malaysia Country Team.
4. Recognising these gaps and challenges, MASA has embarked on an exploratory study to identify and highlight the ESCR on megaproject impacts of a land reclamation to the coastal communities in Penang, one of the states in Malaysia. Though this reclamation project carries the narrative of enhancing the livelihood of the people, it often impedes the ESCR aspects. In preparing this report, MASA has consulted the Human Rights Commission of Malaysia (SUHAKAM) and established its network with researcher from Universiti Teknologi Malaysia (UTM), Seberang Perai Tengah district office, Jaringan Ekologi dan Iklim (JEDI) - a local environmental NGO, marine scientists, researchers from the Centre for Policy and International Studies (CenPRIS) and the affected coastal communities, in particular fishermen, to find solutions in overcoming economic and social dilemmas facing the coastal communities, and to raise public awareness on these slew of pertinent human right issues.

METHODOLOGY

5. The study employed a mixed-methods approach, integrating an exploratory case study and a situational analysis to analyse the socioeconomic impact of land reclamation project - the Penang South Reclamation (PSR) megaproject - on coastal fishermen in Penang.
6. Data was extracted from multiple sources, including through interviews with fishermen and leaders of CSOs, questionnaires and official records from local government agencies.

7. Qualitative data, derived from the interviews, were analysed with demographic information for better understanding of the socioeconomic impacts of the project on fishermen. The quantitative data includes the income levels and poverty statistics, were analysed using descriptive statistics for qualitative findings.

THE PENANG SOUTH RECLAMATION (PSR) PROJECT

8. The Penang South Islands (PSI) project, also known as the Penang South Reclamation (PSR) project, is a large-scale development initiative located off the southern coast of Penang. It is part of the Penang Transport Master Plan (PTMP) to develop an integrated transport infrastructure to provide job opportunities, capital injections and stimulate the supply chain in the region.
9. The original plan was for reclamation and development of three (3) islands totalling 1,820ha, with Island A encompassing 930 hectares which will serve as the main island - the largest among the three islands proposed. However, due to constant pressures from various CSOs and local organisations, it was scaled down to one island, Island A (930ha).
10. This project raises concerns regarding its ESCR impacts, especially to the vulnerable groups, and lack of public consultation in the decision-making processes.

A. RIGHTS TO ADEQUATE STANDARD OF LIVING AND LIVELIHOOD OF FISHERMEN

Degradation of Incomes

11. The fishing community of Permatang Damar Laut will be badly impacted by the development of Island A, together with Rimau Island which is home to marine ecosystem. The fishing community, in particular Unit Nelayan Permatang Damar Laut, will likely face displacement while their incomes, affected.
12. These fishermen rely heavily on coastal areas for their catch as primary source of their income and this PSR project will only limit their access to such areas. This is against **Article 1 (2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR)** whereby in no case that the community be deprived of their own means of subsistence.
13. Destroyed soil structures will seriously impact the fishermen's socioeconomic status in terms of income and fishery production. Their fishing areas will deplete while fish output will drop, directly affecting their income.¹

Recommendations:

- i. The Penang State Government must recognise the fundamental rights of the affected community by creating value-added product development to enhance their economic resilience in line with **Article 11 (1) of the ICESCR** and paragraph **151.157 of The Third Cycle**; and
- ii. To provide them with ample and decent job opportunities in realising their fundamental needs and rights in line with **SDG 8** and **SDG 10 to reduce inequalities**,

¹ Jumain, N. A., Kamarulzaman, N. H., Latif, I. A., & Economics, B. (2018). 1, 2, 3. 3(03), 87–97. Jiang Gaoming (2008) Land Reclamation: Tread Carefully. Retrieved from <https://www.chinadialogue.net/article/show/single/en/1792-Land-reclamation-tread-carefully>.

and strengthen economic growth as outlined under **Game Changer VI of Malaysia's Twelfth Malaysia Plan**. The state government must also empower the minority group to benefit from economic activities via this PSR project.

Gentrification Process

14. The PSR development project triggers a gentrification process which usually refers to the revitalization and transformation of a neighbourhood through the influx of more affluent residents and businesses. According to Penang Infra, the reclamation project will significantly contribute to the development of the state's electrical and electronic (E&E) industry as well as future economic growth - estimated a total of RM2.2 trillion of national Gross Domestic Product (GDP) and over RM70 billion in foreign direct investment (FDI) to Penang and Malaysia.²
15. The expansion of commercial and high-cost residential projects near coastal areas will displace traditional livelihoods, including fishing, affecting income distribution and leading to increased property and land values. Preliminary findings by MASA illustrated potential income disparity among coastal communities and locals in Penang Island due to this development.
16. Among the impacts include higher property prices, increased cost of living and limited access to affordable housing. This poses challenges for the affected local communities as there is higher concentration of wealth and income disparities which can disrupt social networks, community cohesion and shared cultural heritage.

Recommendations:

- i. To provide effective mechanisms for just and fair redress for any such activities and appropriate measures be taken to mitigate adverse environmental economic, social and cultural impact in line with **Article 32 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)**. Any decisions on this project must be made collectively, with informed consent obtained from each and every affected fisherman, in a sincere and trustworthy manner;
- ii. To establish community land trusts for all affected fishermen and protect them from speculative real estate activities. This will maintain affordable access to land and housing for future generations in line with the recommendations of the paragraph **151.256 of the Third Cycle**; and
- iii. To implement strategies to promote and preserve economic well-being and cultural heritage of the fishing community in the face of gentrification by establishing heritage conservation areas, organising cultural events and festivals for the community to showcase their traditions and practices to strengthen their coastal-based revenue generating activities in line with paragraph **151.257 of the Third Cycle**.

B. RIGHTS TO PROMOTING SOCIAL SECURITY AND SUSTAINABLE LIVELIHOOD

Social Fabric Disruption Amongst Fishermen in Teluk Kumbar

17. Statistically, a significant proportion of fishermen, approximately 47.06%, expressed differing views on the Social Impact Management Plan (SIMP) provided by the state government prior to the implementation of the project.

² Penang South Islands Masterplan, Penang Infra (October 2020). Retrieved from <https://penanginfra.com/penang-south-islands/>

18. Most of them believe that the SIMP is not transparent due to loopholes and other weaknesses such as cronyism and lack of planning execution.
19. **Article 9 of ICESCR** states the right of everyone to social security, including social insurance.³ The state government must ensure that the social security system of the vulnerable group is available to provide benefits for the affected fishermen and address impacts on their livelihoods in accordance with the **Goal 7 of SDG**, and paragraph **151.156 of the Third Cycle**. Such a system must be administered or regulated by the state government and it should be sustainable to provide continuity over generations.

Recommendations

- i. To establish a framework for an integrated and comprehensive social protection through a central council that gathers all data and information pertaining to the fishermen and draw up necessary intervention plans that can guarantee their rights to social protection and security as per recommendations in paragraph **151.163 of the Third Cycle**; and
- ii. To ensure continuous engagement as per paragraph **151.17 of the Third Cycle** via active public participation, notably by off-shore and deep-sea fishermen in policy-making processes, regulations and future projects. This aligns with **Goal 17 of the SDG** which emphasises on the importance of inclusive and participatory approaches where all stakeholders, including marginalised communities, have a voice and are actively engaged. This will foster a sense of ownership and empowerment amongst the fishermen.

C. RIGHTS TO HEALTHY ENVIRONMENT

20. Land reclamations such as the PSR project involve the dredging of sea beds and deposition of soil and rock to create new land. This only disturbs the marine ecosystems, including coral reefs, seagrass beds and fish habitats. Destruction of these ecosystems will have severe repercussions and consequences on marine biodiversity and the livelihoods of local fishing communities.
21. The loss of coral reefs and mudflats due to reclamation and dredging poses potential threats to fishermen as these areas serve as vital marine habitats. According to local experts interviewed by MASA analysts from CenPRIS, the estimated value of lost coral reefs and mudflats due to reclamation - valued at RM12.5 million annually, and RM1.1 million to RM2.3 million due to dredging. These ecosystems play a crucial role in shoreline protection, job creation for coastal communities and recreational activities for the people.

Recommendations:

- i. To minimise the multiple anthropogenic pressures on coral reefs and other vulnerable ecosystems⁴ which might be impacted by the PSR megaproject, and take into account **Aichi Biodiversity Target 10⁵**; and

³ ESCR-Net, The Rights to Social Security (n.d). Retrieved from <https://www.escr-net.org/rights/social-security>

⁴ UNEP/EA.4/Res.13 (28 March 2019)

⁵ UN Convention on Biodiversity (18 September 2020). Retrieved from <https://www.cbd.int/sp/targets/>

- ii. To adopt the **UN Environment Assembly Resolution 4/13** and implement concrete plans of actions to effectively respond to climate change challenges, including mitigation and adaptation measures, specifically in addressing the impacts of ocean acidification on coral reefs and related ecosystems.

D. RIGHTS TO SAFEGUARDING CULTURES AND SOCIO-CULTURAL ACTIVITIES

Heritage of Artisanal Fishing

22. The PSR project is expected to have adverse consequences on artisanal fishing industry. The construction activities associated with the project, including dredging, land filling and infrastructure development, will only disturb the marine ecosystems and alter coastal habitats.
23. Restrictions on traditional fishing rights will affect their sociocultural identity. Fishing activities have played an integral role in their daily lives, fostering a strong sense of community, cooperation and environmental respect. Any restrictions or displacements from their fishing grounds would disrupt this socio-cultural fabric and erode the unique identity and way of life of these coastal communities.
24. Preserving and recognising the heritage of artisanal fishery is of utmost importance, as it is a key and distinctive contribution to Penang's eco-tourism sector. Penang attracts a significant number of foreign tourists who specifically choose the destination to experience its diverse cultural values, including engaging in fisheries activities that have been ingrained in the region since the pre-independence era.
25. The fishing traditions and practices of the coastal communities provide a distinct cultural experience for tourists, contributing to the local economy through eco-tourism. Restricting or diminishing these traditional fishing rights not only harm the livelihoods of the communities but also deprive Penang of a valuable cultural and tourism asset.
26. There are no specific details contained in the Penang 2030 Plan to achieve and create cultural significance of artisanal fishing and preserve its cultural heritage.

Recommendation:

- i. To acknowledge and protect the artisanal fishing areas/industry as part of its heritage and cultural expressions, sites and practices, in accordance to paragraph **151.72 of The Third Cycle**;
- ii. To conduct a comprehensive evaluation that is aligned with **Target 11.4 of the SDG**. Additionally, providing training to enhance the skills of fishermen will support their rights to education and enhance their access to information, enabling informed decision-making and adaptability; and
- iii. To provide alternative fishing zones where identify and designate alternative fishing zones, where fishermen can continue their traditional fishing practices during and after the construction phase, in accordance to **Target 14.2 and Target 14.5 of the SDG**. These zones should be carefully selected to minimise disruptions to fishing activities and protect the marine ecosystem.