



**Orang Asli Network of Peninsular Malaysia**

**Jaringan Kampung Orang Asli Semenanjung Malaysia  
(JKOASM)**

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## **Introduction: Orang Asli**

1. Orang Asli is a collective term (which means original or first peoples in Malay) for some 18 ethnic groups of 178,197<sup>1</sup> in total who are widely regarded as comprising peninsular Malaysia's original inhabitants (in the sense that Orang Asli pre-date the arrival of Malays). Orang Asli is generally divided into three distinct groupings: the Negrito, Senoi and Proto-Malay.<sup>2</sup>

## **Introduction: Orang Asli Network Peninsular Malaysia (JKOASM)**

2. Jaringan Kampung Orang Asli Semenanjung Malaysia (JKOASM) stands for a network of Orang Asli villages in Peninsular Malaysia. JKOASM was formed in 2009 with a mission to learn, educate and empower Orang Asli on their rights; be united, stay united and work as a team among the 18 tribes in Peninsular Malaysia; and advocate, facilitate and promote Orang Asli issues, especially land rights and other issues such as education and basic needs.
3. JKOASM also has submitted its UPR Report for the period of UPR 2013.<sup>3</sup>

## **Status Update on Orang Asli from 2013 UPR Submission**

4. In 2013, 3 of the 8 recommendations concerning the rights of Indigenous Peoples were fully accepted by Malaysian Government. The rejected recommendations are all in relation to native land rights. The excuse given was that a Task Force had been set up to investigate the issues. The Government accepted 17 of the 18 recommendations made by SUHAKAM in its report.<sup>4</sup> However, native land rights have not been upheld.
5. In Malaysia's 2013 UPR National Report, Orang Asli, the Indigenous peoples of Peninsular Malaysia are referred to paragraphs 25 and 67- 72.<sup>5</sup>
6. Referring to Item 71, the recognition and the right to customary land is crucial for the survival of the Orang Asli. The non-recognition of Orang Asli customary land has led to many problems including encroachments and the loss of livelihood.
7. In 2013, The National Human Rights Commission (SUHAKAM) published the Report of The National Inquiry into the Land Rights of Indigenous Peoples 2013 after a nationwide public inquiry.<sup>6</sup>
8. In response, the Malaysian government set up a Task Force to review the recommendations made by SUHAKAM in the Report culminating in the Government accepting 17 of the 18 recommendations made by SUHAKAM in its report.<sup>7</sup>
9. In 2015, the government established a Cabinet Committee on Customary Lands to implement the 17 recommendations accepted by the Government<sup>8</sup>

10. JKOASM and SUHAKAM have raised their concerns about the validity and seriousness of government with the formation of various government committees set up with regard to the implementations of the 17 recommendations.<sup>9</sup>
11. In 2016, the Cabinet via the Legal Affairs Division of the Prime Minister's Department or Bahagian Hal Ehwal Undang-undang Jabatan Perdana Menteri<sup>10</sup> (BHEUU) prepared a report in a response to 2016 SUHAKAM Annual Report. In short, the Cabinet had decided to implement seven (7) recalibrated recommendations in relation to Indigenous land rights, including a review of the concept of customary land.<sup>11</sup>
12. In tandem with this development, the Malaysian government through BHEUU released the National Human Rights Action Plan (NHRAP)<sup>12</sup> report in 2018. In NHRAP, Orang Asli and more broadly, Indigenous rights, are covered in Core Area 4. In Item 3 of that section, the Report referred to the demarcation of Orang Asli settlement or areas but failed to expressly take into account or recognize Orang Asli customary lands and territories beyond settlement areas used and enjoyed by Orang Asli communities. It is perplexing that the NHRAP and the Cabinet are implementing recommendations for the reservation of Orang Asli land while still needing to review the meaning and definition of Orang Asli customary land and identify appropriate mechanisms to determine the area that is claimed as customary land in the longer term.<sup>13</sup> There are serious concerns whether the ultimate definition of Orang Asli customary lands will justly and reflect areas inhabited, occupied, used or enjoyed by the Orang Asli and, pending the outcome of this process, that large tracts of Orang Asli lands will be grabbed or encroached upon by others. So far, there has been no government moratorium on the granting of interests or use of areas claimed to be part of Orang Asli territories.
13. This fear is not without basis. Recently, Datuk Ismail Sabri, the Ministry of Rural and Regional Development (KKLW), stated that the entire area of Orang Asli land is 134,440.99 hectares. Of these officially-acknowledged lands, 32,779.37 hectares have been gazette or in other words protected by written law. Another 19,870.08 hectares have been approved but have not yet been gazette while the total amount of land pending application for gazettal is 74,838.86 hectares. 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.<sup>14 15</sup>
14. Feedback received from the grassroots Orang Asli communities is that gazette or approved areas only consist of settlement area and do not cover the actual customary land area. In Perak, about 20 Orang Asli villages have prepared and notified the authorities of Community Maps prepared by themselves. But when the Department of Orang Asli Development (JAKOA) sends surveyors to demarcate Orang Asli areas, the surveyors measure much smaller areas compared to the actual area of Aboriginal land that has been tagged in Community Maps. Therefore, government statistics of

Orang Asli land usually refers to village settlements only and is far from the total Indigenous land area.

15. The protracted delays in the recognition and protection of Orang Asli customary land have again led to constant land encroachment and land grabs. For years, the Orang Asli communities in Gua Musang Kelantan had engaged with the government to discuss issues pertaining their customary land. Numerous discussions, complaints and demands were made but were ignored and customary land encroachment continues. This had caused the Orang Asli to retaliate by building blockades. In September 2016 to February 2017, the Orang Asli communities in Gua Musang had taken initiative by building blockades as a last resort to defend their customary land because their previous efforts of engagement with the government about the issue of customary land encroachment and forest destruction through protracted and uncontrolled logging activities, large-scale plantations (Ladang Rakyat) and mining activities did not find a solution. During this time, the Orang Asli involved with the blockades were threatened by thugs, forestry officers, police and General Operations Force (PGA). Subsequently, 54 Orang Asli was arrested and 47 of them were held in lock-ups for 2 (two) days.<sup>16 17</sup> As recently, the community erected the blockades again in February 2018 for the similar reasons.<sup>18 19 20 21 22</sup>
16. Among other issues that continued to occur as a result of non-recognition of Orang Asli customary land and individual title grant are:
17. In 2015, Orang Asli from Kampung Pos Lanai, Kuala Lipis, Pahang filed a lawsuit against Tenaga Nasional Berhad (TNB) for the construction of Telom Dam which is part of the customary land of Kampung Pos Lanai. The affected Orang Asli has been trying to find solutions with TNB and the government but finds themselves in a deadlocked negotiation. Finally, they resorted to defending their customary land by taking legal action.<sup>23</sup>
18. In 2017, two (2) Orang Asli village headmen from Kampung Tanah Gembur and Kampung Air Tawas, Gunung Ledang, Melaka was sacked from their position by Department of Orang Asli Development<sup>24</sup> (JAKOA), the reason being these headmen were defending their customary land from encroachments. The case had to be brought to court and is currently on trial. The decision of the case will be heard on May 15, 2018.<sup>25</sup>
19. Orang Asli continues to face the challenges of obtaining lawyers and high legal costs to defend their rights. The government has failed to assist the Orang Asli in terms of obtaining lawyers and bringing their cases to court. In fact, the Orang Asli are also facing opposition from the agency which was established to protect them. JAKOA has been on the opposing side of the Orang Asli in numerous court cases.
20. Referring to paragraph 68 of Malaysia's 2013 National UPR Report<sup>26</sup>, grassroots Orang Asli communities have not seen any significant changes or shifts in terms of access to infrastructure and basic amenities during the review period. Damaged

paved roads requests have not been satisfactorily addressed by agencies although complaints had been made. Kampung Chang Sungai Gepai, Bidor, Perak Malaysia has repeatedly applied to repair damaged tar roads in the village. Although the application was received, the project is not approved with the excuse made no financial allocation. Villages in Perak, Pahang and Kelantan also reported that housing assistance provided by the government was of poor quality. Their homes are prone to premature damage, including cracked floors and walls.

21. In addition, a large number of villages still have no basic facilities such as electricity, clean water, paved roads and other amenities. This raises questions about the proper management of funds received by Government agencies and Government's assurances on Orang Asli villages enjoying complete and satisfactory basic amenities. Kampung Lapan and Kampung Kepayang in Bidor, Perak are prime examples of villages with no paved road, no water, no electricity and no proper housing.<sup>27 28 29</sup>
22. Referring to paragraph 70<sup>30</sup>, the main income generating activity organized by the Government for the Orang Asli community is the Oil Palm Replanting Project (TSK). JKOASM receives similar feedback from the Orang Asli communities involved with the TSK projects, including poor and non-transparent management by relevant agencies such as JAKOA and RISDA<sup>31</sup>. In addition, the profits or dividends received by the Orang Asli participants of the TSK project are below the poverty level (about RM200 - 300 per month). These figures suggest that the TSK has failed as a government measure to increase Orang Asli income and eradicate Orang Asli poverty. Although the Orang Asli has voiced the TSK issue they are yet to see effective government action.
23. In a report released by UN, in 2016, it stated that 34 percent of Orang Asli households live in poverty.<sup>32</sup> According to government Orang Asli poverty rate would decrease to 25 percent by 2015.<sup>33</sup> However, Orang Asli activists and NGOs beg to differ based on their experiences, reality at the ground and Multidimensional Poverty Index (MPI). Poverty should not only use income as a measurement but should include indicators such as poor health, lack of education, inadequate living standards and disempowerment.<sup>34</sup> Hence, Orang Asli NGOs concluded that poverty rate among Orang Asli is still high.<sup>35</sup>
24. The 2013 UPR National Report government did not mention the Orang Asli education and health.
25. The Orang Asli is still far behind in education. Many Orang Asli settlements either have no kindergarten or if there is the medium of instruction is the Malay language.
26. This does not nurture the Orang Asli to maintain and practice their own mother tongue. Orang Asli native language, history, culture are omitted at primary and secondary education.

27. Thus, the mother tongue and identity is almost lost in the education system for Orang Asli.
28. In the interiors, since there is no nearby school, the Orang Asli children are forced to stay in boarding school. This boarding school is usually under non-Orang Asli care. Thus, gives a platform for abuse, bullying and mistreating the students. Students face all forms of discrimination and stereotyping as such as name calling, racial slurs, racist remarks and or physical altercation. On August 23, 2015, in Pos Tohoi, Gua Musang, Kelantan, students being treated badly by teachers over a period of time has forced them to flee. Seven Orang Asli pupils run from the boarding school for fear of being punished by their teacher for swimming in the river.
29. Two of them were found alive on October 12, 2015, while five (5) of them died. This proves the lack of government seriousness in providing a safe and conducive place for Orang Asli students living in boarding schools.<sup>36 37</sup>
30. According to a representative from JKOASM village member in Kelantan, the two children who are alive are still traumatized and has limited communication with their parents only.
31. Satisfactory health care access for many Orang Asli settlements is still poor and generally do not receive early diagnosis and treatment on terminal illness such as cancer, diabetes and high blood pressure. Awareness of health, hygiene and self-care remain relatively low among Orang Asli.
32. Transit hostels for pregnant mothers who are due to deliver are in poor condition and low-quality diet provided for them at the hostel.<sup>38</sup>
33. Orang Asli parents with children with disability lamented that they do not receive proper access to healthcare and support. Parents in Kampung Lapan, Bidor, Perak who have a child with mental disability reiterated that they have not received any form of support from the healthcare department or other agencies.

## **Recommendations**

### **Customary Land Rights**

34. The Malaysian government should impose an immediate moratorium on Orang Asli claimed customary lands and resources to ensure that such areas are not encroached, alienated, appropriated and destroyed pending the official demarcation of Orang Asli customary lands.
35. The demarcation of Orang Asli customary lands should be in accordance with the actual customary area claimed as determined by the local Orang Asli community through statewide community mapping exercises. If the Orang Asli village or 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 villages or communities to determine the precise customary area for demarcation.

### **Basic amenities**

36. The provision and maintenance of basic amenities to Orang Asli should comply with acceptable standards and be reviewed by the introduction of 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.

### **Education**

37. The federal government should improve the quality of formal education for the Orang Asli from pre-school until tertiary levels. The government should establish or support community kindergartens in Orang Asli villages. Further, the early medium of instruction should ideally be in the native language of the Orang Asli children in order to facilitate the smooth transition of these children from pre-school to the national or other mainstream school systems.
38. Policies and procedures for financial assistance to Orang Asli students for all levels of education, ie, The Poor Students' Trust Fund (KWAPM) should be fair, consistent and transparent. Scholarships for Orang Asli students should be extended to Private Institutions of Higher Learning and not limited to Orang Asli who enter Public Institutions of Higher Learning and local universities.
39. To incorporate subjects of the Orang Asli culture, histories and languages into the national education curriculum in order to develop a community rich in knowledge about the Orang Asli communities history and culture in Malaysian society.
40. To build more schools close to Orang Asli villages especially in the interiors. Teachers are to be qualified, passionate and have empathy on Orang Asli values, customs, cultural practices and ways of life.

### **Healthcare**

41. The government should improve access to healthcare and healthcare education for the Orang Asli such as, locating hospitals and clinics closer to Orang Asli settlements particularly those in the interior, enhancing mobile medical and dental services, training in situ paramedics and nurses and increasing health awareness within Orang Asli communities.
42. Review and upgrade food menu in Orang Asli Health Transit so that it meets the needs for a balanced diet.

### **Economy and Poverty**

43. Since the current economic programmes such as the TSK have failed to alleviate a substantial percentage of the Orang Asli from poverty. In devising better programmes for the Orang Asli, the government should also have regard to the UNDP multidimensional measure of poverty which does not focus mainly on increasing income but other factors such as poor health, lack of education, inadequate living standards and disempowerment. The government should explore more holistic measures to poverty alleviation towards Orang Asli with due respect to their culture and self-determination.

### **Principle term of reference**

44. In the implementation of the above recommendations and any other matters concerning the Orang Asli, the federal and state governments should apply the UNDRIP<sup>39</sup> and the 18 recommendations contained in the 2013 SUHAKAM Report.
45. Malaysian Government should develop a policy framework for implementing the free, prior and informed consent (FPIC) process in line with the UNDRIP in all government dealings with Orang Asli.

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<sup>1</sup> [http://www.data.gov.my/data/ms\\_MY/dataset/bilangan-kampung-dan-penduduk-orang-asli-mengikut-negeria-2012/resource/db094d49-27b2-4f61-a292-6183995c2cd3#](http://www.data.gov.my/data/ms_MY/dataset/bilangan-kampung-dan-penduduk-orang-asli-mengikut-negeria-2012/resource/db094d49-27b2-4f61-a292-6183995c2cd3#)

<sup>2</sup> 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

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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.

<sup>3</sup> <https://www.upr-info.org/en/review/Malaysia/Session-17---October-2013/Civil-society-and-other-submissions#top>

<sup>4</sup> Recommendation 1: Address Security of Tenure

Recommendation 2: Clarity of Concepts on Customary Tenure

Recommendation 3: Restitution for Non-Recognition of Customary Lands

Recommendation 4: Redress Mechanisms

Recommendation 5: Address Past Policies & Programmes

Recommendation 6: Review Compensation

Recommendation 7: Adopt HRBA to Development and FPIC Law

Recommendation 9: Promote Successful Development Models

Recommendation 10: Policy Towards People-Centred Inclusive-Sustainable Development

Recommendation 11: Settlement Exercise on Indigenous Customary Lands

Recommendation 12: Recognition of Indigenous Lands in Protected Areas

Recommendation 13: Indigenous Peoples Active Involvement in Forest Management

Recommendation 14: Conduct Comprehensive Review of JAKOA

Recommendation 15: Capacity Enhancement of Land Departments

Recommendation 16: Review Responses to Land Issues

Recommendation 17: Immediate Implementation of Corrective Measures

Recommendation 18: Establish an Independent National Commission on Indigenous Peoples

<sup>5</sup> a\_hrc\_wg.6\_17\_mys\_1\_e; pp. 5 & 11

<sup>6</sup> <http://www.suhakam.org.my/pusat-media/sumber/laporan-siasatan-awam/>

<sup>7</sup> <https://www.bharian.com.my/node/17603>

<sup>8</sup> <http://www.sinarharian.com.my/mobile/nasional/tpm-ketuai-j-kuasa-kabinet-bagi-hak-tanah-adat-1.401742>

<sup>9</sup> <http://hakam.org.my/wp/2015/06/20/suhakam-ngo-keliru-dengan-jawatankuasa-khas-kabinet-hak-tanah-orang-asal/>

<sup>10</sup> <http://www.bheuu.gov.my/>

<sup>11</sup> MAKLUMBALASKERAJAAN LAPORAN TAHUNAN SUHAKAM 2016; pp. 5

<sup>12</sup> <http://www.bheuu.gov.my/index.php/perkhidmatan/pelan-tindakan-hak-asasi-manusia-2018>

<sup>13</sup> NHRAP 2018; pp. 121-133

<sup>14</sup> <http://www.bernama.com/bm/am/news.php?id=1441259>

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- <sup>15</sup> <https://www.bharian.com.my/berita/nasional/2018/02/385849/segera-warta-tanah-rizab-orang-asli-ismail-sabri>
- <sup>16</sup> <https://www.youtube.com/watch?v=Ub2TuE9ob4Q>
- <sup>17</sup> <https://www.bharian.com.my/node/218441>
- <sup>18</sup> <https://www1.nst.com.my/news/nation/2018/02/336207/800-orang-asli-set-blockades-against-logging-durian-plantation-near-gua>
- <sup>19</sup> <https://www.themalaysianinsight.com/s/38336/>
- <sup>20</sup> <http://www.freemalaysiatoday.com/category/nation/2018/02/21/c4-kelantan-government-has-failed-the-orang-asli/>
- <sup>21</sup> <http://www.malaysiandigest.com/frontpage/29-4-tile/722347-orang-asli-to-stage-blockade-against-logging-activities.html>
- <sup>22</sup> <http://www.thesundaily.my/news/2018/02/25/undeterred-orang-asli-prolong-blockade-ninth-day-protest-logging>
- <sup>23</sup> <http://www.sinarharian.com.my/global/empangan-telom-orang-asli-saman-tnb-1.391467>
- <sup>24</sup> <http://www.jakoa.gov.my/en/>
- <sup>25</sup> <http://www.freemalaysiatoday.com/category/bahasa/2017/05/02/jakoa-didakwa-pecat-tok-batin-pertahan-tanah/>
- <sup>26</sup> <https://www.upr-info.org/en/review/Malaysia/Session-17---October-2013/National-report#top>
- <sup>27</sup> <http://www.utusan.com.my/berita/wilayah/negeri-sembilan/penduduk-orang-asli-rayu-kemudahan-asas-lengkap-1.575990>
- <sup>28</sup> <https://www.malaysiakini.com/news/175498>
- <sup>29</sup> <http://www.sinarharian.com.my/nasional/orang-asli-bakal-terima-infrastruktur-lengkap-1.706507>
- <sup>30</sup> <https://www.upr-info.org/en/review/Malaysia/Session-17---October-2013/National-report#top>
- <sup>31</sup> <https://www.risda.gov.my/index.php/en/>
- <sup>32</sup> <https://m.malaysiakini.com/news/331406>
- <sup>33</sup> [http://www1.utusan.com.my/utusan/Dalam\\_Negeri/20140830/dn\\_04/Kadar-miskin-Orang-Asli-turun](http://www1.utusan.com.my/utusan/Dalam_Negeri/20140830/dn_04/Kadar-miskin-Orang-Asli-turun)

### Multidimensional Poverty Index (MPI)

Like development, poverty is multidimensional — but this is traditionally ignored by headline money metric measures of poverty. The Multidimensional Poverty Index (MPI), published for the first time in the 2010 Report, complements monetary measures of poverty by considering overlapping deprivations suffered by individuals at the same time. The index identifies deprivations across the same three dimensions as the HDI and shows the number of people who are multidimensionally poor (suffering deprivations in 33% or more of the weighted indicators) and the number of weighted deprivations with which poor households typically contend with. It can be deconstructed by region, ethnicity and other groupings as well as by dimension and indicator, making it a useful tool for policymakers. For more technical details see Technical notes. The MPI can help the effective allocation of resources by making possible the targeting of those with the greatest intensity of poverty; it can help address some SDGs strategically and monitor impacts of policy intervention. The MPI can be adapted to the national level using

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indicators and weights that make sense for the region or the country, it can also be adopted for national poverty eradication programs, and it can be used to study changes over time. About 1.5 billion people in the 102 developing countries currently covered by the MPI—about 29 percent of their population — live in multidimensional poverty — that is, with at least 33 percent of the indicators reflecting acute deprivation in health, education and standard of living. And close to 900 million people are at risk (vulnerable) to fall into poverty if setbacks occur – financial, natural or otherwise. This year we present online trends in multidimensional poverty for 65 countries for which data were available. For many of these countries, multidimensional poverty is on decline – although it still remains affecting many people.

<sup>34</sup> <http://hdr.undp.org/en/content/multidimensional-poverty-index-mpi>

<sup>35</sup> <https://www.malaysiakini.com/news/331755>

<sup>36</sup> <http://www.astroawani.com/berita-malaysia/kronologi-misteri-7-pelajar-orang-asli-hilang-di-pos-tohoi-gua-musang-75841>

<sup>37</sup> <http://www.astroawani.com/berita-malaysia/kisah-sebenar-tragedi-kehilangan-murid-orang-asli-sk-tohoi-76520>

<sup>38</sup> <http://www.mstar.com.my/berita/berita-semasa/2015/11/25/rumah-ibu-orang-asli-tunggu-kelahiran/>

<sup>39</sup> <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>