JARINGAN ORANG ASAL SEMALAYSIA
INDIGENOUS PEOPLES NETWORK OF MALAYSIA

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Universal Periodic Review of Malaysia (2013)
by
Indigenous Peoples Network of Malaysia (JOAS)

Summary
This submission focuses on the human rights situation of indigenous peoples (orang asal) in Malaysia.

Submitting organizations
Indigenous Peoples Network of Malaysia (or Jaringan Orang Asal SeMalaysia, JOAS) is the umbrella network for 62 organisations[1] 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.

Land Empowerment Animals People (LEAP) is a Sabah non-governmental organisation that engages with communities, government, civil society and industry, to build meaningful partnerships and collaborations.

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Context: Basic information about indigenous peoples of Malaysia:
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, our peoples count as among the most poor in Malaysia, due to marginalisation from the mainstream society on account of the non-recognition of our rights as contained in both national and international customary law.

Basis and focus of the Review (UPR)

This review focuses on the human rights situation of indigenous peoples of Malaysia, based on the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) that Malaysia has endorsed

[1] Please see Appendix 1: List of organisations of the Indigenous Peoples Network of Malaysia (JOAS).

twice (30 June 2007 & 13 September 2007), through the Party-driven and intergovernmental negotiation process. Taking into consideration the collective character and unique circumstances of indigenous peoples, UNDRIP articulates key international human rights obligations interalia the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, as well as the Vienna Declaration and Programme of Action.

Violations with Regard to Right to Land

1. Article 26 of the UNDRIP 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.

2. 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 Kuwau[2], Nor Nyawai[3], Sagong Tasi[4], Rambilin[5], and Madeli Salleh[6].

3. However, state governments continue to refuse to recognize decisions by the highest court in Malaysia. In Sarawak, sections 5(3) and (4) of the Sarawak Land Code provides wide power to extinguish all customary land rights[7].

4. The Federal Court unanimously dismissed two appeals by several indigenous communities affected by the Bakun Dam[8] and a proposed pulp mill factory in Tatau[9], that these fore-mentioned sections of the Sarawak Land Code are inconsistent with the provisions on fundamental rights within the Federal Constitution in particular Article 5 which is "right to life". Currently, there are about 200 cases relating to violations with regards to customary native right to land, filed and pending in Sarawak courts.

5. In the Malaysian Borneo state of Sabah, the issuance of communal titles to develop native customary lands under a joint venture scheme with government agencies or private sector, further erodes Sabah's indigenous peoples' right to ancestral lands. The merging of Native Customary Rights into large plantations under this scheme is deemed dangerous to the status of rights claim of indigenous communities to their traditional lands, territories and resources in the future.

6. The indigenous people of the Tongod district of Sabah, comprising of 16 villages, are fighting for control of 38,000 acres of their ancestral land earmarked for an agropolitan project. The villagers are objecting to the offer of communal titles by the state government that has asserted that they have no 'native customary rights claims' over the contested land. Land offered

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[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] Sarawak Land Code pertaining to land acquisition, published online: http://www.landsurvey.sarawak.gov.my/modules/web/page.php?id=232#sect5_3

[8] Bato Bagi & Others V State Government of Sarawak (Federal Court, Putrajaya, September 8, 2011).

[9] Jalang Ak Paran v State Government of Sarawak & Another (Federal Court, Putrajaya, September 8, 2011).

in compensation to the community, is not suitable for planting purposes, as it is located on very steep and hilly terrain[10].

7. As at 31 December 2010, only 14.21 percent of officially-acknowledged Orang Asli lands had been gazetted[11]. Yet these "officially-acknowledged" Orang Asli lands do not cover the full extent of lands, territories and resources traditionally occupied or otherwise used by Orang Asli. There are no gazetted Orang Asli lands in the state of Kelantan despite the continuous inhabitation and occupation of Orang Asli customary lands by more than 10,000 Orang Asli[12].

8. In December 2009, an Orang Asli land titles and development policy was introduced, much to great protests by the Orang Asli, proposing to alienate individual titles of between 2 to 6 acres each to each Orang Asli head of household for cash crop cultivation. More than 2,500 Orang Asli gathered at Putrajaya (nation's administrative capital) to deliver a protest memorandum against the land titles policy to the Prime Minister. Among the complaints against the land titles policy were the potential loss of customary land and communal arrangements, lack of free, prior and informed consent and engagement and selective consultation[13].

9. The right of indigenous peoples to our traditional lands, territories and resources continues to not be recognized by decision-makers, government agencies and at times, the highest court in Malaysia.

Violations to the Right to Free, Prior and Informed Consent (FPIC)

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

11. One such example takes place in the Malaysian Borneo state of Sarawak, where the state and federal governments are embarking on a major industrialization project called the "Sarawak Corridor of Renewable Energy" (SCORE), worth about USD105 billion. The backbone of this project is 50 hydroelectric dams, with a capacity of 20,000 Megawatt (MW). These dams would flood hundreds of square kilometers of forest and farmland and displace tens of thousands of indigenous people[14].

12. A strong local opposition to the dams has since emerged, including a coalition comprising of affected indigenous communities called SAVE Rivers and the Baram Protection Action Committee. SAVE Rivers with the assistance of the Baram Protection Action Committee, has

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[10] See *Communal Titles a disaster for NCR in Sabah*, published online March 3, 2011 http://sabahkini.net/index.php?option=com_content&view=article&id=6370:communal-titles-a-disaster-for-ncr-in-sabah&catid=69:tanah-adat&Itemid=75

[11] Jabatan Kemajuan Orang Asli, *Pelan Strategik Jabatan Kemajuan Orang Asli 2011-2015 [Department of Orang Asli Development Strategic Plan 2011-2015]* (Planning and Research Section, Department of Orang Asli Development, 2011) (translated from the Malay language), 55.

[12] Jabatan Hal Ehwal Orang Asli [Department of Orang Asli Affairs] ('DOA'), *Data Maklumat Asas* [Basic Information data] (Planning and Research Section, Department of Orang Asli Affairs, 2008) (translated from the Malay language), 18.

[13] *POASM and Gabungan NGO-NGO Orang Asli Semenanjung Malaysia* [Peninsular Malaysia *Orang Asli* NGO Network], *Memorandum Bantahan Dasar Pemberimilikan Tanah Orang Asli yang diluluskan oleh Majlis Tanah Negara yang Dipengerusikan oleh YAB Timbalan Perdana Menteri Malaysia pada 4hb Disember 2009* [Protest Memorandum Against Orang Asli Land Title Grant Policy Approved by National Land Council in a Meeting Chaired by the Right Honourable Deputy Prime Minister of Malaysia on 4 December 2009]. (17 March 2010).

[14] Benjamin K. Sovacool & L.C. Bulan, *Settling the Score, The Implications of the Sarawak Corridor of Renewable Energy (SCORE) in Malaysia*, Energy Governance Case Study #04. Lee Kuan Yew School of Public Policy, published 7 May 2012.

since staged many protests against the building of the 1000MW Baram dam, including an attempted handing over of a thousand-signatures petition to the Sarawak Chief Minister[15].

13. Other local opposition include eight Penan and Kenyah-Badeng communities[16] who staged a month-long blockade between September-October 2012, in protest of the 944MW Murum dam being built (about 70% completed) in their ancestral lands. A leaked resettlement action plan for Murum dam revealed that the 353 households (1,415 people) displaced for the dam would receive isolated land inadequate for farming, located on the fringes of oil palm plantations, and the proposed monetary compensation consists a monthly allowance (RM500 or USD161 per family for four years) below recommended minimum wage[17]. No Environmental Impact Assessment (EIA) surveys were conducted prior before commencing on work on the Murum dam. Currently, the Sarawak's environment laws are such that public participation is not mandatory in the EIA process, thus jeopardizing indigenous peoples' right to FPIC.

14. As part of the SCORE initiative, Malaysia's first smelter plant began operation in Balingian, Sarawak in 2009. Since its operation, indigenous peoples living adjacent to the plant have suffered serious acute respiratory problems, including breathing difficulties, coughing, headaches, skin rashes, sores, dizziness and asthma. The toxic smog has polluted nearby rivers that the villagers are dependent for water supply[18]. Since then, there has been a lack of follow-up by the state authorities after the villagers' disclosure of poor health resulting from the operations of the smelter plant.

15. The ancestral lands of the indigenous people of Johor straits, or the Orang Seletar have been appropriated for developers of a vast industrialization project called Iskandar Malaysia. Several hundred people of nine villages staged a historic protest in front of the Johor state assembly, in December 15, 2011. The community currently lives in dire poverty and poor health due to continuous appropriation of their lands, and resulting pollution from industrial projects[19].

16. In the case of the issuance of communal title by the government of Sabah, the indigenous Orang Asal communities have never been consulted hence having no knowledge that the issuance of the title involves a joint venture scheme between the government agencies and the private sector.

17. These case studies are a few examples of the intense pressure that indigenous peoples are facing from vast industrialization projects taking place in Malaysia. Despite vocal public protests and legal action against these projects, Malaysia's State and Federal governments continue to dismiss the legitimate claims of indigenous peoples by often saying that these protests are "instigated by so-called human rights organizations poisoning minds to go against the government and private companies who are trying to bring progress and development to them[20]."

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[15] See SAVE Rivers and Baram Protection Action Committee (BPAC), http://saveriversnet.blogspot.com

[16] Long Wat, Long Luar, Long Tangau, Long Menapa, Long Singu and Long Malim

[17] Full report of the Murum Hydroelectric Project Resettlement Action Plan, published on http://www.sarawakreport.org/rap/

[18] Peoples Documentary, *Report of Field Trip Findings on Pollution by Press Metal Sarawak Sdn Bhd Aluminium Smelting Plant* http://peoplesdocumentary.wordpress.com/2012/02/27/report-of-field-trip-findings-on-pollution-by-press-metal-sarawak-sdn-bhd-aluminium-smelting-plant-at-balingian-mukahsarawak/

[19] See Citizen Journalism Malaysia report, http://cj.my/post/6827/orang-seletar-of-johor-to-hand-over-memo-to-johor-mb/, published December 27, 2011.

[20] Deputy Chief Minister, Datuk Patinggi Tan Sri Alfred Jabu in a Borneo Post article, "*Penans in Baram instigated by a particular group*." Read more: http://www.theborneopost.com/2012/07/23/penans-in-baram-instigated-by-particular-group-jabu/#ixzz24GP6yEYV, published July 23, 2012.

Violation of Right to Self-Governance

18. The indigenous peoples have the right to maintain and develop our political, economic and social systems or institutions, according to Article 20 of the UNDRIP. However, the government has increasingly interfered in our traditional governance systems, especially in the selection and appointment of our customary leaders.

19. Since it was reported in JOAS's UPR review in 2009, no change has been made since it was reported in JOAS's UPR review in 2009, to the provisions of the *Guidelines on the Procedure for the Appointment of Orang Asli Headmen*[21], that 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.

20. The Aboriginal Peoples act of 1954 gave broad range of powers to the Department of Orang Asli Affairs (JHEOA), including the appointment and removal of Orang Asli headmen[22]. Orang Asli headmen and members of village development committees are subsequently required to attend leadership courses conducted by the government to "change their mindset"[23].

21. In Sarawak, the state government deals with dissenting community leaders by taking away their right to govern, and stopping state allowances to headmen. According to the Community Chiefs and Headmen Ordinance, 2004, the governor has the right to designate any person to be Chief or Headmen for any particular community in Sarawak[24].

22. Many indigenous leaders, rightly appointed by their communities, have since been replaced by appointed representatives who carry out the agenda of the state government[25]. This has caused much strife within communities, who do not agree with the newly appointed headmen.

Violations, intimidations and harassment by authorities

23. In trying to protect our rights to our traditional lands, territories and resources, many indigenous peoples have suffered intimidation and harassment by the authorities and law enforcement personnel.

24. In January 2010, despite a court ruling recognising the community's native land rights, the Sarawak state government and police proceeded to demolish 25 individual houses without prior notice[26].

25. In October 2010, Iban campaigners protesting the logging of their native forests by a company owned by the Chief Minister's sister, Raziah Mahmud, were arrested and jailed[27]. They were then accused of setting fire to the logging camp despite no evidence to substantiate the claim. Numpang Suntai, a local Iban activist, and the indigenous rights activist Nicholas Mujah

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

[22] Asian Indigenous & Tribal Peoples Network report, *The Department of Orang Asli Affairs, Malaysia: An Agency for Assimilation,* October 2008.

[23] The Malaysian Insider, Orang Asli poverty to be reduced to zero by 2020, http://www.themalaysianinsider.com/malaysia/article/orang-asli-poverty-to-be-reduced-to-zero-by-2020, published June 23, 2010.

[24] Laws of Sarawak, Chapter 60, Community Chiefs and Headmen Ordinance 2004, http://lawnet.sarawak.gov.my/lawnet_file/Ordinance/ORD_CAP.%2060%20watermark.pdf

[25] Eg. the case of Headman Mathew Uchat Kajan of Long Semiyang in Upper Baram, removed and replaced by John Jau Wan without the community's consent. Reported in the Borneo Post, http://www.theborneopost.com/2011/10/22/keep-calm-over-headman-dispute-villagers-told/#ixzz1bWfix9vw, October 22, 2011.

[26] Mongabay.com, *New report alleges Sarawak government, police and loggers "act in collusion to harass and intimidate indigenous communities",* published on http://news.mongabay.com/2010/0415-hance_sarawak.html, April 15, 2010.

[27] Sarawak Report, *Raziah Grabs Multi-Million Dollar Forest for just RM250,* published on http://www.sarawakreport.org/2010/09/raziah-grabs-multi-million-dollar-forest-for-just-rm-250/, September 25, 2010.

were among those arbitrarily and falsely jailed[28]. Both had been helping the local community with their anti-logging campaign.

26. In April 2010, a report by JOANGOHutan, the Malaysian Network of Indigenous Peoples and Non-Governmental Organisations, stated that in Sarawak; "*it frequently happens that rather than ensuring the law is being upheld, local authorities, police and loggers act in collusions to harass and intimidate indigenous communities"*[29].

27. One such example of intimidation of a JOAS leader includes Matek Anak Geram, an Iban farmer, a member of TAHABAS (Sarawak Native Customary Rights Network) and Committee Member of Jaringan Orang Asli SeMalaysia (JOAS) who was arrested by the police on 13 August 2009 for the crime of allegedly restraining the workers of an oil palm plantation. Matek and his immediate family have been guarding their property against an oil palm plantation company, Saradu Plantations who have been encroaching on their native lands.

28. Indigenous leaders within JOAS have also faced discrimination and harassment by the government. Their names are on the blacklist of the Immigration Department, resulting in questioning at various entry points between Sabah, Sarawak and West Malaysia. Sarawak in particular, often exercises her right to deny entry to indigenous rights and human rights activists into the state.

Violation to the Right of Citizenship

29. Many indigenous Malaysians are not documented (i.e. not having proper identification papers), thus depriving them of access to basic human rights and government services such as healthcare, housing, education, clean drinking water, electricity or the right to vote.

30. Since reported in the last JOAS UPR submission in 2009, there has been little attempt by the government to ensure undocumented indigenous people are given their right to citizenship.

31. In Sarawak, the interior Eastern Penan, particularly have been systemically denied identity cards by the government. About 63% of Penan households surveyed in 2008[30] were described as living in hardcore poverty but corrupt officials continue to charge exorbitant fees for identity cards, when in fact this government provision is free. Over 80% of the Penan in the area are without identity cards, and only 2% of children attend school[31].

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[28] Free Malaysia Today, *Activists sue police for false imprisonment*, published on http://www.freemalaysiatoday.com/category/nation/2012/04/14/activists-sue-police-for-false-imprisonment/, April 14, 2012.

[29] JOANGOHutan report, *Logging in Sarawak and the Rights of Sarawak's Indigenous Communities,* available online: http://www.bmf.ch/files/news/Logging_in_Sarawak_JOANGOHUTAN_report.pdf, published April 2010.

[30] An independent fact finding mission report by the Penan Support Group, FORUM-ASIA and Asian Indigenous Women's Network (AIWN), *A Wider Context of Sexual Exploitation of Penan Women and Girls in Middle and Ulu Baram, Sarawak, Malaysia*, pg 20, published 2010, available online: http://www.scribd.com/doc/33986536/A-Wider-Context-of-Sexual-Exploitation-of-Penan-Women-and-Girls-in-Middle-and-Ulu-Baram-Sarawak-Malaysia

[31] Full report of the Murum Hydroelectric Project Resettlement Action Plan, published on http://www.sarawakreport.org/rap/

Recommendations

To ensure that the rights of indigenous peoples are protected in Malaysia, UN assistance, particularly from the United Nations Commission on Human Rights, UN Malaysia and other relevant bodies, including bilateral governments, is needed in areas such as advocacy, advisory and capacity building:

i. With the full and effective participation of indigenous peoples, Malaysia should assess and review its domestic and state laws to ensure the best compliance and interpretation of the UNDRIP at the national level, with an aim to providing a report on this to the OHCHR, the PFII and other relevant bodies;

ii. Advocacy of Free, Prior and Informed Consent (FPIC) from indigenous peoples in relation to any industrialization and agropolitan projects that would affect their livelihoods and ancestral lands;

iii. Policy dialogue with decision-makers and sensitization of political leadership to indigenous rights at all levels;

iv. Research studies and surveys of identification of loss of indigenous rights to current economic development and alternative suggestions to sustainable economic development reflective of meaningful indigenous participation;

v. Advocacy of restoring indigenous right to self-governance, through representatives chosen by communities in accordance with their customary procedures;

vi. Advocacy of the right of citizenship for undocumented indigenous peoples of Malaysia;

vii. Capacity building of indigenous communities and networks towards self-determination;

viii. Advocacy of non-discrimination and non-harassment of indigenous peoples by government and other parties.

These UN interventions will contribute to expanding opportunities for indigenous peoples to participate meaningfully in the development of Malaysia, while maintaining our laws, customs, and identity.

Thank you.

Thomas Jalong
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Jaringan Orang Asal SeMalaysia (JOAS)
Indigenous Peoples Network of Malaysia

11 March 2013

Appendix 1: *List of organisations of the Indigenous Peoples Network of Malaysia (JOAS).*

1. PR[32] Pusakag,
2. PR Tonibung,
3. PR Monungkus,
4. PR Gompito,
5. PR JGPT Tongod,
6. PR Tinungkusan,
7. PR G5 Simbuan,
8. PR Tinipot,
9. PR Piroton Dagaling,
10. PR Nokiikito,
11. PR Mukakas,
12. PR Mamakat,
13. PR Balat – Kuamut,
14. PR G5 Mangkawago,
15. PR AARP Ulu Senagang – Mongool,
16. PR Mongopud,
17. PR Alab Lanas,
18. PR G8 Komokitukod,
19. PR Kelab Belia Kampung Gana,
20. PR G14 Ulu Tomani,
21. PR Kawakahan,
22. G4-Kanibungan,
23. PR Nambayan,
24. PR Sinungkalangan,
25. JKKK Kg Orang Asli P. Kempas,
26. Bukit Cheeding,
27. Jaringan Orang Asli Bukit Tampoi,
28. Jaringan Orang Asli Sebir,
29. Jaringan Kg Orang Asli Perak,
30. Jaringan Kg Orang Asli Pahang,
31. Jawatankuasa Bertindak Kg Payah-Rekoh-Berdut,
32. SPNS (Sinui Pai Nanek Sengik Perak),

[32] PR = Pertubuhan Rakyat or Community-based organizations

33. Gabungan Orang Asli Johor Selatan,
34. Tompoq Topoh,
35. Gabungan Orang Asli Pahang,
36. JKKK Pos Simpor,
37. Gua Musang,
38. Sarawak Keruan Organisation,
39. Kampung Bukit Peninjau,
40. PDBT,
41. PPU,
42. Indigenous People Development Centre,
43. Kampung Bukit Limau – Sungai Nat,
44. Pekan Kanowit,
45. SILOP,
46. PANGAU,
47. WADESA (Wanita Desa Sarawak),
48. IPIMAS,
49. Persatuan Penduduk Balingan Satu,
50. ADC MERADONG-JULAU,
51. Jaringan Orang Asal Baram,
52. TAHABAS (Jaringan Tanah Hak Adat Bangsa Asal Sarawak),
53. Rumah Rajang dan Tatu,
54. JKKK Pusat Krokong,
55. Tring-Kameh,
56. Jawatankuasa Tindakan Rakyat Baram,
57. Jawatankuasa Bertindak Rumah Ampau,
58. Jawatankuasa Bertindak Hak Kg Spaoh-Benat,
59. Jawatankuasa Bertindak Melindungi Hak Kawasan Penduduk Tutoh-Apoh,
60. MEBUSA,
61. Sarawak Indigenous Youths Network,
62. JKKK Pusat Jagoi.

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