

# Observations on the State of Indigenous Peoples' Rights in Malaysia

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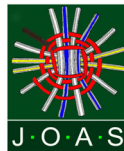
Reporting Organizations:



**Cultural Survival** is an Indigenous-led NGO and U.S. registered non-profit, advocating for Indigenous Peoples' rights and supporting Indigenous communities' self-determination, cultures, and political resilience since 1972. For 51 years, Cultural Survival has partnered with Indigenous communities to advance Indigenous Peoples' rights and cultures worldwide.

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**Jaringan Orang Asal Semalaysia (JOAS)**, or the Indigenous Peoples Network of Malaysia is the Umbrella Network for 105 Orang Asal (Indigenous Peoples) community-based Organizations and communities. It represents Indigenous Peoples and protects their rights via campaigns, capacity-building, networking, and research. Established in 1992, JOAS campaign and advocacy focus around the recognition of customary land, development policies and handling conflicts particularly with the private sector or business sector.

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**PACOS TRUST** is a community-based organization dedicated to supporting indigenous communities since 1987. Formally registered in 1996 under the Trustees Ordinance of Sabah, Malaysia, PACOS TRUST supports over 100 community organizations or peoples' organizations and 23 community learning centers in 17 districts involving 23 geographical areas.

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**MOPOT-Moningolig Pogun Tokou** (in Dusun, Defending the Land of Our Ancestors) based in Tambunan Sabah, defends the fundamental freedoms and rights of the natives of Tambunan, a customary territory of Dusun in the valley north of the interior plains of Sabah.

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## **I. Executive Summary**

Malaysia voted in favor of adopting the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007 and endorsed the Outcome Document of the World Conference on Indigenous Peoples in 2014. Indigenous Peoples in Malaysia hoped they would be protected by Malaysian law and policy after the 2018 election, which marked the first time in the country's history that a new government administration was successfully formed. But two years after being elected, the government toppled. The rapid shift in the dynamics of politics and power has also had a negative impact on the advancement of Indigenous Peoples' rights in Malaysia. Indigenous Peoples across Malaysia experience an array of human rights violations, including a lack of recognition of their ancestral and customary lands and access to education and basic amenities. They also face harassment, intimidation, arrest, and violence as they peacefully seek to defend their customary land. Indigenous Peoples continue to face violation of economic, social and cultural rights including the right to natural resources. Their land, forests, waters and natural resources are under threat due to aggressive development logging, rubber plantations and declarations of national parks and protected areas. Such development projects have been undertaken in violation of their right to self-determined development and are planned without proper Free, Prior and Informed Consent (FPIC) nor meaningful participation or representation in the planning, policy making and implementation.

## **II. Background**

Malaysia is a federation comprising 13 states: 11 states in Peninsular Malaysia and 2 states on the island of Borneo—Sabah and Sarawak—which are referred to as East Malaysia or Borneo Malaysia. There are various groups of Indigenous Peoples in Malaysia. The Orang Asli—or the aboriginal people—are the Indigenous Peoples of Peninsular Malaysia; the Dayaks and/or Orang Ulu or “natives” are the Indigenous Peoples of Sarawak; and the “natives” or Anak Negeri are the Indigenous Peoples of Sabah. They are collectively known as Orang Asal with over 100 different ethnic and sub-ethnic groups. Indigenous Peoples in Malaysia make up 11 percent of the total population of the country, which is 32.7 million.<sup>1</sup> The Orang Asli or Aborigines in Peninsular Malaysia are recognized as Indigenous Peoples under the Aboriginal Peoples Act, 1954. There are 18 Orang Asli subgroups within the Negrito (Semang), Senoi, and Aboriginal-Malay groups. The government does not categorize Malays as Indigenous given their political, social, and economic power.<sup>2</sup>

In Sabah and Sarawak, the word “native” is the commonly used term to refer to Indigenous Peoples, in alignment with the Malaysian Constitution, 1957, which states in its Article 161 that “native” means Indigenous to Sarawak or to Sabah.<sup>3</sup> In Sarawak they are referred to as Dayak and/or Orang Ulu and include the Iban, Bidayuh, Kenyah, Kayan, Kedayan, Lunbawang, Punan,

Bisayah, Kelabit, Berawan, Kejaman, Ukit, Sekapan, Melanau and Penan. In Sabah there are 39 different native peoples or Anak Negeri, including the Dusun, Murut, Paitan and Bajau, who are recognized as such by the Federal Constitution.<sup>4</sup>

The Indigenous Peoples of Malaysia have distinctive cultural and historical characteristics which distinguish them from other demographic groups. The National Land Code, the principal legislation governing land in Peninsular Malaysia, doesn't recognize the customary land rights of Orang Asli, resulting in insecurity of customary land tenure. Under the Aboriginal Peoples Act, 1954 (revised in 1974), "aboriginal community" is defined and some land is recognized as "aboriginal reserves" or "aboriginal areas." However, authorities have often revoked lands protected under reservation and have used them for development purposes, regularly not applying FPIC and without compensation to the Orang Asli. The Aboriginal Peoples Act, 1954, doesn't apply to Sabah and Sarawak. Article 161(A) of the Federal Constitution provides for the special situation of natives of Sabah and Sarawak. In Sabah the state law—the Sabah Land Ordinance, 1930 (revised in 1996)—and in Sarawak the Sarawak Land Code, 1958 (amended in 2018) recognize native customary land rights. Despite this recognition, in practice, government authorities still control land use decisions. They can extinguish those rights at will, converting native customary land to reserve land and granting logging concessions, prioritizing large-scale resource extraction and plantations. Although some Indigenous people are relocating to the periphery of cities, most of them live in rural and sometimes remote areas. Many Indigenous Peoples depend upon subsistence lifestyles, including hunting, gathering, swidden agriculture, and other practices.<sup>5</sup>

### **III. Previous relevant UPR recommendations**

In previous UPR cycles, Malaysia supported many recommendations relevant to Indigenous Peoples, but the level of implementation is unsatisfactory.

- Laos, 3rd cycle: *Strengthen policies and measures for the well-being of the Indigenous Peoples in Malaysia to uplift their economic and social status and benefit from the country's economic development.* Partially implemented.
- Singapore, 3rd cycle: *Expand its existing economic empowerment programs to cover more groups of vulnerable women, such as single mothers and indigenous women.* Partially implemented.
- Bolivia, 3rd cycle: *Continue the implementation of plans and strategies to strengthen the economic and social well-being of indigenous peoples.* Partially implemented.
- Russian Federation, 3rd cycle: *Provide active support to vulnerable groups of the population and elderly persons, persons with disabilities, single mothers and indigenous population and facilitate the broadening of their rights and opportunities through education and training in skills in demand in order to develop human potential.* Partially implemented.

- Kenya, 3rd cycle: *Undertake administrative, policy and legislative measures to guarantee freedom of religion and belief for all in Malaysia, consistent with the Constitution.* Partially implemented.
- Belarus, 3rd cycle: *Continue the implementation of measures aimed at strengthening inter-ethnic and interreligious interaction in the country.* Partially implemented.
- Cambodia, 3rd cycle: *Continue and strengthen efforts in promoting the culture of mutual respect and peaceful coexistence among different religious communities.* Partially implemented.
- Uruguay, 3rd cycle: *Continue developing efforts to guarantee the freedoms and safety of human rights defenders.* Partially implemented.
- Switzerland, 3rd cycle: *Better protect journalists and human rights defenders, in particular by abolishing travel bans they are subject to and amending certain laws, such as the Peaceful Assembly Act and the Penal Code.* Partially implemented.

#### **IV. Ongoing Rights Violations**

##### **A. Violation of Rights to Autonomy over Land and Resources**

###### **A.1 Lack of Indigenous Land Recognition by Law**

*UNDRIP Arts. 8(2)(b), 10, 26, 27, 28, 29, and 32*

Indigenous Peoples' rights to land and natural resources are partially recognized by Malaysia's State and Federal Constitutions but not implemented in practice. They continue to face obstacles to fully realize their land rights,<sup>6</sup> as the federal government still holds power over land. On the other hand, this power does not mean that the federal government is necessarily able to act in favor of Indigenous Peoples; a Court of Appeals judgment in 2021 ruled that the federal government did not have legal standing to sue on behalf of the Temiar Peoples in a land dispute.<sup>7</sup> Article 13 of the Constitution affirms the right to property of Malaysian citizens, including Indigenous Peoples and guarantees the right to “adequate compensation” in the event of the State’s “compulsory acquisition or use of property.”<sup>8</sup> Article 83 of the Constitution provides the federal government, in consultation with the state government, the power to acquire, for public purposes, land that has been designated for large-scale development projects, such as for the creation of dams, highways and national parks.<sup>9</sup> Most of the land targeted for development is Indigenous Peoples’ land, where raw materials such as timber and minerals have not yet been exploited.

In Peninsular Malaysia, under National Land Code, 1965, all lands not owned by title belong to the states and there are no clear provisions recognizing customary land of Orang Asli which has resulted in insecurities in their land tenure. The National Forestry Act, 1984, further grants the state government authority over forest products on reserved areas, restricting access to forest foods for Orang Asli and hindering their subsistence. Under the Aboriginal Peoples Act, 1954 (revised

in 1974), the government has gazetted some land as “aboriginal reserves” or “aboriginal areas” but authorities have often revoked lands protected under reservation to use for development purposes, regularly not applying FPIC and without compensation. Often, native communities are not aware that their customary land has been included in a reserve until the logging companies come to log the area. Because of this, disputes between Orang Asli and forest authorities, including court cases, have occurred in recent years. A January 2023 order of the Court of Appeal forced the state government to provide amenities and pay compensation to the 135 Orang Asli families for the loss of their customary lands.<sup>10</sup> Around 200 Indigenous people from Perak state protested the government's failure to protect their customary lands from logging in July 2022 at the state legislative assembly and submitted a memorandum to legislators to stop the logging.<sup>11</sup>

In Sabah and Sarawak, the state law recognizes Indigenous Peoples’ native customary rights and the right to use their native court system but Indigenous Peoples do not have ownership rights. The government still has the final say in land use decisions and regularly violates customary rights, converting native customary land to reserve land, granting logging concessions, and sometimes this information is presented to communities by simply gazetting the change, after which there is an opportunity to submit objections, but affected people are seldom notified directly.

In the state of Sabah, the Sabah Land Ordinance, 1930 (revised in 1996), looks into the ingredients of native customary rights and the importance placed on them that reflect the ways of life of the Indigenous Peoples of Sabah or as they are aptly and legally referred to, the natives of Sabah.<sup>12</sup> They have collective rights to resources, grazing lands whose use is demonstrated, fruit trees that natives have tended, accessing burial grounds and shrines, water catchment and other communal purposes, but they do not have ownership rights. For years, Indigenous Peoples in Sabah have fought to defend their customary lands.

The primary legislation governing land matters in the state of Sarawak is the Sarawak Land Code, 1958 (amended in 2018).<sup>13</sup> It recognizes native customary land rights for the natives of Sarawak although the legislation has conflicting definitions of what constitutes native customary rights and native customary land. According to Sarawak Land Code, native customary land includes communal territories, village forest reserves and farm lands created before 1 January 1958, whereas any uncultivated land or the virgin forests are defined as state land and government authorities have leased large tracts of native customary land to private companies. Indigenous Peoples’ sovereignty over land is not recognized without a state permit and the Sarawak Land Code states no new customary land rights can be created without a such permit after 1958,<sup>14</sup> meaning the state has absolute power on native land recognition. Native lands are used for palm oil plantations, logging, hydroelectric projects, or roads which encroach on village forests reserves, water catchment areas and farmlands. This has resulted in tension between the government, private investors, and natives, who have continued the claims for customary land.

The battle for legal recognition of Indigenous land rights in Sarawak is long and ongoing. Some examples of this struggle were two rulings refusing to recognize the customary rights of the Iban People on their ancestral lands: one from the Sarawak Federal Supreme Court in 2021 and a previous one from the Federal Court in 2019.<sup>15</sup> The Sarawak government has continually refused to recognize native customary rights, and the 2019 Tuai Rumah Sandah case is a precedent-setting case that may jeopardize other customary rights decisions in natives' favor.

On September 9, 2022, Penan Indigenous Peoples set up roadblocks at Long Ajeng in the Upper Baram region of Sarawak state, which is designated as a protected area, to stop a timber company from logging on land in Malaysian Borneo. Another blockade was erected in Long Pakan in the middle Baram region a few weeks later. According to villagers, the Samling timber corporation illegally undertook a logging operation without FPIC. The community filed police reports immediately, but no action was taken and the community set up blockades. Following the incident, 12 community leaders from around the state sent a letter to Chief Minister Abang Johari Tun Openg, asking the government to stop Samling from logging in the Upper Baram region.<sup>16</sup>

## **A.2 Indigenous Land Rights Violations in the Name of Conservation**

*UNDRIP Arts. 8(2)(b), 10, 25, 26, 27, 29*

Indigenous Peoples face constant threats and have long struggled as their customary land has been transformed into protected areas, forest reserves and national parks, denying them access to natural resources without FPIC. They have faced sudden evictions from lands and forests where they have lived for years and have been portrayed as opponents of conservation.

According to the Ministry of Natural Resources and Environment, there are 467 terrestrial protected areas encompassing 4.35 million hectares of land area.<sup>17</sup> The Department of Wildlife and National Parks and the Department of Forestry are the primary agencies with jurisdiction over terrestrial protected areas, although state governments are also becoming involved in protected area management and decision making. In Peninsular Malaysia, there are 35 protected areas totalling 714,253 hectares.<sup>18</sup> The protected area system in Sarawak covers about one million hectares—8 percent of Sarawak's total area—which includes National Parks, Wildlife Sanctuaries, Wildlife Rehabilitation Centres, Nature Reserves and Marine Parks and is managed by the Sarawak Forestry Corporation. National Parks and Nature Reserves are open to the public for recreation, but the Wildlife Sanctuaries have limited access; they are reserved for conservation and research. In Sabah about 70,000 ha of forest is considered Wildlife Sanctuary, about 909,000 ha is considered as protected forest reserves and about 266,000 ha are considered Parks, including coral reefs.

Indigenous communities living in and around Sabah are restricted in terms of access to their traditional land. The communities living in Pahang National Park, especially in the Kuala Tahan

vicinity, state that there was insufficient participation in the governance, management and decision-making of the protected areas. Orang Asli were sidelined.<sup>19</sup> Previously, the land was used for cultivating, collecting forest products, hunting and more, but now it is inaccessible. As a result, Indigenous Peoples are deprived of their livelihood source. Another case is that of Taman Negara national park, one of the world's oldest rainforests, which is considered customary land for a number of Orang Asli and where logging is dangerously reaching the limits of the park.<sup>20</sup>

Many Indigenous Peoples in Malaysia acquire their food, medicine, fuel, construction materials, and other basic living materials from plants in the forests. They rely heavily on the land around them for their daily needs as their livelihoods are also based on hunting and fishing and some still live in the parks. For example, the Penan, Berawan, Iban and other Dayak communities still live in Mulu National Park and Batang Ai National Park. In Sabah, the Kadazan, Dusuns and Muruts communities have been living for generations in Crocker Range National Park. In Peninsular Malaysia, Orang Asli living along the Tasek Bera Park face conflict with forest authorities, as they are denied access to forest resources.<sup>21</sup>

The Federal Constitution has empowered state governments to autonomously enact and implement their own laws and policies to manage lands and forests. Relevant state departments managing protected areas are thus governed by different enactments, which are not in line with UNDRIP and do not ensure Indigenous Peoples' right to FPIC nor protect their interests, needs and rights.

### **A.3 Encroachment of Ancestral Land by Logging and Plantation Companies**

*UNDRIP Arts. 8(2)(b), 10, 20, 26, 27, 28, 29, and 32*

Indigenous Peoples continue to face threats from logging activities and agricultural corporations, which clear forest land for palm oil, pulp, and rubber plantations and other projects planned by the government to misappropriate the natural resources in Indigenous Peoples' territories. The land, rivers and natural resources are Indigenous Peoples' lifeline, taken away from them without consent. The forest is still a home for many Indigenous Peoples in rural Malaysia, but they have been forced to lose control over their land and traditional areas. Palm oil and rubber plantations are sited in the hills and rural areas of the whole country while timber plantations are placed mostly in Sabah and Sarawak. The government of Malaysia has prioritized large-scale economic development initiatives, infrastructure projects and extractive industries which have caused displacement and associated harms to Indigenous Peoples who live in and near the forests collecting food and medicine, and whose culture and spirituality are derived from this close affinity with the forests. Conglomerates leased and supported by governments have massively cut down forests and tropical lands to plant palm oil, rubber and timber which has resulted not only in violations of Indigenous Peoples rights but also in loss of biodiversity.<sup>22</sup> Over the decades, deforestation for plantations has displaced Indigenous Peoples from their customary land and they have been detained for erecting barriers to logging concessions. State governments are responsible



for granting logging licenses and benefit economically. They are backed by the federal government, despite the courts repeatedly stating Indigenous Peoples rights should be protected.<sup>23</sup> However, logging and plantation activities show that there is a blatant disregard for Indigenous Peoples' rights to establish their own priorities and plans for the use of their lands, territories, and natural resources.

## **B. Violation of Right to Freedom of Religion and Belief**

*UNDRIP Arts. 5, 8(2)(a), 11, 12, 15, and 34*

Due to the government's assimilation program, Malaysia's Indigenous Peoples are losing their cultural identity, heritage, and rights to practice their unique religion and customs. The Constitution of Malaysia recognizes Islam as the official religion of Malaysia. Article 3 (1) states, "Islam is the religion of the Federation but other religions may be practiced in peace and harmony in any part of the Federation."<sup>24</sup> The right to freedom of religion is also guaranteed under Article 11 (1) which states, "every person has the right to profess and practice his own religion."<sup>25</sup> This provision confers personal liberties on every citizen of the nation to profess and practice the religion of their choice, but Article 11 (4) restricts non-Muslims' right to convert people to their religions, while people are allowed to be converted to Islam.

The Jabatan Kemajuan Orang Asli (JAKOA, Department of Orang Asli Development) has practiced a policy of discrimination, wherein Orang Asli who convert to Islam are rewarded with housing, job promotion and other material benefits.<sup>26</sup> There are also cases where religious minorities were prevented from expressing their faith openly and from carrying out their faith-based events and programs.<sup>27</sup> If a spouse refuses to convert to Islam, marriage registration is refused, and if a child is born to a couple without a marriage certificate, the couple is not able to obtain the birth certificate. In order to obtain the child's birth certificate, the spouse is then forced to convert to Islam and eventually the child will be registered as Muslim.<sup>28</sup> The Center for Orang Asli Concerns (COAC) has received numerous such cases of involuntary or forced religious conversion by government officials. Such difficulties exist but people do not always report them because of fear of reprisal.<sup>29</sup>

Islam dominates Malaysian states except Sarawak, where the majority is Christian. In Sabah, there are also Buddhist minorities especially in the state of Penang and Selangor.<sup>30</sup> Thousands in Malaysia, including Indigenous people, have been incorrectly registered as Muslim.<sup>31</sup> Most Indigenous people of Malaysia (more specifically Orang Asli) are non-Muslim<sup>32</sup> but have been forced to compromise their identity, practicing their religious choice privately without legal recognition for fear of societal repercussions.

If a person in Malaysia wishes to convert away from Islam, they are subject to approval from the Syariah court, which may involve detention for up to three years as well as counseling to attempt

to dissuade them. In some states, apostasy can be punished by fine and incarceration.<sup>33</sup> Many parents decide not to register their children with the National Registration Department due to these difficulties and out of concern that they may meet the same fate. Children may lose their citizenship in the future and be denied their fundamental rights, including admission to public schools and job stability if they are unable to obtain identity documents that reflect their genuine religious identities. A group of Orang Asli and other Indigenous communities delivered a memorandum to the parliament in July 2019 requesting the government stop sending Muslim preachers to their communities to convert them.<sup>34</sup>

### **C. Violations of Indigenous Women’s Rights and Discrimination in Accessing Healthcare**

*UNDRIP Arts. 7(2), 21, 22, 23, and 24*

Malaysia is party to the CEDAW, but Indigenous women continue to face discrimination in accessing healthcare services and maternity care facilities and violations of their bodily autonomy and their sexual and reproductive rights. There are cases where Orang Asli women were forced to accept unwanted family planning and birth control medications by health authorities, causing damaging side effects, without information on the side effects and without the opportunity to give or withhold consent.<sup>35</sup> In 2019, An Orang Asli woman activist from Gua Musang, Kelantan (the northeastern province of Peninsular Malaysia), claimed that nurses had threatened women in her village, informing them they would lose their medical cards if they didn't use birth control.<sup>36</sup> In July 2019, the representatives from Orang Asli villages submitted a memorandum to the Ministry of Health to address the issues of forced birth control faced by Orang Asli women. The then-Health Minister stated that birth control medication given to Orang Asli women was meant to reduce pregnancy-related anemia, which is not an excuse for forcing medical care without consent.<sup>37</sup>

Indigenous women in Malaysia continue to suffer emotional, sexual and physical violence and lack necessary facilities to obtain support and protection. Gender-based violence against Indigenous women and girls is underreported and Indigenous women receive no remedies for the violence they experience due to fear of stigmatization and language barrier.<sup>38</sup> Trafficking is one form of violence against Indigenous women and girls.<sup>39</sup> Children, especially girls from rural areas, are particularly vulnerable to trafficking for sex slavery.<sup>40</sup> According to the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants, from 2015 through June 2021, a total of 1,854 trafficking cases were reported.<sup>41</sup> The government launched the National Anti-Trafficking in Persons plan (2021-2025) for tackling human trafficking, but this has not improved Malaysia's performance.<sup>42</sup> No disaggregated data on trafficking cases is available, but in Malaysia, rural women, including Indigenous women, are considered to be socially and economically disadvantaged compared to their urban counterparts due to limited access to economic resources and opportunities. As a result of these inequalities, violence, including trafficking, affects them disproportionately. Child marriage also remains an issue facing children—primarily girls, but all

children are affected—across Malaysia,<sup>43</sup> including Indigenous children.<sup>44</sup> Poverty and lack of educational access have been identified as key drivers of child marriages in Malaysia, resulting in a vicious cycle in which underage parents are unable to continuing attending school and are burdened with the heavy responsibility of supporting their families with few resources.<sup>45</sup>

#### **D. Violation of Rights to Education in Mother Tongues**

*UNDRIP Arts. 13, 14 and 15*

Indigenous children in Malaysia are falling behind in access to quality education. Children’s right to education is protected in Malaysian law<sup>46</sup> and Indigenous Peoples have the right to create and manage their own educational institutions and systems that deliver education in their mother tongues in a way that is conducive to their cultural teaching and learning techniques. Similarly, under the Aboriginal Peoples Act, 1954 (revised 1974), section 17, the Malaysian government has the duty to make education available in Indigenous languages. However, education is still only available in Malay and English. Indigenous Peoples are not given the opportunity to create a curriculum and establish educational institutions based on their own cultures and thus Indigenous children lag behind in access to education and learning outcomes, with significantly higher rates of drop-outs after primary school in comparison with non-Indigenous children. According to data from the Ministry of Education, in the general population in 2021, completion rates for primary, secondary, and upper secondary education were 99%, 99.8%, and 97.8%, respectively,<sup>47</sup> while among Orang Asli students, 42% did not complete up to form 5.<sup>48</sup> Meanwhile, an analysis conducted by the Jabatan Kemajuan Orang Asli (Department of Orang Asli Development) shows that only 2,062 of the 3,200 (64%) Orang Asli children who entered Form One in 2014 across the peninsula finished school through Form 5.<sup>49</sup>

Following a visit to Malaysia in 2017, then Special Rapporteur in the field of cultural rights, Karima Bennoune, brought attention to the fact that Indigenous children, particularly Orang Asli children, were often pressured into assimilating into mainstream schools (including to join Muslim prayers and wear headscarves) and that there is “a dearth of representations of their history and ways of life in the curriculum.”<sup>50</sup> She also expressed her concerns that the bullying of Orang Asli children in schools is a factor leading to Orang Asli children dropping out.<sup>51</sup>

#### **E. Violation of Rights to Self-Determination**

*UNDRIP Arts. 3, 4, 5, 18 and 35*

Indigenous Peoples in Malaysia want some degree of self-determination in decision-making, self-government and autonomy over matters that concern them, as well as ownership of their resources and territory, yet they have no self-government, autonomy nor power to influence the policies and decision-making. The Orang Asli do not have the opportunity to choose their representatives through their own procedures, including electing a representative to the senate; rather, the selection

of the senator is made by a minister on the recommendation of the Jabatan Kemajuan (JAKOA), the Department of Orang Asli Development, the government agency responsible for Orang Asli affairs.<sup>52</sup> Article 45 (2) of the federal constitution supports that senators who are distinguished professionals in different areas are “capable of representing the interests of aborigines” but there are no reserved seats for Indigenous Peoples to represent themselves.<sup>53</sup> This has resulted in a lack of participation of Orang Asli in the senate and has further weakened the protection of their rights, as they fail to participate in the deliberations, discussions and decisions on the laws that affect them.

The right to self-identify as Orang Asli has been ignored through legislation. The Aboriginal Peoples Act, 1954, Section 3 (3) states, “any question whether any person is or is not an aborigine shall be decided by the Minister.”<sup>54</sup> Furthermore, the same Act gives extensive power to the Director-General of JAKOA at the central level for overall administration, welfare and advancement of the Orang Asli, which further curtails Indigenous Peoples’ rights to pursue their lives, customs and beliefs.<sup>55</sup>

At the village level, by customary practices the Batin–village headman of Orang Asli–would be responsible for exercising overall authority in all matters relating to Orang Asli’s customs and beliefs in their village, holding the position either by inheritance or chosen by members of the community through their own procedures. However, at present, the village headman or Batin is chosen and confirmed by the Minister for Rural and Regional Development to head the Village Development and Security Committee (Jawatankuasa Kemajuan dan Keselamatan Kampung-JKKK). The Minister can also remove the headman from this leadership structure.<sup>56</sup> The Aboriginal Peoples Act has violated the Orang Asli’s right to self-governance and their freedom to choose their leaders or representatives in accordance with their own procedures so as to maintain and develop their own Indigenous decision-making institutions.

Similarly as in Peninsular Malaysia, in Sarawak the state governor appoints Sarawak Community Chief and Headmen,<sup>57</sup> and in Sabah, native chiefs and headmen are appointed by the state government to carry out duties related to the welfare and security of the community under the headman’s responsibility.<sup>58</sup> Since they are state appointed representatives, they carry out the government’s agenda and have replaced Indigenous leaders who were chosen by their communities.

## **F. Threat to Indigenous Rights Defenders and Freedom of Expression**

*UNDRIP Arts. 1, 2, 7, 10 and 19*

Indigenous land and rights defenders in Malaysia are struggling and paying a heavy price, including various forms of harassment, physical violence, and murder, to claim and realize their right to customary land and natural resources.<sup>59</sup> On July 4, 2023, an Orang Asli man in Kampung

Ganoh in Bukit Ibam was arrested for protesting against logging activities. He was taken into custody for three days and released after several civil society organizations advocated on his behalf.<sup>60</sup> The Pahang Forestry Department had approved logging in a water catchment area near the village without community consent.

Malaysian authorities often use the Peaceful Assembly Act, which prevents the exercise of freedom of assembly,<sup>61</sup> and the Defamation Act, 1957,<sup>62</sup> to discourage public participation and intimidate protestors.<sup>63</sup> In response to unexpected social events, the Peaceful Assembly Act imposes requirements on assembly organizers to notify authorities 10 days before the gathering. Protestors who fail to comply with the requirements are liable to a fine of up to 10,000 Ringgit.<sup>64</sup> The Peaceful Assembly Act was amended by the Malaysian government in 2019 and some restrictions were loosened; however, many remain in place and the law is still used to persecute participants in protests.<sup>65 66</sup>

Similarly, authorities use the Sedition Act, 1948, and the Communications and Multimedia Act, 1998, to suppress critical offline and online voices spoken against the government labeling them as “fake news,” “false or illegal.”<sup>67</sup> Following the general election in 2018, the implementation of laws that restrict freedom of expression, like the Sedition Act or the Communication and Multimedia Act, were put on hold and promises of reforms were made. The restrictive Anti-Fake News Act, 2018, was repealed in 2019, but investigations against media organizations<sup>68</sup> and raids with confiscation of publications<sup>69</sup> continue.

## **V. Recommendations**

We urge UN Member States to make the following recommendations to Malaysia:

1. Recognize Indigenous Peoples’ customary land rights and customary land tenure of Orang Asli and natives of Sarawak and Sabah.
2. Ensure relevant stakeholders, including legal experts and policymakers, obtain FPIC from Indigenous Peoples to ensure that any legal amendments and legislation reflect their aspirations and rights.
3. Address violations of Indigenous Peoples’ right to education by introducing education in Indigenous languages and addressing high dropout rates of Indigenous children.
4. Take steps to amend laws and policies regulating forests and conservation and protected areas to ensure Indigenous Peoples' right to Free, Prior and Informed Consent and protect their access to land and resources in consultation with concerned Indigenous Peoples.
5. Ensure that Indigenous communities are not displaced for infrastructure or large scale development projects and that such activities always take place based on fulfillment of Free, Prior, and Informed Consent of the concerned communities.

6. Guarantee the right to freedom of religion and belief, including the freedom to have or to adopt a religion or belief of their choice without discrimination.
7. Ensure that Indigenous women have access to healthcare including affordable and good quality services provided in a culturally appropriate manner.
8. Take initiatives to combat human trafficking, in particular of women and girls and with special attention to Indigenous women and girls from rural areas.
9. Guarantee the freedom and safety of Indigenous land and environmental defenders, amending laws curtailing freedom of opinion, expression and peaceful assembly.
10. Guarantee the right of Indigenous Peoples of Malaysia to self-determination, autonomy and participation in government bodies and decision-making as provisioned in UNDRIP and other international law standards.

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