

# 2g1: Indigenous Peoples

## Preamble

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The Orang Asli population numbered about 217,000, according to 2019 estimates. Comprising 18 tribes scattered across the rural areas of the peninsula, they remain among the poorest and most disadvantaged of marginalised groups in the country. They lack basic facilities such as electricity, clean water supply, tarred roads to their villages, access to health clinics and education. For decades, their rights as indigenous people have been violated through the lack of official recognition of their right to customary land territories, which are mostly owned by the government although Orang Asli customary land and laws existed long before the independence of Malaya. Malaysia adopted the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007 but continues to lag behind in implementing it as the Orang Asli face an ongoing war against increased encroachment of their customary lands for economic activities such as agriculture, logging, hydro-electric dams and tourism.

## I: Recognition of Customary Land & Territories

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Both federal and state governments have not been prioritising this issue, thus making it an ongoing concern. The often-used excuse peddled by the federal government is that land matters are not under its jurisdiction but that of the state government.

### **1. Impose a moratorium on third-party projects involving Orang Asli customary land.**

Since it is likely that pending third-party projects involving Orang Asli customary lands were planned without their knowledge or consent, such projects should be halted until the land recognition process is completed.

### **2. Set up a special commission.**

The Human Rights Commission of Malaysia (SUHAKAM), in its 2015 Report of the National Inquiry into the Land Rights of Indigenous Peoples in Malaysia, recommended the establishment of an independent National Commission on

Indigenous Peoples comprising individual experts and relevant stakeholders. The function of this Commission would be, among others, to review recognition as well as promotion and protection of Orang Asli rights to their land and identity.

### **3. The federal and state governments must have equal and joint responsibility over Orang Asli customary land matters.**

The land and its surrounding nature are fundamental to the cultural customs, beliefs and collective identity of the Orang Asli, thus both the federal and state governments should be equally responsible so that the recognition of Orang Asli customary land territories can be fast-tracked without further delay.

(Tijah Yok Chopil, Jaringan Kampung Orang Asli Semenanjung Malaysia (JKOASM), Proposal 2G1-1)

### **4. Amend and harmonise existing laws affecting the Orang Asli to protect their customary land, and enact new laws to secure their rights.**

The Orang Asli have had to resort to the courts to claim their customary land. Despite their many wins, however, the government has not taken heed of the underlying issues of injustice that were revealed. The government should make a new law to address the weaknesses in administering Orang Asli lands, and harmonise all relevant laws so that they are in line with recognising customary land and territories. The issue of land recognition must be resolved to prevent further land loss or imbalances, such as the overlapping of Orang Asli land with the gazettement of protection areas (e.g. forest and wildlife reserves and national parks). The recognition of customary land and territories will ensure the continuity of the practice of cultural customs, beliefs, traditional knowledge, identity, history and ancestral legends. The Orang Asli can also develop their economy on customary territorial land safely.

The Orang Asli must be accorded the right to self-determination.

## **II: Development Projects**

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An important principle of the UNDRIP, which Malaysia is signatory to, is free, prior and informed consent. The government should reflect this in practice by ensuring that all decisions involving the development, advancement and

acquisition of territorial land of Orang Asli are transparent and take into account the decisions of the community themselves.

### **5. Ensure carefully planned and coordinated development programmes.**

Policymakers for Orang Asli development should sit at the same table to sort out conflicting plans that will otherwise result in incomplete or half-hearted projects. Instead of taking a siloed approach, policymakers and programme coordinators should talk to each other and share information, with the Orang Asli as well, to ensure that all development programmes designed for the community are truly beneficial to them, implemented responsibly in terms of cost and quality, and completed. For example, although the Government has set aside housing quotas for the Orang Asli under the Hardcore Poor Housing Programme (PPRT, to use the more well-known Malay acronym) these are typically of poor quality, and the infrastructure and design of the housing units are incompatible with their natural way of living.

### **6. Ensure completion of planned projects.**

Failed or delayed developmental and economic projects for the Orang Asli are a common occurrence. Many villages do not have full or quality basic amenities—for example, no electricity supply although electric utility poles have been planted; or the wiring is ready to be installed but the poles are not in place; or water pipes have been laid out but there is still no water supply.

### **7. Consult and inform the local community about any proposed land development project.**

Often, land development projects in Orang Asli areas are proposed or implemented without any consultation with or agreement from the local community, and later, just as inexplicably abandoned. There is no formal monitoring or notification given to the local community as to the progress of the project, and when it ends up failing or being abandoned, all those involved would be pointing fingers at each other, with no one assuming any responsibility. Any land development project planning therefore should be consultative to ensure completion and accountability to the local community.

(Tijah Yok Chopil, JKOASM, Proposal 2G1-1)

### III: Economic Development

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Land is a key policy issue that is linked to all Orang Asli problems. If this issue can be resolved, others such as the economy, education, safety, development and so on can be resolved too.

(Tijah Yok Chopil, JKOASM, Proposal 2G1-1)

#### **8. Allow the Orang Asli to apply for government assistance and necessary licences or certificates.**

The Orang Asli have not been able to apply for governmental assistance from agencies such as the Department of Agriculture to boost their economy, as their land is deemed 'illegal'. Without the requisite licence from the Malaysian Palm Oil Board and certificate from the Roundtable on Sustainable Palm Oil, Orang Asli planters cannot sell their oil palm produce. Flexibility must be given to them to obtain such licences and certificates through their community Tok Batin (community leader) upon confirmation from the Department of Orang Asli Development that the land being cultivated is within Orang Asli customary territory.

### IV: Freedom of Religion

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Despite the guarantee of Freedom of Religion in Article 11 of the Federal Constitution, there are still cases of Orang Asli being unknowingly or deceptively converted to Islam by registration officers, teachers, among others. In most cases, the individual concerned would only realise the deception that had been committed on them when asked to produce their MyKad or birth certificate for official purposes, finding out then that it states Islam as their religion. The Orang Asli have a right to profess the beliefs of their ancestors and to not be forced or deceived into converting to Islam. Yet, annulling such cases is a costly, time-consuming, bureaucratic run-around. There are even plans by the Kelantan Islamic Religious and Malay Customs Council to convert all Orang Asli in the state by 2049.

## **9. Cease involuntary conversions to Islam, facilitate cancelling of such conversions.**

Efforts to coerce the Orang Asli into converting to Islam and other involuntary conversions must stop. The process of removing the religious status of Islam from their MyKad and birth certificates in such cases should be simplified.