

Observations on the State of Indigenous Human Rights in Malaysia

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Submission by:

Cultural Survival is an international Indigenous rights organization with a global Indigenous leadership and consultative status with ECOSOC. Cultural Survival is located in Cambridge, Massachusetts, and is registered as a 501(c)(3) non-profit organization in the United States. Cultural Survival monitors the protection of Indigenous peoples' rights in countries throughout the world and publishes its findings in its magazine, the Cultural Survival Quarterly; and on its website: www.cs.org

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I. Executive Summary

This is Malaysia's third Universal Periodic Review cycle. In its second cycle, Malaysia accepted 116 of 252 recommendations, among which there are only three commitments to improve conditions for Indigenous communities. These include the eradication of poverty and the enhancement of economic and social welfare of Indigenous Peoples. Malaysia voted to adopt the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007, but has not ratified the ILO Convention No. 169.¹ Even with its expressed support for the UNDRIP, Malaysia continues to violate its principles, particularly seen in its initiation of and response to land rights abuses, the absence of Free, Prior and Informed Consent, and violence against women.

II. Background Information

Malaysia is home to three Indigenous communities, Orang Asli, Orang Ulu, and Anak Negeri, all of which consist of multiple Tribes. The Orang Asli are Indigenous to Peninsular Malaysia and are made up of 18 Indigenous communities within the Negrito (Semang), the Senoi, and the Aboriginal-Malay. Together, these Indigenous communities make up approximately 210,000 people, or 0.7% of the population of Peninsular Malaysia. The Orang Ulu, or Dayak, are Indigenous to Sarawak, and include the Iban, Bidayuh, Kenyah, Kayan, Kedayan, Lunbawang, Punan, Bisayah, Kelabit, Berawan, Kejaman, Ukit, Sekapan, Melanau, and Penan. Together, these populations make up approximately 1.9 million people, or 70.5% of the Sarawak population. The Anak Negeri are Indigenous to Sabah, consisting of 39 distinct Indigenous peoples, largely the Dusun, Murut, Paitan, and Bajau. The Anak Negeri constitute approximately 2.2 million people, or 58.6% of the Sabah population. Malays are also Indigenous to Malaysia, but, since they make up the majority of the country's population and are politically, economically, and socially dominant, they are not considered Indigenous Peoples by the Malaysian government. The Indigenous population recognized by the government, as of 2015, is approximately 13.8% of the total population.² These Indigenous communities face many challenges, many of which are rooted in the laws that were introduced during Britain's colonial rule. Although some of these laws acknowledged Indigenous customary land rights, they have not been implemented by the Malaysian government. The government continues to prioritize the interests of private companies and government agencies, which directly interfere with Indigenous land rights.³ The country is endowed with lush tropical rainforests and complex ecosystems and is considered one of the world's mega-diverse countries as it is ranked twelfth in the world on the National Biodiversity Index (NRE, 2011). The physical environment of Malaysia ranges from tropical rainforests to coastal plains and mountain areas, of which several National Parks (*Taman Negara*) are designated as UNESCO World Heritage Sites, ASEAN Heritage Sites and Ramsar Sites (NRE, 2011).

III. Ongoing Rights Violations

¹ <https://www.iwgia.org/en/malaysia>

² <https://www.iwgia.org/en/malaysia>

³ <https://www.iwgia.org/en/malaysia>

A. Land Rights (UNDRIP Articles 18, 19, 26, 27, 28, 30, 32, 37, 38, & 46)

The Malaysian Constitution and the Sarawak Land Code both provide protections for Native Customary Rights (NCR). Yet, these rights are continuously violated, without recourse. These violations take the form of non-recognition and land grabbing, which prohibit Indigenous communities from using their lands in accordance with their traditional rights – to cultivate land, to hunt, to use for burials and ceremonies, and to inherit and transfer.⁴

The Sarawak government often recognizes Indigenous lands as "idle," and issues licenses and leases for these lands that are directly contrary to traditional uses. Logging licenses not only allow non-Indigenous people to violate Native Customary Rights, but deprive Indigenous communities of their livelihoods. All Malaysian governments must adhere to national legislation that requires, prior to leasing land, conducting a survey to determine if National Customary Rights over the land in question exist. In NCR disputes with the Iban, surveys were never appropriately completed.⁵

A 2016 federal court decision found that native customary land claim practices, of both "pemakai menoa" (territorial domain) and "pulau galau" (communal forest reserve), could not be legally protected in Sarawak.⁶ This invalidation of Indigenous land rights and practices deprives Indigenous communities of "temuda," or the cultivation of land for occupation. Indigenous livelihoods depend on "temuda,"⁷ and violates Indigenous Peoples rights to their territory as outlined in UNDRIP.

Projects such as dams, extractive industries, logging, and agribusiness continue to be licensed on customary native land, threatening Indigenous food security, livelihoods, degrading biodiversity in forests, polluting water sources, and contributing to climate change.

B. Violations of Free, Prior and Informed Consent (UNDRIP 8, 22, 24, & 29)

i. Dam Construction

The Malaysian company Sarawak Energy has worked with the Sarawak government to perform its plan of constructing 12 mega dams in the region by 2020. The first of these dams was completed in Murum in 2014 and dispossessed Indigenous Peoples of their traditional lands, forcing them to resettle in lands that lack security and opportunity. Most of the Indigenous Peoples displaced by the dam were the Penan, whose livelihoods traditionally depend on the forest. The land the Penan were forced to resettle were lands committed for logging concessions "to politically connected timber companies."⁸ In addition to forced displacement,

⁴ Case Studies in Asia Regarding Indigenous Women, Development, and Access to Justice; Asian Indigenous Peoples Pact; Chapter 18; p. 23.

⁵ Case Studies in Asia Regarding Indigenous Women, Development, and Access to Justice; Asian Indigenous Peoples Pact; Chapter 18; p. 23.

⁶ <https://www.themalaysianinsight.com/s/17448/>

⁷ <http://www.theborneopost.com/2016/12/21/federal-court-rules-no-ncr-over-pemakai-menoa-pulau-galau/>

⁸ <https://www.internationalrivers.org/campaigns/murum-dam>

Sarawak Energy and the Sarawak government never consulted the Penan people and never made the environmental impact assessment or their resettlement action plans accessible to the public, depriving the Penan people from the opportunity to be informed and use their voice.⁹

Sarawak Energy and the Sarawak government committed further human rights violations in their proposal of another of the 12 dams, the Baram Dam. The company and government again failed to consult with the 20,000 Indigenous Peoples displaced by the construction plan. Sarawak Energy consultants brought forms to the village of Long Apu, and threatened its Indigenous villagers with zero compensation if they did not fill out the form to approve construction of the dam. The consultants filled out the forms, themselves, without providing explanation about construction details. The consultants asked the villagers if they agreed with the construction, to which they responded no. Regardless, the consultants did not leave until they signed the forms.¹⁰ After 300 days of blockades by villagers, Adenan Satem, the new Chief Minister of Sarawak, ordered blockaders to cease their efforts, but never revoked its order to "extinguish" Indigenous land for the dam's construction. Months later, on March 21, 2016, the Sarawak government officially terminated the project.¹¹

While the termination of the construction of the Baram Dam was a success for the affected Indigenous communities, it was needless for these communities to have had to spend three years of their lives protesting, and five years total of fearing displacement. It is not clear what steps the Sarawak government and other Malaysian governments are taking to prevent similar land rights violations.

In 2016, the Sarawak government approved another Sarawak Energy plan, this time to construct the Baleh mega dam by 2025. Allegedly, this dam will not affect Indigenous communities, but its actual impact is yet to be seen.¹²

If the Sarawak government continues to approve the proposed dams in Sarawak Energy's plan, Indigenous livelihoods will be at great risk. The continuation of the plan will further displace thousands of Indigenous communities. With the absence of these communities in their traditional forest lands, species will likely go extinct, rivers will be polluted, and greenhouse gas emissions will surpass the emissions of a coal-fired power plant.¹³ Free, Prior and Informed Consent (FPIC) is vital for the livelihood of Indigenous communities.

⁹ <https://www.internationalrivers.org/campaigns/murum-dam>;
<https://borneoproject.org/updates/dr-mahathir-mohamad-suggests-sarawak-govt-rethink-mega-dam-scheme>

¹⁰ <https://www.iwgia.org/en/malaysia/2110-malaysia-new-report-calls-for-respect-of-indigenous>

¹¹ <https://www.internationalrivers.org/blogs/433-18>

¹² <http://www.themalaymailonline.com/malaysia/article/sarawak-approves-construction-of-baleh-mega-dam#DRhYyjLyPKSssxsk.97>; <https://www.themalaysianinsight.com/s/2843/>

¹³ 2015 short documentary series, "*Commerce or Corruption?*"

ii. Climate Change Solutions Must Include Indigenous Land Rights

Jaringan Orang Asal SeMalaysia (JOAS) is a national Malaysian network for Indigenous Peoples to connect and advocate for Indigenous rights. JOAS brings attention to how preserving Indigenous lands and requiring FPIC further climate change solutions. Indigenous tradition is grounded in the community's relationship with the earth. Since many Malaysian Indigenous communities' livelihoods and cultures depend on the forest lands, Indigenous lands are inherently sustained, managed, and preserved.¹⁴ Malaysian Indigenous villages consist of high degrees of biodiversity, which these Indigenous Peoples protect.¹⁵

Malaysia has developed a national initiative that is part of the United Nations REDD+ Programme (Reducing Emissions from Deforestation and Degradation of developing countries),¹⁶ and is currently at the "Readiness" phase prior to implementation. The state of Sabah has developed a REDD+ Roadmap which outlines the steps needed in order to become REDD+ ready. The Roadmap's implementation framework includes a plan for developing reference levels, sourcing financing, defining FPIC and outlining a series of pilot projects. Although many of REDD+'s proposed safeguards for governments to follow are grounded in the UNDRIP, these safeguards are not grounded in Malaysian law. These include the recognition of and FPIC with Indigenous communities and their traditional lands.¹⁷ REDD+ is unlikely to be successful as long as Indigenous Peoples' customary land rights are disrespected. To find success in the REDD+ Programme, the Malaysian government needs to recognize and respect Indigenous, traditional knowledge and land rights.

D. Education & Access to Information (UNDRIP articles 14, 16)

Transport is a major hurdle for Indigenous students in rural areas of the country. Some settlements don't have road links to schools, and the only way to reach the nearest school is to use rivers. "We have to use boats to send our children to school," says Sukong Gau, 36, a Penan mother of five children, who used to live in Long Ikang. "Using land is difficult because we have to use the timber roads, and we have no vehicles." In 2015, two primary school children of SK Long Panai died along with their aunt in a boat accident on the Baram River.¹⁸ The Malaysian government must prioritize access to education for rural Indigenous communities in order to provide Indigenous children with the opportunity to become better informed and empowered adults.¹⁹ Access to education, the right to information, and the right to public participation are all crucial elements for the development and well-being of Indigenous women,

¹⁴ <https://borneoproject.org/updates/indigenous-land-rights-vital-to-climate-change-solutions>

¹⁵ <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/conservation-begins-home>

¹⁶ <https://thereddesk.org/countries/malaysia/>

¹⁷ <https://borneoproject.org/updates/indigenous-land-rights-vital-to-climate-change-solutions>

¹⁸ "Orang asli issues: Access to education still difficult" The Star.

<https://www.thestar.com.my/lifestyle/family/features/2015/03/24/orang-asli-issues-access-to-education-still-difficult/#Zp3zOsKUqqi7HYos.99>

¹⁹ <https://iva.aippnet.org/malaysia-ngo-wants-more-orang-asal-women-in-public-life/>

children, and men. Their reception of these rights are inhibited by a lack of internet access, which is essentially nonexistent in Indigenous communities, as telecommunication companies are not compelled to invest their services in predominantly rural and remote regions where most Indigenous communities are found. Internet access would help Indigenous communities to become better informed about their rights, as well as facilitating the implementation of their rights, as well as better participation in democracy, the political process, and access to justice.²⁰ Closing the digital divide in Indigenous communities is also an important step in facilitating the process of achieving free, prior, informed consent of communities before any projects take place that may affect them. It is important for the Malaysian government to prioritize such connectivity.²¹

C. Discrimination Against Indigenous Women (UNDRIP Articles 2 & 7)

Indigenous Malaysian women face double discrimination for being Indigenous and women. Indigenous Iban women in Sarawak, Malaysia are dedicated to maintaining food security for their families and receive income from handicrafts made from forest resources. These lifestyle traditions become increasingly difficult to preserve as access to sources that produce food and income are increasingly lacking, making it nearly impossible for these women to produce their handicrafts and receive income. This is, in part, due to aforementioned land rights deprivation.²²

As the Iban have poor access to education, most Iban women are illiterate. Illiteracy leads to women lacking knowledge about their rights as Indigenous women, which makes it difficult for them to use their voices when presented with such an opportunity. Such opportunities include encounters with companies and the government over land disputes and appropriations.²³

The marginalization of Indigenous women is demonstrated by their underrepresentation in the political sphere. In 2016, Malaysia was given the second lowest ranking in Southeast Asia for female representation in parliament, with only 10.81% of women holding parliamentary seats. Political participation of marginalised women is even lower than the overall average. No trans women or Orang Asli women have ever been presented as candidates or elected to office. A few Indigenous women from east Malaysia have been elected into office: In 2017, statistics show 7 out of 82 women in Sarawak's state legislative assembly, of which 4 are Indigenous. There are no female senators in Sarawak; 4 out of 27 of political secretaries are women, of which 3 of the 4 are Indigenous women.²⁴ Patriarchal interpretations of Islamic laws and public

²⁰<https://www.genderit.org/feminist-talk/there-no-opting-out-indigenous-women-malaysia-and-questions-access>

²¹<https://www.genderit.org/feminist-talk/there-no-opting-out-indigenous-women-malaysia-and-questions-access>

²² <https://academiccommons.columbia.edu/catalog/ac:185142>

²³ Ibid

²⁴ Women's Aid Organisation (WAO) and the Joint Action Group for Gender Equality (JAG) NGO CEDAW Shadow Report, for the Malaysian Government's Review by the CEDAW Committee, at the 69th CEDAW for Session in February 2018 accessed:

policies continue to be enforced, which block progressive legislative amendments aimed at upholding the rights of women and minorities. Attacks against human rights defenders, especially women human rights defenders, are often framed within a purportedly religious perspective.²⁵

Violence Against Indigenous Women & Access to Health and Services

Official health data disaggregated by gender and ethnicity is not publicly available; more gender and identity-sensitive research and data should be promulgated to provide a complete picture on how gender and ethnicity impacts health. According to Sabah Women Action Resource Group (SAWO), Indigenous women, ranging from young children to adults, including those who are disabled, students, single and in relationships, have reason to fear for their safety and health, wherever they go.²⁶ To address this violence against Indigenous women, Sabah Women Action Resource Group (SAWO) and International Work Group for Indigenous Affairs (IWGIA). Their joint-project conducted in 2015 surveyed eight villages in Northern Sabah, one of the poorest Malaysian states where rural, Indigenous women's needs and rights are neglected by the Malaysian government.²⁷ The survey found that at least 47% of adult women in the region suffered from violence of some form – emotional, sexual, or physical abuse. Each of the eight villages lacked means to support and protect their abuse survivors, and such protection has not come from the Malaysian government.²⁸ Access to healthcare is limited for Indigenous women, especially those in rural areas. In addition, the continued privatization of healthcare in Malaysia is threatening to make affordability one of the factors that will reduce women's accessibility to health care services.²⁹

Penan communities in Sarawak experience a severe lack of access to government services, and many are dependent on logging companies to provide basic services, such as transport via logging roads. Indigenous women and girls are particularly vulnerable during these trips and have experienced sexual abuse.³⁰

“Bibi was 21 at the time of the interview. She was raped twice by a logger who she had first met when he gave her family a ride home after dropping her sibling off at school. Both times, he broke into her house and forced himself on her, and each time she got

http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MYS/INT_CEDAW_NGO_MYS_30011_E.pdf

²⁵ Ibid

²⁶ <http://www.sawo.org.my/statistics.html>

²⁷ <https://www.iwgia.org/en/malaysia/2214-malaysia-new-project-addresses-violence-against-women>

²⁸ <https://www.iwgia.org/en/malaysia/2214-malaysia-new-project-addresses-violence-against-women>

²⁹ “The Malaysian health system in transition: The ambiguity of public and private.” Chee-Koon Chan . 2014. Available at:

http://www.municipalservicesproject.org/sites/municipalservicesproject.org/files/publications/OccasionalPaper26_Chan_Malaysian_health_system_in_transition_Aug2014.pdf

³⁰ Women's Aid Organisation (WAO) and the Joint Action Group for Gender Equality (JAG) NGO CEDAW Shadow Report, for the Malaysian Government's Review by the CEDAW Committee, at the 69th CEDAW Session in February 2018 accessed:

http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MYS/INT_CEDAW_NGO_MYS_30011_E.pdf

*pregnant. The logger would occasionally bring food for Bibi and her family, and he claimed her for his wife but she refused to accept him as he had two other wives already. Bibi is illiterate and was too scared to tell anyone about the rapes when they happened.*³¹

In 2008, a National Task Force to deal with sexual violence was formed and a report produced,³² but ten years later, little has been done to address the issue. Meanwhile, in the absence of official data, the civil society organization Sabah Women's Action (SAWO) counted 83 rape and incest cases reported in 2014 in Indigenous communities of Sabah via the Borneo Post and the Daily Express.³³ Notably, sexual violence, in particular rape and incest, is considered one of the most underreported of violent crimes, and therefore real numbers are likely much higher. The National Task Force itself identifies complicating factors for Indigenous women to report these crimes include lack of identification cards, poor transportation, poverty, illiteracy, and discrimination, among others, yet little has been done to address these root issues since the report was released 10 years ago.

IV. Questions

1. How has Malaysia followed up on the findings of the National Task Force on sexual violence against women in 2008?

V. Recommendations

Cultural Survival urges the government of Malaysia to:

1. Ratify ILO Convention No. 169.
2. Respect Native Customary Rights to land, and take steps to develop a procedure for obtaining the Free, Prior, and Informed Consent of Indigenous communities before any development is permitted to take place on their lands.
3. Secure the full, effective participation, and equitable representation of Indigenous women in decision-making bodies and processes that affect their rights.
4. Ensure human rights conventions (UNDRIP and CEDAW) are an integral part of education and the training of government officials and judicial officers.
5. Develop and implement plans to increase the number of women in political positions, particularly in high-level decision making roles, by establishing a transparent framework that includes, but is not limited to, reserved seat quotas in office, funding, and promoting local women in political parties.

³¹ Reproduced from Appendix 2 of the report by The Penan Support Group, the Asian Forum for Human Rights and Development (FORUM-ASIA), and the Asian Indigenous Women's Network (AIWN). *A Wider Context of Sexual Exploitation of Penan Women and Girls*, 2010.

³² http://www.wao.org.my/news_details.php?nid=298&ntitle=What+has+been+done+for+the+Penan+wo

³³ SAWO, "Statistics: Rape cases reported in Daily Express and Borneo Post compiled by SAWO in 2012, 2013 and 2014." Accessed <http://www.sawo.org.my/statistics.html>

6. Take steps to ensure equal access to healthcare for Indigenous women and that healthcare is linguistically and culturally appropriate.
7. Take steps to ensure equal access to education for Indigenous children, especially those in rural areas.
8. Take steps to close the digital divide and provide information technology services to rural areas.
9. Invite the UN Special Rapporteur on the Rights of Indigenous Peoples to visit the country.
10. Create a National Action plan on implementing the rights of Indigenous Peoples based on the World Conference on Indigenous Peoples' Outcome Document.