MALAYSIA
Indigenous Peoples in ASEAN

The Asia Indigenous Peoples Pact (AIPP) is a regional organization founded in 1988 by indigenous peoples' movements as a platform for solidarity and cooperation. AIPP is actively promoting and defending indigenous peoples' rights and human rights, sustainable development and management of resources and environment protection. Through the year, AIPP has developed its expertise on grassroots capacity building, advocacy and networking from local to global levels and strengthening partnerships with indigenous organizations, support NGOs, UN agencies and other institutions. At present, AIPP has 47 members from 14 countries in Asia with 7 indigenous peoples' national alliances/networks and 35 local and sub-national organizations including 16 are ethnic-based organizations, five (5) indigenous women and four (4) are indigenous youth organizations.

Through our Indigenous Women (IW) programme, AIPP aims to empower indigenous women through networking, education and capacity building activities with the overall goal for indigenous women to assert, promote and protect their rights as women and as indigenous peoples.

Our Vision
Indigenous peoples in Asia are fully exercising their rights, distinct cultures and identities, are living with dignity, and enhancing their sustainable management systems on lands, territories and resources for their own future and development in an environment of peace, justice and equality.

Our Mission
AIPP strengthens the solidarity, cooperation and capacities of indigenous peoples in Asia to promote and protect their rights, cultures and identities, and their sustainable resource management systems for their development and self-determination.

AIPP Programmes
Our main areas of work among the different programmes are information dissemination, awareness raising, capacity building, advocacy and networking from local to global. Our programmes are:

- Human Rights Campaign and Policy Advocacy
- Regional Capacity Building
- Environment
- Indigenous Women
- Communication Development

AIPP is accredited as an NGO in special consultative status with the UN Economic and Social Council (ECOSOC) and as observer organization with the United Nations Framework Convention on Climate Change (UNFCCC), Convention on Biological Diversity (CBD), Green Climate Fund (GCF), Global Environment Facility (GEF) and the World Intellectual Property Organization (WIPO). AIPP is a member of the International Land Coalition (ILC).

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Indigenous Peoples in ASEAN: Malaysia

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<td>Aboriginal Peoples Act 1954</td>
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<td>AEC</td>
<td>ASEAN Economic Community</td>
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<tr>
<td>AFAS</td>
<td>ASEAN Framework Agreement on Services</td>
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<td>AFSC</td>
<td>ASEAN Political-Security Community</td>
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<td>APG</td>
<td>ASEAN Power Grid</td>
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<td>ASCC</td>
<td>ASEAN Socio-Cultural Community</td>
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<td>ADB</td>
<td>Asian Development Bank</td>
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<tr>
<td>ASEAN</td>
<td>Association of Southeast Asian Nations</td>
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<tr>
<td>BRIMAS</td>
<td>Borneo Resources Institute Malaysia Sarawak</td>
</tr>
<tr>
<td>BIMP-EAGA</td>
<td>Brunei, Indonesia, Malaysia, Philippines East ASEAN Growth Area</td>
</tr>
<tr>
<td>BIIH</td>
<td>Building Initiatives in Indigenous Heritage</td>
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<tr>
<td>COAC</td>
<td>Centre for Orang Asli Concerns</td>
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<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of all forms of Discrimination Against Women</td>
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<tr>
<td>JHEOA</td>
<td>Department of Orang Asli Affairs</td>
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<tr>
<td>DO</td>
<td>District Officer</td>
</tr>
<tr>
<td>EIA</td>
<td>Environmental Impact Assessment</td>
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<tr>
<td>ESSCOM</td>
<td>Eastern Sabah Security Command</td>
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<tr>
<td>FELCRA</td>
<td>Federal Land Consolidation and Rehabilitation Authority</td>
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<tr>
<td>FELDA</td>
<td>Federal Land Development Authority</td>
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<tr>
<td>IAI</td>
<td>Initiative for ASEAN Integration</td>
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<td>ILO</td>
<td>International Labour Organization</td>
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<tr>
<td>JAKOA</td>
<td>Jabatan Kemajuan Orang Asli (Orang Asli Development Department)</td>
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<td>JOAS</td>
<td>Jaringan Orang Asal SeMalaysia or Indigenous (Peoples Network of Malaysia)</td>
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<tr>
<td>LCDA</td>
<td>Land Consolidation and Development Authority Ordinance</td>
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<td>NDG</td>
<td>Narrowing the Development Gap</td>
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<tr>
<td>Acronym</td>
<td>Full Form</td>
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<tr>
<td>NCR</td>
<td>Native Customary Rights</td>
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<tr>
<td>JAKOASM</td>
<td>Orang Asli Village Network of Peninsular Malaysia</td>
</tr>
<tr>
<td>PACOS TRUST</td>
<td>Partners of Community of Organization - Sabah</td>
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<td>PGU</td>
<td>Peninsular Gas Utilisation</td>
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<tr>
<td>RE</td>
<td>Renewable Energy</td>
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<tr>
<td>RSPO</td>
<td>Roundtable on Sustainable Palm Oil</td>
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<td>SLO</td>
<td>Sabah Land Ordinance 1930</td>
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<tr>
<td>SLUP</td>
<td>Sabah Land Use Policy</td>
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<tr>
<td>SADIA</td>
<td>Sarawak Dayak Iban Association</td>
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<td>SALCRA</td>
<td>Sarawak Land Consolidation &amp; Rehabilitation Authority</td>
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<tr>
<td>SMEs</td>
<td>Small and Medium Enterprises</td>
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<tr>
<td>SEANF</td>
<td>South East Asia NHRI Forum</td>
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<tr>
<td>SEAREPA</td>
<td>South East Asia Renewable Energy People’s Assembly</td>
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<tr>
<td>SUARAM</td>
<td>Suara Rakyat Malaysia</td>
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<tr>
<td>SUHAKAM</td>
<td>Suruhanjaya Hak Asasi Manusia (Malaysian Human Rights Commission)</td>
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<tr>
<td>TTM</td>
<td>Trans Thailand-Malaysia</td>
</tr>
<tr>
<td>UNDRIP</td>
<td>United Nations Declaration on the Rights of Indigenous Peoples</td>
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<tr>
<td>YDP</td>
<td>Yang Dipertua (Chief/Head/Leader or Chairman, President, Governor)</td>
</tr>
</tbody>
</table>
A. Background

Malaysia is a country which covers an area of 329,847 sq. km and consists of two geographical regions divided by the South China Sea: Peninsular Malaysia on the Malay Peninsula and East Malaysia, which occupies the northern and western part of the island of Borneo. Malaysia is a federation of thirteen states and three federal territories. Eleven of the states are in the Malay Peninsula, while Sabah and Sarawak are in Borneo.

The population of Malaysia as of the last census conducted in 2010 (next census to be conducted in 2020) is 28.3 million, of which 17,523,508 are classified as Bumiputera or “princes/sons of the soil,” a political classification which was created and used as a basis for affirmative action and policies in their favor, among others, including reservation for entry into local universities, entry into the civil service and land reservations for re-settlements. Apart from Bumiputera, there are various terminologies used to describe the indigenous peoples of Malaysia. Orang Asli, which literally means “original peoples” or “first peoples,” is used to describe the indigenous peoples of the Peninsula. “Anak Negeri” which means “child of the State” or “native” is used officially to refer to the indigenous peoples of Sabah. Dayak and Orang Ulu are collectively used to refer to the natives or indigenous peoples of Sarawak.

Collectively, indigenous peoples of Malaysia refer to themselves as Orang Asal, a term that is increasingly used, including by the Human Rights Commission of Malaysia.

Jaringan Orang Asal SeMalaysia or Indigenous Peoples Network of Malaysia (JOAS), while recognizing the Malay Bumiputera as indigenous to Malaysia, do not consider them as “indigenous peoples” because they constitute the majority and are politically, economically and socially dominant. For the purposes of this paper, the indigenous peoples referred to

in Malaysia will not include the Malays and will only focus on the Orang Asli from the Peninsular Malaysia and the Natives of Sabah and Sarawak who shall be collectively referred to as the indigenous peoples of Malaysia or Orang Asal interchangeably.

B. Profile of Indigenous Peoples in the Country

The Orang Asal of Malaysia make up about 13.8% of the national population. A majority, an estimated 60%, reside in the rural areas with some settled in very remote areas. Many of these rural indigenous peoples in Malaysia still rely very heavily on their lands and territories for daily livelihood and survival and therefore have a very close relationship with such lands and territories. They still derive their livelihoods from their lands by, among other things, hunting and gathering, fishing and selling forest products. The Orang Asal have pre-existing resource management systems in place used to preserve and protect the environment under the pretext of maintaining harmony with their land both spiritually and culturally. It is their appreciation of continuity and conservation with their lands and territories that gives them the spiritual and material difference and identity as peoples. It is this close relationship with the lands that is being eroded and constantly threatened by large scale development and Government projects and worrisome for the survival of most of the indigenous peoples in Malaysia. The impact of the loss of land and territories on the Orang Asal of Malaysia is so severe that it threatens their development and cultural survival as a distinct group of people.

The Orang Asal have in place their very own customs or adat, related to the use and protection of their ancestral and traditional lands and territories. These rules - both written and unwritten - consist of customary laws, concepts, principles and practices and include customary institutions that regulate and enforce such rules resulting in a form of Indigenous system of governance. The adat is administered by traditional institutions consisting mainly of elders in the communities. Even with the existence of legislations and legal provisions recognizing their land rights in the Federal Constitution, domestic and international laws, their rights to the full enjoyment of their lands have been systematically denied.

B. 1 Orang Asli of Peninsular Malaysia

In 2010 the Jabatan Kemajuan Orang Asli or the Orang Asli Development Department (JAKOA), a department set up to manage the affairs of the Orang Asli under the Ministry of Rural and Regional Development, and was formerly known as Department of Orang Asli Affairs (JHEOA)) estimated the population to be 178,197 people or 36,658 households, which is slightly less than 0.5 per cent of the country’s multi-ethnic and multi-cultural population. The demographic profile published in Sistem e-Damak 2010 by the Department of Orang Asli Development classifies the Orang Asli Development as Negrito, Senoi and Proto-Malays.

The Orang Asli are often considered “second class bumiputeras” in that although they claim over 1 million hectares of traditional land, most

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2 Certain Indigenous individuals who converted to Islam may consider themselves as Malay, especially in Sabah, so the indigenous Malays are included in the calculation of the total percentage.


4 Sistem E-Damak JAKOA, 2010

are not recognized as legal owners of their lands by the Malaysian Government. The Orang Asli’s social, economic and political rights are recognized in the Federal Constitution, but their legal status is not constitutionally defined nor mentioned in the same Constitution.

Distribution Map of Orang Asli Groups

Source: http://www.keene.edu/library/orang asli/map1.cfm

B. 2 Natives of Sabah

Based on the 2000 census, indigenous groups comprise approximately 60 percent of the 2.6 million total population of Sabah. A large controversy exists with respect to who are the natives of Sabah, particularly due to the sudden increase in population over the last 10 years and discrepancies in official data. There are 39 ethnic groups, speaking more than 50 languages and 80 dialects, with the Dusunic, Murutic and Paitanic groups being the largest among them.6 These four classificatory groups, each consists of several ethnic groups:

**Dusun:** Bisaya, Dumpas, Dusun, Kuijau, Kadazan, Kimaragang, Lotud, Rungus, Tatana, Tobilung and Sonsogon.

**Murut:** Baukan, Gana, Kalabakan, Lun Dayeh, Nabai/Ambual, Okolod/Kolod, Paluan, Selungai, Sembakung, Serudung, Sumambu, Tagal/Tagol, Tidung and Timugon.

**Paitan:** Abai Sungai, Rumanau, Tampias Lobu, Tombonuo, Makiang, Kolobuan, Sinabu and Segama.

**Others:** Bajau, Banjar, Brunei/Kedayan, Ida’an/Begahak, Iban, Iranun, Cocos, Tausug/Suluk, Bugis, Sama/Bajau, Yakan, Bonggi and Molbog.

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B. 3 Natives of Sarawak

As of the 2010 census, the population of Sarawak was 2,399,839, with the 28 indigenous groups making up 71.2 percent of the population. The Sea Dayak and Land Dayak are names referring to the Iban and Bidayuh during the colonial period. The Iban make up the largest ethnic group in Sarawak, comprising about 29% of the population. The Bidayuh represent the third largest group and sub-divided into five different ethno-linguistic components namely the Bukar Sadong (Serian), Biatah (Kuching), Jagoi (Bau), Selakau and Lara (Lundu). The Orang Ulu comprise approximately 5% of the total population in Sarawak. Orang Ulu is a collective name given to the indigenous peoples generally found in the interiors of Sarawak which includes the Bukitan, Bisaya, Ukit, Kayan, Kenyah, Kelabit, Lisum, Seping, Lun Bawang, Tagal, Penan/Punan, Sihan/Sian and Tabun.7

Table: Total population for Sarawak as of the last census 2010

<table>
<thead>
<tr>
<th>Ethnic Group</th>
<th>Population</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Malay</td>
<td>568,113</td>
<td>22.98</td>
</tr>
<tr>
<td>Iban</td>
<td>713,421</td>
<td>28.87</td>
</tr>
<tr>
<td>Bidayuh</td>
<td>198,473</td>
<td>8.03</td>
</tr>
<tr>
<td>Melanau</td>
<td>123,410</td>
<td>4.99</td>
</tr>
<tr>
<td>Other Bumiputera</td>
<td>156,436</td>
<td>6.33</td>
</tr>
<tr>
<td>Chinese</td>
<td>577,646</td>
<td>27.42</td>
</tr>
<tr>
<td>Indian</td>
<td>7,411</td>
<td>0.29</td>
</tr>
<tr>
<td>Others</td>
<td>9,183</td>
<td>0.36</td>
</tr>
<tr>
<td>Non citizen</td>
<td>117,092</td>
<td>4.73</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>2,471,140</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

C. Customary/Political Institutions, Governance and Justice Systems

The Orang Asal have long had their pre-existing laws based on their own customs and traditions. Although constitutionally recognized, customary laws and institutions have gradually been usurped by the Government and codified in legislation. It is to be noted that while the “new” laws have essentially adapted these customary laws, the latter have been somewhat diluted and lost their essence in the indigenous communities, their implementation based more on political influence rather than community-based methods. Thus, these laws lost appeal and significance to the indigenous communities. For example, the village headmen of the respective communities are not elected by the communities but are instead “appointed” by the political parties. Such practice has somewhat diluted the trust and reliability of the position and is viewed unfavorably by the community.

In Peninsular Malaysia, the communities used to elect a village chief who would administer the village autonomously based on *adat* or customary laws. However, with the new laws being enacted to dictate village governance, the institution has been reduced to one person under the employ of the State, including the procedures for election as a village chief (JHEOA, *Garis Panduan Prosedur Perlantikan Penghulu dan Batin Orang Asli*. Kuala Lumpur, 1998).

Although there is no aboriginal court system for the Orang Asli (compared to Sabah and Sarawak), there is an existing traditional system

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where the *batin* (headman) and the *Lembaga Adat* or a traditional body resolve issues and conflicts according to the Orang Asli customs. Different procedures are employed by these traditional bodies and vary from community to community. 

In Sabah, native customary laws have been institutionalized through the Native Courts with a three-tiered court system – the Native Court, the District Native Court and the Native Court of Appeal. The Native Court is presided over by a three-member panel namely the district chief, and two others consisting of native chief, representative of the native chiefs or village heads. These act as courts of original jurisdiction and adjudicate on personal law matters between natives, and between native and non-native. They may also adjudicate on other matters if expressly authorized by legislation. They have powers to fine and imprison (on the endorsement of a magistrate), and decisions are made unanimously or by majority.

Above the Native Court is the District Native Court – one for each district within a state – which consists of the district officer as presiding member and two other members, who are appointed from among district chiefs or native chiefs. Above the District Native Courts is the Native Court of Appeal, which is presided over by a judge (currently the chief judge of Sabah and Sarawak from the Ministry of Justice) and which includes two other members – district or native chiefs. Litigants may not be represented by advocates in the Native Courts or District Native Courts but may represent themselves in the Native Court. All three levels of the Native Courts apply the native laws and customs.

At the village level, the Rural Administration Ordinance 1951 provides for the administration of the rural areas and the powers, duties and responsibilities of Native Chiefs and Headmen. Generally, the Ordinance empowers those appointed to carry out duties related to the welfare and security of the community under their respective responsibilities.

In Sarawak, the natives have their traditional leaders and/or Council of Elders who are selected by their community. Every village has its own Council of Elders known as the *Tuai Adat*. Similar to Sabah, this, however, has changed much over time with the village administration becoming integrated into the formal system of governance by the State and the appointments of traditional leaders are now based on political allegiance / beliefs rather than elections by the respective community. Generally, State-appointed representatives who carry out the government’s agenda have since replaced many indigenous leaders who were appointed by their communities. This has caused much strife within communities who do not agree with the State-appointed headmen who serve and advance the agenda of the State and not the welfare of the indigenous peoples. Overall, these State appointments are thus seen to promote and institutionalize actions and developments that are deeply biased against indigenous peoples and undermine their traditional systems of self-governance.

8 For more information on the procedures and the appointments of the batin, please see Affidavit for Examination-in-Chief of Dr. Collin Nicholas in Sagong Tasi case (pp14 – 18), and Baharon Azhar bin Raffie’i (1973), Parit Gong: An Orang Asli Community in Transition. Ph.D Thesis. Cambridge: King’s College (pp 226 – 272).

9 Native Court Enactment 1992 and Native Court Rules 1993.

laws and customs. It has a Central Registry in Kuching and 31 Registries throughout Sarawak. The Native courts hear matters that fall into three main categories, namely: breaches of adat; Native Customary Rights (NCR) land disputes, and applications of natives to be identified with the native communities. All matters on the adat are heard in the first instance before the Headman’s Court or the Chief’s Court. The Chief’s Superior Court is the final appellate court for all adat matters. Effective 1 July 2005, most of the NCR land disputes are heard in the first instance by the District Native Court.

Another body that looks into the native customary laws in Sarawak is the Council for Native Adat and Customs of the Majlis Adat Istiadat, which is governed by the Majlis Adat Istiadat Ordinance 1977. Like in Sabah, there are seemingly two systems of law - the council and the Native Court. Concerns were aired about the efforts by the Ordinance to codify the adat, which may extinguish native customary rights. The Council is composed of civil servants and headed by the Sarawak State secretary. Among the statutory functions of the Council are to review the natives’ customary laws and make recommendations to the Sarawak cabinet regarding the application, codification, publication and enforcement and to explain and promote better understanding and appreciation of the adat, cultures, traditions and history of the various native communities in Sarawak.11

D. Indigenous Peoples and Natural Resource Management

In various villages in Sabah, communities refer to their territories as kampung. These include settlement areas, gardens, farms, cemeteries, grazing areas, ceremonial spots and forests within the confines of a defined village boundary. Generally, people would till their lands individually or are permitted by the owners of the respective lands to do so. The person or household that opens or works the lands within the kampung forests are afforded the rights to ownership. These rights are permanent and transferable to future generations. The individual plots are marked using natural boundaries such as streams, ridges, and some plant the rolok or erect stone structures such as menhirs or hugu. The adat guides the community with respect to rights within a village territorial domain, individual acquisition of land for cultivation, land boundaries and inheritance. Boundaries are important points of reference when there is a dispute among groups or individuals.

Similarly in Sarawak, the adat is the principle that establishes a village’s territorial domain, individual acquisition of land for cultivation, boundary and inheritance. The territorial domain held by a distinct longhouse is known in Iban as pemakai menua and includes farms, gardens, old long house sites, fruit groves, cemeteries, water and forest within a defined boundary (garis menua).12 Boundaries are an important point of reference when a dispute arises between groups or individuals. The process of creating the pemakai menua involves the ceremony called panggul menua (a ritual ceremony to mark the opening of a territory for


settlement, farming, and other activities).

The Penans of Sarawak are traditionally nomadic people. Although most Penans today have settled down in a specific area, a large number still rely on the forest for food and economic activities. The Penans, nomadic or settled, have a distinct relationship to the lands as compared to the other indigenous groups in Sarawak. The Penans do not cut the forest to assert their customary rights over the lands but instead establish rights to the resources within the territory which they occupy. The Penans argue that their rights and attachment to the land are more than just merely tree-cutting to open up land for cultivation to establish customary rights over a particular area. They have a relationship with the landscapes and nurture the environment wherein man-made jungle tracks are maintained with resting places (lasan), thereby creating a sense of ‘kinship’ with the environment.

The Orang Asli communities are identified with the particular ecological niche that it regards as its customary or traditional territories. For the Orang Asli Laut communities, the sea and the coastal fringes constitute their traditional lands, waters, and territories. The Orang Asli territories are very site-specific where each community’s traditional lands do not overlap with another and permission must be sought before an Orang Asli from a different community enters another neighboring community. As such, the occupation, use, ownership and enjoyment of a traditional territory and its resources found therein are always subject to the customs, rules, and traditions of the indigenous group having control over it. The boundaries of the customary lands are determined by geographical features such as rivers, mountains and hill ridges. Among the Semai people, they divide each of their traditional customary lands according to various use categories and include the village proper (genei), swiddens or hill-rice fields (selai), orchards (cetnet), old swiddens (pabel), foraging areas (lepnep), forest/resource areas (jeres), virgin forest (darat), taboo or sacred areas (teiq keramat), water catchments (pendeg/gencolteiw), gravesites (penep) and such other areas (based on interview of Mohd Sharul Irwan by Colin Nicholas in January 2013).

E. Legal Status of Indigenous Peoples in the Country

The Federal Constitution of Malaysia specifically states who is a native of Sabah and Sarawak. The Orang Asli are made to “prove” that they are indigenous, indicating that there is no clear constitutional definition of a native for the Orang Asli in the Federal Constitution. Except for Under Part IV, under Article 45(2) of the Federal Constitution where the King can appoint an Orang Asli as a senator into the Malaysian Senate (Dewan Negara),13 and in the Sabah and Sarawak Constitutions, there is nothing else in the Constitution or any law that specifies the formal representation of the Orang Asal in a body or mechanism. An Orang Asli representative has been appointed as senator but no natives from Sabah and Sarawak had ever been appointed as representatives of racial minorities. Similarly, no appointments under such quota has ever been appointed in the State Legislative Assemblies of Sabah and Sarawak.

E. 1 Definition of a Native in Sabah

There are two definitions of a native for Sabahans: the Federal Constitution’s and interpretation ordinance, and the Sabah Cap 64 definition. Confusion arises as some laws use both. Problems arise when trying to establish

13 “…representative of racial minorities or are capable of representing the interests of aborigines”.
“native” status as the Constitutional definition limits the lineage up to ‘grandchildren’, while the State ordinance definition has no limit.

Article 161A(6)(b) of the Federal Constitution states that a Sabahan is a native if he or she is a citizen, the child or grandchild of a person of a race indigenous to Sabah, was born either in Sabah or to a father domiciled in Sabah at the time of the birth. Similarly according to Article 41(10) of the Constitution of Sabah, a native means a person who is a citizen; is the child or grandchild or a person indigenous to the State; and was born (whether on or after Malaysia Day or not) either in the State or to a father domiciled in the State at the time of birth. The Sabah Interpretation (Definition of Native) Ordinance 1952 (Sabah Cap. 64) attempts to define who is a native. However, section 2(1)(a) does not spell out who are regarded as “indigenous to Sabah” and problems have arisen with the differing lists that were drawn by Federal and State departments on who are Sabah’s natives.

Section 2 (3) in the Interpretation (Definition of Native) Ordinance is also subject to abuse as it empowers the native court to determine who is a native through the issuance of native certificates. The issuance of native certificates has been suspended since 1984 by the government due to past abuse by some native court personnel. The listing of people indigenous to the Philippines and Indonesia as Sabah natives under section 2(1) (c) and (d) in the Interpretation (Definition of Native) Ordinance has given rise to the possibility of new immigrants from these countries to claim native status. Even though the law clearly states that the person must not be limited under the Immigration Act, and especially applying to such persons who entered the State illegally, there have been serious concerns of illegal migrants being given dubious citizenship. A Royal Commission of Inquiry on illegal immigrants in Sabah was formed on August 2012 to study this issue. There are also efforts to amend the current definition of natives at the Sabah Legislative Assembly. However, the amendment appears to be based on linguistics rather than on proper anthropological studies.

E. 2 Definition of a Native in Sarawak

In Sarawak, a native is defined through an exhaustive list in the Federal Constitution and State Legislation. A “native” in Sarawak is an indigenous person who is born of both native parents. This definition, however, leaves out certain smaller groups such as the Berawan, Narum, Jatti Miriek and Saban being. The law’s strict identification of who are natives excludes natives who marry non-natives, and those who identify themselves as natives is viewed as going against the right of self-identification of children of natives. It has also led to discrimination when children born from a native mother and a non-native father are not considered native, while children born from a native father and a non-native mother are considered native.

E. 3 Definition of Orang Asli in Peninsular Malaysia

The Orang Asli in Peninsula Malaysia are not afforded the same constitutional safeguard definitions. Article 160(2) of the Federal Constitution of Malaysia defines an “aborigine” as “an aborigine of the Malay Peninsula” without further defining what is an aborigine. The Aboriginal Peoples Act 1954 (APA) section 3 (1) states that an aborigine is a person whose parents are both aborigines or one parent, male or female, is or was, a member of an aboriginal ethnic group, speaks an aboriginal language and habitually follows an aboriginal way of life,
customs and beliefs. In *Sagong Tasi & Ors v Kerajaan Negeri Selangor* ([2002] 2 MLJ 591], it was established that the Temuan community lived in an organized society and followed an aboriginal way of life. They have their own system of adjudicating disputes, maintain their own language, and culture relating to marriages, inheritance, burial practices, religion and practised their own system of land tenure, and fulfilled the requirements of section 3 of the APA.

The difficult and rather vague definition of who is an Orang Asli in the Federal Constitution and the Aboriginals Peoples Act jeopardises the existence of the Orang Asli as a people. The requirements for proof of being natives have further weakened the Orang Asli’s status and right to self-determination in Malaysia. There is the argument that once an Orang Asli stops speaking the aboriginal language or following their way of life, it is automatically presumed that he/she is no longer afforded the right to be an Orang Asal within the definition of the APA. The final determination of whether a person qualifies to be an Orang Asli lies with the Minister concerned.

**E. 4 Late Birth Registration**

There is a flawed presumption among the Orang Asal that once a birth certificate is obtained, the newborn child is automatically accorded citizenship and a National Identity card will be issued when the child reaches the legal age of 12. For late birth registration, birth certificate is marked with “late registration” and the applicant will have to apply to the courts for the child to be considered a Malaysian citizen and issued a National Identity Card. Non-possession of a National Identity Card means one is not entitled to attend formal education and sit for public examinations.

**F. Laws, Policies, Programs, Bodies/Mechanisms and the Indigenous Peoples’ Issues and Needs**

In 2007, all Association of Southeast Asian Nations (ASEAN) Member States voted in favor of the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Despite Malaysia being a signatory to the UNDRIP, the laws and policies that affect the Orang Asal of Malaysia do not expressly reflect this. Laws in relation to land and property rights of the indigenous peoples do not contain sufficient provisions to ensure the free, prior and informed consent of the Orang Asal to any development. There are implied provisions which can be said to comply with the UNDRIP requirement without necessarily safeguarding the interests of the Orang Asal. These laws are very much centered on development and assume that all “undeveloped” land are idle land regardless of any Orang Asal occupying these.

**F. 1 Peninsular Malaysia**

The Statement of Policy Regarding the Administration of the Orang Asli of Peninsular Malaysia of 1961 (“Policy Statement”), which is a legislation, and the Aboriginal Peoples Act, show the paternalistic approach of the Government when dealing with the Orang Asli. The Government views them as incapable of looking after themselves and therefore need to be protected, to the point that they are not afforded any self-determination.

Under the Aboriginal Peoples Act, for land acquired for development from the Orang Asli, there is no provision to replace such a land although there is compensation for damages to crops only. The Government does not issue titles for ownership of land in an aboriginal area.
and only grants a “right to occupy” permit. (See Aboriginal Peoples Act 1954 section 11(1) and (12)).

While mindful of Orang Asli welfare and the need to protect the Orang Asli lands, customs, institutions and languages, the Statement charts the course for the “development” and ultimate “integration” of the Orang Asli into mainstream Malay society. In this sense, the 1961 Policy is similar to the ILO Convention 107 that charges the State with primary responsibility of protecting indigenous rights and calls for systematic action for the protection of indigenous peoples concerned and their progressive integration into national societies. Inconsistent with the concepts of self-determination and free, prior and informed consent and consultation, the 1961 Policy fails to meaningfully include Orang Asli in any policy decisions affecting them.

F. 2 Legislations and the Orang Asli’s Rights to Land:

**National Land Code 1965**

Although there are no specific provisions for the Orang Asli, customary tenure of the Orang Asli is recognized, as section 4(2) states “Nothing in this Act shall affect the past operation of, or anything done under, any previous land law or, so far as they relate to land, the provisions of any other law passed before the commencement of this Act, Provided that any right, liberty, privilege, obligation or liability existing at the commencement of this Act…be subject to the provisions of this Act.”

**National Forestry Act 1984**

The produce within all permanent reserved forest or State land is vested in the State Authority and no person can take forest products from State land or permanent reserved forest;

**National Land (Group Settlement Areas) Act 1960**

This act permits land agencies such as the Federal Land Development Authority (FELDA) and the Federal Land Consolidation and Rehabilitation Authority (FELCRA) to take land for the purposes of land resettlement culminating in the issuance of land titles to settlers. Most of these early development and land settlements were on traditional lands of the Orang Asli but the Orang Asli did not necessarily benefit from such development;

**Land Acquisition Act 1960**

This is the primary land acquisition legislation in Malaysia. As the Orang Asli are not given titles to their lands, it is difficult for the Orang Asli to prove continuous occupation. This can be difficult as most of the time their crops are destroyed and such proof of occupation is not possible thereby denying the Orang Asli their right to compensation;

**Town and Country Planning Act 1976**

It has no specific reference to the Orang Asli but affects them as development is undertaken to expand townships. Several provisions require that surveys be publicly exhibited by way of advertisements so public objections can be recorded. In practice, however, the public are not informed of their rights, therefore, there is lack of participation and consent from the affected parties, including the Orang Asli. Most advertisements on development are merely procedural in nature and do not necessarily have the participation of the interested affected parties.
F. 3 Sabah

Similarly in Sabah, there are no specific legislations that invoke the participation or consent of the natives especially when it concerns their affected territories. Although the existence of Native Customary Rights to land is recognized, most legislations in Sabah are centered on development, and often disregard the current practices of the natives on these lands. The claims by natives are almost impossible to be implemented with the requirement of a notice and the time required to respond to such notice. There are implied provisions as contained in the following legislations and policies:

In **Land Ordinance 1930**, Section 13 provides that any person wishing to apply for unalienated land shall publish a notice to require anyone with Native Customary Land right to the land being applied for, to come forward and make such claims within the specified period. Section 14 states that claims to Native Customary Rights (NCR) shall be decided by the Collector. One practical problem that constantly arises is that the notice is published in the Collector’s office whereas the affected native lives hundreds or thousands of kilometers away in the village. The notice requirement, as contained in many provisions of the Sabah legislation has caused many problems for the natives. Proper information on forwarding claims of NCR under section 14 were also never clarified nor encouraged. Other ‘administrative’ provisions, though on the surface recognize native rights to land, do not necessarily protect the natives’ rights over their native customary lands. Section 81 of the Sabah Land Ordinance 1930 (SLO), for example, states that all NCR claims are to be sent to the Collector: “It shall be obligatory on all natives claiming land within the district or area proclaimed who do not already hold a documentary title therefor, or who claim other native customary rights therein, to state their claim to the Collector or his agent either verbally or in writing within the period stated in the notification, which period shall not be less than four months from the date thereof.”

The **Land Acquisition Ordinance 1950** explicitly provides for the compensation of claims thus providing the opportunity for consultations although in many cases indigenous communities have lost NCR land through such acquisition without compensation. This is because section 9 allows only three months for the owner to register their interest to the authorized officer after which claims to compensation are considered invalid.

The **Sabah Land Use Policy** (SLUP) which was adopted in 2010 was an attempt at providing a land use orientation that balances social, environmental and economic functions. The Policy considers all lands that are un titled as State land while advocating for the formalization of the concept of native community domain. This concept of native community domain requires the government to take into account ‘the traditions and needs of native communities.’ Reference was made particularly to the practice of hill rice cultivation. Boundaries for community domains are to be agreed upon by native communities in collaboration with the relevant government departments. With respect to security of tenure, the Policy supports the formation of more Native Reserves (under the existing section 78 of the SLO 1930) so that traditional farming of hill rice could continue.

The **Forest Enactment 1968** has provisions that imply the necessity to obtain consent from affected indigenous communities. Sections 8 and 9 state that prior to any creation of
forest reserves, a notification of proposal for the constitution of any forest reserve is to be published in the Gazette and requires the District Officer (DO) or Collector to conduct an enquiry. However, these provisions were not complied with in most cases resulting in indigenous communities not being informed about the proposed forest reserves that would affect their lands (SUHAKAM: p. 95).

Section 35 of the *Sabah Inland Fisheries and Aquaculture Enactment 2003* allows for the declaration and recognition of the indigenous system of river and fisheries management (*Tagal*). The *Tagal* system is a community-based fisheries resource management. Section 36 and 37 create a new protocol by providing for the creation of a committee to administer such zones, and by introducing sanction related to the Community Fisheries Zone. Although the Sabah Inland Fisheries and Aquaculture Enactment 2003 is progressive in recognizing the community system of managing riverine resources (by creating committees under section 36 and section 37), it has contributed to the weakening of the traditional authority for the *Tagal* system. There are concerns that the institutionalization of *Tagal* rules will weaken local governance, which is based on *adat* and generations of traditional knowledge.

The *Wildlife Conservation Enactment 1997* incorporates a component of community participation by establishing a community hunting area, and the recruitment of honorary wildlife wardens from the community. Section 9(2)(c) mentions that a notice is required before declaring an area a wildlife sanctuary, particularly of the “native or traditional rights that will continue to be exercisable after the coming into effect of the declaration of the proposed Sanctuary.” Also, according to section 9(2)(d), there must be consultations made with the communities likely to be affected by the proposed Sanctuary.

The *Sabah Water Resource Enactment 1998* recognizes private water rights, which include the water rights of indigenous peoples. Its primary purpose is to protect ‘environmentally sensitive’ zones. Water Protection areas are those where land use change is not permitted. These can cover both State Land and Forest Reserves. It considers the economic and social impact on the owner or occupant of the land when making a water resource management decision, implying the necessity to examine land ownership and occupation rights of indigenous peoples. Although the Enactment appears progressive with respect to management of water resources, there are gaps with respect to setting aside water protection areas. In section 36, interest to protect areas precedes the rights of indigenous peoples to land and does not recognize the fact that indigenous peoples have been traditionally protecting the area adequately.
F. 4 Sarawak

The Sarawak Land Code 1958 is the main legislation for the administration of land. One of its main features is to clarify the definition of Native Customary Rights to land. It is to be noted that NCR claims cannot be created after 1 January 1958. The legislative definition as to what constitutes NCR is based mainly on cultivation and settlement, while ignoring the traditional features of land use by the Sarawak natives wherein they maintain and preserve, but not cultivate, vast areas within their territories for hunting, gathering, recording their history and commemorating significant events and/or people.

The other legislation that deals with Native customary land is the Sarawak Land Consolidation and Rehabilitation Authority Ordinance 1976 which aims mainly to develop agricultural land in situ and often involves owners of Native Customary Lands entering into joint ventures with Sarawak Land Consolidation & Rehabilitation Authority (SALCRA) to develop their lands and to plant cash crops.

The Sarawak Land Consolidation and Development Authority Ordinance (LCDA) 1981 allows LCDA as a government agency to acquire land for private estate development and includes Native Customary Rights land. LCDA forms joint venture companies with private investors and NCR land owners.

The Natural Resources and Environment Ordinance 1993 in Section 11A(a) requires any person undertaking activities such as forest clearance, logging, mining exploration or commercial development to submit an environmental impact assessment report of such activities. However, these requirements are undermined by the First Schedule of the Natural Resources and Environment (Prescribed Activities) Order 1994, logging activity will only require a mandatory Environmental Impact Assessment (EIA) if it falls into (i) areas exceeding 500 hectares; and (ii) areas declared to be a water catchment area under the Water Ordinance 1994; or by developers who circumvent these by parceling out land into less than 500 hectares.

G. The Situation of Indigenous Women and Their Individual and Collective Rights

Indigenous women, particularly those who live in the rural areas, have contributions to community life in many ways but these are not recognised. This is partly due to their limited or non-participation in political processes in organisations or in traditional institutions. Existing traditional institutions such as village heads and native chiefs are still dominated by men even though women are also well-versed in the adat and customs. Currently established political organizations have more participation of women but most positions are still held by men.

Malaysia signed the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) in 1995 but with several reservations, mainly due to religious concerns. Changes were slow and the Federal Constitution, for example, was only amended in 2001 to specifically remove gender-based discrimination under Article 8(2). Other relevant provisions in the CEDAW relating to rape and sexual assault have not been incorporated into domestic laws. A recent positive move was the commitment by the government of the 30% target in the participation of women in decision-making at all levels in the 10th Malaysia Plan.
However, in party politics and governance, women still lag far behind as illustrated below. Women are lagging behind because of the lack of opportunities that would allow them to be well-versed in the running of political organizations or traditional institutions. This is a direct result of years of discrimination against women and the stereotyping, thus they do not get the support from their own families and communities to occupy such positions. There is also a tendency for women themselves to shy away from opportunities, thus the need for continuous enhancing of capacities and self-confidence.

H. The Impacts of Government Projects/Programs within the ASEAN Integration Plan on Indigenous Peoples

Malaysia’s national development plan and the AEC blueprint and the Roadmap

While there are numerous activities planned in Malaysia related to ASEAN, there are very limited studies on specific locations and impacts on indigenous communities. Nevertheless, the free flow of goods, trade facilitation, Malaysia’s national single window; free flow of services, free flow of investments and free flow of skilled labour (workers from other ASEAN countries particularly Indonesia and Philippines to
Malaysia) have impacted on indigenous peoples indirectly.

The 10th Malaysia Plan (2010 – 2015) underlines five basic strategies for Malaysia to achieve a high income nation status by 2020, including increasing the value in the economy, improve knowledge abilities and innovation, handle socioeconomic inequalities, improve living quality, and strengthen institutions and the country’s implementation. The economic sector gets the biggest fund allocation amounting to 55% of RM230 billion. During this 10th Plan period, the service sector will be liberalised among others, under the ASEAN Framework Agreement on Services (AFAS). And in keeping with the AFAS timeline and equity parameters, further liberalization will be undertaken for 128 subsectors, allowing at least 70% ASEAN equity ownership by 2015. In this regard, new commitments are made including healthcare, tourism, telecommunications, education, environment, transport and business services subsectors. This builds upon the liberalization of 65 of the 128 subsectors as of end 2008. In addition to the 128 subsectors, financial and air transport services will also be further liberalised towards meeting the targets for 2015.14

Another project which Malaysia is pursuing is the ASEAN Power Grid (APG), a flagship programme mandated in 1997 by the ASEAN Heads of States/Governments under the ASEAN Vision 2020.15 The APG is aimed at ensuring regional energy security while promoting the efficient utilization and sharing of resources for mutual benefit; enhancing electricity trade across borders through the integration of

national power grids to meet the increasing electricity demand and improve access to energy services; and sharing of surplus reserve generation capacity among ASEAN member States to enhance overall system security and reduce system costs. Malaysia through the various interconnection projects with Thailand, Philippines, Singapore, Indonesia and Brunei is planning to sell 6,830 MW of electricity (see figure 11.2 Status of ASEAN Interconnection Project, August 2013 below).

Powering these projects are mega dams to be built on indigenous territories such as the Bakun, Murum and proposed Baram dams in Sarawak, and several proposed dams in Peninsular Malaysia and Sabah. These dams would definitely devastate ancestral lands and displace indigenous communities into resettlement shacks as seen in Bakun and Murum.

Another key project related to the optimisation of the Trans-ASEAN Gas Pipelines is the construction of the Sabah – Sarawak Gas Pipeline, involving a 512 km, 26 inch diameter onshore natural gas pipeline from the proposed Sabah Oil and Gas Terminal in Kimanis, Sabah, to the Petronas LNG complex in Bintulu, Sarawak, and the construction of associated facilities by a consortium led by Punj Lloyd. Since 1984, Petronas has been supplying natural gas produced by the fields offshore Terengganu to consumers located in Peninsular Malaysia, and power plants in Singapore via its Peninsular Gas Utilisation (PGU) Pipeline system. Comprising six gas processing plants with a combined capacity of 2 Bcf/d and more than 2,500 km of main and lateral pipelines to transmit gas to the customers, the PGU Pipeline is linked to the 614 km Trans Thailand-Malaysia (TTM) Gas Pipeline system in the north.

Direct impacts on indigenous peoples are on the Food, Agriculture and Forestry sector where more focus is on agricultural production, particularly of oil palm and rubber. These negatively affect food sovereignty and forest conversion and allow development aggression as well as dispossession of land.

ASEAN’s Intellectual Property Rights work plan is aimed to establish a national and regional database on Traditional Knowledge, Genetic Resources and Cultural Traditional Expressions. In Malaysia, an online portal, MyTKDL, was created based on information garnered through secondary sources such as museums, agriculture, forest departments and parks.

Through the ASEAN Community, projects to recognize or promote positive developments were initiated such as the establishment of a Small and Medium Enterprises (SMEs) development fund to be used as a financial source for communities to sustain themselves. However, not many indigenous enterprises could compete with other more established businesses, or traditional occupations are not considered viable.

Indigenous peoples also took advantage of an important forum for development in the Social Forestry in Malaysia which advances positive standards by the ASEAN Social Forestry Network and the promotion of community-based economic livelihoods mainly in non-timber forest products. However, capacity building and market development in Malaysia are lagging far behind Indonesia and Philippines.

There is a pledge by ASEAN governments to increase the development and utilization of

Renewable Energy (RE) sources to achieve 15% target in ASEAN power generation mix and to enhance awareness and information sharing and strengthen networks. Better networking among RE practitioners has led to the formation of SEAREPA – the South East Asia Renewable Energy People’s Assembly. In 2012, SEAREPA had its inaugural gathering in Sabah, Malaysia which brought together over 130 renewable energy experts from across 11 countries. The gathering concluded with an agreement on 12 future projects, including developing community micro-hydro practitioner networks, promoting regional exchanges of renewable energy systems, building a youth alliance in the Mekong Delta, and building a network against the massive dam spree in Sarawak, among other initiatives.17 Efforts to promote RE also propelled the need to address climate change issues. However also considered to be an RE development is the promotion of biofuels and hydroelectricity, which means more indigenous lands being taken for oil palm plantations and dams.

Air transport liberalization links under the BIMP-EAGA project (Brunei, Indonesia, Malaysia, Philippines East ASEAN Growth Area) could be seen as a positive development, with cheaper travel and communication in this sub-region. The low cost carrier Air Asia has also enabled face-to-face meetings among indigenous peoples in Malaysia but this could also be said for trade and development that may function against indigenous peoples’ interest.

To concretize the ASEAN Vision 2020, the ASEAN Heads of States/Governments adopted the Declaration of ASEAN Concord II (Bali Concord II) in 2003 to establish an ASEAN Community by 2020. The ASEAN Community consists of three pillars, namely the ASEAN Political-Security Community (APSC), the ASEAN Economic Community (AEC) and the ASEAN Socio-Cultural Community (ASCC). A Blueprint for each of these pillars was produced as a roadmap and timetable to realize an ASEAN integration plan by 2015.

Of these three pillars, the AEC is the most elaborate. The end-goal of ASEAN economic integration is the full realization of an ASEAN Economic Community, wherein the region will be transformed “into a single market and production base, a highly competitive region, a region of equitable economic development, and a region fully integrated into the global economy.” In particular, ASEAN leaders agreed to hasten the establishment of the AEC by 2015 and to transform ASEAN into a region with free movement of goods, services, investment, skilled labour, and freer flow of capital (ASEAN Economic Blueprint, Article 4). These programmes are likely to have the most impact on indigenous peoples.

The APSC is aimed at promoting political development in line with principles of
democracy, rule of law and good governance; respect for and promotion and protection of human rights and fundamental freedoms; prevent and combat corruption and promote peace and stability in the region. The APSC envisions a people-oriented ASEAN in which all sectors of society, regardless of gender, race, religion, language, or social and cultural background, participate in, and benefit from, the process of ASEAN integration and community building (APSC Blueprint Article 7). However, while the APSC Blueprint claims to support gender-mainstreaming, tolerance, respect for diversity, equality and mutual understanding, it does not have any specific mention of indigenous peoples.

I. The ASEAN and Key Issues and Challenges

As can be seen in the preceding sections, many of the laws and policies related to the protection of Orang Asal rights to land are weak and there are no substantive participatory and conflict resolution mechanisms in Malaysia. There is also a general lack of corporate accountability and a culture of nepotism in Malaysia in awarding contracts. The lack of a legal framework for the recognition of indigenous peoples’ rights, including their individual and collective rights to lands, territories and resources and the right to the free, prior and informed consent is a major setback for indigenous peoples in the ASEAN integration plan. These rights which are guaranteed by international human rights instruments including the UNDRIP are not explicit in the ASEAN Human Right Declaration. There are also no grievance mechanisms to address human rights and other abuses.

The ASEAN Integration is currently aimed at integrating the ‘transitional economies’ of new ASEAN members to be able to form an integrated production base in the region. This involves privatization of lands and other economic assets, opening to foreign investments, dismantling of state-owned and state-run enterprises, and reducing social welfare projects and government subsidies which are happening at different levels to accommodate the capitalist model. Once the Initiative for ASEAN Integration (IAI) with the objectives of Narrowing the Development Gap (NDG) and accelerating economic integration of the newer members of ASEAN are complete, indigenous peoples in Malaysia and in South East Asia would have to deal with a fully functioning capitalist ASEAN economies.

Many of the eleven priority integration sectors i.e. Agro-based products, Fisheries, Wood-based products, Rubber-based products, Textiles & Apparels, Automotive, Electronics, Air Travel, Tourism, Health care and e-ASEAN (ICT) would affect indigenous economies and ways of life.

According to a 2014 study by the International Labour Organization (ILO) and the Asian Development Bank (ADB), the ASEAN Economic Community could generate 14 million jobs by 2025 and improve the livelihood of 600 million people across all 10 ASEAN member states. The study estimates 14 million projected jobs within 10 years from the AEC launching in 2015. For the Orang Asal, this could be a double-edged sword. Unemployment among indigenous youths may still continue to be over-represented in the current estimated 100 million unemployed or more rural migration will occur in already empty villages. This will further exacerbate the loss of inter-generational
This is already evident from the number of complaints by indigenous peoples received by SUHAKAM and members of the Roundtable on Sustainable Palm Oil (RSPO). Those who join the AEC fray will find themselves entering a vulnerable monetized economy, losing once important traditional values.

The Malaysian trade, industries and resources are likely to be monopolized by the elite, causing huge income disparity among the population in the country. Elite domination of the economy and politics in the country begets corruption. While the government has launched a number of initiatives to address corruption including in the business sector, the Corruption Perception Index 2011 results show that leaders and public institutions are not doing enough to combat corruption, especially “grand corruption.” These include the continuing and snowballing practice of awarding mega projects and contracts without open tenders or competitive bidding, limited access to information, allegations of inflated pricing in military purchases and the continued close nexus between business and politics in Malaysia.

Efficient delivery systems, where the organs of government and institutions govern and manage the country and its resources with integrity, transparency, accountability and good governance will require stronger and clearer guidance from the APSC Blueprint.

Corruption and leakages are among the causes of transfer of indigenous knowledge and ways of life.

The study also noted that the job gains will be uneven, and will vary by country, sectors, and gender. These will not be distributed evenly between countries, economic sectors or between women and men. The study found that there will be fewer new jobs for women in the new AEC, with many of those jobs possibly being in sectors that are vulnerable and informal leading to greater inequalities.

The top ASEAN companies on agro-based products, fisheries, and rubber products, will continue to dominate industries in the region, with Malaysia as one of the leading producers. For example, the oil palm planted area in Malaysia alone was 5.1 million hectares by December 2012. For Sabah in the same year, almost 1.5 million hectares of oil palm had been planted, producing some 5.84 million tonnes of crude palm oil in 2011, or over 11 per cent of global production. Currently, vegetable oils (from oil palm) and rubber products constitute half of the total exports of ASEAN countries. Much of these lands belong to Orang Asal communities and land-grabbing is expected to increase as industries compete to enhance production. Those wanting to maintain a traditional way of life will fall deeper into poverty as indigenous economies are completely neglected by the ASEAN Economic Blueprint.

### Malaysia’s Trade with ASEAN

<table>
<thead>
<tr>
<th></th>
<th>ASEAN’s Global (US$ bil)</th>
<th>Intra ASEAN Trade (US$ bil)</th>
<th>Malaysia’s Total Trade (US$ bil)</th>
<th>Malaysia’s Total Trade with ASEAN (US$ bil)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>2,388.6</td>
<td>598.2 (25%)</td>
<td>423.9</td>
<td>115.8 (27.3%)</td>
</tr>
<tr>
<td>2001</td>
<td>320.6</td>
<td>77 (24%)</td>
<td>161.7</td>
<td>38.8 (23.9%)</td>
</tr>
</tbody>
</table>

Source: MATRADE

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of continued foreign intrusions in the 1,400 km coastal areas of Sabah under the Eastern Sabah Security Command (ESSCOM). Security in Sabah is also very important being one of ASEAN’s growth area under the BIMP-EAGA. There are reports of smuggling of contraband cigarettes, petroleum and other essential goods that have affected indigenous peoples living within the ESSCOM areas. These result not only in the State’s loss of revenue but also to increased cost of essential goods as the demand then exceeds availability. The inability of the federal government of Malaysia to control the massive influx of economic migrants to Sabah from Indonesia and Philippines is testament to an unbalanced implementation of the AEC as compared to the APSC. More such issues would arise as part of the ASEAN Integration. Currently foreign laborers from Indonesia and Bangladesh make up the bulk of the workers in Malaysia.22

Similarly, a weaker implementation of the ASCC compared to the AEC Blueprints has resulted in the degradation of the environment. Environmental protection of indigenous territories as practiced by communities for generations, particularly forest and watershed areas, were disregarded when Malaysia expanded its agro-based, fisheries, rubber and timber production. Communities are being corralled into decreasing village areas and many are forced to abandon sustainable ways of life. If policies of social welfare and protection, social justice and rights, and environmental sustainability as outlined in the ASCC Blueprint are not assured, the Orang Asal who still rely on their land and traditions would be the most disadvantaged target of the ASEAN Integration.

J. Profile of Indigenous Organisations, Movements, Alliances, Networks

There are only a handful of organizations that monitor the impacts of the ASEAN Integration projects in Malaysia. Currently, none of the indigenous organizations in Malaysia has dedicated programmes to follow-up the progress in the ASEAN. And as cited earlier, meetings to monitor progress are often held at the capital, Kuala Lumpur, making it difficult for indigenous organizations based in Sabah and Sarawak, including JOAS, to participate actively. Nevertheless, these indigenous organizations can be mobilized as they deal with issues related to the activities by ASEAN that affect indigenous communities.

Jaringan Orang Asal SeMalaysia or the Indigenous Peoples Network of Malaysia (JOAS) has membership from 87 indigenous community organizations, and five support NGOs namely Partners of Community of Organization - Sabah (PACOS TRUST), Centre for Orang Asli Concerns (COAC) - Peninsular Malaysia, Borneo Resources Institute Malaysia Sarawak (BRIMAS), Sarawak Dayak Iban Association (SADIA), and Building Initiatives in Indigenous Heritage (BIIH). JOAS’s key programmes and strategies are on capacity building of its members and networking to achieve legal and policy changes on systemic issues, particularly land, development and recognition of indigenous peoples. JOAS is playing a role in monitoring activities by ASEAN such as the Sabah-Sarawak gas pipeline, the drafting and implementation of the ASEAN Human Rights Declaration, renewable energy, ASEAN Social Forestry Network and other issues related to development and climate change.

Other indigenous networks that have interests in issues in ASEAN are Save Rivers Sarawak and Sabah Save Rivers Coalition that are against the construction of dams on indigenous territories, and the Orang Asli Village Network of Peninsular Malaysia (JAKOASM) that is currently a member of the NGO committee organizing the ASEAN Social Forum in 2015.

Suara Rakyat Malaysia or SUARAM is the leading NGO, and the key partner of Forum Asia, in following-up on the activities of ASEAN, including organizing fora on related issues. SUARAM mainly focuses on human rights issues but since it is also part of COMANGO, a large coalition of civil society movements and organizations in Malaysia (which started in 2013 to highlight various human rights issues at the second cycle of the Universal Periodic Review of Malaysia), it now enjoys input from various groups. Some of these groups – Pusat Komas, Child Rights Coalition of Malaysia, Women’s Aid Organization and various workers’ unions - have been involved or following-up activities by ASEAN.

Apart from these CSOs, alliances can be formed with universities and national and regional human rights institutions that are keen in assessing the progress and impact of ASEAN such as the Foreign Policy Study Group of Universiti Sains Malaysia (USM), the Malaysian Human Rights Commission (SUHAKAM) and the South East Asia NHRI Forum (SEANF). SEANF has come up with reports on indigenous peoples’ rights and trafficking of persons.

An effective strategy by civil society organisations, including indigenous organizations would be through institutional engagement and dialogues to develop safety nets for communities. A deeper study and analysis of the impacts and adverse effects of the planned projects on affected indigenous territories and communities must be undertaken with the involvement of the indigenous peoples. This is to inform them of the implications on their lives and how they can counteract these through organizational strategies and mitigate the impending changes with their traditional and customary laws and knowledge. It is also important to rally for the defense and protection of Orang Asal rights through struggle and mobilization campaigns and solidarity, especially with other indigenous peoples in the ASEAN region. With more than 1000 Malaysian companies in the ASEAN region, communities affected by transnational companies would be strengthened through joint campaigns and actions.
The Indigenous Peoples Human Rights Defenders Network (IPHRD Net) is a platform for solidarity, coordination and support among indigenous human rights defenders and their organizations. Through the IPHRD Net, indigenous peoples human rights defenders can more effectively address human rights issues and violations wherever these occur by working with other indigenous peoples organisations, other human right organisations, and with regional and international human rights mechanisms and bodies.

THE FUNCTIONS OF THE IPHRDS NET ARE AS FOLLOWS:

1. Mechanism for exchange of information and updates relating to human rights of indigenous peoples
2. Facilitation of technical, logistics and other forms of support
3. Forum for planning, capacity building and skills enhancement of network members
4. Mechanism for strengthening solidarity and cooperation.

ACTIVITIES

1. Documentation of human rights violations against indigenous peoples for use in lobby and advocacy at all levels
2. Manage the database of human rights violations against indigenous peoples in Asia
3. Capacity-building on human rights documentation and advocacy
4. Awareness-raising on human rights, in particular the UN Declaration on the Rights of Indigenous Peoples
5. Advocacy on indigenous peoples issues at all levels
6. Networking with other civil society organisations to gather support on the issues and concerns of indigenous peoples
7. Facilitate direct support to indigenous peoples human rights defenders at risk.

www.iphrdefenders.net

Have you witnessed a human rights violation against indigenous peoples?

Are you an IPHRD at risk needing assistance?
Contact us at: www.iphrdefenders.net/index.php/request-for-assistance-form
AIPP at a glance

The Asia Indigenous Peoples Pact (AIPP) is a regional organization founded in 1988 by indigenous peoples' movements as a platform for solidarity and cooperation. AIPP is actively promoting and defending indigenous peoples' rights and human rights, sustainable development and management of resources and environment protection. Through the years, AIPP has developed its expertise on grassroots capacity building, advocacy and networking from local to global levels and strengthening partnerships with indigenous organizations, support NGOs, UN agencies and other institutions. At present, AIPP has 47 members from 14 countries in Asia with 7 indigenous peoples' national alliances/networks and 35 local and sub-national organizations including 16 are ethnic-based organizations, five (5) indigenous women and four (4) are indigenous youth organizations. It also specifically aims to empower indigenous women through networking, education and capacity building activities with the overall goal for indigenous women to assert, promote and protect their rights as women and as indigenous peoples.

Our Vision
Indigenous peoples in Asia are fully exercising their rights, distinct cultures and identities, are living with dignity, and enhancing their sustainable management systems on lands, territories and resources for their own future and development in an environment of peace, justice and equality.

Our Mission
AIPP strengthens the solidarity, cooperation and capacities of indigenous peoples in Asia to promote and protect their rights, cultures and identities, and their sustainable resource management systems for their development and self-determination.

AIPP Programmes
Our main areas of work among the different programmes are information dissemination, awareness raising, capacity building, advocacy and networking from local to global. Our programmes are:

• Human Rights Campaign and Policy Advocacy
• Regional Capacity Building
• Environment
• Indigenous Women
• Communication Development

AIPP is accredited as an NGO in special consultative status with the UN Economic and Social Council (ECOSOC) and as observer organization with the United Nations Framework Convention on Climate Change (UNFCCC), Convention on Biological Diversity (CBD), Green Climate Fund (GCF), Global Environment Facility (GEF) and the World Intellectual Property Organization (WIPO). AIPP is a member of the International Land Coalition (ILC).