

South East Asia National Human Rights Institutions Forum (SEANF)
Project on Good Practices in Promoting and Protecting the Rights of
Indigenous Peoples

GOOD PRACTICES IN MALAYSIA



HUMAN RIGHTS COMMISSION OF MALAYSIA (SUHAKAM)

TABLE OF CONTENT

NO.		PAGE
1.	INTRODUCTION	3
	1.1 BACKGROUND OF THE SEANF PROJECT ON GOOD PRACTICES IN PROMOTING AND PROTECTING THE RIGHTS OF INDIGENOUS PEOPLES	3
	1.2 BACKGROUND ON GOOD PRACTICES IN PROMOTING AND PROTECTING THE RIGHTS OF INDIGENOUS PEOPLES IN MALAYSIA	4
2.	INTRODUCTION TO THE ORANG ASAL IN MALAYSIA	6
	2.1 DEFINITION AND COMPOSITION OF THE INDIGENOUS PEOPLES IN MALAYSIA	6
	2.2 THE ORANG ASAL'S WAY OF LIFE	10
	2.3 THE CURRENT ADMINISTRATION OF THE ORANG ASAL IN MALAYSIA	11
3.	GOOD PRACTICES IN PROMOTING AND PROTECTING THE RIGHTS OF THE ORANG ASAL IN MALAYSIA	13
	3.1 INTRODUCTION	13
	3.2 GOOD PRACTICES IN PROMOTING AND PROTECTING THE RIGHTS OF THE ORANG ASAL IN MALAYSIA	13
4.	CURRENT AND PERSISTING CHALLENGES IMPEDING THE PROMOTION AND PROTECTION OF THE RIGHTS OF THE ORANG ASAL IN MALAYSIA	44
5.	CONCLUSION	53

1. INTRODUCTION

1.1 BACKGROUND OF THE SEANF PROJECT ON GOOD PRACTICES IN PROMOTING AND PROTECTING THE RIGHTS OF INDIGENOUS PEOPLES

The South East Asia National Human Rights Institutions Forum (SEANF)¹ consists of the Indonesian Komisi Nasional Hak Asasi Manusia (KomnasHAM), Human Rights Commission of Malaysia (SUHAKAM), Myanmar National Human Rights Commission (MNHRC), Commission on Human Rights of the Philippines (CHRP), National Human Rights Commission of Thailand (NHRCT), and Timor Leste Provedor for Human Rights and Justice (PDHJ). During the SEANF's Technical Working Group Meeting on 23-24 February 2012 in Bangkok, Thailand, SEANF Members collectively agreed to embark on a project entitled 'Good Practices in Promoting and Protecting the Rights of Indigenous Peoples'. SUHAKAM was elected as the coordinator of this Project.

The Project aims to share experiences among SEANF Members on their respective Country's relevant laws, policies and programmes which have contributed to the enhancement of the protection and advancement of the IP's civil, political, economic, social and cultural rights. From the contributions of each SEANF Member to the project, it is aspired that adaptable foreign good practices could be advocated by each SEANF Member at their national level, towards improving further the well-being of the IP in their Country.

In undertaking this Project, each SEANF Member would draft a paper that highlights some of the good practices that have been undertaken by the various institutions and organisations in each of the Member Institution's Country for the purpose of promoting and protecting the rights of IP. Each paper would be distributed to all SEANF Member

¹ The SEANF was formed after a Declaration of Cooperation for the protection and promotion of human rights in South East Asia was signed by KomnasHAM, SUHAKAM, CHRP, and NHRCT, in Bali, Indonesia on 25-28 June 2007. The PDHJ and MNHRC were admitted as members to the SEANF on 15 November 2010 and 12 September 2012. South East Asia National Human Rights Institutions Forum (SEANF), *'About Us South East Asia NHRI Forum'* (SEANF) <<http://www.seanf.asia/index.php/about-us>>

Institutions and uploaded onto the SEANF Website for the Members' future reference as well as for public consumption.

1.2 BACKGROUND ON GOOD PRACTICES IN PROMOTING AND PROTECTING THE RIGHTS OF INDIGENOUS PEOPLES IN MALAYSIA

The following study will highlight some of the initiatives taken in Malaysia that positively impact the rights of IP in the Country, for the purpose of the SEANF's Project entitled 'Good Practices in Promoting and Protecting the Rights of Indigenous Peoples'.

It will begin by ascertaining who constitutes the IP of Malaysia, who are locally called the *Orang Asal*, based on definition given by domestic legal provisions, and which term will be used throughout this paper, where relevant. It will also look at the composition of the *Orang Asal* in Malaysia before it explores their way of life and current administration, as well as legal standing in the Country, in particular, the special position they are afforded by law. Subsequently, this study will highlight some of the existing measures that have been introduced in order to protect and advance the well-being of the *Orang Asal*, which have simultaneously enhanced the promotion and protection of their rights. While these will be mainly focused on the measures taken by the State, it will also highlight some of the programmes that have been implemented by certain non-governmental institutions and organisations.

However, in doing so, SUHAKAM takes stock of the experience of the Expert Mechanism on the Rights of Indigenous Peoples (EMPRIP) in its study concerning the right to participate in decision making,² in which it encountered difficulty in defining what 'good' practices constituted in the context of its study,³ as the Expert Mechanism could not verify whether all the 'good' practices it reported were "*uncontroversial or objectively good in every respect*".⁴ The Expert Mechanism qualifies this as follows:

² UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), 'Final study on indigenous peoples and the right to participate in decision-making - Report of the Expert Mechanism on the Rights of Indigenous Peoples' (EMRIP, 2011) A/HRC/EMRIP/2011/2 <<http://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/AEVfinalreportStudyIPRightParticipate.pdf>>

³ EMRIP (n.2), 3

⁴ EMRIP (n.2), 4

*“Mechanisms enabling the participation of indigenous peoples in external, non-indigenous decision-making processes can be problematic for various reasons. They may operate in environments where indigenous peoples are politically, socially and economically non dominant and, while they enhance indigenous peoples’ participation, they do not go so far as to level the playing field with non-indigenous individuals and peoples, they do not allow greater indigenous influence over decisions in practice, because they are poorly implemented, or suffer from previously unforeseeable problems; or because they give privilege to the participation of certain indigenous individuals over that of others, creating concerns about their ability to achieve equality between individuals.”*⁵

In this light, some of the practices recorded in the Expert Mechanism’s study were included based on the elements of those practices which appear to have positive aspects.⁶ Moreover, the Expert Mechanism had even included in its report some practices which it qualifies as among those that might not have been well implemented. It did so in order to draw attention to the potential that they have to promote and protect the right of the IP to participate in decision making.⁷

The Expert Mechanism went on to underscore that *“Good practices may be found in, inter alia, a law, a policy programme, a single project and/or in a component of a project”*⁸

Similarly, the following good practices included by SUHAKAM would encompass measures – including laws, policies and programmes – that have positively impacted, as well as those that appear to have the potential to contribute to the protection and advancement of the rights of IP in the Country. In addition, measures with elements that appear to have positive aspects are also highlighted in following study.

Before concluding, this study will highlight some of the current and persisting challenges that impede the full realisation of the rights of the *Orang Asal* in Malaysia.

⁵ EMRIP (n.2), 3,4

⁶ Ibid.

⁷ Ibid.

⁸ EMRIP (n.2), 4

2. INTRODUCTION TO THE ORANG ASAL IN MALAYSIA

2.1 DEFINITION AND COMPOSITION OF THE INDIGENOUS PEOPLES IN MALAYSIA

The IP of Malaysia are collectively called the *Orang Asal*.⁹ They are composed of the aborigines (*Orang Asli*) of Peninsular Malaysia and the natives of Sabah and Sarawak. Together, the *Orang Asal* makes up 13.8% of the total population of Malaysia.¹⁰

(i) *The Orang Asli of Peninsular Malaysia*

Article 160 (2) of the Federal Constitution¹¹ defines the Aborigines or *Orang Asli* to include the aborigines in Peninsular Malaysia,¹² who can be divided into three major groups, namely the Negrito, Senoi and Proto-Malays. Each major group is divided further to comprise in total 18 sub-ethnic groups.¹³ The Kensui, Kintak, Jahai, Lanoh, Mendriq and Bateq sub-ethnic groups make up the Negrito, while the Senoi includes the Semai, Temiar, Jahut, Che Wong, Mahmeri and Semok sub-ethnic groups.¹⁴ The Proto-Malay consists of the Temuan, Semelai Jakun, Kanaq Kuala and Seletar sub-ethnic groups.

Table 1 shows the composition of the *Orang Asli* in Peninsular Malaysia in 2010. Among the three major *Orang Asli* groups, the Senoi make up the largest group at 54.9% of the total *Orang Asli* population, while the Proto-Malay forms 42.3% of the *Orang Asli* population. The Negrito forms a much smaller group, forming only 2.8% of the total *Orang Asli* population in Peninsular Malaysia. In total, the *Orang Asli* in Peninsular Malaysia forms only about 0.06% of the national population.¹⁵

⁹ Human Rights Commission of Malaysia (SUHAKAM), *Report of the National Inquiry into the Land Rights of Indigenous Peoples*, (SUHAKAM, 2013), v

¹⁰ Ibid.

¹¹ Federal Constitution of Malaysia [31 August 1957]

¹² Ibid., Article 160 (2)

¹³ Yahya bin Awang, *The State of Indigenous Oral Traditions. Indigenous Oral Traditions of the Orang Asli, Malaysia* By Yahya bin Awang, <<http://mobile.asean.org/coci/files/Malaysia/Malaysia.pdf>>accessed 31 July 2014

¹⁴ Ministry of Rural and Regional Development (KKLW) and Department of Orang Asli Affairs (JAKOA), *Pelan Strategik Kemajuan Orang Asli* (Bahagian Perancangan dan Penyelidikan JAKOA, 2011), 19

¹⁵ Total population for Malaysia for 2010 is 28.3 million. Department of Statistics, Malaysia, *Population Distribution and Basic Demographic Characteristics 2010* (DoS, 2010), 1

TABLE 1: ORANG ASLI COMPOSITION, PENINSULAR MALAYSIA, 2010

STATE	NEGRITO	SENOI	PROTO-MALAY	TOTAL
Pahang	925	29,439	37,142	67,506
Perak	2,413	50,281	605	53,299
Kedah	251	19	0	270
Selangor	3	5,073	12,511	17,587
Kelantan	1,381	12,047	29	13,457
Terengganu	34	818	41	893
N. Sembilan	0	96	10,435	10,531
Melaka	1	28	1,486	1,515
Johor	1	55	13,083	13,139
TOTAL	5,009	97,856	75,332	178,197

Source: KKLW and JAKOA (2011), *Pelan Strategik Kemajuan Orang Asli 2011-2015*

(ii) *The Natives of Sarawak*

According to Article 161A of the Federal Constitution and Section 3 of the Sarawak Interpretation Ordinance (Cap 61, 2005), the ‘natives’ of Sarawak are listed as the Bukitans, Bisayahs, Dusuns, Sea Dayaks, Land Dayaks, Kadayans, Kalabits, Kayans, Kenyahs, (including Sabups and Sipengs), Kajangs (including Sekapans, Kejamans, Punans, Tanjongs and Kanowits), Lugats, Lisums, Malays, Melanos, Muruts, Penans, Sians, Tagals, Tabuns and Ukits.¹⁶

The Sea Dayaks and Land Dayaks respectively refer to the Iban and Bidayuh during the colonial period. Further, the Bukitan, Bisayah, Ukit, Kayan, Kenyah, Kelabit Lisum, Seping, Lun Bawang, Tagal, Penan/Punan, Sihan/Sian and Tabun are collectively called the Orang Ulu and refer to indigenous communities who are generally found in the interiors of Sarawak.¹⁷

Based on the 2010 census, Table 2 shows the Sarawak population based on ethnic groups. The Iban makes up the largest ethnic group in Sarawak, comprising of about 29% of the total Sarawak population. The Bidayuh forms about 8% of the

<http://www.statistics.gov.my/portal/download_Population/files/census2010/Taburan_Penduduk_dan_Ciri-ciri_Asas_Demografi.pdf>accessed 31 July 2014

¹⁶ Federal Constitution of Malaysia (n. 11), Article 161A(7)

¹⁷ SUHAKAM (n 9), 15

Sarawak population and is the third largest group in Sarawak. The Bidayuh is subdivided further into five different dialect components namely the Bukar Sadong (Serian), Biatah (Kuching), Jagoi (Bau), Selakau and Lara (Lundu). The Orang Ulu represents approximately 5% of the total population in Sarawak.¹⁸

TABLE 2: POPULATION BREAKDOWN, SARAWAK, 2010

RACE	POPULATION	PERCENTAGE
Malay	568,113	22.98
Iban	713,421	28.87
Bidayuh	198,473	8.03
Melanau	123,410	4.99
Other Bumiputera	156,436	6.33
Chinese	577,646	27.42
Indian	7,411	0.29
Others	9,183	0.36
Non-Citizens	117,092	4.73
TOTAL	2,471,140	100

References: http://www.statistics.gov.my/portal/download_Population/files/census2010/Taburan_Penduduk_dan_Ciri-ciri_Asas_Demografi.pdf

(iii) *The Natives of Sabah*

Currently, there is no official listing in the law that specifies who the natives of Sabah are. However, according to the Federal Constitution, a native in Sabah means ‘a person who is a citizen, is the child or grandchild of a person of a race indigenous to Sabah, and was born (whether on or after Malaysia Day or not) either in Sabah or to a father domicile in Sabah at the time of the birth’.¹⁹ In addition, Section 2(1) of the Interpretation (Definition of Native) Ordinance of Sabah defines a ‘native’ to include the following:

- (a) *any person both of whose parents are or were members of a people indigenous to Sabah; or*

¹⁸ Ibid.

¹⁹ Federal Constitution of Malaysia, (n. 11), Article 161A(6)(b)

- (b) *any person ordinarily resident in Sabah and being and living as a member of a native community, one at least of whose parents or ancestors is or was a native within the meaning of paragraph (a) hereof; or*
- (c) *any person who is ordinarily resident in Sabah, is a member of the Suluk, Kagayan, Simonol, Sibutu or Ubian people or of a people indigenous to the State of Sarawak or the State of Brunei, has lived as and been a member of a native community for a continuous period of three years preceding the date of his claim to be a native, has borne a good character throughout that period and whose stay in Sabah is not limited under any of the provisions of the Immigration Act, 1959/63 [Act 155.]:*

Provided that if one of such person's parents is or was a member of any such people and either lives or if deceased is buried or reputed to be buried in Sabah, then the qualifying period shall be reduced to two years; or

- (d) *any person who is ordinarily resident in Sabah, is a member of a people indigenous to the Republic of Indonesia or the Sulu group of islands in the Philippine Archipelago or the States of Malaya or the Republic of Singapore, has lived as and been a member of a native community for a continuous period of five years immediately preceding the date of his claim to be a native, has borne a good character throughout that period and whose stay in Sabah is not limited under any of the provisions of the Immigration Act, 1959/63 [Act 155.].²⁰*

Table 3 shows the population breakdown in Sabah based on the 2010 national census. The three major groups of Kadazandusun, Murut and Bajau make up about 1.2 million or 35% of the total Sabah population in 2010.

²⁰Interpretation (Definition of Native) Ordinance, Section 2(1)

TABLE 3: POPULATION BREAKDOWN, SABAH, 2010

RACE	POPULATION	PERCENTAGE
Malay	184,197	5.74
KadazanDusun	568,575	17.71
Bajau	450,279	14.00
Murut	102,393	3.20
Other Bumiputera	659,856	20.57
Chinese	295,674	9.20
Indian	7,453	0.23
Others	48,527	1.51
Non-Citizens	889,779	27.74
TOTAL	3,206,742	100

References: http://www.statistics.gov.my/portal/download_Population/files/census2010/Taburan_Penduduk_dan_Ciri-ciri_Asas_Demografi.pdf

2.2 THE ORANG ASAL'S WAY OF LIFE

The majority of the *Orang Asal* in Malaysia still reside in rural and remote areas. However, there is an increasing trend of migration among the *Orang Asal* to the periphery of the urban areas.²¹

A significant number of the *Orang Asal*, especially the natives in Sabah and Sarawak, are now employed in the civil service or private sector, while many others still survive by hunting and gathering, fishing, swidden farming, arboriculture and by trading forest products. Nonetheless, by and large, the *Orang Asal* remains a rural population.²² Their lives remain closely linked to their lands, territories and natural resources. Lands and resources are not only their means of subsistence, but are also integral to their spiritual and cultural beliefs which, in turn, forms their identity.²³

The indigenous communities utilise their traditional customs or *adat* to govern their daily lives including their traditional beliefs and social and economic system, as well as to regulate their use and protection of lands, territories and resources, among others. It

²¹ SUHAKAM (n. 9), 11

²² Ibid.

²³ Ibid.

encompasses customary laws, concepts, principles and practices, which also apply to the customary institutions that implement and regulate such laws, concepts, principles and practices. In turn, the *adat* is governed by traditional institutions which typically comprise knowledgeable and respectable elders. They are mainly responsible to promote the understanding and enforcement of the *adat* in their communities. They are also to guide their next generation with the knowledge so as to ensure the continued practice and respect of their customs.²⁴

However, the traditions that govern the *Orang Asal*'s way of life are slowly deteriorating in Malaysia. Besides the introduction of mainstream institutions by the Government that have forced the alteration of traditional institutions, the forced acquisition and encroachment of customary land, territories and resources by the Government and/or private proponents have also curtailed the ability of the *Orang Asal* to efficiently practise their spiritual and cultural rights, and therefore their identity.²⁵

2.3 THE CURRENT ADMINISTRATION OF THE ORANG ASAL IN MALAYSIA

By virtue of Articles 73,²⁶ 74(1),²⁷ and 74(2)²⁸ of the Federal Constitution of Malaysia, both the Federal and State legislatures have jurisdiction over the administration of the *Orang Asal* in Malaysia, whereby, depending on the subject matter, the administration of the *Orang Asal* could either fall under the Federal or State jurisdiction, or could form the

²⁴ Ibid.

²⁵ SUHAKAM (n. 9), 11, 12

²⁶ Federal Constitution of Malaysia, (n. 11), Article 73.

73. *Extent of federal and State laws:*

In exercising the legislative powers conferred on it by this Constitution –

(a) *Parliament may make laws for the whole or any part of the Federation and laws having effect outside as well as within the Federation;*

(b) *The Legislature of a State may make laws for the whole or any part of the State.*

²⁷ Federal Constitution of Malaysia, (n. 11), Article 74:

74. *Without prejudice to any power to make laws conferred on it by any other Article, Parliament may make laws with respect to any of the matters enumerated in the Federal List or the Concurrent List (that is to say, the First or Third List set out in the Ninth Schedule)*

²⁸ Federal Constitution of Malaysia, (n. 11), Article 74(2):

74(2). *Without prejudice to any power to make laws conferred on it by any other Article, the Legislature of a State may make laws with respect to any of the matters enumerated in the State List (that is to say, the Second List Set out in the Ninth Schedule) or the Concurrent List.*

matter under both the Federal and State legislatures concurrently. The Federal Constitution's Ninth Schedule provides several lists that enumerate the matters which are either under the separate or shared jurisdiction of the Federal and State legislatures.²⁹

List I provides matters under the Federal Parliament's purview. Examples of such matters which could immediately relate to the IP include education, medicine and health, and social security. Moreover, List I clearly includes the welfare of the *Orang Asli* in the Peninsula as a Federal matter. On the other hand, land matters are among the subjects under the State's jurisdiction as itemised in List II of the Ninth Schedule. In addition, the supplemental List IIA provides items classified as matters specifically for the States of Sabah and Sarawak to include, among others, native law and customs. While the above Lists deals with the legislative powers of the Federation and States, the subsequent List III and List IIIA of the Ninth Schedule provide matters that are under the jurisdiction of both the Federal and State legislatures, such as social welfare and services, public health and preservation of heritage.³⁰

²⁹ Federal Constitution of Malaysia (n. 11), Ninth Schedule

³⁰ Federal Constitution of Malaysia (n. 11), List I, II, IIA, III, IIIA

3. GOOD PRACTICES IN PROMOTING AND PROTECTING THE RIGHTS OF INDIGENOUS PEOPLES: GOOD PRACTICES IN MALAYSIA

3.1 INTRODUCTION

The following highlights some of the measures undertaken in Malaysia which are deemed as good practices by SUHAKAM in promoting and protecting the rights of IP. They range from certain legal provisions, policies and specific programmes that are seen to have positive implications on the rights of the *Orang Asal*.³¹

The practices below include those that have proven to have positive impact, as well as those that appear to have the potential to contribute to the promotion and protection of the rights of the *Orang Asal* in Malaysia. In addition, measures with elements that appear to have positive aspects are also highlighted.³²

3.2 GOOD PRACTICES IN PROMOTING AND PROTECTING THE RIGHTS OF THE ORANG ASAL IN MALAYSIA

i. Establishment of the Legitimate/Special Interests of the *Orang Asal* in Malaysia and their Protection

The foremost important piece of legislation that establishes and protects the special interests of the *Orang Asal* in Malaysia is the Federal Constitution of Malaysia.³³ The Federal Constitution, while underscoring that all persons are equal before the law, has given a few exceptions for the *Orang Asal*, in that it allows for affirmative action for the protection and advancement of the special interests of *Orang Asli* in Peninsular Malaysia and natives of Sabah and Sarawak.

In the context of the *Orang Asli* in Peninsular Malaysia, while the Federal Constitution generally proscribes discrimination,³⁴ Article 8(5)(c) states that those anti-discrimination

³¹ Refer to para. 1.2 of this study

³² Ibid.

³³ Federal Constitution of Malaysia (n 11)

³⁴ Federal Constitution of Malaysia (n 11), Article 8(1), 8(2), 8(3), 8(4)

provisions do not prohibit “*any provision for the protection, well-being or advancement of the aboriginal peoples of the Malay peninsula (including the reservation of land) or the reservation to aborigines of a reasonable proportion of suitable positions in the public service*”³⁵.

Further, the Federal Constitution affords the special position and protection to the natives of Sabah and Sarawak. Article 153(1) of the Federal Constitution provides that “*it shall be the responsibility of the yang di-Pertuan Agong [King] to safeguard the special position of the Malays and natives of any of the States of Sabah and Sarawak and the legitimate interests of other communities in accordance with the provisions of this Article*”.³⁶ Article 153 goes on to specify the approaches in order to protect those legitimate interests, such as establishing quotas for entry into the civil service, as well as for the attainment of public scholarships and education.³⁷

With respect to native land in Sabah and Sarawak, Article 161A(5) of the Federal Constitution has excluded the application of Article 8 concerning equality and non-discrimination to any State law that seeks to reserve or alienate land for their natives, or for giving the natives preferential treatment for the alienation of land by the State.³⁸

ii. Representation of the Orang Asal in the Government

The EMRIP underscores that the IP’s participatory and decision-making rights are vital to enable them to protect their cultures and languages, as well as their lands, territories and resources.³⁹ The representation of IPs in their Government is among the various means available to ensure the realisation of their right to participate in decision-making.⁴⁰ Article 25(a) of the International Covenant on Civil and Political Rights (ICCPR) provides that every citizen has the right, and shall be given the opportunity to take part in the conduct of public affairs, either directly or through their freely elected

³⁵ Federal Constitution of Malaysia (n. 11), Article 8(5)(c)

³⁶ Federal Constitution of Malaysia (n. 11), Article 153 (1)

³⁷ Federal Constitution of Malaysia (n. 11), Article 153(2), 153(3), 153(4), 153(8A)

³⁸ Federal Constitution of Malaysia (n. 11), Article 161A(5)

³⁹ EMRIP, *Expert Mechanism advice No. 2(2011): Indigenous peoples and the right to participate in decision making* (EMRIP, 2011) para. 1

<http://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/Advice2_Oct2011.pdf>accessed 30 July 2014

⁴⁰ UN Human Rights Committee (HRC), *CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote)*, *The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service*, 12 July 1996, CCPR/C/21/Rev.1/Add.7, para. 2

representative.⁴¹ The conduct of public affairs stated above refers to the exercise of legislative, executive and administrative powers, and include the formulation and implementation of policy at international, regional and local levels.⁴²

In Malaysia, representation of the *Orang Asal* and their interests in the Government are guaranteed by the Federal Constitution. In the context of the *Orang Asal*'s representation in the Senate, Article 45(2)⁴³ of the Federal Constitution, which provides the composition of the Malaysian Senate, states the following:

*“The members to be appointed by the Yang di-Pertuan Agong shall be persons who in his opinion have rendered distinguished public service or have achieved distinction in the professions, commerce, industry, agriculture, cultural activities or social service or are representative of racial minorities or are capable of representing the interests of the aborigines”*⁴⁴

With respect to the *Orang Asal*'s representation in the public service, Article 8(5)(c) of the Federal Constitution allows for the reservation of a reasonable proportion of suitable positions in the public service especially for the *Orang Asli* in Peninsular Malaysia.⁴⁵ Additionally, Article 153(2) provides that the Yang di-Pertuan Agong shall exercise his function under the Constitution and federal law to reserve for, among others, the natives of Sabah and Sarawak, reasonable proportions of positions in public service (other than the public service of a State).⁴⁶

iii. Native Courts

The *Orang Asal* utilises their unique traditional customs or *Adat* to govern their daily lives. They include customary laws that govern their social system as well as on their lands, territories and resources, among others.⁴⁷ The United Nations Declaration on the

⁴¹International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), Article 25(a)

⁴² HRC (n. 40), para. 1, 5

⁴³ Federal Constitution of Malaysia (n. 11), Article 45(2)

⁴⁴ Ibid.

⁴⁵ Federal Constitution of Malaysia (n. 11), Article 8(5)(c)

⁴⁶ Federal Constitution of Malaysia (n. 11), Article 153(2)

⁴⁷ SUHAKAM (n. 9)

Rights of Indigenous Peoples (UNDRIP)⁴⁸ provides the right of the IP to be able to, *inter alia*, maintain their juridical systems and customs.⁴⁹ In Malaysia, Native Courts are one of the legal instruments available to conserve the *Adat* and way of life of the natives in Sabah and Sarawak and are recognised by the Federal Constitution of Malaysia.⁵⁰ These are in addition to the civil and Syari'ah Courts that currently operate in the Country.

The Native Court Enactment 1992⁵¹ provides for a three-tier native court system in Sabah including a Native Court of Appeal, a District Native Court and a Native Court,⁵² whereas in Sarawak, there are six levels of courts including a Natives Court of Appeal, a Resident Natives Court, a District Natives Court, a Chief's Superior Court, a Chief's Court, a Headman's Court.⁵³

Generally, both Native Courts in Sabah and Sarawak have jurisdiction to preside over:

- cases arising from a breach of native law or custom where all the parties are natives;
- cases involving native law, custom relating to:
 - betrothal, marriage, divorce, nullity of marriage and judicial separation;
 - adoption, guardianship or custody of infants, maintenance of dependants and legitimacy;
 - gifts or succession testate or interstate; and
- other cases of which jurisdiction is conferred upon the Courts by the Enactment or any written law.⁵⁴

On the other hand, the operation of the Native Courts is not without challenges. Some of the stumbling blocks that impede effective execution of legal practice in the court system include:

⁴⁸ UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) (resolution / adopted by the General Assembly, 2 October 2007) A/RES/61/295

⁴⁹ *Ibid.*, Article 34

⁵⁰ Federal Constitution of Malaysia (*n. 11*), Article 145(3), 161 (5), Ninth Schedule List IIA

⁵¹ Native Court Enactment, 1992 [En. No. 3/1992]; Native Courts Ordinance, 1992 [Ord. No. 9/92]

⁵² Native Court Enactment, 1992 (*n 51*)

⁵³ Native Courts Ordinance, 1992 (*n 51*)

⁵⁴ Laws of Malaysia. Interpretation Ordinance (Definition of Native) Cap 64 [10 December 1952], Section 2; Native Court Enactment (*n. 51*); Native Courts Ordinance, 1992 (*n 51*)

- The lack of jurisdiction of Native Courts in respect of any cause or matter within the jurisdiction of the Civil or Syari'ah Courts;⁵⁵
- Lack of staff in the Native Courts. Native Courts staff are normally seconded from district offices, which may at times lead to conflict of interest, in particular cases against the government or its officials;
- The involvement of political powers in the appointment of District Chief, Native Chief and village chiefs who are key Native Courts personnel;⁵⁶ and
- Lack of financial resources to ensure effective operation of the courts;
- Awareness and practice of customs and *adat* by current younger leaders as the future preservation and adherence of customs heavily depends on their actual practice.⁵⁷

Despite the above challenges, the Native Court in Malaysia is an important institution as it empowers the natives in Sabah and Sarawak to realise their right to maintain their juridical system. At the same time, these institutions are able to preserve the adherence to the *Adat* amongst the natives. The Native Court is also a cheaper alternative for those who wish to bring their matter to court, in comparison to the Civil and Syari'ah Courts.⁵⁸

(iv) Preservation of the Orang Asal's Cultural Heritage

The IP have the right to pursue, maintain and strengthen their cultural institutions as part of their right to self-determination.⁵⁹ Correspondingly, international human rights

⁵⁵Native Court Enactment (n. 51), Section 9

⁵⁶Ramy Bulan, 'Indigenous Peoples and the Right to Participate in Decision Making in Malaysia' in *International Expert Seminar on Indigenous Peoples and The Right to Participate in Decision Making*, Chiang Mai, Thailand, 20-22 January 2010, 9
<<http://www2.ohchr.org/english/issues/indigenous/ExpertMechanism/3rd/docs/contributions/UniversityMalaya.doc>> accessed 16 September 2014; Native Court Rules 1993; Native Courts Ordinance, 1992 (n 51); Native Court Enactment (n. 51). The personnel at the lower courts preserved the traditional dispute resolution structure administered by the traditional leadership consisting (a) in Sarawak, the headman, the Penghulu, Pemancha and Temenggong (Sarawak) and (b) in Sabah, the headman and Orang Kaya-Kaya. The adjudicators in higher (appellate) courts are drawn from the government administrators, the District Officer, the Resident (Sarawak) and a High Court judge may sit in the Native Court of Appeal.

⁵⁷RamyBulan (n 56) 10

⁵⁸Nancy Lai, 'Upko fully backs proposed Native Judicial Dept' *Borneo Post Online* (Penampang, 12 July 2010) <<http://www.theborneopost.com/2010/07/12/upko-fully-backs-proposed-native-judicial-dept/>> accessed 29 October 2014

⁵⁹ UN General Assembly, *Universal Declaration of Human Rights* (UDHR) (adopted 10 December 1948) 217 A (III), Article 22, 27; UN General Assembly, *International Covenant on Economic, Social and Cultural Rights* (ICESCR) (adopted 16 December 1966) United Nations, Treaty Series, vol. 993, Preamble, Article 1; UNDRIP (n. 47), Preamble, Article 5, 15(1), 31(1)

law provides that States have the duty to ensure the protection, preservation and development of this right.⁶⁰ Moreover, Article 8 (1) of the UNDRIP states that the IP “*have the right not to be subjected to forced assimilation or destruction of their culture*”⁶¹.

The *Orang Asal*’s traditions and customs play a major part in enriching the Malaysian melting-pot of cultures, and the preservation of those traditions and customs have long been underscored. For instance, the Founding Father of Malaysia, the late Tunku Abdul Rahman, gave the assurance that the religion and culture of the natives of Sabah and Sarawak would not be lost by joining Malaysia.⁶² He pledged that the natives had the freedom to pursue their customs and to study their ancestral language.⁶³ More recently, in a statement before the 66th Session of the UN General Assembly in New York in 2011, the Malaysian Representative to the UN, Ms Farisha Salman, said that the Government has made it a priority to assist the IP in Malaysia to preserve their traditional cultural heritage.

It is noted that the customs and traditions of the *Orang Asal* in Malaysia currently face deterioration due to various factors such as modern development, interference of the Government and the creation of new forms of institutions that do not respect those traditional customs and traditions.⁶⁴ However, there are a number of initiatives instituted in Malaysia that have supported the preservation of the *Orang Asal* traditions and

⁶⁰ ICESCR (n 59), Article 3, 6(2), 15(1)(a), 15(2); UNDRIP (n 48), Article 8(2)(a), 11(2), 12(2), 16(2)

⁶¹ UNDRIP (n 48), Article 8(1)

⁶² Assoc. Prof. Dr. Ramy Bulan, “Constitutional Safeguards for Native Cultural and Customary Rights” in *Orang Asli and Our Constitution – Protecting Indigenous Customs and Cultural Rights* (Kuala Lumpur, 1 November 2007)

<http://www.malaysianbar.org.my/malaysian_law_conference_organising_committee/orang_asli_and_our_constitution_protecting_indigenous_customs_and_cultural_rights.html>accessed 8 September 2014

⁶³ Ibid.

⁶⁴ The Malaysian Bar, *The Orang Asli and Our Constitution – Protecting Indigenous Customs and Cultural Rights* (The Malaysian Bar, 1 November 2007)

<http://www.malaysianbar.org.my/malaysian_law_conference_organising_committee/orang_asli_and_our_constitution_protecting_indigenous_customs_and_cultural_rights.html>accessed 8 September 2014; Amanda Stephenson “Borneo Mega-dams Threaten Indigenous “Ethnocide” (*Cultural Survival*, 11 July 2014) <<https://www.culturalsurvival.org/news/borneo-mega-dams-threaten-indigenous-ethnocide>> accessed 8 September 2014; SUHAKAM (n 9), para. 2.9; Centre for Orang Asli Concerns (COAC), “Integration and Modernisation of the Orang Asli: The Impact on Culture and Identity” (COAC, 20 August 2012) <http://www.coac.org.my/beta/main.php?section=articles&article_id=15> accessed 8 September 2014; Dr Alias Abd Ghani, ‘The Semang Group of Orang Asli: Language and Cultural Endangerment’ (*Universiti Sains Malaysia*) <http://www.mymla.org/files/icmm2010_papers/ICMM2010_p8.pdf> accessed 8 September 2014

customs. The following highlights two examples of such initiatives, namely the Lenggong Archaeological Gallery and the Sabah Parks:

(a) Lenggong Archaeological Gallery

The Lenggong Valley located in Perak is an important archaeological site in Malaysia. Excavations within the site not only revealed ancient human habitat, particularly from the Paleolithic, Neolithic and Metal Age, but also showed hereditary signs of native identity, culture and belief systems. This site also marks the oldest record of early man in the world – Perak Man.

Perak Man is the oldest, most complete human skeleton found in Southeast Asia and was discovered within the Gunung Runtuh Cave situated in the Kepala Gajah Hill. Other prehistoric burial sites were also found in the Gunung Runtuh, Teluk Kelawar and Kajang Caves situated in the Lenggong Valley. These discoveries have increased the awareness among the public of the existence of obsolete cultural activities of the IP. The revelations also instil a sense of appreciation amongst the IP of their cultural heritage and the need to preserve them.

The Lenggong Valley was inscribed as a United Nations Educational, Scientific and Cultural Organisation (UNESCO) World Heritage Site during the 36th World Heritage Committee Meeting in Saint Petersburg, Russia in 2012.⁶⁵ This historical achievement has put Malaysia in a good position to protect and promote the ancient identity and culture of the oldest mankind ever recorded in this area.

The recognition of Lenggong Valley as the World Archaeological Heritage Site has successfully captured the interest of the community towards the discovery of ancient treasures, thus making Malaysia a popular destination for tourists as well as archaeologists. The interest has heightened the need for Malaysia to preserve this historical site. The National Heritage Department is fully responsible for the protection and conservation of the site. All development programmes and

⁶⁵ Department of National Heritage (DNH), '*Archaeological heritage of the Lenggong Valley, A UNESCO World Heritage Site*' <<http://lenggong.heritage.gov.my/index.php/about/archaeological-heritage>>accessed 26 March 2013

promotions aimed at attracting visitors are conducted based on a set of guidelines to preserve the native heritage.⁶⁶

The Lenggong Valley's listing as a world heritage site was commemorated on 10 November 2014. More importantly, the celebration served as a platform to increase public knowledge and commitment towards protecting and conserving the Lenggong Valley.⁶⁷ In addition, in order to ensure that only limited and necessary developments are carried out in the area, Malaysia had submitted to the UNESCO its management plan which spells out a special area plan and a conservation plan that serves as a guide for the preservation and protection of the archaeological site.⁶⁸

(b) Sabah Parks

Sabah Parks is a statutory body established by the Government with the purpose of preserving at all times, areas with significant geographical, geological, biological or historical features as a national heritage for the benefit, education and enjoyment of the people of Sabah. It is also responsible to manage and promote the various protected reserves in Sabah, in particular those designated as national parks.⁶⁹

There are currently 8 areas in Sabah that have been gazetted as national parks with a total land area of 317,654 hectares owned by the IP.⁷⁰ In many instances, the inclusion of IP areas into national park reserves have created many frictions between the authorities and the IPs. Affected IP landowners were restricted from practising their traditional way of life, including hunting gathering and

⁶⁶Muna Khalid, 'Exploring History of Early Man in Lenggong Valley' *My SinChew.com* (Kuala Kangsar, 9 November 2012) <<http://www.mysinchew.com/node/79659>>accessed 26 March 2013

⁶⁷The Star Online, 'Nov 10: Celebration of Lenggong Valley's Recognition as Unesco World Heritage Site', *The Star Online* (Lenggong, 6 November 2012) <<http://thestar.com.my/news/story.asp?file=/2012/11/6/nation/20121106122729&sec=nation>>; Bernama, 'Explore the history of early man in the Lenggong Valley' (Kuala Kangsar, 9 November 2012) <http://www.themalaysiantimes.com.my/explore-the-history-of-early-man-in-the-lenggong-valley/>> accessed 26 March 2013

⁶⁸Audrey Dermawan, 'Management Plan for Lenggong Valley by 2014' *New Straits Times Online* (Ipoh, 22 August 2012) <<http://www.nst.com.my/nation/general/management-plan-for-lenggong-valley-by-2014-1.127863>>accessed 26 March 2013; Business Times, 'Protecting Lenggong Valley' (Lenggong, 16 February 2014) <<http://www2.nst.com.my/business/latest/protecting-lenggong-valley-1.485041>>accessed 17 October 2014

⁶⁹The Board of Trustees of the Sabah Parks, 'Vision, Mission and Objectives' *The Official Sabah Parks Website* <<http://www.sabahparks.org.my/about-us/vision-mission-objective>>accessed 25 September 2014

⁷⁰Ibid.

cultivation.⁷¹ In contrast, the authorities sought to preserve the rich biodiversity in the protected areas that happened to be inhabited or used by the IP.⁷²

A good practice adopted by the Sabah Parks to overcome the frictions was through the introduction of the Community Use Zones (CUZ)⁷³ in order to strike a balance between conservation and usage of resources in the protected areas by the IP.

The CUZ is defined as *“areas where existing cultivation and forest resource collection are found to occur inside the park and where traditional human activities will be allowed to continue under the supervision of Sabah Parks”*.⁷⁴

Therefore, under the CUZ, if indigenous persons are found to have legal ownership to lands located within a park reserve, they would be allowed to proceed to manage their properties as expressed in the land titles. On the other hand, any existing native land use within the Parks without ownership titles, while allowed to continue, will be regulated by the authorities.⁷⁵ At the same time, the IPs are made partners to the authorities in order to manage and conserve the protected areas. Therefore, while the IPs are permitted to utilise the area, it should be in a sustainable manner. The IPs are also to assist in ensuring that no outsiders encroach on the protected area. The CUZ, therefore, has the potential to create a win-win situation for the IPs and authorities.⁷⁶

An example is the CUZ established within the Crocker Range Park, including the Ulu Senagang and Mongoo Baru villages where the Murut communities have been living. With the establishment of the CUZ, the Murut communities are empowered to manage and conserve the protected area, while continuing with their traditional

⁷¹ PACOS Trust, 'Malaysia. Securing Indigenous Peoples' Rights in Conservation: Reviewing and Promoting Progress in Sabah, Malaysia (Working Draft)' (Forest Peoples Programme, September 2008) 4, 11<<http://www.forestpeoples.org/sites/fpp/files/publication/2010/04/wccmalaysiapareviewwwkgdftsept08eng.pdf>>; SUHAKAM (n 9) 95,96

⁷² Ibid.

⁷³ The New Sabah Times, 'CUZ concept for Crocker Range Park' *The New Sabah Times* (Kota Kinabalu, 20 October 2009) <<http://www.newsabahtimes.com.my/nstweb/fullstory/32872>>accessed 26 September 2014

⁷⁴ Ludi Apin, 'Taman-Taman Sabah (Sabah Parks)' In *Roundtable Discussion on the Good Practices to Promote and protect the Rights of Indigenous Peoples*, 5 November 2012

⁷⁵ Ludi Apin, 'Sabah Parks (Taman-Taman Sabah)' in *Roundtable Discussion on the Good Practices to Promote and protect the Rights of Indigenous Peoples*, 5 November 2012; PACOS Trust (n 71)

⁷⁶ PACOS Trust(n 71); SUHAKAM (n 9) 95,96

way of life including generating their incomes through sustainable farming, rubber tapping and hunting.⁷⁷

This form of co-management between the authorities and indigenous communities is also being considered for the proposed gazettement of the Tun Mustapha Park which is a marine area currently utilised by the IP. The Park is to be gazetted for the purpose of protecting habitats to support the livelihood of artisanal and commercial fisheries and to alleviate the socio-economic condition of the local indigenous communities. Government agencies, including Sabah Parks, Sabah Fisheries Department, Universiti Malaysia Sabah and the Land and Survey Department, NGOs, WWF-Malaysia and the local indigenous communities are working together to make this project a realisation.⁷⁸

(v) Poverty Eradication

Poverty eradication is a constant aim set to be achieved by the Malaysian Government and is evident from its repeated inclusion as one of the major thrusts since the very first Malaysia Plan 1966 – 1970.⁷⁹ As a result, the incidence of poverty in Malaysia has significantly reduced from 49.3%⁸⁰ in 1970 to 1.7%⁸¹ in 2012, while the incidence of hardcore poverty decreased from 6.9%⁸² to 0.2%⁸³ in the same period. Correspondingly, the

⁷⁷Laili Ismail, 'Wild wonders of Crocker Range' *New Straits Times* (8 May 2014) <<http://www2.nst.com.my/life-times/holiday/wild-wonders-of-crocker-range-1.590021>>; Ludi Apin *et al.*, 'Community Use Zone of Crocker Range Park, Sabah, Malaysia' delivered at the 1st Asia Park Congress, Sendai, JAPAN, 14-15 November 2013<http://asia-parks.org/pdf/wg2/APC_WG3-08_Ludi%20Apin.pdf>; Daily Express, 'Crocker Range accorded Biosphere reserve status' *Daily Express* (Kuala Lumpur, 20 October 2014) <<http://www.dailyexpress.com.my/news.cfm?NewsID=92397>>accessed 21 October 2014; PACOS Trust (n 71) 11

⁷⁸ Sabah Parks, 'The Sabah Parks Board of Trustees' <http://www.sabahparks.org.my/eng/events/event_details.asp?eventsid=99>accessed 4 March 2013

⁷⁹ Economic Planning Unit (EPU), *First Malaysia Plan 1966-1970*, 2; EPU, *Second Malaysia Plan 1971-1975*, 1; EPU, *Third Malaysia Plan 1976-1980*, 44-50, 159-198; EPU, *Fourth Malaysia Plan 1981-1985*, 155, 170-177; EPU, *Fifth Malaysia Plan 1986-1990*, 16-19; EPU, *Sixth Malaysia Plan 1991-1995*, 3, 4, 63 80; EPU, *Seventh Malaysia Plan 1996-2000*, 12-14, 69-99; EPU, *Eighth Malaysia Plan 2001-2005*, 4-6, 9-11, 55-83; EPU, *Ninth Malaysia Plan 2006 – 2010*, 34-37, 323-353< <http://www.epu.gov.my/en/previous-plans>>accessed 8 September 2014; EPU, *Tenth Malaysia Plan 2011-2015*, 18-19, 140-188 <http://www.epu.gov.my/epu-theme/RMKE10/rmke10_english.html>accessed 8 September 2014

⁸⁰EPU, *Incidence of Poverty by Ethnicity, Strata and State, Malaysia, 1970-2012*, <<http://www.epu.gov.my/documents/10124/669145a4-1b34-4f04-9043-31b24d1c3442>>accessed 31 July 2014

⁸¹ Ibid.

⁸² EPU, *Incidence of Hardcore Poverty by Ethnicity, Strata and State, Malaysia, 1984-2012*, <<http://www.epu.gov.my/documents/10124/ea7c59c2-3eb8-453e-8f11-0627d71200b8>> accessed 10 September 2014

⁸³ Ibid.

incidence poverty amongst *Orang Asli* households declined from 39.8%⁸⁴ in 2000 to 11.2%⁸⁵ in 2010, while the incidence of hardcore poverty among IP households shrunk from 43.6%⁸⁶ to 20%⁸⁷ during the same period. Poverty and hardcore poverty among the natives in Sabah and Sarawak have also reduced. Table 4 shows the incidences of poverty and hardcore poverty in Sabah and Sarawak in 1999 and 2012.

TABLE 4: INCIDENCE OF POVERTY AND HARDCORE POVERTY, SABAH AND SARAWAK, 1999, 2012

STATE	Incidence of Poverty (%)		Incidence of Hardcore Poverty (%)	
	1999	2012	1999	2012
Sabah & Labuan	23.4	7.8	7.1	1.6
Sarawak	10.9	2.4	3.0	1.0

Source: Department of Statistics Malaysia (DOS), 'Insiden Kemiskinan dan Kemiskinan Tegar mengikut negeri, Malaysia, 1999 - 2007(Perbelanjaan dan Pendapatan)'; KKLW, Buletin Perangkaan KKLW 2012

Malaysia's commendable progress in reducing the incidence of poverty is attributable to its economic policy's twin objectives of 'growth and equity', whereby the Government sought for economic growth that benefits all communities.⁸⁸ These objectives formed the central strategic thrust of Malaysia's New Economic Policy in 1970 that adopted various poverty eradication strategies including, among others, by raising income levels and increasing job opportunities.⁸⁹ Later, focused efforts toward reducing poverty amongst the IP was pledged in the Eighth Malaysia Plan 2001-2005, during which the Government implemented more target-specific poverty eradication programmes.⁹⁰

Towards the above end, the Government had implemented various income generating strategies towards alleviating poverty. The following highlights two of the various

⁸⁴ KKLW (n 14), 31

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ United Nations Development Programme (UNDP) et al, *Malaysia. Achieving the Millennium Development Goals. Successes and Challenges*, (UNDP, January 2005), 45 <http://www.un.org.my/upload/MDG_full_report.pdf>accessed 10 September 2014

⁸⁹ Ibid.; EPU, 'New Economic Policy' <<http://www.epu.gov.my/en/dasar-ekonomi-baru>>accessed 24 September 2014

⁹⁰ EPU, *Eighth Malaysia Plan 2001-2005*, 60, 73 <http://www.epu.gov.my/en/c/document_library/get_file?uuid=d354c617-8bb8-4666-97e1-0d7833dce1dc&groupId=283545>accessed 24 September 2014

income generation projects that have supported poverty reduction amongst the IP, namely the “One District One Industry” Programme and the Sabah Rubber Industry.

- (a) “One District One Industry” Programme – *Orang Asli* Village in Carey Island, Selangor

The “One District One Industry” Programme or *Program Satu Daerah Satu Industri* (SDSI)⁹¹ in Malaysia is an adaptation of the “One Village One Product” Programme that was first introduced in Japan.⁹² The underlying concepts of the SDSI are to identify local products/services from a district having high commercial potential, and to provide support to the locals to develop, promote and market those products/services in order to enhance the local community’s capacity to generate income.⁹³

At the initial stage of implementation, the SDSI in Malaysia was executed without any form of coordination, whereby different agencies autonomously implemented their own approaches to support locals to develop their products/services.⁹⁴ However, in 2004, a Cabinet Directive called for a more organised employment of

⁹¹ICU, ‘Garis Panduan Pelaksanaan Program Satu Daerah Satu Industri (SDSI)’, (Jabatan Perdana Menteri, 2012) 8, 12, 13 <http://www.icu.gov.my/pdf/arh_pk/gp_sdsi_2012.pdf> accessed 6 October 2014; Implementation Coordination Unit (ICU), Prime Minister’s Department, ‘Program Satu Daerah Satu Industri (SDSI)’, 5 <http://www.icu.gov.my/pdf/artikel/slide_sdsi.pdf>; accessed 26 September 2014. The SDSI evolved from being implemented as One Village One Product (*Satu Kampung Satu Produk*) in 1992, to One Village One Industry (*Satu Kampung Satu Industri*) in 2002, to SDSI in 2003. A coordinated implementation of the SDSI in Malaysia stemmed from a Cabinet directive in 2004.

⁹²Hiroshi Murayama *et al*, ‘Understanding the OVOP Movement in Japan. An Evaluation of Regional One-Product Activities for Future World Expansion of the OVOP/OTOP Policy’ (2010) <<http://www.iovoppa.org/files/murayamason.pdf>>; Oita OVOP International Exchange Promotion Committee, ‘One Village One Product Movement (OVOP)’ <http://www.ovop.jp/en/ison_p/haikei.html>; International OVOP Policy Association, ‘About OVOP’ <http://www.iovoppa.org/about_ovop.php> accessed 26 September 2014

⁹³Rohayu Roddin *et al*, ‘Pendekatan Program Satu Daerah Satu Industri (SDSI) dalam Melestarikan Keupayaan Pelancongan Desa: Satu Kajian dalam Komuniti Orang Asli’ in *Seminar Hasil Penyelidikan Sektor Pengajian Tinggi Kementerian Pendidikan* held on 2-3 July 2013, Universiti Utara Malaysia, Kedah (2013) <<http://eprints.uthm.edu.my/4133/>>; Abdul Aziz Ab Latif, ‘Analysis of “One Village One Product” (OVOP) or “Satu Daerah Satu Industri (SDSI)” in Kelantan’ in *One District One Industry = Satu Daerah Satu Industri (SDSI) Workshop Proceedings* (Universiti Malaysia Kelantan, 2009) <<http://umkeprints.umk.edu.my/1086/1/Paper%201.pdf>>; Malaysian Handicraft Development Cooperation (MHDC), ‘The One District One Industry Programme (MHDC, 5 June 2013) <<http://www.kraftangan.gov.my/main/content/122>> accessed 26 September 2014; ICU (n 91)

⁹⁴ICU (n 91)

the SDSI, with the Implementation Coordination Unit (ICU) in the Prime Minister's Department appointed as the coordinator.⁹⁵

Under the ICU's coordination, four product/service clusters were formed, namely the food and drinks, homestay, handicrafts, and health products and services clusters. A ministry is assigned to each of the Cluster as the agency in charge to provide the needed support in terms of both product and human resource development, such as R&D, product standards, human resources trainings and strengthening of business management:

NO.	PRODUCT/SERVICE CLUSTER	LEADING MINISTRY (as of 2012)
1.	Food and Drinks	Ministry Agriculture and Agro-based Industry
2.	Homestay	Ministry of Tourism
3.	Handicrafts	Ministry of Information, Communication and Culture
4.	Health Products and Services	Ministry of Rural and Regional Development

Source: ICU, 'Garis Panduan Perlaksanaan Program Satu Daerah Satu Industri (SDSI)' (ICU, 2012) <http://www.icu.gov.my/pdf/arh_pk/gp_sdsi_2012.pdf>

Apart from the above, in order to support local entrepreneurs to promote and market their SDSI products/services at the domestic and international levels, the Ministry of International Trade and Industry (MITI) was assigned to lead a fifth cluster known as the Promotion, Marketing and Entrepreneurial Development Cluster. Under this Cluster, the MITI provides, among others, various types of trainings for local entrepreneurs and regularly organises "Showcase SDSI" during which various SDSI products are exhibited to the public.⁹⁶

An important facet of the SDSI is that it encourages sustainable income generation for local residents that also supports other enterprises within the local economic value chain, including the supply of manpower, raw materials, production,

⁹⁵ICU (n 91), 5, 6

⁹⁶Ministry of International Trade and Industry (MITI), 'MITI Rancang Promosikan Produk dan Perkhidmatan SDSI' (MITI, 25 November 2010) <http://www.miti.gov.my/cms/content.jsp?id=com.tms.cms.article.Article_824534b7-c0a81573-111a111a-fd159ad5>accessed 1 October 2014

packaging, marketing and others. This is evident from the set of SDSI qualification criteria, out of which, at least three must be met for a potential product/service to be eligible for support under the SDSI Programme:

- Project value chain that involves local communities in the particular district;
- Local specialty(ies) or product(s) that features or can feature the particular district's unique identity;
- Product(s) that utilises the particular district's resources including raw materials, human capital, culture and natural environment;
- Has the ability to create mutual economic support within the project's value chain from the supply of raw materials, production, distribution, labelling, packaging, to marketing and others;
- Has the ability to create job opportunities for the locals of the particular district.⁹⁷

The SDSI has proven to be a lucrative platform for local communities. For example, Table 5 shows the distribution of the SDSI Programme for handicraft products by State, number of projects, entrepreneurs, workforce and annual sales for 2008, 2011 and 2012.

⁹⁷ICU(n 91), 9

TABLE 5: DISTRIBUTION OF SDSI PROGRAMMES (HANDICRAFT) BY STATE, NUMBER OF PROJECTS, ENTREPRENEURS, WORKFORCE AND ANNUAL SALES FOR THE HANDICRAFTS CLUSTER, 2008, 2011 & 2012

NO.	STATE	NO. OF PROJECTS			NO. OF ENTREPRENEURS			NO. OF WORKFORCE			ANNUAL SALES (RM)		
		2008	2011	2012	2008	2011	2012	2008	2011	2012	2008	2011	2012
1.	Perlis	-	1	1	-	3	4		17	10	-	119,958.99	361,278.00
2.	Kedah	3	9	8	34	59	59	45	151	147	197,954.00	1,261,007.19	3,330,220.00
3.	Penang	1	2	2	7	21	13	25	44	25	123,546.50	424,029.87	872,493.50
4.	Perak	5	6	6	85	130	131	142	251	181	690,572.42	1,645,043.40	3,440,776.90
5.	Selangor	1	3	3	12	21	17	20	110	78	41,632.00	898,760.91	5,225,795.65
6.	N. Sembilan	5	6	6	24	29	21	102	94	60	1,333,572.00	563,416.19	834,629.00
7.	Malacca	3	4	4	6	15	13	47	108	31	213,759.00	835,264.57	1,065,639.00
8.	Johore	3	3	3	9	9	19	30	29	63	413,040.50	3,108,379.02	7,387,210.00
9.	Pahang	6	7	9	31	36	40	219	274	227	3,346,885.50	3,404,921.57	8,379,116.75
10.	Terengganu	8	10	13	129	120	107	545	1,049	1,114	2,850,060.50	24,069,484.25	55,534,585.00
11.	Kelantan	8	8	9	109	126	99	558	698	893	7,459,226.04	14,018,041.51	52,535,853.44
12.	Sabah	12	13	14	38	119	401	670	721	880	5,027,830.00	2,834,987.21	14,623,513.00
13.	Sarawak	4	7	7	4	37	37	54	134	63	135,675.80	147,006.24	1,116,412.50
TOTAL		59	79	85	488	725	961	2,457	3,680	3,772	21,833,754.26	53,330,300.92	154,707,522.75

Source: Malaysian Handicraft Development Corporation Annual Reports 2008, 2011, 2012

One of the notable SDSI projects involving the IP is the *Mah Meri* handicraft industry in Kampung Sungai Bumbun located on Carey Island in Selangor. The *Mah Meri* community forms a sub-ethnic of the Senoi, and are well known for their handicrafts, wood carving and sculptures, weaving and traditional dance. Their aboriginal sculptures have even attained the UNESCO Seal of Excellence.⁹⁸ Through the SDSI Programme, participants were given skill trainings and workshops, while their handicraft products were promoted through various exhibitions both nationally and internationally which have encouraged further demand over their traditional products.⁹⁹ In addition, the Government opened the *Mah Meri* Cultural Village in Kampung Sungai Bumbun that houses, among others, a museum, heritage gallery and stalls for handicrafts and agricultural products.¹⁰⁰

(b) Sabah Rubber Industry

Sabah is the second largest State in Malaysia and rich in natural resources. Yet it remains the poorest State in the Country. Between 2004 and 2012, the incidence of poverty remained the highest in Sabah compared to the other States in Malaysia.¹⁰¹ In addition, since 1976, the incidence of poverty in the State stayed above the national average.¹⁰²

⁹⁸ Ministry of Tourism Malaysia, 'Deputy Prime Minister Opens Motour Art Gallery' [Media Release], (Ministry of Tourism Malaysia, 13 September 2012) <http://corporate.tourism.gov.my/mediacentre.asp?page=news_desk&news_id=717>accessed 29 September 2014; Rohayu Roddin (n 93)

⁹⁹ Bernama, 'Pengukir Kayu Mah Meri Diberi Peluang Tonjol Kemahiran di Washington' (Bernama, 16 March 2010) <http://www.bernama.com/bernama/state_news/bm/news.php?id=482874&cat=tn>; Khairunnisa Sulaiman, 'Produk Orang Asli di pasaran Internet' (Utusan Online, 03/12/2009) <http://www.utusan.com.my/utusan/info.asp?y=2009&dt=1203&pub=Utusan_Malaysia&sec=Keluarga&pg=ke_01.htm>; Siti Aminah binti Mohd Sam *et al.*, 'Kelestarian Pembangunan Sosiobudaya Komuniti Orang Asli' in Persidangan Kebangsaan Geografi & Alam Sekitar Kali Ke 4, (Universiti Pendidikan Sultan Idris, Perak, 5-6 March 2013) <http://eprints.uthm.edu.my/3992/1/KELESTARIAN_PEMBANGUNAN_SOSIOBUDAYA.pdf>; ICU, 'Garis Panduan Perlaksanaan Program Satu Daerah Satu Industri (SDSI)', (Jabatan Perdana Menteri, 2012) 8, 12, 13 <http://www.icu.gov.my/pdf/arh_pk/gp_sdsi_2012.pdf>accessed 6 October 2014

¹⁰⁰ Bernama, 'Mah Meri Cultural Village Promotes Unique Culture' (Bernama, 18 July 2011) <http://www.bernama.com/bernama/state_news/news.php?cat=ct&id=602141>accessed 6 October 2014

¹⁰¹ EPU, 'Incidence of Poverty by Ethnicity, Strata and State, Malaysia, 1970-2012' (EPU) <<http://www.epu.gov.my/documents/10124/669145a4-1b34-4f04-9043-31b24d1c3442>>accessed 31 July 2014

¹⁰² Ibid.

The Sabah Rubber Industry Board (SRIB)¹⁰³ was formed by the Malaysian Government in order to develop an integrated rubber industry through efficient management of smallholder sector, increase commercial production and diversification of downstream industry for competitive global market.¹⁰⁴ One of the core objectives of the SRIB is assist in the government's aim of alleviating poverty by way of creating steady and sustainable source of income amongst farmers.¹⁰⁵

Towards the above aim, the SRIB has put in place several strategies to reduce poverty and to ensure the development of the local communities in Sabah. These strategies include:

- To establish sustainable source of income for the poor / hardcore poor;
- To develop programmes to increase the income of target groups;
- To provide and improve basic amenities and infrastructure in rural areas; and
- To improve and enhance the overall delivery system and poverty eradication programmes.

The target groups of the SRIB are landowners, self-sufficient farmers practising shifting cultivation, and communities living in the rural and isolated areas. While this initiative is not designed to specifically cater to IP, the target groups mentioned include a large number of them.

Implicitly, the SRIB projects aimed at reducing poverty amongst farmers employ the principle of free, prior and informed consent (FPIC) as no farmer is forced to participate in the land development project. Rather, interested farmers can apply from the SRIB for their land to be developed, and is based on a set of eligibility criteria that has been determined by the SRIB.¹⁰⁶

¹⁰³ Sabah Rubber Industry Board (SRIB), 'Introduction' (SRIB, 2 October, 2012) <http://www.ligs.sabah.gov.my/?page_id=38>accessed 7 September 2014

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ SRIB, 'Syarat-Syarat dan Kelayakan Penyertaan Program Tanaman Getah Secara Berkelompok' (SRIB, 21 Julai 2014) <http://www.ligs.sabah.gov.my/index.php?page_id=1893&lang=ms>accessed 19 September 2014

The Block New Planting/Replanting of Rubber Trees with Latex Timber/High Yield Clones Programme, which had been initiated by SRIB in 1981 has shown a huge impact on the productivity in land usage and the commercialisation of rubber plantation. To date, SRIB has successfully developed around 85,654 hectares of land. Each participant for this programme is given an incentive of RM 14,000.00 per hectare as well as assistance for land clearance and maintenance for 5 years.¹⁰⁷

The outcome of this project has shown a significant increase in people's income, thus, improving the living standard among the poor. Based on the study conducted by SRIB from 2009 to 2012 which involved 188 respondents from 10 districts in Sabah, this Rubber Block New Cultivation Planting Programme has contributed to the significant increase of income levels among smallholders.

Table 5 shows the average monthly income of landowners before and after participating the SRIB's Rubber Block New Cultivation Planting Programme. The income levels has risen by up to 600%, which ranges from RM2,500.00 to RM 3,000.00 per month, in accordance with rubber market value at the time at RM 4.50/kg for every 4 acres.

TABLE 5: AVERAGE MONTHLY INCOME OF PROJECT PARTICIPANTS BASED ON DISTRICT AND LAND AREA

DISTRICT	INCOME (RM)		INCREMENT (%)	LAND AREA (ACRES)
	BEFORE	AFTER		
PITAS	286	2,160	655	7.6
K. MARUDU	193	1,233	538	6.7
KENINGAU	321	1,704	431	5.9
TAMBUNAN	250	1,124	350	5.1
K. BELUD	290	1,261	335	5.1
RANAU	229	995	334	5.6
KUDAT	404	1,421	250	6.6
TELUPID	319	1,036	225	4.6

Source: Lembaga Getah Industri Malaysia Research

¹⁰⁷ Sabah Rubber Industry Board (SRIB) <<http://www.ligs.sabah.gov.my/>>accessed 25 March 2013

However, there are several challenges in the implementation of the programme including:

- Land ownership and citizenship as important criteria to engage in this new-planting/re-planting rubber project. This is a challenge as there are many IP in Sabah that do not have personal documentation;
- Bureaucracy in the process of application; and
- Lax in the delivery system.

To address some of the challenges, the SRIB has made several improvements including:

- Improved land management methods and permanent farming system for smallholders' plantation;
- Transfer of new technology and training can be done effectively through a continuous consultation process provided by SRIB;
- Additional cost for administrative and technical services which are not sufficiently subsidised by the Government will be absorbed by SRIB as part of its Corporate Social Responsibility;
- Facilitation in the collection and purchasing of rubber by SRIB through the building of road in plantation areas in order to improve the efficiency of the SRIB delivery system; and
- Provision of a steady and sustainable income, and able to increase their living standards. The revenue of this project will be paid in cash according to the market price of rubber.

The SRIB project has led to the attainment of economic development amongst the IP in Sabah through which they enjoy a sustainable income, while continuing their traditional way of life that is in consistent with Article 21¹⁰⁸ of the UNDRIP and Article 2¹⁰⁹ of the United Nations Declaration on the Right to Development¹¹⁰.

¹⁰⁸ UNDRIP (n 48), Article 2:
Article 2

(vi) Provision of Healthcare Services for the Orang Asal

As earlier mentioned, while more and more *Orang Asal* are migrating to the periphery of the urban areas, the majority of the *Orang Asal* still reside in rural and remote areas.¹¹¹ This situation has presented a challenge for the Government to effectively deliver various vital services. To overcome this problem, various outreach programmes have been instituted to serve the needs of rural and remote communities.

In terms of healthcare, the Government has introduced a number of mobile healthcare services to reach rural and remote communities, including the *Orang Asal*. In Sarawak for instance, the Flying Doctor Service (FDS) and Village Health Promoter Programme (VHPP) were introduced to serve communities in less accessible areas.

The FDS team consists of a medical officer, a medical assistant and two community nurses who visit the locations once a month or once in two months. The FDS operates three helicopters based on Kuching, Sibul and Miri in Sarawak, and cover a total of 141 locations in the remote parts of the State. It attends to around 70,000 outpatients every year. The FDS also provides medical emergency evacuations for critically ill patients to be transferred to the nearest appropriate hospital or clinic. They are also responsible for

(1) Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security;

(2) States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities”.

¹⁰⁹ UN General Assembly, *Declaration on the Right to Development* (resolution/adopted by the General Assembly, 4 December 1986) A/RES/41/128, Article 2:

Article 2

(1) The human person is the central subject of development and should be the active participant and beneficiary of the right to development;

(2) All human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free and complete fulfilment of the human being, and they should therefore promote and protect an appropriate political, social and economic order for development;

(3) States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom”.

¹¹⁰ UN General Assembly, *Declaration on the Right to Development* : resolution / adopted by the General Assembly, 4 December 1986, A/RES/41/128 <<http://www.un.org/documents/ga/res/41/a41r128.htm>>

¹¹¹ SUHAKAM (n. 9), 11

the speedy despatch of health, investigation and control medical teams during disease outbreaks.¹¹²

On the other hand, the VHPP is a community-based health programme, in which participating villages would send two volunteers to be trained to provide basic healthcare services. At the end of the training, volunteers would be deployed to serve the basic health needs of communities living in remote areas. Volunteers would also be responsible for providing reports on the types of illnesses they had attended to. By the end of 2001, there were a total of 2,956 VHPP in Sarawak that serve a total of 271,182 people from 1,664 villages.¹¹³

More recently, in 2010, the 1Malaysia Mobile Clinic (1MMC) Programme was introduced, with the first mobile clinic launched at the *Orang Asli* Pos Raya village in Perak. Unlike the other existing mobile clinics provided by the Ministry of Health, the 1MMC is more comprehensive with sophisticated facilities and has the ability to perform minor surgeries.¹¹⁴

¹¹² Sarawak State Health Department, 'About Sarawak Health Department' <http://jknsarawak.moh.gov.my/en/modules/mastop_publish/?tac=92> accessed 31 July 2014

¹¹³ Ibid.

¹¹⁴ Bernama, '1Malaysia Mobile Clinics Will Provide Free Medical Services For Rural Folk – Najib', *KKLW* (Ipoh, 9 December 2010) <<http://kklw.bernama.com/en/news.php?id=548749>>; Bernama, 'Orang Asli have access to 1Malaysia Mobile Clinics' *The Borneo Post* (Bentong, 6 February 2012) <<http://www.theborneopost.com/2012/02/06/orang-asli-have-access-to-1malaysia-mobile-clinics/>>; Nornasheila Zaidi, '1Malaysia cataract mobile clinic starts operation' *New Sarawak Tribune* (Kota Samarahan, 13 September 2013) <<http://www.newsarawaktribune.com/news/11340/1Malaysia-cataract-mobile-clinic-starts-operation/>>; Chan Li Lee, 'PM launches 1Malaysia mobile clinic' *The Star Online* (Ipoh, 9 December 2010) <<http://www.thestar.com.my/Story/?file=%2F2010%2F12%2F9%2Fnation%2F20101209134324>>; Chan Li Lee, '1Malaysia mobile clinic to reach out to those in the interior' *The Star Online* (Ipoh, 10 December 2010) <<http://www.thestar.com.my/Story/?sec=nation&file=%2F2010%2F12%2F10%2Fnation%2F7597009>> accessed 24 September 2014



Source: 1MDB <<http://www.1mdb.com.my/csr/quality-of-life>>; Koleksi Foto JDAB2013 Kelantan!! #UiTM in Kelate Today (22 February 2013) <<http://kelatetodays.blogspot.com/2013/02/koleksi-foto-jdab2013-kelantan-uitm.html>>

The Programme, which is a joint effort of the Ministry of Health Malaysia and the Yayasan 1Malaysia Development Berhad (1MDB), provides free medical services for people living in certain rural areas, in particular, those who do not have access to the existing mobile clinics provided by the Ministry of Health, and are outside the 25km radius of the nearest health clinics.

The Programme is currently undergoing expansion to reach various remote communities in Peninsular Malaysia, Sabah and Sarawak. It had also recently launched its first 1Malaysia Cataract Mobile Clinic.¹¹⁵

(vii) Initiatives by SUHAKAM

The main functions of SUHAKAM are provided under Section 4(1) of the Human Rights Commission of Malaysia Act 1999 (Act 597) which includes: (i) to promote awareness and provide education in relation to human rights; (ii) to advise and assist the Government in formulating legislation and procedures and recommend the necessary measures to be taken; (iii) to recommend to the Government with regard to subscription or accession of treaties and other international instruments in the field of human rights; and (iv) to inquire into complaints regarding infringements of human rights.

¹¹⁵Nornasheila Zaidi (n 114)

In the discharge of these functions, SUHAKAM has undertaken various efforts to address the rights of IP in Malaysia. In its advisory role, SUHAKAM has continuously recommended to the Government to ensure the promotion, protection and respect of the rights of IP. SUHAKAM has also constantly called upon the Government to accede to all the core international human rights treaties. Accession to these instruments would lead to laws and policies that are in line with international human rights standards and therefore bring about positive changes towards greater respect for the human rights of all segments of the population including IP's rights to education, health, land and economic development and others. At the moment, Malaysia is only a party to the CRC, CEDAW and CRPD. On the other hand, Malaysia had voted in favour for the adoption of UNDRIP in September 2007. Malaysia's support for the UNDRIP is an important first step in the recognition of indigenous rights.

Based on its other statutory mandates, SUHAKAM has also implemented numerous promotion and education programmes concerning the IP's rights and the UNDRIP, researches on native customary land rights and right to a standard of living. SUHAKAM also receives and investigates complaints alleging human rights violations, including the rights of IP.

The following highlights two major undertakings by SUHAKAM with respect to the promotion and protection of the rights of IP in Malaysia, including SUHAKAM's Human Rights Best Practices in School (ATHAM) and National Inquiry into the Land Rights of Indigenous Peoples.

(a) Human Rights Best Practices in Schools (ATHAM)

SUHAKAM's ATHAM Project was initiated in 2009 and conducted in collaboration with the Ministry of Education (MOE). Through this Project, SUHAKAM sought to integrate human rights values and principles into every aspect of school life. SUHAKAM looks forward to shaping an environment in which human rights are not only taught and learned, but practiced, respected and promoted in schools.

Initially, five secondary schools from different states in Peninsular Malaysia were selected as pilot schools. During the second phase of the Project, its reach was expanded to twelve *Orang Asli* schools chosen by the MOE.

The majority of the selected schools were receptive of the ATHAM Project. However, SUHAKAM did encounter some challenges in the earlier phase of implementation. These include the limited time allotted by the participating schools for ATHAM activities, lack of understanding and skills among teachers to impart human rights knowledge to students; and lack of support and commitment of all teachers and students in implementing the program. As for the ATHAM objectives on the integration of human rights practices, they showed greater preference in the integration of ATHAM programmes into the co-curricular activities and the school environment rather than into class activities.

Despite these challenges, SUHAKAM continued to engage with the schools, which resulted in several major positive developments as it had observed during its follow up visits to 15 of the selected schools in 2013:

- Teachers and students were noticeably more involved in the ATHAM programmes. They showed improved understanding of human rights and child rights in their practices. In addition, teachers and principals showed better understanding and heightened cooperation amongst them.
- ATHAM activities conducted have been documented by most of the schools for their reference purpose. This is a good practice as it could transfer knowledge to teachers and students who are not yet involved in the programme. The ATHAM Project has also been repeatedly underscored during the schools' special celebrations and co-curricular programmes.
- The majority of the participating schools utilise the human rights materials and ATHAM resources provided by SUHAKAM. However, they were insufficient as the schools did not have their self-produced human rights materials. SUHAKAM assisted by launching a competition for the schools to produce a human rights booklet. SUHAKAM further supported the schools

by way of sourcing and distributing relevant human rights pamphlets and materials.

Another key achievement of the ATHAM came about in 2013 when the MOE agreed to set up the Ministry's Convention on the Rights of the Child (CRC) Committee as an offshoot to the ATHAM. SUHAKAM is a permanent member to the Committee that is chaired by the MOE's Director General. Through this Committee, the MOE had agreed to an additional 151 schools, inclusive of 30 additional *Orang Asli* schools, to be included for the ATHAM Project. The Committee conducts workshops and meets twice annually to, among others, review students' activities in order to perpetuate human rights practices and culture, including those that relate to the *Orang Asli*.

(b) National Inquiry into the Land Right of Indigenous Peoples¹¹⁶

Since its establishment, SUHAKAM received numerous complaints and memoranda from the IP who alleged that their native customary right to land have been violated by various actors including the Government and private land concessionaires. In particular, they claimed of encroachment and/or dispossession of native land to plantation and/or commercial land development, gazetting of native land into forest or park reserves, overlapping community claims over native land, and delay in the part of the Government in processing the IPs' application for land titles over their native territories. Literature review on the issue also revealed that the deprivation of native customary right to land had also led to the IP's further marginalisation.

Realising that the overwhelming and systemic native land issues in Malaysia cannot be effectively dealt with by way of piecemeal approaches, in 2011, SUHAKAM decided to conduct its maiden national inquiry (NI) to address the land right of the IP in Malaysia.

¹¹⁶ SUHAKAM (n 9)

In brief, the Terms of Reference for the NI were as follows:

- i. To ascertain the extent to which the existing Malaysian constitutional, legal, administrative and political provisions/positions recognise the IP's land rights and their effectiveness in promoting and protecting native land rights;
- ii. To identify the constraints that impede the full enjoyment of IP's right to land and their spillover effect on the enjoyment of other rights;
- iii. To promote awareness and understanding of the IP's land rights and way of life; and
- iv. Based on the facts and findings of the NI, to recommend, *inter alia*:
 - a. the review of domestic land laws and policies in order to address the persisting native land dilemma in Malaysia and ensure their respect towards human rights, and
 - b. the formulation of strategies and a plan of action in which the IP's land right is integral to the general promotion and protection of human rights.

The NI sought wide public participation from the beginning of the process, including the involvement of indigenous communities, the Government, NGOs, the academia and other experts in the field.

At the prelude of the NI, a series of introductory sessions and intensified engagements with the media were conducted to create public awareness about the intention and objectives of SUHAKAM's NI. The ensuing public consultations and call for public submissions received overwhelming response with a total of 892 statements being recorded from the IP. The statements covered a wide range of issues including, among others, allegations of delay in processing of native land titles, encroachment by logging, plantation and commercial development projects, problems with indigenous land development schemes, as well as inclusion of native land into forest reserves and other national or state protected areas. From the total statements received, 132 cases were selected – on the basis that valid supporting documents were made available during the consultations and submissions – to be examined further during the public hearings before a three-member panel consisting of SUHAKAM Commissioners. Apart from the IP witnesses, relevant

government officials, private concessionaire personnel, as well as experts on native land studies were called before the Panel to give evidence in connection to each case. Literature review was also conducted on the background of the IP of Malaysia as well as existing domestic laws and international standards with respect to the IP's land rights.

The benefits coming out from the NI are manifold. Below are some of the indirect, yet positive outcomes, from the NI:

- Awareness Raising

The various procedures of the NI including the introductory sessions, public submissions, public consultations and public hearings that were held at the grassroots level throughout Malaysia, had led to greater awareness on the plight of IP among the stakeholders and also among the general public.

The overwhelming publicity received on the NI had also enabled SUHAKAM to bring further to light at the national and international level, the problems the IP encounter with respect to their ancestral land. In addition, the NI was able to raise awareness amongst the IP about their right to land based on established international standards.

- Participation and Consultation

The NI was conducted in a manner that ensured, as much as possible, the participation and involvement of IP throughout the process. More specifically, various indigenous communities were consulted through the various procedures of the NI including the public submissions, public consultations and public hearings.

- Identification of root problems

Throughout the NI, SUHAKAM was able to identify the root problems and key issues relating to land rights of IP in the Country. These findings have served as the basis for SUHAKAM's recommendations to relevant stakeholders to mitigate if not resolve the issues.

SUHAKAM's NI report which was released on 5 August 2013, contained extensive analysis of the information and data gathered through the NI process. Based on its findings, the NI set forth six major recommendations that sought to address the following areas:

- recognition of indigenous customary right to land
- recognition of native land as integral to the IP's identity
- remedies for the loss of native land
- overcome land development imbalances
- prevent future loss of native land
- address land administration issues

In response, the Malaysian Cabinet has established a national task force and is currently assessing the findings and recommendations of the NI Report.

(viii) Initiatives by NGOs

There are numerous NGOs in Malaysia that have, through their efforts, sought to address and promote the rights of IP. For the purpose of this study, the following highlights the activities of two NGOs, namely PACOS Trust and Jaringan Orang Asal SeMalaysia (JAOS):

(a) PACOS Trust's Community Learning Centres (CLC)

The development and preservation of the cultural heritage of IP in Sabah has been an important aspect of the work of Partners of Community Organisations in Sabah (PACOS). PACOS is a community-based organisation dedicated to support the indigenous communities in Sabah since 1993.¹¹⁷ Their support in promoting the IP's practices and customs has impressed the local communities in many areas especially in terms of the continuity of their culture, knowledge, tradition as well as their heritage.

¹¹⁷Nasiri Sabiah 'Amalan Baik Bagi Mempromosi Dan Melindungi Hak Orang Orang Asal di Malaysia' in *Round Table Discussion on The Good Practices to Promote and Protect The Rights of Indigenous People*, 5 November 2012

The Community Learning Centre (CLC) under the Community Education Programme which was developed by PACOS Trust, provides pre-school education for indigenous children under the age of 6. The Centre also runs a non-formal educational programme that imparts skills and traditional knowledge of IP that has been transmitted from generation to generation. The Centre was established as a venue for communities to share knowledge and skills related to the indigenous ways of life, including handicraft, music, dances, language and food.¹¹⁸ The curriculum which focuses on learning IP's way of life is improved from time to time in line with the needs and aspirations of the communities. Table 4 shows the activities offered by PACOS under the CLC programme.

TABLE 6: PROGRAMMES PROVIDED BY THE CLC

NO	CATEGORIES	PROGRAMMES	ACTIVITIES
1.	Children	Educational programme based on Government curriculum but modified to incorporate elements related to the indigenous way of life.	Classroom activities.
			Using mother tongue as a medium of interaction for better understanding.
		Older generation of indigenous communities passing down traditional knowledge and skills to the younger generation in order to preserve such knowledge and skills.	Basket weaving, resources management, fishing, farming, traditional music instruments, traditional costumes.
2.	Youth	Providing the youths who had dropped out from formal schools with traditional knowledge and skills.	Resource management, paddy harvesting, documentation, mapping, NCR workshop
3.	Women	Preservation of traditional knowledge and practice through indigenous way of	Handcraft / weaving
			Traditional medicine
			Farming

		life.	
		Learning other skills to improve their economic development.	Pastry class, fish farming and poultry, sewing classes

Despite the invaluable benefits received by the indigenous communities through these programmes, there are a few challenges faced by PACOS Trust such as shortage of human resources as only a small number of volunteers are willing to facilitate the CLC programmes, poor infrastructure conditions of the learning centres, financial constraints; and due to the fact that traditional knowledge and skills are less practised by the communities.¹¹⁹

In view of the poor infrastructural conditions of the learning centres, SP Setia, which is a well-known developer, has contributed funds to refurbish and enhance the conditions of the centres to make it more conducive for learning children. As part of the Setia Adoption Programme¹²⁰, the community has benefited from the new building with the design coming from the village children themselves.¹²¹ This effort has indirectly attracted trainers who are experienced, knowledgeable and proficient in traditional customs such as education, community native language, handicrafts, traditional medicine, and other skills to be part of this CLC programme.

(b) JAOS' Awareness Raising Campaign and Engagement with UN Mechanisms

JOAS has conducted extensive work in promoting the UNDRIP.¹²² One of the steps taken by JOAS to promote UNDRIP is the extensive references to UNDRIP by JOAS lawyers in the court litigations and this has resulted in several landmark verdicts in favour of indigenous rights.

¹¹⁹Nasiri Sabiah, (n 117)

¹²⁰SP Setia Bhd Group, 'The SP Setia Foundation' (SP Setia Bhd Group) <<http://www.spsetia.com.my/corporate/setia-foundation.asp>>accessed 15 September 2014

¹²¹Ruben Sario, 'New conducive learning centre for pre-schoolers in Keningau' *The Star Online* (Kota Kinabalu, 29 October 2011) <<http://thestar.com.my/news/story.asp?file=/2011/10/29/nation/9800001&sec=nation>> accessed on 25 March 2013

¹²²UNDRIP (n 48)

Since the adoption of the Declaration in 2007, JOAS has also conducted numerous roadshows and workshops around the country to raise awareness on the UNDRIP. JOAS has also worked closely with SUHAKAM to promote the UNDRIP especially by translating and publishing the UNDRIP into the national language. In addition, JOAS has published a simplified version of the UNDRIP. Furthermore, JOAS has conducted a comparative study to examine the domestic laws and policies and to identify gaps that need to be addressed in order to ensure that the laws and policies are in line with the UNDRIP.

Over the years, JOAS has also actively engaged with UN Mechanisms related to IP such as the Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples, and the Special Rapporteur on the Rights of Indigenous Peoples to submit input to studies as well as cases of human rights violations. It has also submitted its reports for Malaysia's Universal Periodic Review in 2008 and 2013.

4. CURRENT AND PERSISTING CHALLENGES IMPEDING THE PROMOTION AND PROTECTION OF THE RIGHTS OF THE ORANG ASAL IN MALAYSIA

The following section highlights some of the contemporary and persisting issues that impede the promotion and protection of the rights of the *Orang Asal* in Malaysia.

i. Customary Land rights

The IP have a special bond with their customary land, which is part of their identity. Customary land constitutes an integral element of their culture and way of life. Through their deep understanding of, and connection with the land, indigenous communities have been able to manage their resources for generations.

The Federal Constitution of Malaysia gives a certain level of protection for the natives of Sabah and Sarawak to continue their special relationship with their land, including spelling out the fiduciary obligation of the Federal and State Governments that ensures the respect, recognition and protection of customary land rights. However, the *Orang Asli* in Peninsular Malaysia is left out in this specific provision.

Mainstream development and forest conservation have greatly infringed the IP's claim to their customary land. This often means that their livelihood and future are seriously threatened. Many indigenous communities continue to be expelled from their territories under the pretext of the establishment of protected areas, including forest reserves and national parks. Forced displacement of the IP from their traditional lands as a result of laws and policies that favour the interests of commercial companies and the Government are major factors in the impoverishment of these communities.

Over the years of conducting various studies and receiving complaints from the IP, SUHAKAM has found that many issues exist with regard to native customary right (NCR) to land, such as:

- Lack of or non-recognition of NCR to land by the Government;
- Differing perspectives of NCR to land between the Government and the IP;

- The refusal by the Government to accept indigenous perspectives to NCR to land as affirmed by Federal Court decision;
- Slow processing of native land claims and gazettement of IP reserve lands;
- Inadequate compensation;
- Transactions on ownership of land that do not follow proper procedures;
- Encroachment into and/or dispossession of native land through development aggressions; and
- NCR land gazetted into parks and other protected areas.

The violations against the IP's land rights continue to affect not only their livelihood, but also their cultural and traditional practices as well as identity. In addition, many development projects have negative repercussions towards the ecosystem, affecting the IP's right to clean environment, which, according to Article 29¹²³ of UNDRIP, must be respected.

Various development projects by the Government have negatively affected indigenous communities especially their NCR to land. Among these projects are:

(a) Bakun Dam, Sarawak.

The construction of the Bakun Dam, one of the largest dams in Asia, has forced thousands of indigenous communities to be relocated. This is clearly inconsistent with Article 10¹²⁴ of UNDRIP.

¹²³ UNDRIP (n 48), Article 29:

29. *Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination. 2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent. 3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented".*

¹²⁴ UNDRIP (n 48), Article 10:

10. *Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.*

(b) Tasik Chini, Pahang.

Logging, clearing of land for agriculture and unstructured mining activities at the vicinity of Lake Chini in Pekan, Pahang, have affected 11 indigenous villages around the Lake. Pollution and forest deterioration have resulted in lower income, social conflict and threats on those advocating for their rights among affected indigenous communities.

Land issues do not only affect IP's rights to life, to own property, to practise their culture, traditions and to preserve their identity, but also affect the whole ecosystem and their right to clean environment, which according to Article 29¹²⁵ of UNDRIP, must be respected.

(ii) Free, Prior and Informed Consent (FPIC)

During the Public Hearings of SUHAKAM's NI on the Land Rights of Indigenous Peoples, SUHAKAM received numerous complaints from the IP regarding the non-application of the principle of *Free, Prior and Informed Consent (FPIC)* for development projects affecting them. FPIC implies informed, non-coercive negotiations between investors, companies or Governments and the IP prior to the development and establishment of development or agricultural projects such as oil palm estates, timber plantations or other enterprises on their customary lands.¹²⁶ This means that consultations and negotiations must take place with the communities before any project can proceed. Indigenous communities have the right to decide whether they will agree to the project or not once they have a full and accurate understanding of the implications of the project on them and their customary land.¹²⁷

According to the UNDRIP, the IP have the right to determine and establish priorities and strategies for their self-development and for the use of their lands, territories and other resources. IP should demand that the principle of FPIC be treated as a condition

¹²⁵ UNDRIP (n 48), Article 29:

29. *Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination*".

¹²⁶ Forest Peoples Programme, 'Free, Prior and Informed Consent' <<http://www.forestpeoples.org/guiding-principles/free-prior-and-informed-consent-fpic>> assessed on 8 August 2012

¹²⁷ Ibid.

for approving or rejecting any project or activity affecting their lands, territories and other resources. Based on the EMRIP's Final Report on The Study on Indigenous Peoples and The Right to Participate in Decision-Making, the participation of IP in the internal process of decision making that is free from external interference, should be supported by the community and the authority.¹²⁸

FPIC is recognised by intergovernmental organisations, international bodies, as well as in international human rights law in varying degrees and increasingly in the laws of States.¹²⁹ However in Malaysia, the respect towards the FPIC principle is nearly non-existent, and as such, violates the international standard. Numerous reports and complaints show that the Social and Environmental Impact Assessments (SEIA/EIA) that are required before certain projects commence were not conducted in a proper manner and that communities were often not consulted.

(iii) Education

Education of indigenous children is at a worrying level. Many indigenous children fail to master the 3M skills (reading, writing, arithmetic). In addition, the number of indigenous children who drop out from schools before Standard Six is alarming.¹³⁰ As a result, indigenous students fail to master core subjects, including the Malay language, English, Mathematics and Science. For example, almost 50% of indigenous children at Kampung Kolam Air Pantai, Seremban in Negeri Sembilan have been reported to be uninterested in going to school,¹³¹ while a higher number of indigenous children were reported to have dropped out in Sabah and Sarawak.¹³²

Based on a research by University Utara Malaysia entitled "*Children of the Orang Asli Minority in Malaysia: Achieving the Malay Language Literacy*" carried out by Abdul Sukor

¹²⁸ EMRIP (n 2), para. 18

¹²⁹ Fergus MacKay, 'Indigenous People's Right to Free, Prior and Informed Consent and the World Bank's Extractive Industries Review' (Summer 2004) Sustainable Development Law and Policy 4(2), 43-65 <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1380&context=sdlp>

¹³⁰ Johari Talibet *al.*, 'Bagaimana kanak-kanak Orang Asli gagal di sekolah?' (2007) MALIM: Jurnal Pengajian Umum Asia Tenggara 8, 51-76 <<http://journalarticle.ukm.my/1142/1/1.pdf>>

¹³¹ Utusan Online, '50% anak Orang Asli enggan ke sekolah' *Utusan Online* (Seremban, 26 September 2011) <http://www.utusan.com.my/utusan/info.asp?y=2011&dt=0927&pub=Utusan_Malaysia&sec=Selatan&pg=ws_03.htm#ixzz2FYUwQem5> accessed 20 December 2012

¹³² Liz Gooch, 'Indigenous Malaysians Miss School, Agency Finds' *The New York Times Online* (Kuala Lumpur, September 9, 2012) <http://www.nytimes.com/2012/09/10/world/asia/10iht-educmalay10.html?_r=0> accessed 1 August 2013

Shaari, Nuraini Yusoff, Mohd Izam Ghazali and Mohd Hasani Dali in 2011, most of *Orang Asli* students claim that the main reasons for the high percentage of school dropouts among them are due to:

- Low socioeconomic level – many choose not to go to school in order to earn a living;
- Poor transportation facilities to bring indigenous children to schools;
- Lack of awareness on the importance of formal education;
- Lack of motivation;
- Poor health; and
- Lukewarm attitude of parents towards truancy problems.

The academic achievement of *Orang Asli* students in school is still very low compared to other Malaysians.¹³³

There are several key factors that impede formal education for indigenous children. These factors include those related to facilities, discrimination and curriculum:

(a) Facilities

Most indigenous communities normally live in remote areas and within forest areas. Schools that provide formal education are located near the town, and not within the vicinity of the IP's homes. Many indigenous children are forced to wake up very early in the morning and walk three to four hours through the forests and unpaved roads to attend schools. Some need to travel by boat, which may take up to two hours to reach school. Some of the routes taken by the children are dangerous. While the Government is taking positive steps to address these issues, a large number of indigenous children continue to face such predicaments.

The MOE has built more schools with hostels so the children need not commute to school everyday. However, human rights advocates have been asking for alternatives such as home schooling, so young children are not separated from their

¹³³Toh Kit Siang, *Pendidikan Orang Asli: Projek Sarjana Muda*. Universiti Kebangsaan Malaysia, Bangi. 2008

parents as stated in Article 9 of the Convention on the Rights of the Child (CRC).¹³⁴

(b) Discrimination factor

Indigenous children are often discriminated against and may develop an inferiority complex when they are around other children. Indigenous children are known to be timid and shy. When bullied and discriminated against by other children, they tend to be reclusive, and as a consequence, they decide to drop out of school.

For this reason, many indigenous parents do not see the importance of formal education and are apathetic as to whether their children obtain formal education or not.

(c) Culturally-Inappropriate Curriculum

The curriculum offered in Government schools is one of the factors why indigenous children are not very interested to enrol in, and complete their formal education. Elements that are closely related to the ways of life of IP are not incorporated in the curriculum of these schools. In Malaysia, there is no bilingual education in public schools, and only two indigenous languages are taught in Sabah and Sarawak as one of the subjects in school. Indigenous children are greatly disadvantaged by this, which is especially needed in the first three years of schooling.

(iv) Economic development

The IP in Malaysia are sadly, often associated with poverty and having low incomes. It was estimated in 1999 that 50.9% of the *Orang Asli* fall below the poverty line, while 15.4% falls under the hardcore poor category.¹³⁵ Indigenous economic system is

¹³⁴ UNDRIP (n 48), Article 9:

9. *Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right*".

¹³⁵Prof. Madya Dr. Mohd Fauzi Mohd Harun *et al.*, 'Analisis Faktor Kemiskinan Orang Asli: Aplikasi Model Multinomial Logit' in *Technical Report. Institute of Research, Development and Commercialization* (Universiti Teknologi MARA, 2010) < http://eprints.uitm.edu.my/3304/1/LP_MOHD_FAUZI_MOHD_HARUN_10_24.pdf>

characterised by the small but diverse economic activities, placing great importance on land resources, economic self-sufficiency, social support and barter trade.¹³⁶

The IP have varied occupations and ways of life. *Orang Asli* communities such as the Orang Laut, Orang Seletar and Mah Meri, for example, live close to the coast and are mainly fishermen. Some Temuan, Jakun and Semai people have taken to permanent agriculture and now manage their own rubber, oil palm or cocoa farms. About 40% of the *Orang Asli* population - including Semai, Temiar, Che Wong, Jahut, Semelai and Semoq Beri - however, live close to, or within forested areas. Here they engage in hill rice cultivation and do some hunting and gathering. These communities also trade in *petai*, *durian*, rattan and resins to meet their ends. A very small number of these indigenous communities, especially among the Negrito groups (such as Jahai and Lanoh) are still semi-nomadic, preferring to take advantage of the seasonal bounties of the forest. A fair number also live in urban areas and are engaged in both waged and salaried jobs.¹³⁷

As for the natives of Sabah like the Kadazan, Duzun, Bajau and Murut, and the Iban, Bidayuh, Melanau in Sarawak, they also practise self-sufficiency like the *Orang Asli* of Peninsular Malaysia. They run small scale activities such as farming, fishing/hunting, and collecting forest products for food, medicine, crafts, building materials and livestock. Their traditional occupations may be as traditional craftsmen, weavers, carpenters, carvers, blacksmith and healers.¹³⁸

Traditionally, the IP of Malaysia go about their daily life using natural resources first and foremost, for their family and self-sufficiency, and any surplus would then go to produce for the community and for the general population.

Among the issues that impede economic development and growth for the IP in Malaysia are large-scale land development programs, non-recognition of indigenous subsistence economic activities and lack of opportunities.

¹³⁶Jannie Lasimbang, 'Prinsip Sistem Ekonomi dan Teknologi Orang Asal' in World Indigenous Peoples Day, held in Sabah, 8 August 2011

¹³⁷ Collin Nicholas, 'The Orang Asli of Peninsular Malaysia' (Magic River, 1997) <<http://www.magicriver.net/oa.htm>>assessed on 8 August 2012

¹³⁸Jannie Lasimbang (n 136)

There are several land development programmes/schemes that have been implemented by the Government or private companies that involve indigenous customary land. However, such development can lead to misappropriation of customary lands if these have not been demarcated, thus impoverishing affected communities. There are also schemes on indigenous lands such as the development of land under Communal Titles in Sabah, the Agropolitan, Mesej, economic corridors that are linked to poverty eradication programmes through the introduction of plantations and infrastructure. However, the efficacy of these programmes in raising the income levels of Indigenous communities is questionable.

Because of the small scale nature, family and community-based economic support of indigenous economic systems, these are often not given the recognition it deserves from the Government. The Economic Transformation Programme, for example, gives no mention and in fact only caters for profit-oriented activities.

While there are training courses that provide the necessary knowledge and skills to IP in preparation for better occupational opportunities, there is a negative perception that IP are not employable. The number of IP entering higher institutions is still low due to the fact that they are among the impoverished groups and that, they are unable to pay for the fees. In this regard, opportunities for economic growth are very limited. Efforts to introduce traditional occupational skills in many training institutes have not been successful, and neither are there support for IP to establish their own educational institutions as provided for by Article 14 of the UNDRIP.¹³⁹

(v) Legal system

IP possess their own traditional judicial system, which covers legal aspects including customary laws, conflict resolution and arbitration and their traditional institution that implements and monitor its legal system.

¹³⁹ UNDRIP (n 48) Article 14:

14. Indigenous Peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

In the states of Sabah and Sarawak, native courts for the IP had been formalised by the British colonial rulers in recognition for the traditional legal systems. These courts, play an important role in resolving disputes within the indigenous communities. However, such courts do not exist in Peninsular Malaysia for the *Orang Asli*. In this regard, many advocates of the IP's rights are calling for the establishment of native courts in Peninsular Malaysia. Native Courts serve as a crucial mechanism in recognising the indigenous legal system.¹⁴⁰

(vi) Health

Access to healthcare is a major issue for IP in Malaysia. Malnutrition is seen as a serious problem for indigenous communities especially among the women and children. This may be due to loss of land and forest, resulting in an imbalanced diet. The common illnesses among indigenous communities include tuberculosis, malaria, anaemia and dengue. The incidence of infectious diseases among IP is much higher than non-indigenous population. For example, the incidence of tuberculosis (TB) among *Orang Asli* in Perak is about 240 per 100,000 or 5.5 times that of the overall Perak population.¹⁴¹ The poor nutrient intake and limited dietary habits have resulted in chronic energy deficiency¹⁴² especially among the indigenous women.

Indigenous communities, especially those who live in the interior areas, face difficulties in accessing medical treatment and healthcare services due to the distance between their homes and the medical facilities. The clinics available in the villages do not provide comprehensive healthcare services. In addition, language barrier is also an issue. Indigenous communities find it difficult to communicate with the doctors or medical officers. As a result of these factors, many IP do not seek medical treatment.

¹⁴⁰Jannie Lasimbang, 'Sistem Perundangan Orang Asli di Malaysia' in *Round Table Discussion on Indigenous Legal System*, held on 18 May 2012

¹⁴¹Jeyakumar Devaraj, 'Between Myth and Reality : Why are Orang Asli more Prone to Illness?' in *World Conference of Primary Care Physicians*, held in Kuching, Sarawak in March 1999)

¹⁴²Lim Hwei Mian et al., 'Nutritional Status and Reproductive Health of Orang Asli Women in Two Villages in Kuantan, Pahang' (Dec 1998) *Malays J Nutr.* 4(1) 49

5. CONCLUSION

While there are still many issues concerning the rights of IP in Malaysia that need to be looked into and addressed, efforts have been made by various stakeholders to find measures that may mitigate if not resolve these issues. Some of these measures have proven to be effective and some can even be considered as good practices. It is important that these good practices be shared with other stakeholders inside or outside of Malaysia so that the good practices can be emulated and implemented to address similar issues from other countries. These good practices may be able to boost the level of fulfilment and respect towards the human rights and fundamental freedoms of IP.

In addressing the rights on IP, it is crucial to take cognizance of some of the main concerns, which are as follows:

- i. It is important to focus on the restitution of non-recognition of customary lands, redress mechanisms for the loss of the land, review compensation payment made on land taken for development and enhancement of the capacity of land departments;
- ii. Government bodies are called upon to adopt a human rights based approach to development with the application of the Free, Prior and Informed Consent principle;
- iii. To promote sustainable development models with active involvement and participation of indigenous people in Forest Management and other areas, that do not have an adverse effect on the indigenous communities;
- iv. Immediate implementation of corrective measures on indigenous issues especially in relation to health, education, economic development, civil and political reformation, laws and policies as well as social and cultural heritage.

SUHAKAM urges stakeholders including Government agencies and CSOs to step up their efforts in uplifting the status of indigenous status particularly in terms of economic, social and cultural aspects.

Finally, SUHAKAM urges all stakeholders to uphold principles of the UNDRIP so as to promote greater acknowledgement and respect for the rights of IP.