

SUHAKAM'S REPORT ON
THE ROUNDTABLE
DISCUSSION ON
**THE RIGHTS OF
ETHNIC MINORITIES AND
MARGINALISED COMMUNITIES
IN MALAYSIA**



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PREFACE

The aspiration to eliminate deeply rooted economic and social imbalances remains among the core commitments of the Malaysian Government. This goal takes centre-stage in all of Malaysia's five-year development plans. While various measures have been outlined and notable progress made, there remain economic and social imbalances and inequalities among communities. This is evident from the measure to 'address persistent socio-economic inequalities constructively and productively', as identified in the Ninth Malaysia Plan (2006-2010).

Since its establishment, the Human Rights Commission of Malaysia (SUHAKAM) has emphasised the need to address socio-economic inequalities. It established the Economic, Social and Cultural Rights Working Group (now the Economic, Social, Cultural & Civil and Political Rights Working Group), which is mainly tasked with conducting research and highlighting the plight of vulnerable and disadvantaged groups vis-à-vis their economic, social and cultural rights, such as the right to adequate housing, healthcare, education, employment, income generation and customary land rights.

The Roundtable Discussion (RTD) on 'The Rights of Ethnic Minorities and Marginalised Communities in Malaysia', held on Nov 19, 2008, brought together representatives of indigenous communities, the Malaysian Siamese minority group and NGOs who spoke for groups like displaced Indian plantation workers and the urban poor. Legal and social experts on these issues were also present.

The RTD enabled SUHAKAM to further substantiate its findings based on earlier research and identify common areas of concern shared by minorities and marginalised community groups. It was principally found that these groups lack access to basic human needs and to public services. Many are poor and do not have sufficient access to food, clean and safe drinking water, employment opportunities, as well as to education, healthcare and registration services. While some receive financial and other forms of Government assistance, others do not have access to this because they are undocumented persons; live in isolated locations; do not have the means to reach such assistance; or simply because they are unaware of the availability of such assistance and the

application procedures.

It was also found that, while the Government aspires to implement socio-economic development projects that benefit both the country and its people, it appears that some ventures have instead sidelined sections of the communities, with some being further marginalised. Many indigenous peoples have been displaced from their ancestral land and simultaneously denied access to forests which are their sources of food, medicine and daily necessities.

Retrenched plantation workers are given modest compensation after closure of plantation areas that have given way to property- and township- development. Since their skills do not match the expertise needed for these projects and developers have a tendency to employ cheap foreign labour, many migrate to urban areas. Some manage to get odd jobs, but others are unable to find employment. This, in turn, increases the incidence of urban poverty and the number of low-income families living in urban poor locations.

The problems confronted by the concerned minorities and marginalised communities are in fact issues of human rights. As the primary duty bearer in ensuring that human rights are achieved, SUHAKAM contends that the Government is principally accountable in promoting and protecting human rights. Failure to address many of these issues in an effective way can be constituted a violation of basic human rights.

In this respect, SUHAKAM urges the Government to ensure that effective measures are introduced to reduce social and economic disparities. Such steps should target disadvantaged groups irrespective of ethnicity, geographical location or religious differences. Furthermore, there is a need for the Government to ensure that they are provided with all necessary means, including access to basic amenities and public services, to encourage self-help and socio-economic empowerment.

SUHAKAM further urges the Government to ensure that the implementation of development projects does not infringe the economic, social and cultural rights of the people. This is especially important in the case of indigenous communities that have been displaced from their customary lands. It is fundamental for the Government to ensure that affected communities are able to participate in planning and implementation, and that the projects only proceed after free, informed and prior consent is obtained from them. Communities whose rights have been infringed must be adequately compensated.

SUHAKAM recommends that the Government fulfils provisions of supported

declarations such as the United Nations Declaration on the Rights of Indigenous Peoples. SUHAKAM also recommends that the Government ratifies other international human rights instruments like the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the International Convention on the Elimination of all Forms of Racial Discrimination.

SUHAKAM expresses its deepest appreciation to all participants and staff who contributed their views and expertise at the RTD and in the preparation of this report.

February 2010



Dato' Dr Michael Yeoh Oon Kheng
Chairperson of the Economic,
Social, Cultural & Civil and
Political Rights Working Group
(ECOSOC-CPR)



Datuk Dr Denison Jayasooria
Commissioner of the Economic,
Social, Cultural & Civil and
Political Rights Working Group
(ECOSOC-CPR)

PART 1

REPORT ON THE ROUNDTABLE DISCUSSION ON THE RIGHTS OF ETHNIC MINORITIES AND MARGINALISED COMMUNITIES IN MALAYSIA

Based on the discussion held on Nov 19, 2008 between SUHAKAM and
representatives of relevant Government agencies and NGOs

INTRODUCTION

1. INTROUCTION TO THE ROUNDTABLE DISCUSSION

On Nov 19, 2008, the Human Rights Commission of Malaysia (SUHAKAM) held a Roundtable Discussion (RTD) on 'The Rights of Ethnic Minorities and Marginalised Communities in Malaysia'. Organised by the Economic, Social, Cultural & Civil and Political Rights (ECOSOC-CPR) Working Group, this was part of SUHAKAM's continuing efforts to highlight the plight of disadvantaged communities in Malaysia.

The RTD was held with the following objectives:

- (i) To review the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities (Declaration on the Rights of Minorities) and United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), alongside the Federal Constitution, in order to ensure effective promotion and protection of minority rights in Malaysia;
- (ii) To provide an opportunity to hear different views and perspectives on the current status of minority groups and marginalised communities in Malaysia; and
- (iii) To identify common areas of concerns and draw up specific strategies and recommendations in the promotion and protection of minority rights and marginalised communities in Malaysia.

Participants

The RTD convened with 25 participants including representatives of Government agencies, non-governmental organisations (NGOs), community-based organisations (CBOs), academia and other interested groups and individuals.

Selected resource persons were invited as speakers and panellists to contribute their views and experiences relating to ethnic minorities and marginalised communities in Malaysia. They included Mr Ramdas Tikamdas, the former



Roundtable Discussion of the Rights of Ethnic Minorities and Marginalised Communities in Malaysia.

President of the National Human Rights Society (HAKAM); Prof Ramy Bulan, Associate Professor, Faculty of Law, Universiti Malaya; Dr S Nagarajan, Research Director of Educational, Welfare & Research Foundation Malaysia (EWRF); Mr Siri Neng Buah, representative of *Persatuan Siam Malaysia*; Dr Colin Nicholas, Director & Coordinator of Centre for Orang Asli Concerns (COAC); Mr Jayl Langub, Researcher with Universiti Malaysia Sarawak; and Ms Julie Jidwin, Secretary of the Kadazandusun Cultural Association.

SUHAKAM was represented by Vice-Chairman Tan Sri Datuk Seri Panglima Simon Sipaun, and Commissioners Dr Mohammad Hirman Ritom Abdullah, Tan Sri Dato' Asiah Abu Samah, Datuk Dr Denison Jayasooria, Tunku Datuk Nazihah Tunku Mohamed Rus and Dato' N Siva Subramaniam. They were assisted by the ECOSOC-CPR Secretariat.

Summary of Proceedings

Tan Sri Datuk Seri Panglima Simon Sipaun delivered the Welcoming Address during the Opening Session.

In the Second Session, two speakers presented their views on the Declaration on the Rights of Minorities and UNDRIP, and their significance to ethnic

minorities and marginalised communities in Malaysia. A question and answer session ensued.

Two panel sessions followed. The first featured two panellists who respectively addressed issues of displaced plantation workers and the Siamese minority group in Malaysia. The second session saw three panellists discussing the plight of indigenous peoples in Peninsular Malaysia, Sarawak and Sabah respectively. Each panel discussion was followed by a question and answer session.

Preceding the conclusion of the RTD was an Open Discussion Session which was aimed at drawing out commonality on issues discussed. Based on this, strategies were charted for the promotion and protection of the rights of ethnic minorities and marginalised communities in Malaysia.

2. ISSUES RAISED BY THE PARTICIPANTS

Comments on the UN declarations

Participants emphasised the usefulness of the two UN declarations in advocating the rights of minorities and indigenous peoples. Both documents set minimum standards for compliance by Governments in the promotion and protection of their rights. Both state the obligations of Governments to ensure that minorities are not discriminated against, and are able to attain the same basic human rights that are enjoyed by the mainstream of society.

Participants, however, noted that both documents are not legally binding and hence, Governments are not bound by their provisions despite their expressed support for the declarations.

Socio-economic development

The participants highlighted that limited access to socio-economic facilities has led to further deterioration of the standard of living of vulnerable groups. Socio-economic issues include access to education, healthcare services and poverty eradication programmes.

● *Poverty*

Participants acknowledged that Malaysia has made great strides in poverty reduction since Independence. However, while the national poverty rate showed remarkable decrease to 6.5% in 2004, disaggregated data revealed pockets of deprivation within the communities.

The indigenous peoples remain the poorest and most marginalised in the country. Many are categorised as hardcore poor. This is mainly because they do not have sufficient sources of livelihood and income, and rely on a traditional lifestyle for sustenance. Their situation is aggravated by the implementation of projects such as plantations and hydroelectric dams which have led to their being dispossessed of ancestral and native lands. The implementation of such projects does not appear to have considered the need to protect and sustain the livelihood of indigenous peoples.

With respect to displaced plantation workers, participants said their socio-economic development does not appear to have experienced any improvement when compared to the dramatic growth of the nation as a whole. Many plantations today still remunerate workers with extremely low daily wages. It was claimed that this level of remuneration was practised during the British colonial era and has been maintained to date. Depending on factors such as the weather and global commodity prices, the monthly wage may vary; some workers may even earn less than the appropriate subsistence level.

Participants said that, while plantation workers can be classified as poor, they are unable to access and receive assistance through the Government's rural development programmes. They claimed that this is because plantation workers reside in quarters provided by the plantation companies. These are considered private property and thus fall outside Government jurisdiction.

Participants said that many plantation workers have faced a great risk of losing their jobs and source of income since a policy shift in the 1980s. This provides for the acquisition of plantation areas for the development of properties and townships. In addition, the current agricultural trend that influences crop change – in particular, from rubber to oil palm – and use of modern technology have resulted in the retrenchment of workers, especially those whose skills are only relevant to rubber plantations. The influx of, and preference for, cheap foreign labour in Malaysia has further narrowed opportunities for new employment among those retrenched.

Participants explained that plantation workers who are retrenched do not own

property as they had solely depended on facilities provided by plantation companies, including living quarters complete with basic amenities. Those retrenched are forced to leave their quarters which have been their support structure for decades. Many migrate to urban areas in search of better employment opportunities. Some are able to secure low-cost housing while others become squatters on Government land, such as along railway lines and on disused mining land. Without the necessary skills and educational background, many can only obtain low-paying jobs. The incidence of urban poverty is thus increased.

Participants opined that poverty affects the psychology of youths in particular. They have low self-esteem and feel alienated or may become embroiled in gangs and crime.

Many families are unable to send their children to school because of poverty. As a result, the children have limited opportunities for employment in the future.

Some participants agreed that while Malaysia's five-year plans recognise and classify indigenous communities and plantation workers as among those in need of poverty reduction programme and assistance, in reality, many of them remain neglected and pushed further into socio-economic marginalisation. Many are still unable to enjoy their basic human rights such as food, education, healthcare, safe drinking water, a clean environment and adequate housing.

● *Access to education*

Many indigenous children living in the interior do not have adequate access to education. The distance between villages and schools poses a tremendous obstacle. Poverty stricken families cannot afford the expenses associated with sending their children to school, including the cost of transportation. Among children enrolled in schools, many have difficulty coping with the lessons which are taught in Bahasa Malaysia, as they primarily speak and understand their mother tongue. All these factors lead to absenteeism among indigenous children.

According to a participant, Tamil primary schools are partially aided by the Government. Nonetheless, many schools lack proper infrastructure. While there are both primary and secondary Tamil schools, there is a lack of pre-schools near areas populated by Malaysian Indians, such as estates and low-cost flats in urban areas.

● *Healthcare services*

Participants said that indigenous peoples, especially those residing in isolated areas, lack access to healthcare services. Many villages have no access to community clinics; there is only a Medical Assistant (MA) stationed in each village. Even then, the number of MAs is insufficient and medical supplies are limited. While the Flying Doctor Service (FDS) and mobile health teams (MHT) have been made available by the Ministry of Health, visits to villages are irregular. During unfavourable weather conditions like strong winds or during the rainy season, both the FDS and MHT cannot reach villages.

With respect to healthcare in plantations, participants said that services are minimal. In some areas, the facilities are dilapidated and in urgent need of upgrading to modern standards.

● *Housing*

Participants highlighted that plantation companies are obliged to provide basic amenities in living quarters as stipulated in the Workers' Minimum Standards of Housing and Amenities Act 1990. However, participants said that this provision is often ignored, and it appears that the authorities take no action to hold the companies accountable. As a result, the quality of life of workers remains below a satisfactory level; they lack access to basic needs such as healthcare, education, and clean and safe drinking water. This is a violation of their fundamental human rights.

● *Compensation for retrenched workers*

Participants were of the view that the quantum of compensation in the Termination and Lay-off Benefits Regulations 1980¹ is inadequate for plantation

¹ Regulation 6 of the Termination and Lay-off Benefits Regulations 1980 states:

6. (1) Subject to the provisions of these Regulations, the amount of termination or lay-off benefits payment to which an employee is entitled in any case shall not be less than—
 - (a) ten days' wages for every year of employment under a continuous contract of service with the employer if he has been employed by that employer for a period of less than two years; or
 - (b) fifteen days' wages for every year of employment under a continuous contract of service with the employer if he has been employed by that employer for two years or more but less than five years; or
 - (c) twenty days' wages for every year of employment under a continuous contract of service with the employer if he has been employed by that employer for five years or more, and pro-rata as respect an incomplete year, calculated to the nearest month.

workers. They explained that the provision is based on the daily rate of wages. According to the participants, plantation workers' wages are daily rated, with the total amount depending on such factors as workers' output, weather and crop yields, as well as the market price. Wages vary daily and workers sometimes receive a modest amount. Taking into consideration the physical strain involved in performing the work, participants felt that compensation based on the Regulations is both sufficient and unfair.

Undocumented Malaysians

Participants raised concerns about undocumented Malaysians, in particular, among indigenous peoples, Indian plantation workers and those of Siamese origin who reside in states along the Malaysia-Thai border, such as Kedah, Kelantan and Perlis. Participants said that undocumented persons risk discrimination and harassment. They do not have access to basic human rights such as education, healthcare and employment and this reinforces the cycle of poverty as well as the risk of exploitation.

Poor physical access to vital registration services has led to many indigenous peoples remaining undocumented. They still reside in isolated villages that can only be reached across difficult terrain; there are no local registration service centres. While the mobile registration service is available, its effectiveness is curtailed due to the terrain, especially during unfavourable weather.

Participants said the situation of undocumented Malaysian Indian plantation workers has worsened over the past decade. Because of poverty, many families are unable to send their children to school. Furthermore, they only speak their mother tongue. Since command of Bahasa Malaysia is a pre-requisite in obtaining a personal identification document, their applications are rejected by the authorities. Participants of the RTD also claimed that many applicants have given up their effort to obtain a MyKad as they have been traumatised by the harsh treatment meted out by Government personnel.

-
- (2) For the purposes of this Regulation "wages" shall have the meaning assigned thereto under Section 2(1) of the Act and "a day's wages" shall be computed in such a manner so as to give the employee his average true day's wages calculated over the period of twelve completed months' service immediately preceding the relevant date
 - (3) For purposes of this Regulation, the period of employment under a continuous contract of service shall include any such employment prior to the date on which these Regulations come into force
 - (4) The termination or lay-off benefits payment to which an employee is entitled under this Regulation shall be in addition to any payment to which he may be entitled under Section 13 of the Act.

Many Malaysian Siamese, meanwhile, only hold permanent residence status (Red IC/MyKad) even though many were born in Malaysia. To obtain citizenship, they have to sit an examination. Applicants, many of whom are illiterate, have said that they find it difficult to pass the examination. Participants opined that they have been treated unfairly.

Concerns about land ownership

Participants said that indigenous peoples face difficulty in securing ownership of their native land. Many have lost their customary land to private companies that were awarded licences by the Government for logging, land schemes, plantations and dams. As a consequence of land dispossession, indigenous peoples have also lost their source of sustenance and livelihood.

Some participants claimed that the indigenous peoples do not have secure tenure over native land. Their lands are taken away by the Government without their free, prior and informed consent. For example, Orang Asli gazetted reserves are de-gazetted by the Government without the knowledge of the Orang Asli, to make way for development projects. Others receive titles to the land, but these are only for lease of 99 years. Participants felt that this temporary occupational term denies the indigenous peoples' status as the earliest settlers of the land. Thus, participants felt that existing laws for the Orang Asli appear only to be a temporary measure of protection. Having come to realise this, indigenous people have struggled to reclaim their land and seek restoration of their customary rights. It was alleged that, in some instances, the Government has resorted to use of the Police force. The Police are alleged to have intimidated and harassed villagers, forcing them to leave their land.

The Siamese, in particular those living in Kedah and Perlis, face difficulty in owning land. They must hold the Sijil Siam² to enable them to own land, including inherited land.

² Sijil Siam is an agriculture certificate issued by the Government of Malaysia to the Siamese community for agricultural work.



Participants at the RTD held on Nov 19, 2008.

3. RECOMMENDATIONS OF THE PARTICIPANTS

Participants of the RTD proposed the following recommendations for the attention of the Government and SUHAKAM.

Recommendations to the Government

- *Establish a commission on minority rights*

The Federal Government should establish a special commission on minority rights. Its members should include at least three commissioners from Peninsular Malaysia, Sabah and Sarawak respectively. This special commission would be responsible for identifying and analysing problems concerning minorities and their rights in Malaysia.

- *Implement affirmative action for minority groups*

The Government should formulate and implement affirmative action for the development of all minority groups and the advancement of their human

rights. Programmes and policies should be formulated based on needs rather than ethnicity.

- *Ratification of international human rights instruments*

Malaysia should ratify the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), and the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD). Participants further recommended that provisions of these instruments should be reflected in the relevant national laws and policies.

- *Assistance with applications for personal identification documents*

Participants felt that the current application procedure for personal identification documents is elaborate and causes difficulty for disadvantaged communities. Participants maintained that the Government is obligated to provide assistance to ensure all citizens possess the necessary personal documents. Thus, participants recommended that an assistance mechanism be put in place to assist disadvantaged communities like the indigenous peoples and Indian minority group to apply for birth certificates and MyKad.

To ensure progress, participants recommended that the National Registration Department should come up with a time frame to monitor such efforts.

Recommendations to SUHAKAM

- *Ensure participation of senior Government officials*

Participants recommended that SUHAKAM ensures the participation of senior Government officials in related RTDs as they would have better comprehension of the issues and would be in authority to initiate follow-up action. Such meetings hosted by SUHAKAM would also help strengthen the link between NGOs, CBOs and Government agencies.

- *Establish an 'alert mechanism' on human rights violations*

SUHAKAM should come up with an 'alert mechanism' on human rights violations.

This mechanism would entail the need for SUHAKAM to closely monitor the situation and alert the public to any infringement of human rights. This system should also be accessible to the public to alert SUHAKAM on human rights violations.

Participants were encouraged by the presence of journalists at the RTD and emphasised that the media plays an important part in alerting the public to human rights violations.

- *Educate policy makers*

Participants recommended that SUHAKAM intensifies programmes to enhance human rights awareness and training, especially for policy makers and civil servants.

- *Issues on undocumented persons*

A participant suggested that SUHAKAM appeals to the Government to grant amnesty to citizens who do not currently possess proper documentation.

4. SUHAKAM'S RECOMMENDATIONS

Based on the issues raised and discussed at the RTD, SUHAKAM makes the following recommendations.

Honour international commitments

SUHAKAM urges the Government – as the primary duty-bearer – to ensure that commitments made through the ratification of international human rights treaties like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and Convention on the Rights of the Child (CRC), are translated into action and do not merely remain programmatic aspirations.

SUHAKAM strongly recommends the realisation of provisions of the Universal Declaration of Human Rights (UDHR). Although not legally binding, it is globally accepted that the UDHR is international customary law that applies to all peoples and does not require ratification.

SUHAKAM also recommends that the Government fulfils provisions of declarations that have received its support for adoption, like the UNDRIP.

Ratify international treaties

SUHAKAM reiterates its recommendation that Malaysia ratifies, among others, the ICESCR, ICCPR and ICERD. This would strengthen the Government's commitment towards human rights, especially its commitment towards the right to equality and non-discrimination.

Ensure compliance of local legislation to international treaties

SUHAKAM recommends that the Government takes immediate measures to ensure that the rights provided in ratified international human rights treaties are reflected in local legislation.

In addition, there is a need for the Government to ensure the review or abolition of provisions and laws that contradict or may lead to the infringement of human rights.

Apart from legislation, there is a need for the Government to ensure that policies and programmes are anchored in human rights principles, especially the right to equality and non-discrimination.

Ensure socio-economic development for all

(i) Eliminate income poverty

The Ninth Malaysia Plan affirms that while the population has become increasingly urbanised and educated and the middle income group has expanded, there are still considerable income and wealth inequalities due to persistent disparities in inter- and intra-ethnic distribution, as well as differences between rural and urban incomes and between less developed and more developed regions. By many accounts, racial polarisation is felt in schools, in the workplace, in residential areas and by society in general.³

Based on this as well as the views of participants during the RTD, SUHAKAM

³ See para 4 of the Ninth Malaysia Plan (2006-2010), p. 4

urges the Government to take immediate action to ensure all persons in Malaysia are able to equally enjoy socio-economic development. There is a need for the Government to intensify efforts to eliminate pockets of deprivation within communities. Affirmative action must be taken to ensure all disadvantaged groups such as the indigenous communities (Orang Asli in the Peninsula, and indigenous communities in Sabah and Sarawak) and Malaysian Indians living in plantations and low-cost flats in urban areas are able to enjoy their inherent human rights as enjoyed by the mainstream of society. SUHAKAM, therefore, supports the Government's aspirations in the Ninth Malaysia Plan to address persistent socio-economic inequalities constructively and productively.

(ii) Adopt a human rights approach in eradicating poverty

As societies progress, poverty is gradually seen in a broader perspective that takes into account aspects concerning not only economy, but also human rights. This has given rise to a wider definition of poverty as the non-fulfilment of person's right to a range of basic capabilities that are important for an individual, in order to do and be the things he or she has reason to value. In view of this, SUHAKAM strongly recommends that the Government adopts and applies a human rights approach to poverty reduction strategies, given the compatibility and the added value this could present to the effectiveness of existing policies and programmes.

In addition, it is recommended that poverty eradication be addressed on the basis of rights and entitlements rather than as a mere act of charity or as a handout; this would ensure that human rights are given due consideration in defining poverty.

(iii) Ensure proper coordination among agencies

SUHAKAM believes that Government policies and programmes at the macro-level do not have elements of deliberate marginalisation of groups. However, SUHAKAM feels otherwise about the agencies responsible at the micro-level. Therefore, there is a need for the Government to improve and monitor coordination within and between agencies at federal, state and district levels.

In addition, it is recommended that the relationship between agencies and NGOs and CBOs be encouraged, as the latter could play a key cost-effective role in bridging the community-Government divide.

Ensure participation of minorities and marginalised communities

SUHAKAM strongly recommends that the Government ensures the participation of minorities and marginalised communities in planning, decision making, implementation and monitoring of programmes that affect their interests.

Further to being a human right, participation of communities would enable the Government to identify real rather than perceived needs, and avoid pre-empting their needs. Strategies could be formulated based on real needs. This would enhance the effectiveness of programmes.

Overcome the issue of undocumented Malaysians

SUHAKAM urges the Government to take immediate measures to overcome the issue of undocumented Malaysians. The absence of documents has a great implication in Malaysia, as this negatively affects a person's access to other human rights such as education, employment and healthcare, and to Government assistance.

Thus, where possible, SUHAKAM recommends that community service centres or offices be set up near villages for registration of births and to receive applications for MyKad. Such centres should also be opened near rural and isolated villages and estates.

While SUHAKAM lauds the efforts of mobile registration teams, it notes that their effectiveness is curtailed due to such reasons as unfavourable weather conditions that could lead to flooded roads or flight cancellations. Therefore, SUHAKAM recommends that the Government ensures that affected villages are connected to main towns or cities via tarred roads. This would also facilitate the effectiveness of mobile teams. A proper drainage system should be in place to mitigate flooding of access roads to the villages.

Create a special agency/council for ethnic minorities and marginalised communities

SUHAKAM recommends that the Government considers establishing a special agency or council that would be responsible for looking into the affairs of disadvantaged ethnic minorities and marginalised communities. It should, in particular, formulate and implement policies and monitor issues concerning

accessibility to services, amenities and other needs. It is further recommended that members of this entity should include senior Government officials, representatives of interest groups, NGOs and members of the affected communities.

Ensure adequate budgetary commitment

There is a need for the Government to ensure adequate budget commitment in eliminating persistent socio-economic inequalities.

5. CONCLUSION

While Malaysia is internationally renowned for its rapid progress and has made noteworthy achievements in overall development, socio-economic inequalities have persisted in inter- and intra-ethnic distribution as well as between rural and urban areas and between less developed and more developed regions.

In moving forward, the Government is slowly realising the need to address the concerns of those who are in the lower-income groups including minorities and marginalised communities. SUHAKAM supports such endeavour but maintains that the effectiveness of this could be enhanced by viewing the relevant issues – and overcoming these – from the human rights perspective.

Above all else, it has to be recognised that the usual concerns highlighted on and by minorities and marginalised communities relate to their rights, and not to privileges. These basic rights are inherent to all peoples, and they are entitled to restitution if these rights are infringed.

The Government holds the primary duty to ensure that these rights are protected, respected and fulfilled. There is a need for the Government to establish benchmarks to monitor the situation and ensure that steps are taken to reduce socio-economic inequalities within society.

Disadvantaged groups such as minorities and marginalised communities must be assisted by way of empowering them, among others, through education, training, access to socio-economic development opportunities and justice before the law.

They must be able to practise their right to participate in planning, decision making, implementation and monitoring of measures that affect their economic, social, cultural, civil and political interests.

PART 2

ANNEXURES

ANNEXURE 1

**Roundtable Discussion on the Rights of
Ethnic Minorities and Marginalised Communities in Malaysia**
SUHAKAM Office, Kuala Lumpur

19 November 2008

PROGRAMME

TIME	AGENDA	
0900 - 0930	Registration	
0930 - 0945	Welcoming Address by Tan Sri Datuk Seri Panglima Simon Sipaun <i>Vice Chairman of SUHAKAM</i>	
0945 - 1045	<p>Paper Presentation :</p> <p>Review of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities (20 minutes)</p> <ul style="list-style-type: none"> by Mr. Ramdas Tikamdas <i>Former President National Human Rights Society (HAKAM)</i> <p>Review of the United Nations Declaration on the Rights of the Indigenous People (20 minutes)</p> <ul style="list-style-type: none"> by Prof Ramy Bulan <i>Associate Prof. Faculty of Law, UM</i> <p>Q & A (20 minutes)</p>	<p>Session Moderator: <i>Tan Sri Datuk Asiah Abu Samah SUHAKAM Commissioner</i></p>
1045 - 1200	<p>Panel One :</p> <p>Issues & Concerns of Ethnic Minorities</p> <ul style="list-style-type: none"> Displaced Plantation Workers (20 minutes) by Dr. S. Nagarajan <i>Education, Welfare & Research Foundation Malaysia</i> Thai Minority Community in Malaysia (20 minutes) by En. Siri Neng Buah <i>Persatuan Siam Malaysia</i> <p>Q & A (30 minutes)</p>	<p>Session Moderator: <i>Dato' Siva Subramaniam SUHAKAM Commissioner</i></p>
1200 - 1315	Lunch	

1315 - 1445	<p>Panel Two : Issues & Concerns of Marginalised Communities</p> <ul style="list-style-type: none"> • Orang Asli Community in Peninsular (20 minutes) <i>by Dr. Colin Nicholas</i> <i>Centre for Orang Asli Concerns (COAC)</i> • Indigenous Communities of Sarawak (20 minutes) <i>by Mr Jayl Langub</i> <i>University Malaysia Sarawak</i> • Indigenous Communities of Sabah (20 minutes) <i>By Ms Julie Jidwin</i> <i>Secretary of Kadazan Cultural Association</i> <p>Q & A (30 minutes)</p>	<p>Session Moderator: <i>Dr. Mohd. Hirman Ritom Abdullah</i> SUHAKAM <i>Commissioner</i></p>
1445 - 1545	<p>Open Discussion Drawing Commonality on Issues and Charting Strategies for the Promotion & Protection of Ethnic Minority and Marginalised Communities Rights in Malaysia</p>	<p>Session Moderator: <i>Datuk Dr. Denison Jayasooria</i> SUHAKAM <i>Commissioner</i></p>
1545 - 1600	<p>Closing Remarks <i>by Datuk Dr. Denison Jayasooria</i> SUHAKAM Commissioner</p>	
1600	<p>End of RTD / Refreshment</p>	

ANNEXURE 2

LIST OF PARTICIPANTS

No.	Name	Organisation
1	K. Shanmuganathan	Amnesty International of Malaysia
2	Helen Ting Mu Hang	Institute of Malaysian And International Studies (IKMAS)
3	Rohani Hj Omar	Ministry of Housing and Local Government
4	Ooi Kiah Hui	Malaysian Care
5	Micheal Gerald Sebastian	Yayasan Kajian Dan Pembangunan Masyarakat
6	Mareia Hasan	State Planning Unit Chief Minister's Department Kuching
7	June Loh	Baha'i Community of Malaysia
8	Jasmine Adaikalam	Yayasan Strategic Social
9	Ivy Josiah	Women's Aid Organisation
10	Dr. Sai'ah Hj Abdullah	Jabatan Hal Ehwal Orang Asli (JHEOA)
11	Pn. Zainah Baharom	Jabatan Hal Ehwal Orang Asli (JHEOA)
12	Pn. Nor Hayati Abdul Shukor	Ministry of Women Family & Community Development
13	Ms. Jiwi Khathaiyah	MALAYSIA INDRU
14	Mr. Vinod	Representative of The United Nations High Commissioner for Refugees
15	Amy Bala	Malaysian Association of Social Workers (MASW)
16	Rasmani Kandiah	The National Council Of Women's Organisations (Ncwo)
17	Prof. Dr. Ramy Bulan	University Malaya (UM)
18	Mr. Jayl Langub	University Malaysia Sarawak (Unimas)
19	Dr. Colin Nicholas	Centre For Orang Asli Concerns (COAC)
20	Dr. S. Nagarajan	Educational, Welfare and Research Foundation (EWRF)
21	Siri Neng Buah	Persatuan Thai Malaysia
22	Julie Jidwin	Kadazandusun Cultural Association
23	Prof. Dr. Mansor Mohd Noor	College of Law, Government & International Studies, Universiti Utara Malaysia
24	Mr. Ramdas Tikamdas	The National Human Rights Society (HAKAM)
25	En. Malik	Kementerian Pembangunan Luar Bandar (MRRD)

Welcoming Remarks

Address by

Tan Sri Datuk Seri Panglima Simon Sipaun

Vice Chairman of SUHAKAM

Ladies and gentlemen,

On behalf of Suhakam, in general, and the Economic, Social and Cultural working group of Suhakam in particular, I am honoured and delighted to welcome all moderators, panelists and participants of this Roundtable Discussion on the Rights of Ethnic Minorities and Marginalised Communities in Malaysia. I also thank you for your attendance. I fully realize that you are all very busy people and to spend the day here represents a great sacrifice on your part.

2. I get the impression that in some countries there is a belief or perception that there is, for example, religious freedom just because 95% of the population belong to a particular religion and therefore the religious rights of the 95% are adequately protected by the constitution of the country. However this state of affairs does not mean that human rights are properly understood unless there is adequate safeguards in place for the remaining 5%. Human rights issues are very often about 5%, 3% or even less. Human rights must be extended to every individuals. If there are minorities based on gender, ethnic or religious groups whose rights are not respected or protected then the society at large will become poorer for it.

3. This RTD is organized with the following objectives amongst others:

- (i) To examine the Declaration on the Rights of Persons Belonging to National, Ethnic, Religious or Linguistic Minorities and the UN Declaration on the Rights of the Indigenous Peoples with reference to the Federal Constitution in an effort to ensure effective promotion and protection of minority rights in Malaysia.
- (ii) To provide a forum for the exchange of views, knowledge and experience concerning the status of minority groups and marginalized communities in Malaysia.

- (iii) To identify common areas of concerns and to come up with specific strategies and recommendations in the promotion and protection of minority rights and marginalized communities in Malaysia.

4. Article 27 of the International Covenant on Civil and Political Rights provides that in “State in which ethnic, religious and linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language”. I note that it has not been easy to arrive at a consensus when it comes to the definition of the term ‘minority’. Differing views were expressed by people involved in the attempt to come up with a suitable definition. One UN study proposed to define ‘minority’ as a group of citizens of a state, constituting a numerical minority and in a non – dominant position in that state, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority population, having a sense of solidarity with one another, motivated, if only implicitly, by a common will to survive and whose aim is to achieve equality with the majority in fact and in law.

5. After about a quarter of a century of negotiations the UN General Assembly finally passed the UN Declaration on the Rights of Indigenous Peoples on 13 September 2007. The vote for its passage was 144 to 4 with 11 abstentions. The U.S, Australia, Canada and New Zealand voted against. This was rather surprising as these countries were usually known for positive human rights stand. Unfortunately, as in the case of the Universal Declaration of Human Rights the Declaration on the Rights of Indigenous Peoples has no enforcement mechanisms. It is merely a statement of standards and principles. Countries of the world can just ignore it. It is worth noting also that there is now a UN Permanent Forum on Indigenous Issues.

6. In this Country the mainstream populations are the Malays, Chinese and Indians. The rest are generally officially categorized as “others” who could be classified as minorities comprising mainly of Orang Asli in Peninsular Malaysia and indigenous communities of Sabah and Sarawak. Other marginalized communities include estate workers, people with disabilities, single parents and so on. They are by no means homogeneous. They are as diverse as they possibly could in terms of race, ethnicity, religion, belief, language, tradition, culture and so on. What they have in common is predicament, marginalization, lack or limited access to education, health care, employment opportunities and poverty eradication programme, to name a few. One of the most glaring examples of right being denied to the indigenous communities is their right to

land. Yet their lives and survival depend so much on land. The Orang Asli, for example, are being displaced from their traditional territories to make way for commercial land development. In the case of Sabah and Sarawak the indigenous communities are being denied native land customary rights. To add misery into injury many of them especially those who live in remote areas are denied the right to citizenship simply because they do not have birth certificates. Yet they have never left the place they were born. They become stateless. They are denied access to education. They cannot vote. And they continue to be ignored. Sadly in the case of Sabah illegal immigrants obtain Mykad and citizenship without much fuss. Local natives lose theirs. Yet the Malaysia Agreement states "Persons born in North Borneo (Sabah) or naturalized, or registered as born in Sabah as citizens of the U.K. and colonies who are ordinarily resident in Sabah, Sarawak, Brunei, Singapore on Malaysia Day will become citizens of Malaysia by operation of law.

7. With your knowledge and experience I am confident that the rights of ethnic minorities and marginalized communities in this country will be fully examined and discussed. For its part SUHAKAM will compile a report incorporating the issues raised in this discussion together with the recommendations and submit it to the relevant authorities for consideration.

8. With these remarks, ladies and gentlemen, I wish each and everyone an interesting, fruitful and enjoyable discussion. I thank you for your attention.

ANNEXURE 4

Review of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities

Address by

Mr. Ramdas Tikamdas

Former President of National Human Rights Society (HAKAM)

1. Introduction

There is no event in recent memory that has so dramatically and universally brought into focus minority rights as the election of Barack Hussein Obama as the President of USA. The Newsweek dated November 10, 2008 in a cover story *"The Global Election"* captured the planetary euphoria: *"Asia was trying to claim Obama for his Indonesian childhood, Africa for his Kenyan father and the Middle East for his middle name"*. These regions all have their deep rooted problems in addressing minority rights while in Malaysia the Prime Minister declared that a non-Malay can be the Prime Minister even as the nation was struggling to accept a Chinese as the General Manager of a State Corporation. Earlier the Vice-Chancellor of a University openly sanctioned a demonstration of his majority mono-ethnic student population protesting the proposal to open up ten (10) per cent of the student population for the other minority Malaysians.

In the week before the November 4 elections, when television networks were in a frenzy covering the greatest event on earth, with foreign commentators freely making their own preferred choice of President on behalf of the Americans, suddenly the CNN anchor asked a question "In your country can a minority be the Head of State?" There was silence. After a few minutes someone called from India: *"Yes in my country a Muslim nuclear scientist was the President, a Sikh is the Prime Minister and a Roman Catholic is the leader of the ruling political party."* But the question still, was quite embarrassing for all.

2. Democracy And Liberty

In addressing the issue of minority rights, it is important to draw a distinction between "Democracy" on the one hand and "Liberty" on the other. While Democracy is a system of government which is elected by the majority, Liberty on the other hand, espouses fundamental rights of the individual that no

majority can take away. Seen in the context of this doctrine, each member of the minority has equal rights with the individual members of the majority. Hence Article 8(1) of the Federal Constitution that *“All persons are equal before the law and entitled to the equal protection of the law.”*

But real *politik* is different. International legal instruments recognise that the minority need express recognition, protection and promotion of their rights.

3. Who is a minority?

But what constitutes a minority?

The Oxford Advanced Learner's Dictionary defines a minority as *“a small group within a community or country that is different because of race, religion, language etc.”*

And what is the unit by reference to which a minority is determined? The country state, town, village or neighborhood? Can Malays, for example claim to be the minority in Brickfields? A similar question arose and was answered by the Supreme Court of India in **re the Kerala Education Bill 1957**. (AR) 1958 S.C. 956:

“What is a minority? That is a term which is not defined in the constitution. It is easy to say that a minority community means a community which is numerically less than 50 per cent... Is it the 50 per cent of the entire people of India or 50 per cent of the population of the state forming a part of the Union? Are we to take as our unit a district or a sub-division or a town or its suburbs or a municipality or its wards? It is well known that in many towns persons belonging to a particular community flock together in a suburb of the town or a ward of the municipality... for the Bill before us extends to the whole of the State of Kerala and consequently the minority must be determined by reference to the entire population of that state.”

Thus if a law or state policy extends to the whole country, the minority must be determined by reference to the entire population of the country.

4. International instruments Protecting Minorities

There is a growing body of international human rights instruments that have been formulated for the protection of minorities. On December 18 1992, the

General Assembly of the United Nations adopted resolution 47/135: **“Declaration on the Rights of Persons Belonging to National, or Ethnic, Religious and Linguistic Minorities.”**

This Declaration unlike the other covenants does not require member states to ratify it and there is no enforcement mechanism. It is a declaration which carries moral rather than legal weight.

But it is significant that the Declaration in its Preamble makes direct reference to the Charter of the UN; the UDHR; the Convention on the Prevention and Punishment of the Crime of Genocide; the International Convention on the Elimination of All Forms of Racial Discrimination (**CERD**); the International Covenant on Civil and Political Rights (**ICCPR**); the International Covenant on Economic, Social and Cultural Rights (**ICESCR**); the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief; and the Convention on the Rights of the Child.

In this sense the Declaration is not a stand alone document and because it relates to a corpus of international human rights instruments, no nation that aspires to developed status and modernity can flout or contravene its principles.

Some of the more important principles of the Declaration are as follows:-

Article 1

States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.

Article 4

- (1) States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.
- (3) States should take appropriate measures so that, wherever possible persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.

- (4) States should where appropriate take measures in the field of education in order to encourage knowledge of the history traditions language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.
- (5) States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country.

Article 5

National policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.

5. Relationship between Equality Provisions and Minority Rights in the ICCPR

It is a common provision entrenched in international instruments and state constitutions that; *"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law."* (See Article 26, ICCPR)

Quite apart from this guarantee, Article 27 of ICCPR provides that:-

"In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."

The Encyclopedia of Human Rights, Edward H. Lawson at Pg 837 states that:-

"The protection of these rights is directed towards ensuring the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole... These rights must be protected as such and should not be confused with other personal rights conferred on one and all under the Covenant..."

Therefore minority protection rights are over and above what the state confers by law on individuals within its territory or under its jurisdiction, irrespective of whether they belong to minorities or not.

6. Guarantee of Equal Rights and Opportunities in the ICESCR

The scheme of the **ICESCR** appears to focus on guaranteeing the economic, social and cultural rights of all nationals of a state, except that in the case of developing countries, the state *“with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognised in the present covenant to non-nationals”*.

Thus while the covenant recognises for developing countries that there may not be equality of economic rights to non-nationals, so far as nationals are concerned, Article 2 (2) provides that states *“undertake to guarantee..rights.. without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”*

Further **Article 7** provides the right of everyone to the enjoyment of just and favourable conditions of work, fair wages and equal remuneration for work of equal value, equal opportunity for promotions in employment subject to no considerations other than those of seniority and competence.

Article 13 provides for compulsory primary education and equal access to secondary and higher education. Sub-article (3) provides for states to undertake to have respect for the liberty of parents to choose for their children schools, other than those established by the public authorities to ensure the religious and moral education of their children in conformity with their own convictions.

7. International Customary Law

Thus although the Declaration itself does not provide for ratification by states and has no enforcement mechanism, it is still obligatory based on international customary law for states to abide by the Declaration as it expressly refers to the various international human rights instruments in its Preamble including UDHR and every state would have ratified at least some if not all the international instruments, the most universally ratified being the Rights of the Child and CERD.

8. Conclusion

The underlying basis of the rule of law for civilized states is non-discrimination and equality of rights and opportunities for its nationals. These twin principles of non-discrimination and equality are also the precondition for any state aspiring to national integration and progress towards developed status. It is in recognition of this reality that 173 states out of the 192 member states of the UN have ratified **CERD**. Malaysia cannot continue to be in an isolated gallery of non-ratifiers if it seeks to achieve its goals of national integration and developed status in a globalised world.

ANNEXURE 5

Review of the United Nations Declaration on the Rights of the Indigenous Peoples

Address by

Prof Ramy Bulan

Associate Prof. Faculty of Law, University Malaya

1. Minorities, peoples and indigenous peoples

- Minorities and disadvantaged groups remain distinct from “peoples” and “indigenous peoples” in international law.
- The right to self-determination, for example, is accorded to “peoples” (usually those under colonial domination), but not to minorities.
- As for indigenous peoples, this term has led to some definitional difficulties.
- Indigenous Populations is defined as “descendants of the original inhabitants of conquered territories possessing a minority culture and recognising themselves as such”.

2. Background

- **1982:** United Nations Working Group on Indigenous Populations (WGIP) is created to give indigenous peoples a place to express their human rights concerns.
- **1985:** Voluntary Fund for Indigenous Populations is launched.
- **1990:** U.N. General Assembly proclaims 1993 the International Year of the World’s Indigenous People.
- **1993:** At the opening ceremony of the International Year For Indigenous People, indigenous leaders speak directly to the U.N. General Assembly for the first time.
- **1994:** U.N. General Assembly designates August 9 to be observed as the International Day of the World’s Indigenous People every year during the International Decade.

- The General Assembly declares **1995-2004** the International Decade of the World's Indigenous People.
- **1995:** U.N. Commission on Human Rights establishes the Working Group on the Draft Declaration (WGDD) to complete a Declaration on the Rights of Indigenous Peoples before the end of the International Decade.

3. 15 March 2006 – General Assembly GA/10449

- Sixtieth General Assembly
- Plenary
- 72nd Meeting (AM & PM).
- **General Assembly establishes New Human Rights Council by vote of 170 in favour to 4 Against, with 3 Abstentions.**
- **Council Elections Scheduled for 9 May; Inaugural Meeting to be Held on 19 June.**
- United Nations Member States today overwhelmingly approved the establishment of a new Human Rights Council, aiming to strengthen the world body's machinery to promote and protect fundamental rights, and deal with major human rights offenders.
- Adopting a resolution by a recorded vote of 170 in favour to 4 against (Israel, Marshall Islands, Palau, United States), with 3 abstentions (Belarus, Iran, Venezuela), the General Assembly decided to set up the new Council to replace the Geneva-based Commission on Human Rights, which has come under fire for excessive politicization. (For details of the vote, see Annex.)

4. June 25 2006: A New Dawn For Indigenous Peoples?

- Adoption of the Draft Declaration on Indigenous Peoples by the Human Rights Council.

5. Adoption of UN Declaration by General Assembly

- 13 September 2007
General Assembly adopts Declaration on Rights of Indigenous Peoples: 'Major Step Forward' Towards Human Rights For All, Says President.

6. The Declaration: Confirmation that the same basic rights apply to indigenous peoples

- "Every paragraph of the Draft Declaration is based upon known instances of

the violations of the human rights of indigenous peoples. There is nothing theoretical, abstract, or speculative about the substantive content of the Draft Declaration ... The ...Declaration ... began a cry from the indigenous people for justice, and it is drafted to confirm that the international standards which apply to all peoples of the world apply to indigenous peoples. It is an inclusive instrument, meant to bring indigenous peoples into the purview of international law as subjects of international law.

Mathew Coome Come, Grand Chief of the Grand Council of the Crees, 1995

7. Sheika Haya Rashed, President of the General Assembly

- “The importance of this document for indigenous peoples and more broadly, for the human rights agenda cannot be underestimated.
- By adopting the Declaration, we are also taking another major step forward towards the promotion and protection of human rights and freedom for all.”

8. Adoption of UN Declaration

Brought to an end nearly 25 years of contentious negotiations over:

- Rights of native peoples to protect their lands and resources, and
- To maintain their unique cultures and traditions.

9. UN Declaration

- Sets out the individual and collective rights of the worlds’ 370 million indigenous peoples.
- Calls for the maintenance and strengthening of their cultural identities, *and*
- Emphasizes their rights to pursue development in keeping with their own needs and aspirations.
- Prohibits discrimination against indigenous peoples.
- Promotes their full and effective participation in all matters that concern them.

10. The Declaration on Indigenous Peoples

- Part 1: Fundamental Rights
- Part 2: Life and Security
- Part 3: Culture, Religion and Language, Laws
- Part 4: Education, Media, and Employment

- Part 5: Participation and Development
- Part 6: Land and Resources
- Part 7: Self Government and Indigenous
- Part 8: Implementation
- Part 9: Minimum Standards

11. Equality and Protection For Indigenous Institutions

- Art 2
- Art 5
- Art 7(1)
- Art 10
- Art 11
- Art 20
- Art 22
- Art 34

12. Participation in decisions affecting them

- Art 18
- Art 19

13. Land

- Art 25
- Art 26 (1)
- Art 26 (3)
- Art 27
- Art 28(1) and (2)
- Art 32 (2)
- Art 38

14. Is the Declaration binding?

- Preamble - Declaration is a “standard of achievement to be pursued in a spirit of partnership and mutual respect”.
- Not binding, but the delineated rights “constitute the minimum standards for the survival, dignity and well-being of indigenous peoples. (Art 34).

15. Will the Declaration Make a Difference?

- Declaration is non binding- but this has relatively little significance.
- L Barsh “A declaration with a highly visible, popular, and well publicised review mechanism is more likely to generate diplomatic and public pressure than a treaty that is discussed in the shadows”.

16. Impact of the Declaration

- The Declaration provides a moral framework for indigenous peoples’ rights, a tool for changing attitudes, a focus for dialogue and a basis for mobilising resources.
- The declaration contributes and reinforces the process out of which customary international law on indigenous rights has developed.

17. “Soft” enforcement of the declaration

- 1. : Application of international human rights through common law.
- In Sagong Tasi Ahmad J quoted Brennan J in *Mabo (No. 2)*:
“The common law does not necessarily conform with international law but international law is a legitimate and important influence on the development of the common law especially when international law declares the existence of universal human rights. A common law doctrine founded on unjust discrimination in the enjoyment of civil and political rights demands reconsideration. It is contrary both to international standards and to fundamental values of our common law to entrench a discriminatory rule which because of supposed position on the scale of social organisation of the indigenous inhabitants of a settle colony, denies them a rights to occupy their traditional lands.”

18. The Federal Constitution

- Art 8(5), Art 13, Art 153.
- The spirit and intendment of the Declaration are in line with these provisions.
- There is a reasonable expectation that Malaysia as a member of the United Nations and the Human Rights Council would pursue the standards of the Declaration on the Rights of Indigenous People in the spirit of partnership and mutual respect.

Issues and Concerns of Thai Minority in Malaysia

Address by

En. Siri Neng Buah

Persatuan Siam Malaysia

MASYARAKAT MALAYSIA KETURUNAN SIAM

Asal-usul Orang Siam Ringkas

Semua penulis yang diketahui mengatakan bahawa orang Siam berasal dari kawasan Asia Tengah yang membentuk Negara Mongolia dan China hari ini. Phararajohongsawadarn oleh Phra Boriharntheaphani (TB 2511 : TM 1968) dan Sejarah Asia Tenggara (1971) oleh D. G. E Hall sepakat mengisahkan perihal tanah asal orang Siam di Asia Tengah. Dipercayai bahawa sekitar 7,000 tahun dahulu mereka mendiami kawasan pergunungan Altai (Mongolia) dan sekitar 2,500 tahun kemudian berkembang hijrah ke selatan yang lebih subur dan membina penempatan kekal di Lembangan Sungai Hoang Ho dan Yang Tze Kiang, kerana selain sebagai penternak nomad, mereka juga petani berkebolehan. Penempatan kekal telah mewujudkan puluhan negara kota orang-orang Siam seperti Sze Chuan, Cheng Tu, Hu Pe, Hu Nan, Auhui di wilayah Sze Chuan dari Kwang Choa di negara China hari ini.

Sama ada disebabkan bilangan penduduk semakin ramai atau pergolakan sesama sendiri dan tekanan orang Cina dalam rentetan sejarah yang panjang, orang Siam mulai bergerak turun ke selatan dari penempatan besar di Chungking.

Orang Cina sebelum ini hidup secara nomad mulai membina kekuasaan dan menekan pengaruh ke atas orang Siam. Pada beberapa peringkat dengan diketuai oleh raja-raja mereka, orang Siam dapat mempertahankan diri dan memperlakukan penghijrahan mereka ke Selatan. Orang Cina, menggelar nama kerajaan mereka sebagai 'Syampok' atau Ailao. Dari nama ini barangkali asal nama orang Siam atau Lao.

Sekitar TM 757, kerajaan Siam Nanco di Wilayah Yunan, selatan China telah wujud sebagai sebuah empayar yang luas hingga ke Shan dan hulu Sungai Irrawadi. Sedang lembah Menam Chao Phraya di bawah pengaruh Khmer mulai didatangi oleh beberapa gerombolan Siam dari Muang Se, Tong King dan Annam. Mereka berhijrah ke lembangan Mekong dan menjadi penduduk tetap Angkor Wat. Pada abad-abad seterusnya, lembangan Sungai Ping, Wang, Yom dan Nan

mulai menerima penduduk Siam. Beberapa kerajaan kecil yang merdeka wujud semenjak TM 1096, diikuti dengan negeri kota di Ciengrai, Ciensen, Ciengmai (Empayar Lannathai), Sua (Luang Prabang) dan lain-lain.

Penaklukan ke atas Naneao oleh Kublai Khan (TM 1253) telah merubah taburan penempatan orang Siam di kerajaan kecil di Selatan. Sukhothai (wujud sejak TM 1238) dan Luang Prabang di Lembah Sungai U mulai berkembang membentuk empayar Lanchang (TM 1353), walaupun kerajaan Siam Ahom di Assam (India) tetapi menyemarakkan perkembangan mereka di Sipsong Panna dan Sipsong Cuthai.

Sukhothai dianggap mencapai zaman keemasan semasa pemerintahan Rama Kamheng (TM 1283 - 1317) dan orang Siam mengingatnya sebagai pengasas huruf tulisan bangsa ini. Perluasan Empayar Sukhothai dipercayai hingga ke hujung tanah (Johor-Singapura) walaupun tiada bukti kukuh. Namun begitu, kerajaan Lavo, Khamphenghet hingga ke Caiya dan Lagor di Segenting Kra dianggap sbagai sebahagian daripada empayar tersebut.

Sewaktu Sukhothai meniti zaman kemerosotan Raja U Thong (nama kerajaan) membina Kota Baru 'Dvaravati Sri Ayudhyu' di sebuah Pulau di Sungai Choa Phraya. Di sebelah Luang Prabang pula, Fa Ngum berusaha membina empayar Sejuta Gajah (Lan Chang).

Empayar Siam Ayudhya (TM 1350 - TM 1767)

Kota Ayudhya berkembang pesat dan mulai dikenali sebagai "Kota Siam" di kalangan sekitar dan Barat. Pengaruhnya jauh ke selatan mengambil alih peranan Sukhothai, Kerajaan Siam di Perak (Gangga Negara), Johor (Khlangkeo) dan Pahang (Inderaputera) tentulah mempunyai kaitan rapat dengan Ayudhya.

Sejarah Melayu (TM 1612) karangan Tun Seri Lanang menyebut bahawa Negeri Genggayu (Khlangkeo) dibina oleh orang Siam asli terletak di hulu sungai Johor. Kotanya diperbuat daripada batu hitam dan pemerintahnya, Raja Chulan sebagai Raja Besar, 'segala raja di sebelah timur ini boleh dikatakan kesemuanya takluk kepada Baginda'. Kerajaan Siam Gangga Negara dan Khlangkeo telah ditakluki oleh Raja Benua Hindi dan kerajaannya di Pahang telah ditewaskan oleh Melaka. Walaupun gagal memberikan tarikh sebagai suatu fakta sejarah, Tun Seri Lanang menegaskan bahawa Genggayu ialah negeri Siam asli dan kotanya masih wujud semasa beliau menyiapkan buku tersebut.

Buku undang-undang Siam Kot Monthienraban (TM 1360) menyebut sebagai

kerajaan taklukan Siam, dikenali sebagai kerajaan Wurawari terletak di Johor Tua Genggayu/Khlangkeo. Para pengkaji sejarah hanya berbeza pendapat tentang nama kerajaan tersebut tetapi tidak menafikan tentang kewujudan kerajaan Siam asli di Johor. Ini membuktikan bahawa orang Siam telah lama berada di Semenanjung Tanah Melayu, menjalani kehidupan berkerajaan secara aman dan perang dengan pihak lain, terutamanya Melaka yang kian muncul sebagai kuasa baru. Kehidupan mereka juga bercampur baur dengan kerajaan Melayu lain seperti Pattani, Kelantan, Kedah dan lain-lain sama ada di bawah pengaruh Ayudhya atau tidak.

Zaman Bangkok (TM 1767 – TM 1909)

Ayudhya, kota besar dengan penduduk hampir sejuta jiwa itu telah dibumi-hanguskan oleh tentera Burma (TM 1767) itu tidak mampu dibangun semula oleh Phya Taksin mahupun Chakri (Thongduang). Dari Chanthaburi, kemudiannya Thonburi, saki baki tentera Ayudhya melancarkan perang gerila hingga tentera Burma berundur 10 tahun kemudian. Kejatuhan Siam kehilangan kuasa pusat. Kerajaan naungan dan jajahan mula berdiri bebas. Usaha penyatuan semula oleh Phya Taksin memakan korban bukan sedikit. Pengiktirafan ke atas karismanya dan kecekapan menyusun strategi ketenteraan dalam siri peperangan penyatuan semula Siam membolehkan Wilayah Ayudhya yang telah mengisytiharkan kemerdekaan atau sebagai kerajaan pusat ganti Ayudhya ditewaskan satu persatu, Negeri Fang di Utara, Phimai di Korat dan Nakhon Si Thammarat di selatan.

Siam di Semenanjung Malaysia

Kerajaan Siam zaman Rattanakosin (Bangkok) memperlihatkan pengaruh lebih jelas ke atas negeri Melayu di Selatan, Pattani, Kelantan, Kedah, Perlis dan Terengganu. Penghantaran bunga emas, setiap dua atau tiga tahun sekali ke Bangkok sebagai tanda persahabatan dan kesetiaan. Bahkan pelantikan seseorang raja di negeri tersebut (kecuali Terengganu) harus disahkan oleh “Maharaja Benua Siam”. Surat pengesahan dengan gelaran Phya Saiburi dan Raja Perlis pula Phya Visedsongkram Ramwiedwillismara Phya Palis. Sultan Kelantan sebagai Phya Phipidhakdi Phya Kalantan.

Terdapat beberapa pegawai Siam ditempatkan di beberapa negeri tersebut dan bagi rakyat jelata Siam, negeri-negeri Melayu ini adalah negeri mereka juga. Mereka datang dalam bentuk kumpulan petani mencari kawasan subur untuk menetap dan diterokai sebagai kawasan pertanian. Sebagai rakyat biasa mereka tidak tertarik dengan urusan politik atau ‘kerja raja-raja’ walaupun kita pernah

juga mendengar beberapa penglibatan penduduk Siam ini dalam perang saudara di Kelantan.

Serangan tentera Phya Thaksin ke atas Nakhon Si Thammarat dua tahun selepas Phya Nakon (NU) mengisytiharkan kerajaan mereka (TM 1770) memungkinkan rakyat jelata Siam melarikan diri ke negeri Selatan dan terus menetap di sana. Hidup di bawah perlindungan raja-raja Melayu. Ada yang mendapat sedikit sebanyak kedudukan atau kurniaan. Umpamanya To Merah Chu Ding dijadikan Ketua Siam di Besut oleh Tengku Muda, Raja Besut (Terengganu) dengan gelaran Tok Helang Merah.

Kerajaan Siam zaman Bangkok menyaksikan tekanan perluasan kolonialisme Barat dari segenap penjuru sempadannya. Siam mula kehilangan wilayahnya; Sipsong Panna, Sipsong Cuthai, Siamrap, Batthabong kepada Perancis. Kok Song di Tenaserim, kepada Inggeris dan TM 1909, melalui Perjanjian Bangkok, Siam menyerahkan Kedah, Perlis, Kelantan dan Terengganu kepada Inggeris. Namun rakyat jelata Siam terus menetap di negeri naungan British ini walaupun ada cerita lisan menyatakan hampir semua keluarga Siam di Bukit Tempurong, Besut pulang ke Wilayah Narathiwat, antara TM 1912 - 1915.

Masyarakat Siam Malaysia Hari ini

Dewan Negara yang bersidang pada 3 Disember 2001 dimaklumkan bahawa terdapat seramai 50,211 orang penduduk keturunan Siam di negara ini. 38,353 orang merupakan warganegara Malaysia dan Laporan Banci Penduduk dan Perumahan (1991) mendapati jumlahnya 36,184 orang berdasarkan laporan negeri sebagaimana Lampiran B.

Dari laporan tersebut didapati orang Siam mendiami negeri bersempadanan dengan Thailand iaitu Kedah, Kelantan, Perlis dan Perak. Pulau Pinang walaupun agak jauh sedikit tetapi kedudukannya sebagai zon perindustrian menarik minat penghijrahan mereka di samping terdapat penduduk Siam yang tetap, sama ada dari Kedah atau Thailand.

Secara umumnya mereka merupakan penduduk luar bandar, terutamanya di daerah Pendang, Baling, Padang Terap, Kubang Pasu dan Sik (Kedah), Tumpat dan Pasir Mas (Kelantan) serta Pengkalan Hulu (Perak).

Kehidupan budayanya tidak banyak berbeza dengan saudara mara di Thailand (Selatan). Hampir keseluruhannya beragama Buddha, dilambangkan oleh biara (wat) dan para bikkhunya yang memakai jubah serba kuning dengan kepala

digondolkan sebagaimana bikkhu pertamanya; Putera Sidharthak, pengasas agama ini dari Kabilavasthu (India). Bangunan Wat yang unik dengan ukiran seni tampak Siam merupakan satu citra/imej tersendiri. Rupa bentuk ini perlu terus dipelihara dengan beberapa penyesuaian, mungkin reka bentuk tempatan, tulisan rumi dan Bahasa Melayu.

Dari aspek 'pelancongan-budaya' (cultural tourism) orang Siam boleh dikenali daripada dialek bahasa (dialek Thai Ligor atau Che' He), pakaian, seni persembahan, beberapa symbol di sekitar kawasan kediaman - 'Kathiak' perkuburan atau 'bua' perayaan dan amalan adat. Seni persembahan yang masih diwarisi ialah menora, wayang gedek (nang talung), ram klongjau dan ramvong. Seni ini sering diperagakan sempena perayaan atau pesta tertentu - Loy Krathong, perasmian bangunan tertentu di wat-wat, sambutan kepada para tetamu/pembesar, majlis perkahwinan atau di perayaan tahun baru; "Songkran."

Siri Neng Buah

Ketua Penolong Pengarah

Cawangan Pewartaan

Jabatan Warisan Negara

Lampiran B

Jadual 1.4 : Perbandingan Jumlah Penduduk Siam antara Tahun 1931 hingga 1991

Negeri / Tahun	1931	1947	1970	1991	2001
Kedah	12 729	9 162	3 805	17 779	–
Kelantan	6 643	7 092	6 937	8 301	–
Perlis	1 616	1 730	2 903	4 639	–
Perak	–	973	1 338	2 000	–
Pulau Pinang	–	548	1 471	1 074	–
Selangor	–	151	385	657	–
Terengganu	72	139	165	499	–
Kuala Lumpur	–	–	–	329	–
Johor	–	36	23	248	–
Pahang	–	21	42	244	–
Melaka	–	18	15	216	–
N.Sembilan	–	42	30	93	–
Sabah	–	–	–	60	–
Sarawak	–	–	–	43	–
Labuan	–	–	–	2	–
Jumlah	21 060	19 947	27 114	36 184	50 211

Pada tahun 2000 penduduk keturunan Siam seramai 50 211 orang

(38 353) orang warganegara Malaysia – 76.4 %

(Dewan Negara : 3/12/2001)

Penurunan jumlah masyarakat Siam antara tahun 1931 dan 1947 berikutan pengembalian sebahagian masyarakat Siam ke Thailand semasa berlaku Perang Dunia ke-2. Ini kerana Thailand tidak ditakluki oleh Jepun.

Lampiran B (1)

Jumlah Penduduk Siam Mengikut Negeri dan Jantina

Negeri / Jantina	Lelaki	Perempuan	Jumlah
Kedah	8 707	9 072	17 779
Kelantan	4 021	4 280	8 301
Perlis	2 224	2 416	4 639
Perak	941	1 059	2 000
Pulau Pinang	483	591	1 074
Selangor	298	359	657
Terengganu	208	291	499
Kuala Lumpur	147	182	329
Johor	84	164	248
Pahang	86	158	244
Melaka	104	112	216
N. Sembilan	36	57	93
Sabah	31	29	60
Sarawak	22	21	43
Labuan	0	2	2
Jumlah	17 391	18 793	36 184

Sumber: Jabatan Perangkaan (1995), Laporan Banci Penduduk dan Perumahan 1991.

ANNEXURE 7

Issues and Concerns of Orang Asli Community in Peninsular Malaysia

Address by

Dr. Colin Nicholas

Centre for Orang Asli Concerns (COAC)

FIRST ON THE LAND, LAST IN THE PLAN

The Orang Asli and Discrimination in Malaysia

Malaysia practices discrimination. It is so pervasive and so plain to the person in the street that it has become internalized and accepted in the mindsets of Malaysians. But say this to an ‘enlightened’ and ‘educated’ audience and you are likely to be warned of the Sedition Act or be called a traitor, a racist, or even worse.

But the reality remains that Malaysia practices discrimination. And this is most clearly attested by the fact that we have different categories and policies for Bumiputera and non-Bumiputera Malaysians.

Saying so is not to make a value judgment on whether such a dichotomy of our citizenry is right or wrong. Or whether positive discrimination, as in the practise of affirmative action policies, is both good and necessary in our context. I personally feel that special treatment for members of disadvantaged groups is justifiable – but only as long as the discrimination and inequality persists. However, this is not the venue for a discussion on the matter.

My aim here is to show how discrimination as practised in our country actually acts against the interests of the other indigenous Bumiputeras. A simple test to demonstrate this is to juxtapose the privileges and rights enjoyed by the Malay community as the standard to assess those enjoyed by the Orang Asli and other indigenous communities in Sabah and Sarawak, on the basis that all are Bumiputera communities.

For example, in the maintenance, development and regard for Orang Asli identity (including their culture, language and religion), a clear gap is evident. In brief, Orang Asli identity markers do not get the same protection and regard as those of the Malays. For when you have, for example, an expressed policy to

“integrate the Orang Asli with the mainstream society”, or more specifically to “assimilate the Orang Asli into the Malay sector of society” (JHEOA 1961, 1993), you cannot place the Orang Asli on the same level as the dominant Bumiputera ethnic group to which it is supposed to assimilate into. Discrimination in ‘protections’

Furthermore, with the expressed objective to convert all Orang Asli to Islam (JHEOA 1983), and the absence of credible state-sponsored actions to protect and promote Orang Asli traditions, territories, and languages, you cannot justify the claim that all Bumiputeras are treated equally. On the contrary, for the Malay Bumiputera, state support for these are not only institutionalized and heavily sponsored but also regarded as a given right, and often vehemently defended.

The disparity in protections also extends to more material aspects of Orang Asli concerns, especially in the security of tenure of their traditional lands. Orang Asli reserves do not enjoy the same legal tenurial security as does Malay reservation lands. (Try de-gazetting Malay reservation land without the inhabitants’ consent and see what happens?)

On the other hand, Orang Asli gazetted reserves are habitually de-gazetted without even the constitutional provisions being adhered to, or with the knowledge, let alone consent, of the Orang Asli. Between 1990 and 2002, a total of 7,994.5 hectares of Orang Asli reserves and approved lands were de-gazetted without consent or adequate notice – in direct contravention of the government’s Statement of Policy Regarding the Administration of the Orang Asli (1961) and the UN’s Declaration of the Rights of Indigenous Peoples.

Individual states have also promised to give land titles to Orang Asli. Perak, for example, promised to do so by 1990. Needless to say, this is yet another empty promise. Nevertheless, even when such land titles are given, as in Pahang in more recent years, this is on condition that they resettle to sites that routinely constitute about a quarter of their original traditional land areas. And their ‘land titles’ (for an area of 4 to 6 acres per household) are actually temporary occupational leases for 99 years.

Compare this to originally-landless Felda applicants who apply to be settlers and are given land, in perpetuity, on plots that are 8 to 10 acres in size, the minimum acreage deemed by the experts to be necessary to keep an agricultural household above the poverty line. The Dayaks and Orang Ulu who were displaced by the Bakun Dam, if you recall, only received 3 acres each –

and had to fork out RM51,000.00 for their respective units in their wooden longhouses. Why the discrimination?

Political Dominance

There are several reasons why Orang Asli and the native peoples of Sabah and Sarawak (collectively called Orang Asal) are able to be discriminated against. But ultimately it boils down to who stakes, and wields, political dominance today.

That the Malays have political dominance today cannot be disputed. And it is frequently asserted that the Malay claim to political dominance is based on their indigeneity – which is asserted as a legitimate foundation for staking political dominance. This rationale however does not extend to the Orang Asli – the ‘First’ or ‘Original’ Peoples of the peninsula – and the Natives of Sabah and Sarawak.

While the Orang Asli can also stake their claim as the indigenes of this land, they however do not enjoy the accompanying political clout that such indigeneity should bring (following the practice in Malaysia). That is to say, while they are accepted as Natives or Indigenes, they are not recognized as the political masters of the land. That this is so can be gleaned from the pronouncements of two of our former Prime Ministers:

Tunku Abdul Rahman, *The Star* (6 November 1986):

“There was no doubt that the Malays were the indigenous peoples of this land because the original inhabitants did not have any form of civilisation compared with the Malays... and instead lived like primitives in mountains and thick jungle.”

Mahathir Mohamad, *Malay Dilemma* (1981: 73):

“The Malays are the original or indigenous people of Malaya and the only people who can claim Malaya as their one and only country... the Orang Melayu or Malays have always been the definitive people of the Malay Peninsula. The aborigines were never accorded any such recognition nor did they claim such recognition... Above all, at no time did they outnumber the Malays.”

So it appears that the criteria for political dominance – that is, the prerequisites for controlling your life and those of others – are: a civilized society, numerical superiority, and self-accordance and assertion of recognition.

Having now established numerical superiority, and having asserted and claimed recognition as the indigenes of this country, it only remains for the Malays to ensure the perpetuation of the myth that the Orang Asli and other native peoples are still the uncivilized, anti-development, nomadic, isolated pagans in need of administrative intervention. Some of these perceptions were repeated by high level officials as recent as the past month (e.g. 'Resettling Orang Asli', New Straits Times, 27.10.2005).

It has to be mentioned however that the Orang Asli were never always a subjugated people. During the turbulent formation of the Malay sultanates, Orang Laut help was sought to prop up the sultanates in Malacca and Johor. Hang Tuah himself was said to be of Orang Laut origin. In Negeri Sembilan, the position of the Biduanda tribes were ensconced in the Adat Perpatih such that the Batins (Orang Asli chiefs) had more than a mere ceremonial role in the institution of the ruling Undang. And then of course, there is the Legend of the White Semang which relates how the first Sultan of Perak took an Orang Asli ('Semang') wife.

It is not within the scope of this paper to go into the 'rise and fall' of the Orang Asli in early modern Malaysian history. Rather, for our purpose here, it should be noted that, going both by the exhortations of our national leaders and in the realpolitik of today, the Orang Asli (and it follows, the native peoples of Sabah and Sarawak) today are not recognised as the indigene of this land.

Without Power and in Poverty

And without the attendant aspects that come along with the status of a people in power, it is not surprising that the Orang Asal rate as among the most marginalised and disadvantaged in Malaysian society today. For example, while the national poverty level had dropped remarkably to 6.5 per cent in 2004, more than three-quarters (76.5 per cent) of the Orang Asli still live below the poverty line. The other social indicators (health, education, access to basic facilities, etc) all show that the Orang Asal rate far behind the Malaysian mainstream (Nicholas 2000 & 2005; Nicholas & Baer, forthcoming). Without doubt, the Orang Asal meet Chamber's (1983) definition of the poor as being a combination of five elements: insufficient reserves of cash and food, physical debility and illness, isolation, vulnerability in the face of the unexpected, and a lack of influence.

But the Orang Asal are not just 'poor' in the socio-economic sense. They are also 'the people' as defined in Chamber (1983), namely: those who are invisible

and unknown, those who do not speak, those who are the last in line, and those who are forgotten.

As such, the Orang Asal, i.e. 'the people', are at one extreme of the social spectrum; at the other being those who are visible, those who expound, those who determine the playing fields, and those whose presence dominate the landscape – i.e. the world of developers and researchers, of decision-makers and intellectuals, and of politicians and entrepreneurs.

I should add, however, that despite the high level of poverty among the community, this has not dented the rise in the number of Orang Asal businessmen who have bettered their economic situation at the expense of the community, through contracts and projects in Orang Asal areas, obtained on the "merit" of their good relations with the authorities and on the strength of their Orang Asal identity. This is especially evident in the Orang Asli context where these Orang Asli Baru – or to borrow the phrase of Brian Barry (2001: 21), these 'ethnocultural political entrepreneurs' – use the 'politics of difference' to exploit its potential for their own ends by mobilizing a constituency around a set of sectional demands.

But the fact remains that the majority of the ordinary Orang Asal folk live on the margins and are kept on the margins.

Rethinking Development Activities

One of the most common and most impactful activities to be foisted on the lives of the Orang Asli is exogenous development, sometimes implemented for their direct benefit but most times a consequence of the development needs of others. And development agents are at the fore-front of this universal activity.

However, as Olivier de Sardan (2005: 205) asserts, the classic methods of training development agents do not prepare them for a future role as mediators between indigenous and modern paradigms. Instead the training teaches them to look down on the indigenous peoples as 'ignoramus'. Or passes off old-world imperialism as modern-day 'development'. This according to Arnfred (1998: 77) manifests itself in five characteristics of present day development practice:

1. The "they-have-the-problem-we-have-the-solution" approach;
2. Immunity to adverse facts;
3. The development agent as expert;

4. The development agent as male; and
5. The exclusion of indigenous experience and knowledge.

The Orang Asal do not need 'development' that destroys their livelihoods or denies them their right to culture, identity and justice. For the Orang Asal, dispossession and displacement from their customary or adat lands – an invariable consequence of modern-day development and modernization – can never be truly compensated. So when these aspects of their lives are regularly threatened, even when their lives are not at risk, it is to their cultures that they often cling to, in order to give meaning, dignity and security to their lives. Frequently, they assert this with much sentiment and emotion such that ethnic consciousness and common identities are frequently incubated, often to the detriment of the designs of the development agent!

Also, the human dimension in development is frequently absent in development activities when it relates to the Orang Asal in particular. People are not the focus here, and they need to be. For, in the context of the Orang Asal, there can be no real development if there was no element of self-determination involved in the first place. Thus, even if the aim is to conserve the natural environment, it is pertinent that the people should be the focus if the desired goal is to have a chance of being achieved.

Side-stepping the UN-DRIP

It can never be over-emphasised that Malaysia actually double-endorsed the United Nations' Declaration on the Rights of Indigenous Peoples (UN-DRIP). First when she was a member of the Human Rights Council that approved the original draft in June 2006. And then, on 13 September 2007, when it was successfully tabled in the UN General Assembly. One would therefore think that Malaysia fully supported the thrust and intent of the DRIP.

Having said this, it needs to be said that, with regard to the Orang Asli, the UN-DRIP is but a far cry from being implemented, whether in part, or in full in Malaysia.

Not only is the UN-DRIP not internalized into the mindsets of the decision-makers and legislators – a crucial prerequisite if its content and intent are to be realized in concrete terms – but there was no announcement, media coverage or allusion to DRIP by anyone in authority since the time it was adopted till today.

On the contrary, in the federal court appeal against a lower court's decision to recognize the land rights to the Orang Asli of Bukit Tampoi in Selangor (in the landmark Sagong Tasi case), the senior federal counsel for the government has argued that sections 3 and 6 of the Civil Law Act should apply. Basically, what these sections say is that if there is a local specific law that addresses the issue at hand, then the court should not resort to drawing comfort from other authorities or jurisdictions (such as the Constitution, common law, international customary law, or even international declarations). In this particular case, the counsel argues, the local specific law is the Aboriginal Peoples Act. And this law basically says the Orang Asli have no rights to their customary lands.

Clearly, therefore, the positive articles and clauses in the UN-DRIP that protect the rights of the Orang Asli have not been internalized into our judicial system let alone the officers of the government which voted, twice over, for the declaration.

APPENDIX

The Orang Asli Socio-economic Status

The Orang Asli number about 150,000 or about 0.6 per cent of the national population. Even so, the 18 ethno-linguistic groups lead diverse lifestyles and have equally diverse cultures and languages. For example, fishing is the chief occupation of coastal communities, such as the Orang Laut, Orang Seletar and Mahmeri. Others, including some Temuan, Jakun and Semai communities, practise permanent (commercial) agriculture. However, approximately 60 per cent of the Orang Asli still live close to or within forested areas. These comprise the Semai, Temiar, Chewong, Jahut, Semelai and Semoq Beri communities who engage in swiddening and hunting and gathering. They also trade in petai, durian, rattan and resins to earn cash incomes. A very small number, especially among the Negrito groups, are still semi-nomadic and depend on the seasonal bounties of the forest. A fair number of them are to be found in urban areas surviving on their waged or salaried jobs.

While the poverty rate in Malaysia has been reduced to a remarkable 3.5 per cent in 2007, about 77 per cent of Orang Asli are considered poor, while 54% are considered hardcore poor. With good oil palm and rubber prices the previous two years, the situation is expected to improve. Nevertheless, when you consider all the socio-economic indicators, the Orang Asal fare badly compared to the national population.

More specifically, only 48.8 per cent of Orang Asli households had some form of piped water, either indoors or outdoors, the others depend on rivers, streams and wells for their water needs. The availability of toilet facilities as a basic amenity was lacking in 43.7 per cent of the Orang Asli housing units, compared to only 3 per cent at the Peninsular Malaysia level. For lighting their homes, 51.2 per cent of Orang Asli households depend on kerosene lamps or pelita (Department of Statistics 1997: 47, Zainal Abidin 2003).

In terms of health, the Orang Asli also fare badly when compared to the general population. For example, Orang Asli have 5.5 times the incidence of tuberculosis as the national average. And despite their very small population size, Orang Asli had 53.6 per cent of the malaria cases recorded in Peninsular Malaysia in 2003 (JHEOA 2005: 22).. The incidence of leprosy is also on the increase among the Orang Asli, from 8.74 reported cases per 100,000 of the population in 1998 to 19.63 in 2002 (JHEOA Gombak Hospital 2004). Also,

the 'old' diseases and infections that have plagued Orang Asli for as long as they can remember still plague them today. These include skin infections such as scabies, worm infestation, diarrhoea (sometimes resulting in fatality), and goitre. In fact, although goitre is easy and cheap to prevent, up to a third of Orang Asli adults are goiterous today, which is about the same proportion that had goitre 50 years ago (Baer 1999). Eighty per cent of Orang Asli children were also found to be undernourished and stunted, and many of the children also had intestinal worms and protozoa, anaemia, dental caries, and vitamin A deficiency.

In terms of education, while there has been significant improvements made in the overall enrolment of the Orang Asli in schools, however the actual number of years an Orang Asli remains in school leaves much to be desired. Studies done by the JHEOA and by independent consultants all reveal that the dropout rate among the Orang Asli schoolchildren, at all levels, is disproportionately high compared to the national average. It is found that for every 100 Orang Asli children entering Primary 1, only about 6 will be expected to reach Secondary 5 eleven years later. That is, 94 per cent would have dropped out by then.

However, merely attending school is not fully indicative of educational attainment. Pass rates among Orang Asli schoolchildren have not been too encouraging, though it has been increasing over the years. For example, Lim (1997: 45) comments that, the percentage of passes among Orang Asli schoolchildren taking the SRP (Primary 6) exam in 1990-1992 was between 43 to 59 per cent, compared to 69 to 78 per cent at the national level. Similarly, for the 1993-1995 period, the proportion of Orang Asli passing the SPM (Secondary 5) exams was 51 to 54 per cent, compared to 66-67 per cent nationally. While the pass rate is expected to be higher in recent years, it is not expected to be significantly higher since many Orang Asli students would have dropped out prior to these public examinations.

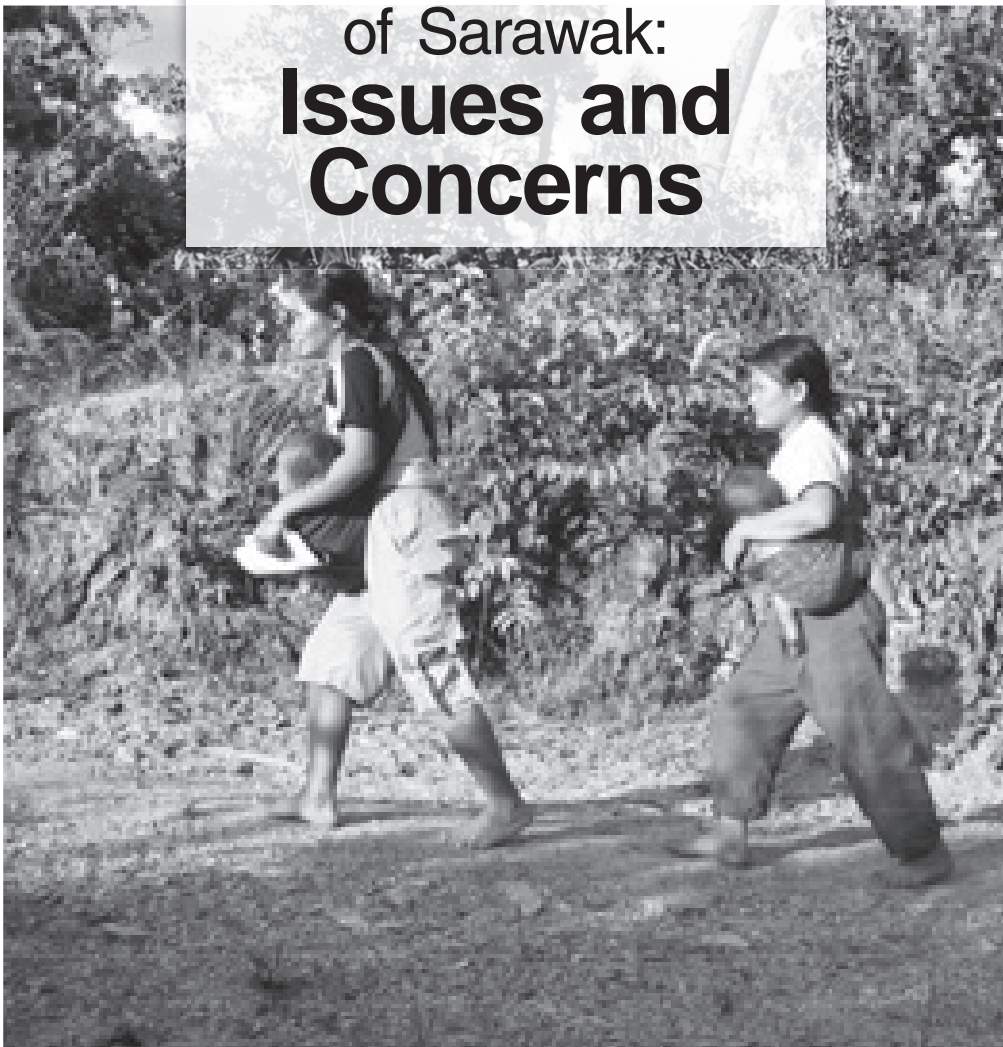
Issues and Concerns of Indigenous Communities of Sarawak

Address by

Mr. Jayl Langub

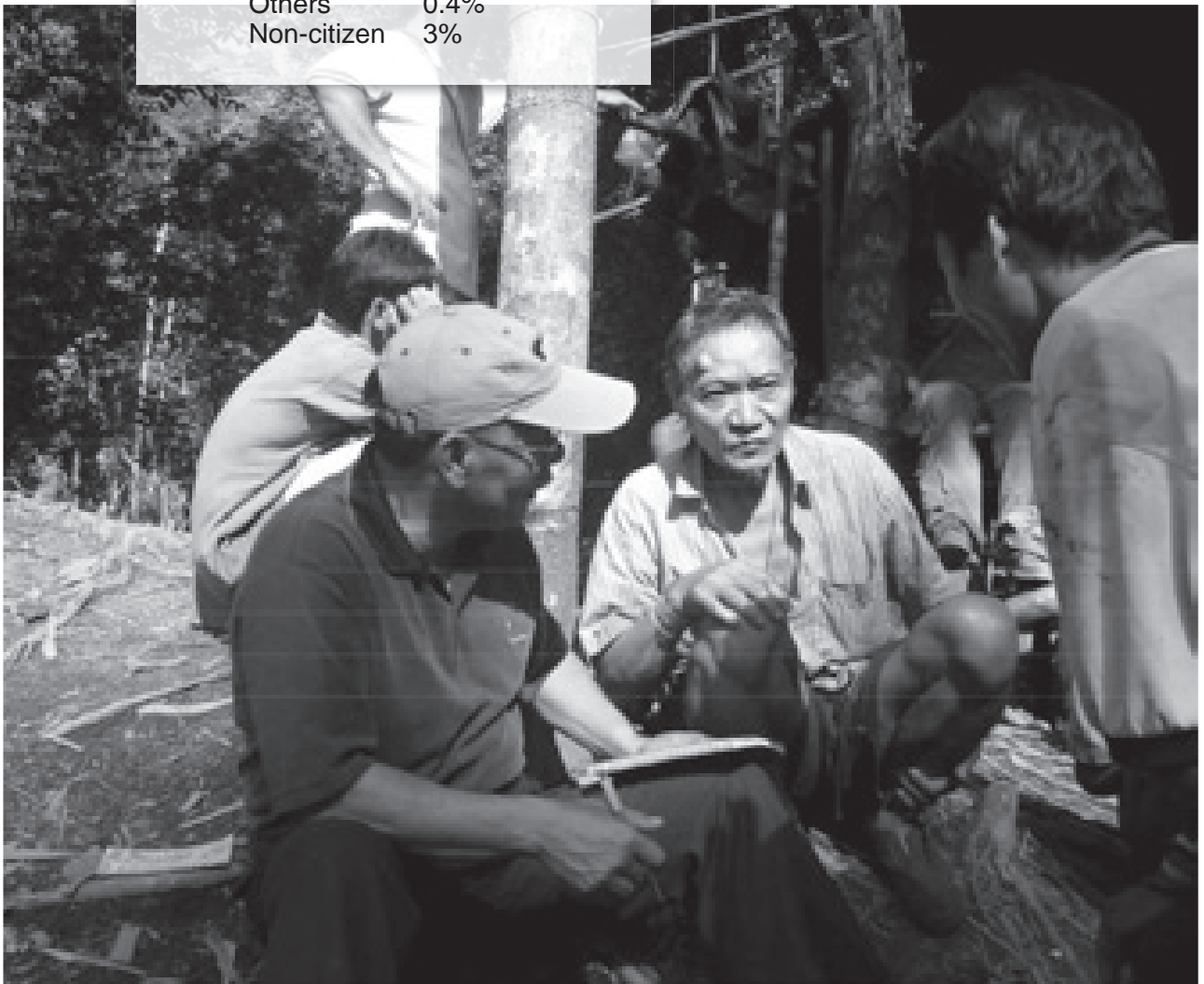
University Malaysia Sarawak

Indigenous Communities of Sarawak: Issues and Concerns



Population of Sarawak 2004 (2,071,506)

Malay	22%
Melanau	5%
Iban	29%
Bidayuh	8%
Orang Ulu	6%
Chinese	26%
Others	0.4%
Non-citizen	3%



Poverty

- Sarawak 16.2%
- Urban 2%
- Rural 19.4%



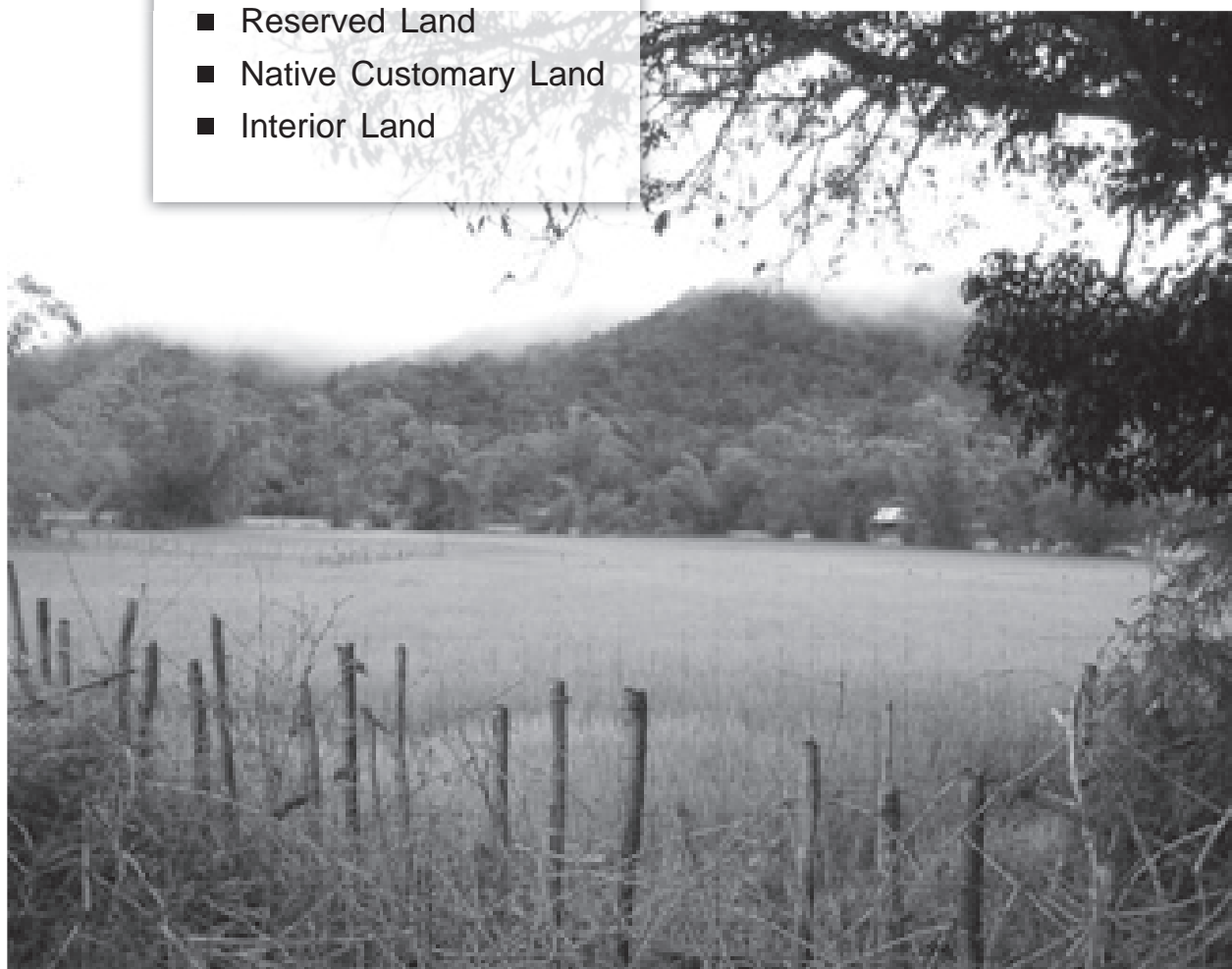
Land

- Indigenous people largely subsistence farmers, land important
- Land is core economic, cultural and spiritual life of Indigenous people
- Rights to land established through custom



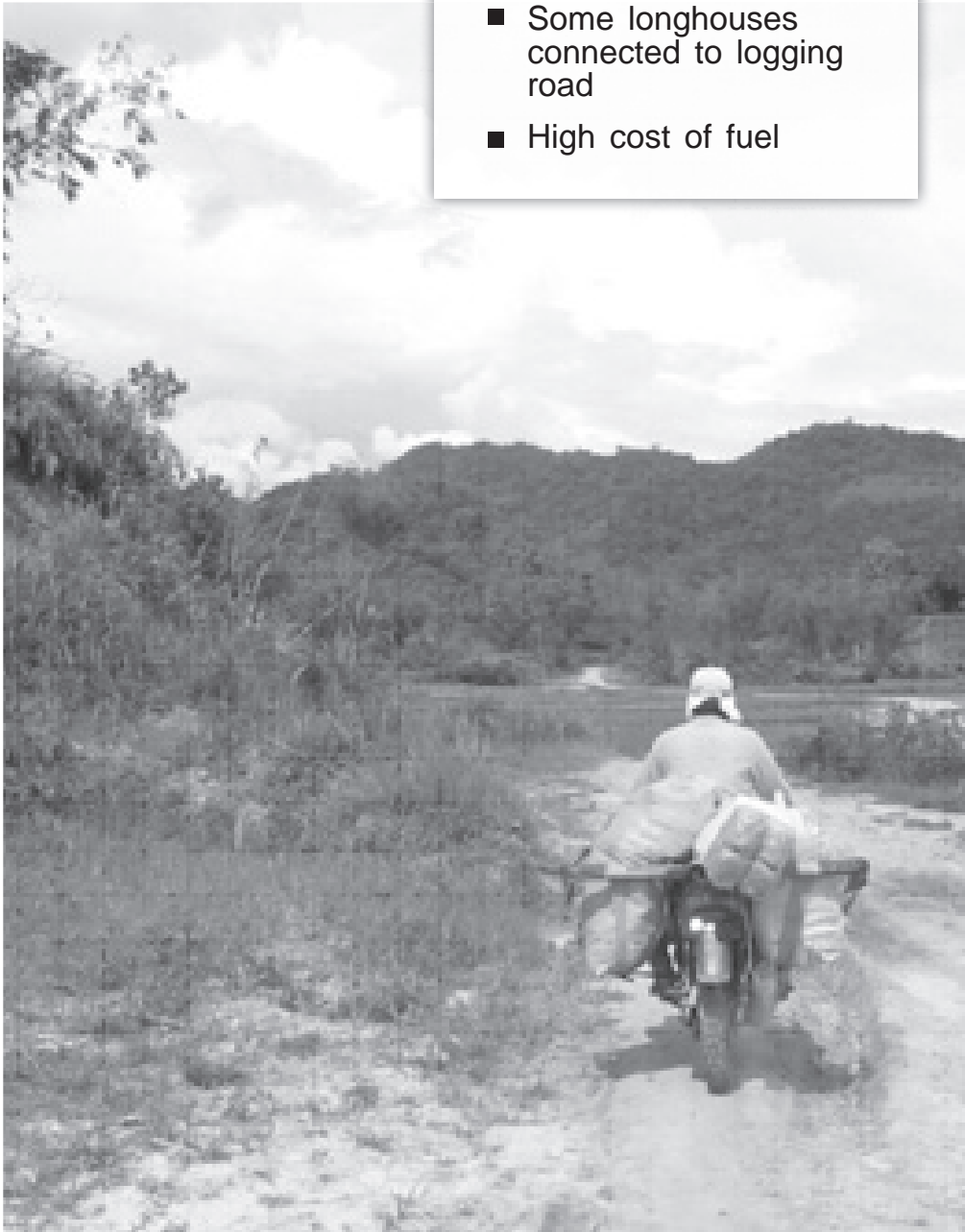
Land Classification

- Mixed Area Land
- Native Area Land
- Native Communal Reserve
- Reserved Land
- Native Customary Land
- Interior Land



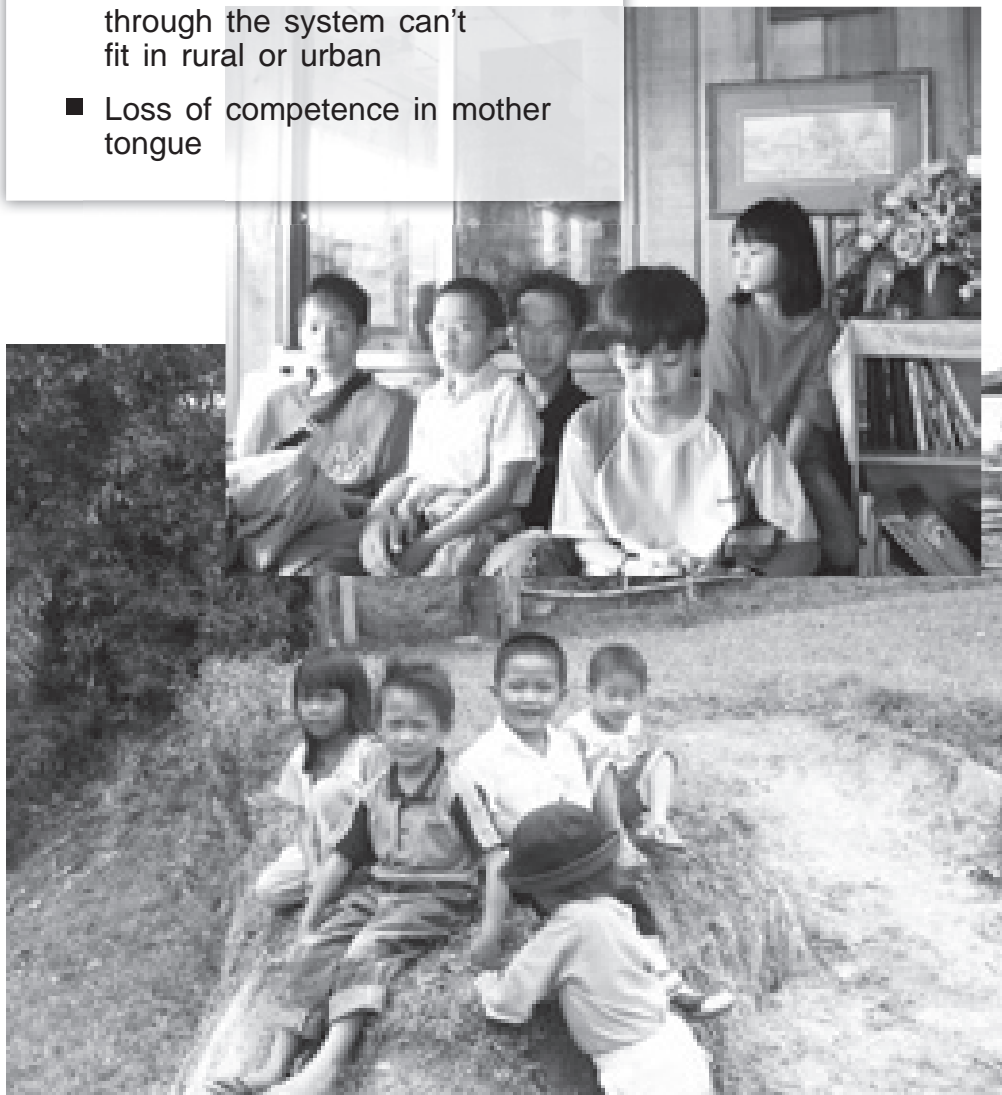
Communication/ Transport

- River and on foot
- Some longhouses connected to logging road
- High cost of fuel



Education

- Some groups do well e.g. Kelabit, Bisaya
- Urban bias: facilities, curriculum
- Moving goal posts --can't get jobs with secondary education
- Kids who can't make it through the system can't fit in rural or urban
- Loss of competence in mother tongue



Health Care

- Sarawak inherited good rural health service
- Rural Health Centre
- Mobile Health Service
- Flying Doctor Service
- Village Health Promoters
- Challenges



Water Supply

- Treated water supply 47%
- Untreated water supply (gravity-feed, well etc) 45%
- River/stream 8%



Electricity

■ Grid	31%
■ Alternative (gen-set, solar etc)	59%
■ None	10%



Citizenship

- Many without I/C
- No Birth Certificate



ANNEXURE 9

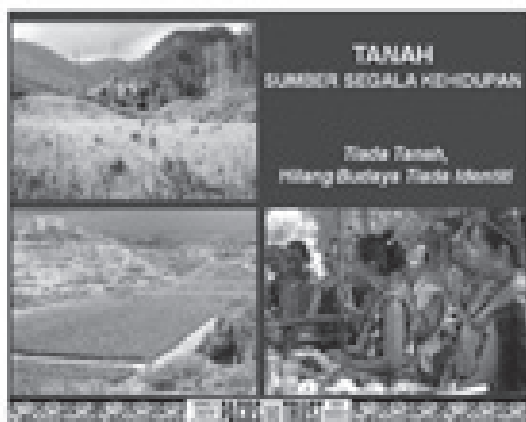
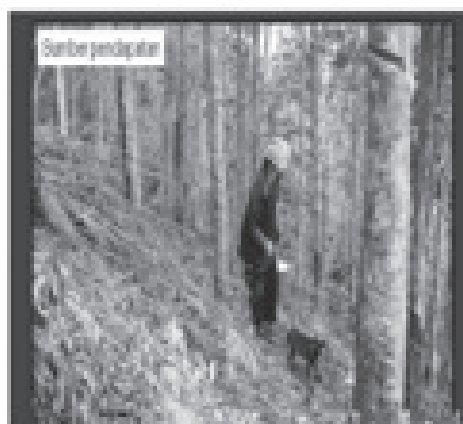
Issues and Concerns of Indigenous Communities of Sabah

Address by

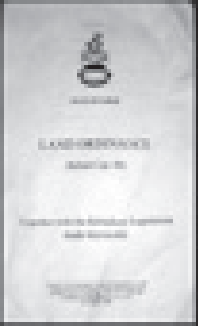
Ms. Julie Jidwin

Secretary of Kadazan Cultural Association





PELBAGAI SITUASI MASALAH TANAH



Kurang / Tiada pengetahuan tentang peruntukan
(Common Law, Perundangan Peruntukan, Undang Tanah Selat & Persekutuan Polis)

Hak-hak istimewa sebagai Anak Negeri (Native) dinafikan

Sekayam 12, 14, 15, 65, 66, 76 & 78

Komuniti Tempatan Sering Dipertindahi

TANAH ADAT / TANAH HAK ASLI (NATIVE CUSTOMARY RIGHTS - NCR)
-Sekayam 15-

(a)	Peruntukan tanah adat: "Pegangan Adat" (di mana bermaya adat ditunjukkan "di Sekayam 67")
(b)	Tanah yang dituntut dengan bukti kuat-kuatan di mana peruntukan adalah di antara 15 atau lebih pada setiap haluan
(c)	Penggunaan tanah kuat-kuatan, juga akan atas tanah/tanaman yang mempunyai nilai komersial yang mana dapat dibuktikan oleh peruntukan kepada peruntukan tanah adat
(d)	Tanah peruntukan / tanah adat
(e)	Tanah yang telah dituntut atau dibuktikan dalam masa tiga tahun berturut-turut
(f)	Tanah peruntukan atau tempat komersial
(g)	Akhir sekali (atau bagi orang dan lain-lain)

PELBAGAI SITUASI MASALAH TANAH



Tanah Hak Adat Anak Negeri (NCR) dirampas / diambil Hak milik kepada orang luar



Tanah adat diambil oleh orang luar / diambil kepada orang luar



PELBAGAI SITUASI MASALAH TANAH

Rungus land shouldn't have gone to Sawit

Polis yang belum dibenarkan (Jari Kuning)

Jari (Kuning) untuk "membangun komuniti tempatan" (Mengembalikan tanah kepada komuniti setelah dibuangkan)

PELBAGAI SITUASI MASALAH TANAH

PENDUDUK DAHANA PENGALAK CEROSOH TADAHAN AIR

Pembinaan di kawasan berhutan dan / sumber air yang penting Kawasan Tanah Adat




PELBAGAI SITUASI MASALAH TANAH

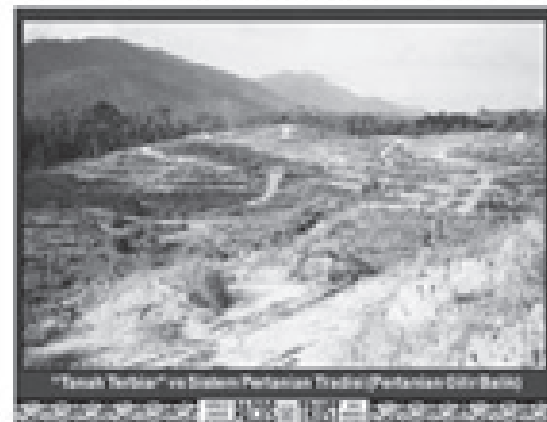
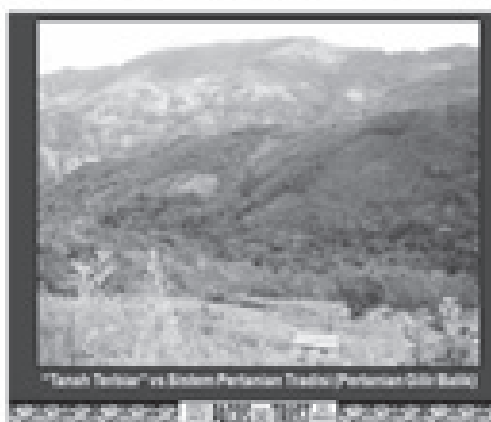
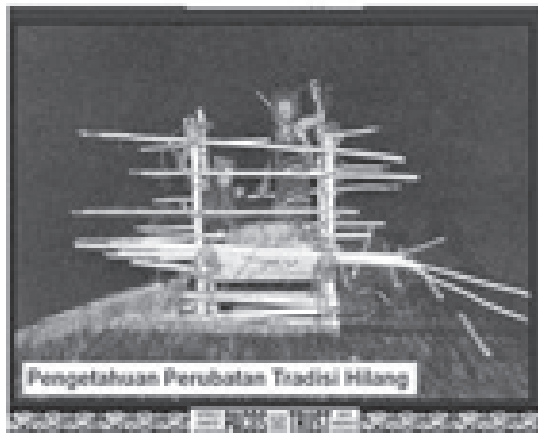
Tanah Hak Adat Anak Negeri (NCR) bersempit dalam kawasan hutan ladang (Muda Simpan / Tadahan Air / Tanah)

Tanah peruntukan / peruntukan tanah adat dengan komuniti









CABARAN DAN TINDAKAN

Sabaham: Sabahans need to know more about human rights

Komuniti tempatan perlu lebih banyak pendedahan tentang Hak

Pemilikan tanah Hak Adat Anak Negeri (NCR) harus dihomatidutamakan

'Land rights violated'

Kerajaan harus menghormati dan melindungi kepentingan komuniti tempatan

CABARAN DAN TINDAKAN

Isuget laka baka paka rapet rapet tempatan jua' land movement

Mesedaran komuniti tempatan berhubung dengan kuasa-kuasa Polis

Penglibatan pihak Polis - Sering berpakat kpd tyankul

Contoh Kes I:

Lantikan pemeriksaan kesujudan Tanah Hak Adat Anak Negeri (NCR) oleh kakitangan Jabatan Tanah dan Ukur

(Berdasarkan Seksyen 12, 14, 15, 65 & 66 Ordinan Tanah Sabah)

CABARAN DAN TINDAKAN

Mempertahankan tanah adat (NCR) sepenuh jiwa

Tahan tanah dengan nyawa

'We won't give up'

Sebelum...

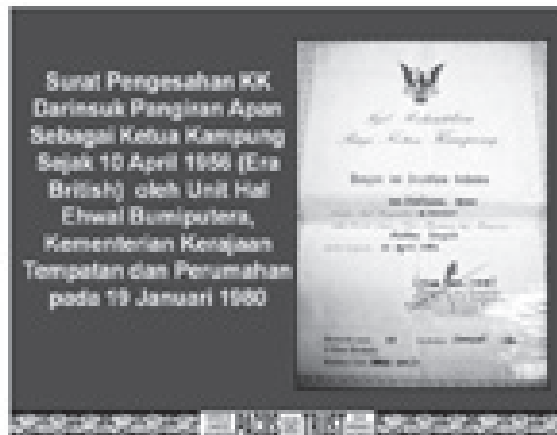
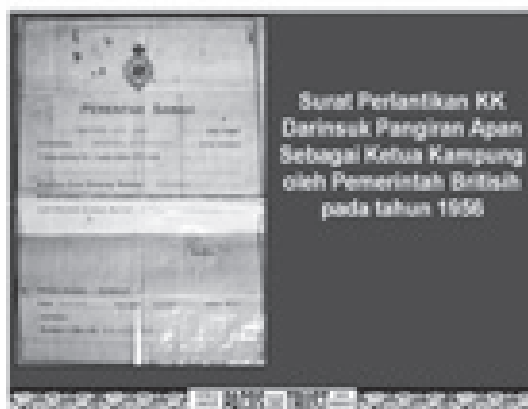
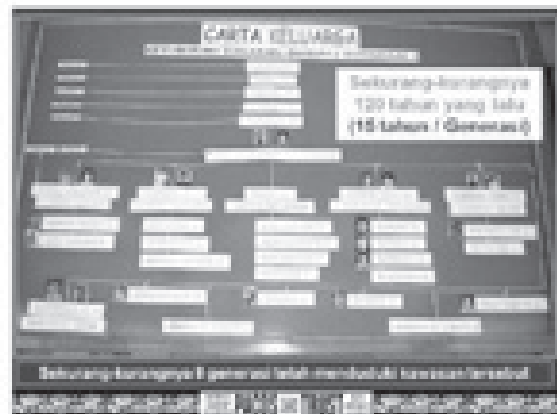
Seterpas...

Siapa Harus Dipersalahkan?...

Contoh Kes II:

Tanah Hak Adat Anak Negeri (NCR) telah diberikan hak milik (Ceterang) kepada pihak Iuan/tyankul

(Hak Anak Negeri (Native) atau penduduk tempatan dinafikan)



Report on the Roundtable Discussion

DISTRICT OF LOCALITY SCALE REF NO	KINABATANGAN SG TONGOD 1:100,000 LA 97001300 L.S. 901-1-2833
MNR. GEOCODE: STD SHI	1334457226 57996633
REGISTRATION FEES	RM30.00
RECEIPTS NOS. EXAMINED FOR SURVEY LOT	
BY: DATED:	<i>[Signature]</i> 20.7.99
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PAYMENTS	
BY: DATED:	<i>[Signature]</i> 20.7.99

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Page 1

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PAYMENTS	
BY: DATED:	<i>[Signature]</i> 20.7.99

Persoalan Penting!..

PACOS TRUST

CLOSING REMARKS

Address by

Datuk Dr Denison Jayasooria

Commissioner SUHAKAM

As we come to the close of the RTD on Ethnic Minorities and Marginalised Communities let me take this opportunity to thank all the paper presenters and all present for your valuable input, reflections and recommendations. In this context let me reiterate ten key points that impressed upon me as we devoted a whole day of deliberation on this theme.

Firstly it is significant to note that the two UN Documents which we used as the foundational basis are useful documents. These are part of the human rights documentation. It is extremely helpful in terms of advocacy and in ensuring compliance of the State. Many of the issues highlighted today could be addressed using the benchmark of these two UN Declarations. These can therefore serve not only as a useful tool for advocacy but also as the minimum standards that our nation should apply.

Second, many of the speakers were able to provide useful statistics. However in the case of the indigenous community this was clearer as compared to the available data on displaced Indian plantation workers. It is imperative that a clearer description and data on marginalised and disadvantaged communities at the sub ethnic or subgroup level might be helpful not only our work in Suhakam but also for all public institutions in order to effectively deliver the required services. It is in this context the sub community data in both Sabah and Sarawak are urgently needed.

Thirdly, the five case studies presented provides an effective description of alienation and victimisation. Whether this is as a result of politics or administrative or exploitative, one aspect is very clear that there is a tremendous impact on the fundamental rights of all the affected communities. There are real genuine grievances that are out there and therefore there is an urgent need for public services to articulate them and address them. In this context Prof Ramy Bulan highlighted aspects pertaining to self determination and Mr Ramdas made reference to non-discriminatory policies. These aspects must be the focus of public policies.

Fourthly, through the presentations we can acknowledge that cultural identity is an important dimension for all the communities. What is important to note is that there is a need for the recognition of the unique cultural as well as ritualist rights of communities. This dimension of rituals seems to be an important dimension of the indigenous communities. We can recognise from the discussions that there is no forced assimilation or destruction of the cultural rights, however there is a call for greater recognition of cultural, lingual as well as religious rights including the historical heritage of all sub ethnic groups which is a part of our national history.

Fifthly one aspect that is cutting across both ethnic minorities and marginalised indigenous communities is their claim of being denied their citizenship rights. This was highlighted by the Siamese community, the displaced Indian plantation communities and the Penan community. These people who are socio-economically at the bottom of the socio-economic ladder feel powerless. Their inability to secure the registration of birth (BC) and subsequent of the identification cards (IC) renders them stateless and deprived of the civil and political rights. This inability to secure the documents also impacts upon their ability to make a claims as a citizen on their traditional lands although they have been residing in the forest for over eight generations. BC/IC has become a vehicle for the continued marginalisation of this section. Therefore this is one area whether one is from the Siamese communities or displaced Indian plantation worker now residing in urban poor locations which requires both a political and administrative solution in order for their integration into mainstream Malaysian society.

Sixthly, a dimension which came up very strongly in the afternoon session, was the affinity of the people to their land whether it is an Orang Asli community in the Peninsular or among the natives of Sabah and Sarawak. In a similar way the Siamese community claim that in Perlis and Kedah, they also have issues pertaining to ownership of land. In this context we can note that these are impacting issues pertaining to land ownership, marginalisation and exploitation. There are many land related issues brought before the commission and we are able to establish a pattern in the violation of human rights and denial of land ownership claims by many State governments. This is major problem faced by communities in Sarawak. Often communities leaders are approaching the Sarawak Commission office with urgent calls for intervention as the bulldozers are moving closer and closer to the powerless natives whose land and trees are being destroyed in the name of development. Mr Jayl Langub pointed out to us the spiritual link of the communities to their land. In addition Dr Colin Nicholas highlighted the impact on the person who is displaced from their land

as land is both their identify and heritage.

Seventhly, in the course of the discussion we noted problems arising from an unresponsive civil service who are not able to appreciate cultural diversity and historical heritage of the various communities, including their unique dimensions, differences, and ethnic diversity. It is imperative that the civil service develops services and measures which will enhance inclusion, empowerment and access with greater cultural appreciation.

Eighthly, also linked to access to public services, is whether the services provided such as poverty eradication programmes, education and training, health care, income generation and housing assistance, is reaching the actual target group? It was Dr Colin who brought up this important point. In addition Dr Nagarajan noted that sometimes the State surrenders its service role to a private sector company as in the case of plantation workers. This is also similar in the case of some Penan communities where the private companies who exploit the natural resources are then expected to provide social services. In this context there can be a major conflict between the community expectations and private sector exploitation of resources. One wants the natural resources, the other wanting to develop it. Often big powerful business interest with strong political support impacts negatively on native and minority communities which further illustrates their vulnerability.

Ninthly it is imperative that there is a smart partnership between public, private and community including civil society in ensuring that there is an effective mechanism in addressing the violations and enhancing the human rights of all communities especially the poor and low income communities irrespective of their ethnic or religious background.

Tenthly, SUHAKAM is open to receive feedback in the role its should continue to play in ensuring that the promotion and protection of human rights especially to strength the position of minorities and marginalised community in Malaysian society.



Making sense of politics and pop culture

Web version available at: <http://www.thenutgraph.com/left-in-the-margins>

Left in the margins

By Zedeck Siew

zedecksiew@thenutgraph.com



Temiar children from RPS Kemar, Perak. The Temiar here routinely dress up in their traditional gear, as a sign of emerging pride in their culture (© Centre for Orang Asli Concerns)

MULTICULTURALISM is one of our most touted traits: Malaysia, Truly Asia. Nevertheless, it is an open secret that Malaysians coexist uneasily, and that national policy discriminates according to religion and ethnicity. In the public consciousness, issues of community rights are painted in broad strokes, along the Malay-Chinese-Indian matrix.

Focus on big battlefields means that individual skirmishes get little attention. These include the indigenous peoples, who are constitutionally bumiputera; to smaller ethnic communities, like the Malaysian Siamese; to subsets of “major” groups, like ethnically Indian plantation workers and urban-poor populations.



Self-formed Semai traditional dance group from Kampar, mainly members of an extended family
(© Centre for Orang Asli Concerns)

These ethnic minorities and marginalised communities not only face great obstacles in accessing their basic rights to culture and way of life, but also in getting what they deserve as equal Malaysians.

During a Malaysian Human Rights Commission (Suhakam)-hosted roundtable on the rights of such communities in Malaysia on 12 Nov 2008, Suhakam vice-chairperson Tan Sri Datuk Seri Panglima Simon Sipaun affirmed the importance of safeguarding the rights of the least dominant of society's members.

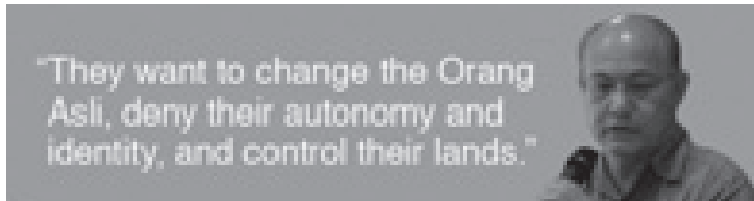
"If there are minorities based on gender, ethnic or religious groups whose rights are not respected or protected, then the society at large will become poorer for it," Sipaun said in his keynote address.

A different reality



While Malaysia has double-endorsed the UN's Drip, the reality is different.
(© Asif Akbar / sxc.hu)

If Sipaun is correct, Malaysian society is already impoverished. In a paper titled **First on the Land, Last in the Plan**, Centre for Orang Asli Concerns co-ordinator Colin Nicholas revealed that, while Malaysia has double-endorsed the UN's Declaration on the Rights of Indigenous People (Drip), the reality is different.



According to Nicholas: "With regard to the Orang Asli, the UN-Drip is but a far cry from being implemented, whether in part or in full in Malaysia."

He demonstrated how the Orang Asli community — which accounts for about 0.6% of the national population, but make up 54% of the hardcore poor — has had their rights to land and self-determination repeatedly impinged.

Many national schemes, typically managed by the Department of Orang Asli Affairs (JHEOA), look good when announced, but actually disadvantage the Orang Asli. For example, a new land policy would deprive the indigenous peoples of Peninsular Malaysia of more than a third of their current lands, and turn these lands into 99-year leaseholds, he said.

In his presentation, Nicholas juxtaposed the state of the Orang Asli with the privileges and rights enjoyed by the Malay community, on the grounds that they were both bumiputera. Not only was it obvious that the two are not equitable, Nicholas points to a 1993 JHEOA report which states that the expressed state policy is to "assimilate the Orang Asli into the Malay sector of society".

"They want to change the Orang Asli," Nicholas said, "deny their autonomy and identity, and control their lands." Public outcry is kept to a minimum, due to the perpetuation of the stereotype that the Orang Asli are backward and "anti-development", he added.

Moral weight

The roundtable included reviews of the Drip and the Declaration of the Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities, two UN declarations directly related to the subject of marginalised/minority rights. Lawyer Ramdas Tikamdas, in his critical evaluation of the latter, concluded by saying that:

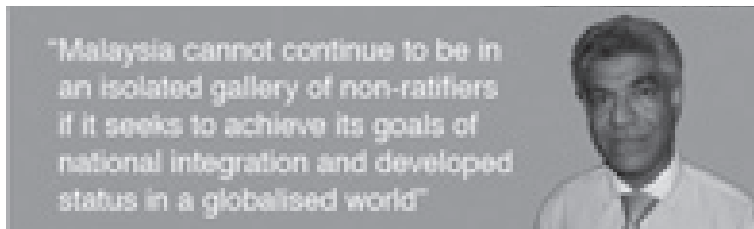
"The underlying basis of the rule of law for civilised states is non-discrimination and equality of rights and opportunities for its nationals. These twin principles ... are also the precondition for any state aspiring to national integration and progress towards developed status."

The declaration does not require ratification by member states, and has no mechanisms for enforcement; it carries moral, not legal weight. However, Tikamdas argued that the fact it directly references other human rights instruments — such as the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) — allows the declaration international customary law status.

Tikamdas pointed out that 173 of the UN's 192 member states have ratified the ICERD. "Malaysia cannot continue to be in an isolated gallery of non-ratifiers if it seeks to achieve

its goals of national integration and developed status in a globalised world,” he asserted. Among the non-signatories are such states like North Korea and the military dictatorship of Myanmar — disreputable company at best.

The Indian equation



In a discussion on the plight of ethnically-Indian rubber plantation workers, Education, Welfare & Research Foundation Malaysia research director Dr S Nagarajan outlined a disconnect between state policies and the callous reality on the ground.



Non-signatories of the ICERD are shown in light grey on the map (source: wikipedia.org)

“Plantations are classified as private property,” Nagarajan explained. Because of this technicality, “things like mobile clinics, poverty eradication programmes, and education bypass plantation communities.”

The problems affecting the Indian plantation workforce have been endemic since pre-Merdeka, and are tied to the fact that plantations were structured to keep workers and families in their confines. Today, as Malaysian agriculture shifts in focus from rubber to palm oil, and plantations make way for land development, these communities are forced into squatter areas and merge with the urban poor, said Nagarajan.

This migration is clear when you look at the statistics. In 1970, according to the Population and Housing Census Report, 65.3% of the Indian Malaysian population was in the rural areas and 34.7% in the urban areas but by year 2000, only 20.3% were in the rural areas while 79.7% were in urban areas. (As Indian Malaysians were historically employed in the plantation sector, rural means plantation in this context.)

“I am sure the percentage of Indian Malaysians in rural areas will be below 20% by now because evictions from the plantations are still going on,” pointed out Nagarajan.



Chewong, from Bukit Cenal, Pahang. This small community is to be resettled for the Kelau dam project, even though their hillock-hamlet is way above the water-level of the proposed dam (© Centre for Orang Asli Concerns)

There were many suggestions at the roundtable as to how the problem of discrimination could be addressed. These include the creation of a statutory commissioner, who would function as an ombudsman in hearing the grievances of minorities; and a fine-tuning of the National Development Policy, to make it based not on race, but need.

Other suggestions include strengthening of civil society networks, so that the influence of non-governmental organisations extends beyond urban areas; and educating the civil service and policy-makers to appreciate cultural diversity.

Success stories

There have been success stories. Persatuan Siam Malaysia representative Siri Neng Buah raised several issues as being close to the Siamese community here: unfair citizenship exams; the necessity of sijil Siam (Siamese certificates) in the states of Perlis and Kedah, before the ethnically Siamese could work the land for agriculture; and the fact that Buddhist wats could not be gazetted in these states.

"If you look at a map [of the state] there is nothing there," Siri said, "but actually there would be a huge temple building". As a result, wats have been demolished to make way for Felda settlements in the past.

By contrast, the Islamic theocracy of Kelantan sports 20 such temple complexes, all recognised by the PAS state government — Tumpat's Pikulthong Wat was even the site of a diplomatic event on 12 Nov that saw the Kelantan Menteri Besar and a Thai royal representative in attendance. The sijil Siam, which Siri points out is an apparatus of racial discrimination, does not exist in Kelantan.



Yet, at the root of the problem is the Malaysian government's willingness to discount these issues. Kelantan-style high-mindedness does not yet happen at the federal level. As one participant of the roundtable put it: "We can talk the whole day, but if we can't reach the political masters, nothing can be done."

Tikamdas believed that the government gets away with being all bluster and little action because it is allowed to. It is the onus of Malaysians to keep government accountable and public policy fair and effective. "Citizens need to stand up and demand that they want equal rights," he said.

Comments are now closed for this article as per our policy

fleas Posted: 12 Dec 08 : 11.18AM

The map showing countries that have ratified ICERD is hilarious!

What's the use of ratifying something if absolutely no steps are taken to actually implement anything? This is 100% lip service.

In those green countries, you can see all manner of racial discrimination ranging from political incorrectness to genocide.

The entire Eastern Europe, India and Pakistan are green for Satan's sake!

Zedeck Posted: 13 Dec 08 : 2.30PM

Hello fleas:

What the ICERD map does show is that there are some countries to whom the appearance (if nothing else) of being against racial discrimination is important -- and other countries where it is not.

Malaysia is not being hypocritical here, because it could not care less.

November 19, 2008 22:13 PM

Suhakam Urges Govt To Protect Orang Asli Rights

KUALA LUMPUR, Nov 19 (Bernama) -- The Human Rights Commission (Suhakam) wants the government to use the United Nations Declaration on Rights of Indigenous Peoples as a benchmark when making policies on the Orang Asli.

Suhakam Commissioner Datuk Dr Denison Jayasooria said the UN document should be used as legal standard to protect the rights of Malaysia's indigenous peoples, as well as other marginalised communities such as Indian plantation workers.

"The Orang Asli and the natives of Sabah and Sarawak are closely tied to their land. It is a source of their livelihood, their culture, their history and their very lifestyle.

"They have been on these lands for generations and in some cases, they have been requesting for their land rights for more than 40 years.

"However, when a large private company with political connections steps into the picture, they would receive the land rights that these people have been requesting, within the short period of two years," he told reporters after a discussion on indigenous people at the Suhakam headquarters here.

Jayasooria said although the government had allocated compensation land to these indigenous peoples, it did not equate to the amount of land allocated for Felda settlers.

"These people have land. It is their land. And yet, when the government took their land, they were only given between six and eight acres per family, whereas they actually need about 10 to 30 acres per family to make it viable for small holders," he added.

-- BERNAMA

Land rights, culture key concerns of minorities

Wednesday, 26 November 2008 09:15AM

©The Sun (Used by permission)

by Tan Yi Liang

KUALA LUMPUR: Land rights, statelessness and the recognition of native cultures and religions rank high in the concerns of ethnic minority groups in Malaysia, the Human Rights Commission of Malaysia's (Suhakam) Economic, Cultural and Social Working Group heard. Suhakam commissioner Datuk Dr Denison Jayasooria, who closed a roundtable on the Rights of Ethnic Minorities and Marginalised Communities in Malaysia last week, said that on the key issue of land, these groups take the view that land given to them as indigenous people should be comparable to that given to Felda settlers.

"It cannot be three acres (1.2ha), as in the case of Sarawak, or six acres (2.4ha). It should be more than 10 to 30 acres (4-12ha) per family, as they need a certain area to make the land viable as smallholders," he said, adding that the private sector was abusing its political connections to gain land rights.

"They are saying that private sector companies, through political connections, are violating their land rights, and this was identified as a gross injustice. This can only be addressed through political will, and the political decision-makers should protect the land of natives of Sabah and Sarawak and the orang asli in the same way they protect Malay land reserves." Jayasooria said these groups feel alienated from the land.

"That means the natives of Sabah and Sarawak and the orang asli have land, but their land titles are not recognised, and in compensation, they are getting lease land, or land that is inadequate for them." Other specific issues of concern relate to cultural diversity, language, religion, history and lifestyles. Jayasooria said the indigenous people call for greater appreciation of their cultural diversity and unique history and background. They also want the government to recognise their particular grievances in the social and economic realm as they feel alienated and marginalised from mainstream development, and to recognise their traditional cultures and rights.

“In terms of access and inclusion in public sector services, they call for the specific appreciation of their historical disadvantage, cultural background and peculiar problems, so that the delivery of services and programmes will take into account their needs,” Jayasooria said, adding that such communities often found it difficult to compete with more mainstream urban cultures.

Panellists such as Dr S. Nagarajan of the Education, Welfare and Research Foundation Malaysia spoke on the plight of displaced estate workers while Siamese Society of Malaysia spokesman Siri Neng Buah touched on issues facing the Siamese community in Kelantan. Both raised the issue of registration of ethnic minorities and indigenous communities.

“The registration of a lot of people, such as plantation or estate workers, the Siamese community, the orang asli, and natives of Sabah and Sarawak have many problems with the registration of births and receiving identification cards. They are in effect stateless people,” Jayasooria said, pointing out the case of a Penan family which had resided in Malaysia for eight generations but had been denied registration.

“Without documentation, they have no access to health care, they have no voting rights, no education, and they are stateless on their own land. If you use the UN Declaration on the Rights of Indigenous Peoples, I think this is something that is important.” He added that other panellists and participants, which included Dr Colin Nicholas of the Centre for Orang Asli Concerns, Jayl Langub of Universiti Malaysia Sarawak, Kadazan Cultural Association secretary Julie Jidwin, and Women’s Aid Organisation executive director Ivy Josiah had called on Suhakam to take steps to protect the rights of ethnic minorities in Malaysia.

The panellists also called on Suhakam to set up a human rights violation alert. The commission will compile a report for the working The Malaysian Bar committee to see what course of action needs to be taken, and a decision is expected next year. Jayasooria said Suhakam was already committed to conducting a legal study on the land rights of the orang asli in Peninsular Malaysia and the indigenous peoples of Sabah. The commission had carried out a study on indigenous land rights in Sarawak in the middle of the year.

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

Adopted by General Assembly resolution 47/135 of 18 December 1992

The General Assembly,

Reaffirming that one of the basic aims of the United Nations, as proclaimed in the Charter, is to promote and encourage respect for human rights and for fundamental freedoms for all, without distinction as to race, sex, language or religion,

Reaffirming faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small,

Desiring to promote the realization of the principles contained in the Charter, the Universal Declaration of Human Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and the Convention on the Rights of the Child, as well as other relevant international instruments that have been adopted at the universal or regional level and those concluded between individual States Members of the United Nations,

Inspired by the provisions of article 27 of the International Covenant on Civil and Political Rights concerning the rights of persons belonging to ethnic, religious and linguistic minorities,

Considering that the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live,

Emphasizing that the constant promotion and realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities, as an

integral part of the development of society as a whole and within a democratic framework based on the rule of law, would contribute to the strengthening of friendship and cooperation among peoples and States,

Considering that the United Nations has an important role to play regarding the protection of minorities,

Bearing in mind the work done so far within the United Nations system, in particular by the Commission on Human Rights, the Subcommission on Prevention of Discrimination and Protection of Minorities and the bodies established pursuant to the International Covenants on Human Rights and other relevant international human rights instruments in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Taking into account the important work which is done by intergovernmental and non-governmental organizations in protecting minorities and in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Recognizing the need to ensure even more effective implementation of international human rights instruments with regard to the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Proclaims this Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities:

Article 1

1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.
2. States shall adopt appropriate legislative and other measures to achieve those ends.

Article 2

1. Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.

2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.
3. Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.
4. Persons belonging to minorities have the right to establish and maintain their own associations.
5. Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.

Article 3

1. Persons belonging to minorities may exercise their rights, including those set forth in the present Declaration, individually as well as in community with other members of their group, without any discrimination.
2. No disadvantage shall result for any person belonging to a minority as the consequence of the exercise or non-exercise of the rights set forth in the present Declaration.

Article 4

1. States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.
2. States shall take measures to create favorable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.
3. States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.
4. States should, where appropriate, take measures in the field of education,

in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.

5. States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country.

Article 5

1. National policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.
2. Programmes of cooperation and assistance among States should be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.

Article 6

States should cooperate on questions relating to persons belonging to minorities, inter alia, exchanging information and experiences, in order to promote mutual understanding and confidence.

Article 7

States should cooperate in order to promote respect for the rights set forth in the present Declaration.

Article 8

1. Nothing in the present Declaration shall prevent the fulfilment of international obligations of States in relation to persons belonging to minorities. In particular, States shall fulfil in good faith the obligations and commitments they have assumed under international treaties and agreements to which they are parties.
2. The exercise of the rights set forth in the present Declaration shall not prejudice the enjoyment by all persons of universally recognized human rights and fundamental freedoms.
3. Measures taken by States to ensure the effective enjoyment of the rights set forth in the present Declaration shall not prima facie be considered contrary to the principle of equality contained in the Universal Declaration of Human Rights.

4. Nothing in the present Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States.

Article 9

The specialized agencies and other organizations of the United Nations system shall contribute to the full realization of the rights and principles set forth in the present Declaration, within their respective fields of competence.

United Nations Declaration on the Rights of Indigenous Peoples

Resolution adopted by the General Assembly

[without reference to a Main Committee (A/61/L.67 and Add.1)]

61/295. United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,

Taking note of the recommendation of the Human Rights Council contained in its resolution 1/2 of 29 June 2006,¹ by which the Council adopted the text of the United Nations Declaration on the Rights of Indigenous Peoples, Recalling its resolution 61/178 of 20 December 2006, by which it decided to defer consideration of and action on the Declaration to allow time for further consultations thereon, and also decided to conclude its consideration before the end of the sixty-first session of the General Assembly, Adopts the United Nations Declaration on the Rights of Indigenous Peoples as contained in the annex to the present resolution.

107th Plenary Meeting

13 September 2007

ANNEX

United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter, *Affirming* that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

¹ See Official Records of the General Assembly, Sixty-first Session, Supplement No. 53 (A/61/53), part one, chap. II, sect. A.

Affirming also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

Reaffirming that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind, Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

Recognizing also the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

Emphasizing the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

Considering that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

Considering also that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights² and the International Covenant on Civil and Political Rights,² as well as the Vienna Declaration and Programme of Action,³ affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

Bearing in mind that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

Encouraging States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

Emphasizing that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

Believing that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous

² See resolution 2200 A (XXI), annex.

³ A/CONF.157/24 (Part I), chap. III.

peoples and in the development of relevant activities of the United Nations system in this field,

Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

Recognizing that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

Article 1

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights⁴ and international human rights law.

Article 2

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

4 Resolution 217 A (III).

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 6

Every indigenous individual has the right to a nationality.

Article 7

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.
2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
 - (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
 - (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
 - (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
 - (d) Any form of forced assimilation or integration;

- (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article 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.

Article 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.

Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.
2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.
2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.
2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Article 14

1. 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.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

Article 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.
2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Article 16

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.
2. States shall take effective measures to ensure that State-owned media duly

reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

Article 17

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.
2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.
3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 21

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.

Article 22

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.
2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.
2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Article 29

1. 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.

Article 30

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.
2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.
2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Article 35

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

Article 36

1. Indigenous peoples, in particular those divided by international borders,

have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

Article 37

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.
2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

Article 38

States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

Article 39

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Article 41

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

Article 42

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

Article 43

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Article 44

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

Article 45

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

Article 46

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.
2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such

limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.