



JOINT MEMORANDUM ON THE REFORM OF THE ABORIGINAL PEOPLES ACT 1954 AND ORANG ASLI POLICY AND ADMINISTRATION — TOWARDS BETTER ORANG ASLI SELF-DETERMINATION

EXECUTIVE SUMMARY

INTRODUCTION

1. Concerned with the effectiveness of the Federal and State governments' legal powers to ensure the welfare of the Orang Asli, Pusat KOMAS and the Bar Council Committee on Orang Asli Rights ("COAR") held a Roundtable Discussion ("RTD") on 18 April 2019 to discuss the continued relevance of the principal statute governing the Orang Asli, namely, the Aboriginal Peoples Act 1954 ("APA") in terms of Orang Asli rights and the wide powers the APA confers on the State over the Orang Asli. Twenty-two representatives from the Orang Asli community, Orang Asli organisations, relevant non-governmental organisations, the University of Malaya, COAR and the Human Rights Commission of Malaysia ("SUHAKAM") participated in the RTD.

ORANG ASLI EMPOWERMENT AND SELF-DETERMINATION

2. During the RTD, there was a general consensus that the extensive governmental statutory power possessed over the Orang Asli and their lands had not resulted in better protection of the Orang Asli and their lands, but increased State control over them, to their detriment.
3. In this respect, many provisions in the APA confer extraordinary governmental power to control most, if not all, material aspects of Orang Asli lives for the sake of their protection. Such provisions are outmoded and, from a human rights perspective, have no place in contemporary Malaysia.
4. Examples of the wide-ranging Federal statutory power include the following: The Director General ("DG") of Jabatan Kemajuan Orang Asli ("JAKOA")'s power to control activities conducted within Aboriginal areas (section 6), Orang Asli land transactions (section 9) and monetary compensation awarded to the Orang Asli for loss of traditional lands (section 12); and the Minister having charge of Orang Asli affairs's power to make regulations affecting the Orang Asli including redefining their ethnicity (sections 3(3) and 19).
5. Examples of State Government power over Orang Asli land matters in the APA that potentially run counter to the Malaysian appellate courts' legal recognition of Orang Asli customary land and resource rights include the following: The State Authority's power to declare, vary and revoke Aboriginal reserves and Aboriginal areas, and to evict the Orang Asli from Malay or other reserved lands, with minimal **statutory** remedies (sections 6(3), 7(3) and 10(3) - (4)); and the State Authority's statutory power to determine whether or not to grant adequate compensation for the acquisition or use of Orang Asli lands (section 12).

6. In line with international standards on international indigenous rights, participants of the RTD called for more control over their lives and lands through proposals relating to: (i) autonomy in respect of matters relating to Orang Asli identity, adat and adat lands, and the right to free, prior and informed consent in relation to such matters; (ii) the right to prior and effective consultation in respect of laws and policies affecting the Orang Asli; and (iii) the substantial revamp and transformation of JAKOA, from an agency having control over the Orang Asli into a government service agency that efficiently aids the needs of the Orang Asli community.

PROPOSED WAY FORWARD FOR THE REVIEW OF ORANG ASLI LAWS

7. To facilitate the greater empowerment of the Orang Asli in matters affecting them, the APA and other applicable laws are in need of reform.
8. However, it is crucial for any law, policy, institutional and practice reforms that concern the Orang Asli community to take into account previous consultations held with the community and, in the future, be preceded by prior and effective consultation with all sections of the community and at every stage of the reform process.
9. To increase Orang Asli empowerment and self-determination within the current administrative framework and facilitate the transition of JAKOA from an administrative agency to a service agency, law reforms should include legal safeguards to ensure there is an equitable balance of power between the Government and the Orang Asli community.
10. In compliance with international best practices on indigenous and human rights, such legal safeguards should take the form of rights to free, prior and informed consent and to prior and effective consultation.
11. The Memorandum details suggestions for the Federal Government, in consultation with the Orang Asli, to adopt in reviewing and amending laws on the Orang Asli. These include: (i) calls to implement the recommendations by SUHAKAM in its 2013 Report on the National Inquiry Into the Land Rights of Indigenous Peoples, and items 1-8 under the *136 Resolusi Konvensyen Orang Asli Kebangsaan 2019*, adopted by the Federal Government during the National Orang Asli Convention 2019 to immediately protect and recognize Orang Asli land and resource rights; (ii) the proposal for any law reform to reflect the intention to recognize Orang Asli empowerment and self-determination in matters affecting the community; and (iii) recommendations to incorporate Orang Asli rights to free, prior and informed consent and effective consultation into specific provisions of the APA.
12. It is also proposed that the Ministry in charge of Orang Asli Affairs obtain approval from the Malaysian Cabinet to form a working group consisting of Government and relevant independent experts on the Orang Asli and community representatives to study, review and recommend specific amendments to the laws concerning Orang Asli as outlined above or other amendments as deemed fit. Consultation drafts of any proposed laws and policies should be provided to all relevant stakeholders with the intention of obtaining and considering timely and effective input from all parties concerned.

Prepared by:
Bar Council Malaysia
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