

ORANG ASLI



- RIGHTS
- PROBLEMS
- SOLUTIONS





A study commissioned by SUHAKAM

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- SOLUTIONS

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CONTENTS

RIGHTS OF THE ORANG ASLI	1
1.1 The Federal Constitution	3
1.2 National Laws, Enactments and Relevant Judicial Decisions	6
1.3 Government Policy	10
1.4 Fiduciary duty and compliance with the Constitution	13
1.5 International Documents and Declarations specific to Indigenous Peoples	15
1.6 What do Orang Asli want?	17
1.7 Summary	17
PROBLEMS FACING THE ORANG ASLI	19
2.1 Rights to land and natural resources	22
2.2 Rights to Development	37
2.3 Right to self-determination	63
2.4 Right to Culture and Identity	73
2.5 Right to Security	77

SOLUTIONS: A FRAMEWORK FOR THE RESOLUTION OF THE ORANG ASLI PROBLEM	83
3.1 Confer recognition	86
3.2 Change the Mindset of the JHEOA	86
3.3 Change the Mindset of Politicians	88
3.4 Greater Orang Asli Involvement	88
3.5 Bigger Role for Orang Asli Women	89
Notes	90
References cited	92

Author's note:

This report was submitted to Suhakam in May 2006 and is published here in its near-entirety. The data and discussion relate, in large part, to the Orang Asli situation prior to that date. Nevertheless, while acknowledging that significant changes have occurred in some areas since, it is maintained that the conclusions and recommendations in this report still remain pertinent today.

INTRODUCTION

The Human Rights Commission of Malaysia (SUHAKAM) commissioned Dr. Colin Nicholas, who is the Founder and Coordinator of the Center for Orang Asli Concerns (COAC) to prepare the report on the needs and issues confronting the Orang Asli community in Peninsular Malaysia.

He has undertaken a comprehensive study noting historical, legislative and socio-economic challenges confronting this disadvantaged and marginalised community. While the data in the study reflects the relevant progress of the Orang Asli previous to 2010, the spirit of the issues highlighted may be relevant to date.

This is a valuable study especially in light of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

It is now published for further study, reflection and appropriate action to enhance the economic, social and cultural rights of the Orang Asli community.

SUHAKAM expresses its deepest appreciation to Dr. Colin Nicholas and the SUHAKAM Staff who contributed towards the publishing of this report.

31 March 2010
Human Rights Commission of Malaysia
Kuala Lumpur

RIGHTS OF THE ORANG ASLI



RIGHTS OF THE ORANG ASLI

The Orang Asli are the indigenous minority Malaysians of Peninsula Malaysia. This designation implies two statuses, and with it two sets of inalienable rights—Orang Asli as Malaysian citizens and Orang Asli as indigenous peoples. The second status is of particular focus here as in the context of Malaysian politico-reality, indigeneity and marginalization are accepted as reasons enough for the administration of affirmative or positive discrimination.

The concurrent rights of the Orang Asli, as indigenous peoples, are enumerated (and governed) in several documents, both nationally relevant and internationally applicable, namely:

- The Federal Constitution;
- National Laws, enactments and relevant judicial decisions;
- Government policy statements; and
- International Documents and Declarations specific to indigenous peoples.

1.1 THE FEDERAL CONSTITUTION

The Orang Asli are referred to as ‘aborigine’ in Article 160(2) of the Federal Constitution. They are separate from the other indigenous groups mentioned therein viz. the Malays and the natives of Sabah and Sarawak who are

unambiguously accorded special privileges and protection under Articles 153 and 161A. Article 153 in fact imposes a responsibility that enables, indeed obliges, the Yang DiPertuan Agung to provide these special privileges.

While the Federal Constitution does not explicitly state that the Orang Asli do not enjoy such clearly defined provisions of special privileges and protection, it does nevertheless provide some recognition of their special status. More specifically, the Federal Constitution provides that the ‘aborigine’ is within the responsibilities and powers of the Federal Government as distinct from the State Governments (Ninth Schedule, Federal List No. 16). This is a provision that enjoins the Federal Government with all powers and responsibilities. Article 8(5)(c) in fact, enables the Government to provide:

“... for the protection, well-being or advancement of the aboriginal peoples of the Malay Peninsula (including the reservation of land) or the reservation to aborigines of a reasonable proportion of suitable positions in the public service.”

However, it is frequently held by the authorities that in the reservation and alienation of lands for the Orang Asli, the Federal Constitution appears not to be on side of the Orang Asli. Officers of the Department of Orang Asli Affairs (JHEOA), in particular, frequently assert that because the Federal Constitution provides that all matters pertaining to land comes under the purview of the individual states (Ninth Schedule, State List No. 2), this provision hinders the establishment of land reserves for the Orang Asli as provided in Article 8(5)(c). Basically they argue that while the Orang Asli are a federal matter, land is a state matter. As such, their hands are tied in this regard.

However, as contended by Rachagan (1990: 103), Lim (1997: 3-4) and others, the Federal Constitution does actually contain adequate provisions for the Federal Government to establish these land reserves. Specifically, the acquisition of land for the creation of reserves for Orang Asli comes within

the meaning of the definition of “Federal purposes” contained in Article 160(2). Article 83 of the Federal Constitution, on the other hand, provides for the acquisition of land for Federal purposes. Article 83(1) states:

If the Federal Government is satisfied that land in a State, not being alienated land, is needed for federal purposes, that Government may, after consultation with the State Government, require the State Government, and it shall then be the duty of that Government, to cause to be made to the Federation, or to such public authority as the Federal Government may direct, such grant of the land as the Federal Government may direct:

Provided that the Federal Government shall not require the grant of any land reserved for a State purpose unless it is satisfied that it is in the national interest so to do.

The powers of acquisition as detailed in Article 83 of the Federal Constitution are moreover not fettered. That is, the land may be acquired in perpetuity and without restrictions as to the use of the land. Hence, not only is the federal Government empowered to obtain land for Orang Asli reserves, it may also acquire for the Orang Asli exclusive rights over particular tracts of land for specific purposes such as fishing, hunting, gathering, logging, mining, settlement, and such. These are powers vested in the Federal Constitution but, sadly, they are yet to be exercised in favour of the Orang Asli to any significant extent (cf. Rachagan 1990: 105).

Thus, aside from the general rights in the Federal Constitution accorded to Malaysian citizens, including rights to property, association and religion, the Federal Constitution also stipulates that special rights and protections are to be accorded to the Orang Asli community.

1.2 NATIONAL LAWS, ENACTMENTS AND RELEVANT JUDICIAL DECISIONS

The Aboriginal Peoples Act (1954, revised 1974) is the only law that specifically refers to the Orang Asli. The traditional way of interpreting this Act, with regard to reserving land for Orang Asli, has been to accept that while the Act provides for the establishment of Orang Asli Areas and Orang Asli Reserves, it also grants the state authority the right to order any Orang Asli community to leave—and stay out of—an area.

In effect, the perception is that the best security that an Orang Asli can get is one of ‘tenant-at-will’. That is to say, an Orang Asli is allowed to remain in a particular area only at the pleasure of the state authority. If at any such time the state wishes to re-acquire the land, it can revoke its status and the Orang Asli are left with no other legal recourse but to move elsewhere. Furthermore, in the event of such displacement occurring, the state is not obliged to pay any compensation or allocate an alternative site to the affected Orang Asli; it may only do so. That is, in matters concerning Orang Asli land, the state authority has the final say.

The practice has also been to accept that the Aboriginal Peoples Act accorded the Minister concerned—or his representative, the Director-General of the Department of Orang Asli Affairs (JHEOA)—the final say in all matters concerning the administration of the Orang Asli, including the appointment of headmen, entry or removal of individuals into Orang Asli settlements, and even deciding on the name of the ethnic subgroup an Orang Asli belongs to!

However, it is contended here that the provisions of the Aboriginal Peoples Act have been narrowly interpreted and applied, invariably in favour of the authorities’ interests. All this in spite of the preamble of the Aboriginal Peoples Act specifically stating that this was to be, “*an Act to provide for the protection, well-being and advancement of the aboriginal peoples of West Malaysia*”.

Nevertheless, recent court decisions in matters concerning Orang Asli rights to their traditional land and resources have interpreted the Aboriginal Peoples Act in a manner that ensures its compliance with the Federal Constitution. As can be seen from the summaries of the precedent-setting judgments below, the courts have thus far been proactive and clear as far as the recognition of Orang Asli rights is concerned.

Ruled: Only Orang Asli have rights to forest produce in Orang Asli areas

(Koperasi Kijang Mas v Kerajaan Negeri Perak)

In 1992, the Ipoh High Court, in deciding the case of *Koperasi Kijang Mas & 3 others v Kerajaan Negeri Perak & 2 others*, held that the State Government of Perak had breached the Aboriginal Peoples Act, 1954 (revised 1974) when it accepted Syarikat Samudera Budi Sdn. Bhd's tender to log certain areas in Kuala Kangsar. These areas included lands which have been approved by the State Government as Aboriginal Reserves namely the Orang Asli regroupment schemes of RPS Sungei Banun and RPS Pos Legap.

The High Court went on further to hold that Syarikat Samudera accordingly had no rights to carry on logging activities and that only Orang Asli as defined in the Aboriginal Peoples Act had the right to the forest produce in these reserves.

An important point canvassed by the State Government was that the lands, although approved, had not been gazetted. Justice Malek in a strong opinion held that gazettement was not a mandatory requirement. The approval of the State Government for the lands to be aboriginal reserves had, without the necessity of gazettement, created the reserves and thereafter only Orang Asli have exclusive rights to the forest products in the reserves.

This decision has important implications for Orang Asli land rights as official

sources indicate that some 29,144.18 hectares of aboriginal lands in 2002 have been approved, but are yet to be gazetted. In respect of these lands therefore, Orang Asli have some measure of statutory protection from encroachment and displacement by many other interests.

Ruled: Orang Asli have proprietary interest on the land

(Adong bin Kuwau & Ors v State Government of Johor)

In 1997, the Johor High Court awarded compensation to 52 Jakuns for the loss of 53,273 acres of ancestral lands. The state government had taken the forested land and leased it to the Public Utilities Board of Singapore who subsequently constructed a dam to supply water to both Johor and Singapore.

Justice Mokhtar concluded that the Jakuns had proprietary rights over their lands, but no alienable interest *in* the land itself. That is to say, while the Jakuns may not hold title to their traditional lands, they nevertheless have the right to use it for their subsistence and other needs.

In this instance, the court ruled that while certain lands are reserved for aboriginal peoples, they also have recognized rights to hunt and gather over additional lands—the “right to continue to live on their lands, as their forefathers had lived.”

Such proprietary rights were protected by Article 13 of the Federal Constitution, which required the payment of “adequate compensation” for any taking of property. In accordance with this, the Jakuns were awarded a sum of RM26.5 million for their loss of income for the next 25 years. (With interest accrued, the final payment was close to RM38 million.) This judgment was upheld by the Court of Appeal in 1998, with no leave being granted for appeal to the Federal Court.

Ruled: Orang Asli have proprietary interest in the land

Sagong Tasi & 6 Ors v Kerajaan Negeri Selangor & 3 Ors

Sagong Tasi was among 23 family heads from Bukit Tampoi in Dengkil, Selangor who had 38 acres of their land taken from them for the construction of the Nilai-Banting highway linking with the new Kuala Lumpur International Airport in 1995. Some also had their crops and dwellings destroyed. While they were paid a nominal amount for these, there was no compensation for the land. The authorities maintained that the Orang Asli were mere tenants on state land and as such were not entitled to compensation under the Land Acquisition Act 1960.

With the help of a *pro bono* team of lawyers from the Bar Council, the Temuans took their case to court. They asserted that they are the owners of the land by custom, the holders of native title to the land and the holders of usufructuary rights (i.e. right to use and derive profit) to the land. They also maintained that their customary and proprietary rights over the land, which they and their forefathers have occupied and cultivated for a long time, were not extinguished by any law.

In April 2002 Justice Mohd Noor ruled that the Temuans did have native title under common law over their lands. And as such compensation was to be paid to them in accordance with the Land Acquisition Act, 1960. The four defendants (the Selangor State Government, United Engineers Malaysia (UEM), Malaysian Highway Authority (LLM), and the Federal Government) appealed.

In October 2005, Justice Gopal Sri Ram sitting in the Court of Appeal with two others, unanimously threw out the appeal and held that the High Court was not misdirected when it decided, based on a large quantity of evidence and fact that were not challenged, to rule that the Temuans did indeed have proprietary rights over their customary lands. As such, these lands should be treated as titled lands and therefore subject to compensation under the Land Acquisition Act.¹

Thus it can be seen that the Orang Asli were deemed to be in possession of titled rights to their traditional lands all this while despite claims by the authorities to the contrary.

1.3 GOVERNMENT POLICY

In 1960, after the end of the communist insurgency in the then Malaya, the government decided to continue the institution of the Department of Aborigines—now renamed the Jabatan Hal Ehwal Orang Asli (JHEOA)—in order that it will be able to realise the mandate of the Federal Constitution and the Aboriginal Peoples Act that the welfare and progress of the Orang Asli are taken care of.

In this light, the government, through the JHEOA, introduced in 1961 the important policy document entitled, *Statement of Policy Regarding the Administration of the Orang Asli of Peninsula Malaysia* (hereinafter called the ‘1961 Policy Statement’).

The 1961 Policy Statement has several ‘broad principles’ that assures the Orang Asli of their wide-ranging rights. Among these are:

[1(a)] The aborigines ... must be allowed to benefit on an equal footing from the rights and opportunities which the law grants to the other sections of community... special measures should be adopted for the protection of institutions, customs, mode of life, person, property and labour of the aborigine people.

[1(b)] The social, economic, and cultural development of the aborigines should be promoted with the ultimate object of natural integration as opposed to artificial assimilation ... Due account must be taken of the cultural and religious values and of the forms of social control.

[1(c)] The aborigines shall be allowed to retain their own customs, political system, laws and institutions when they are not incompatible with the national legal system.

[1(d)] The special position of aborigines in respect of land usage and land rights shall be recognized Aborigines will not be moved from their traditional areas without their full consent.

[1(e)] Measures should be taken to ensure that they have the opportunity to acquire education at all levels on an equal footing with the other sections of the population. At the same time care must be taken to ensure that their own dialects are preserved and measures should be introduced to enable the teaching of these dialects.

[1(g)] Adequate health services should be provided ... and special facilities should be provided for the training of their own people as health workers and medical personnel.

[1(j)] In all matters concerning the welfare and development of the aboriginal peoples, the Government will seek the collaboration of the communities concerned or their representatives.

[2(iii)(a)] In the implementation of forest conservation requirements, the special position of these communities is to be acknowledged provided any relaxation exercised in their favour will not be detrimental to the effective and proper implementation of accepted Forest policy and objectives.

[2(iii)(b)] The basic requirements for settled agriculture are a sufficiency of food crops and a dependable cash crop This requires a degree of permanency of occupation,

and advance in agricultural technique and the choice of suitable sites.

Since then, the JHEOA has introduced a number of action plans and ‘programme summaries’ for the attainment of the goals and principles as outlined in the 1961 Policy Statement. But the 1961 Policy Statement still remains as the *only* official policy governing the administration and development of the Orang Asli that is still in force today.

This was confirmed by the then Deputy Director-General of the JHEOA, Yahaya Hj. Awang, in his sworn testimony in the Shah Alam High Court during the hearing of the Sagong Tasi case in 2001. He also testified that there is no evidence of withdrawal of this policy thus far and as such it is still in force (Notes of Evidence, *Sagong Tasi* case, Shah Alam High Court, 2001).

This being so, it is clear that the intention of the Government in 1961 was to accord the Orang Asli with various rights, including the rights to their traditional lands and to their culture, in accordance with the deliberations of the 1953 Legislative Council hearings when the Aboriginal Peoples Bill (which later became the Aboriginal Peoples Act 1954) was debated and eventually passed. In fact, Dato Onn Jaafar in moving the Bill to the Legislative Council on 27 October 1953, reiterated that it was to be a “comprehensive legislation for the protection of aborigines throughout the Federation.”

Thus the 1961 *Statement of Policy Regarding the Administration of the Orang Asli of Peninsula Malaysia* puts in clear, unambiguous terms how the legislators of the Aboriginal Peoples Act intended the Orang Asli to be treated by further enumerating those rights in writing.

1.4 FIDUCIARY DUTY AND COMPLIANCE WITH THE FEDERAL CONSTITUTION

It should be evident by now that the Orang Asli have been accorded certain ‘special’ rights both under the Federal Constitution, the Aboriginal Peoples Act as well as in the 1961 Policy Statement.

Unfortunately, in practical terms, the Federal Constitution and the Aboriginal Peoples Act have been interpreted by administrators and the authorities in a manner that denies the Orang Asli the enjoyment of these rights. Even the clear directions given in the 1961 Policy Statement have been whittled down or ignored completely, especially when alternative action programme plans are drawn up. This is especially so in the area of Orang Asli customary land rights.

This issue was taken up by the Court of Appeal in the *Sagong Tasi* case (September 2005). Acknowledging that the purpose of the Aboriginal Peoples Act 1954 was to “protect and uplift the First Peoples of this country”, Judge Gopal Sri Ram asserted that, “*it was therefore fundamentally a human rights statute, acquiring a quasi-constitutional status giving it preeminence over ordinary legislation. It must therefore receive a broad and liberal interpretation.*”

This, he said, was in keeping with the early debates and discussions as recorded in the Federal Legislative Council Hansards, newspapers of the day and archival records which clearly showed that Orang Asli lands were to be recognized. For example, as noted in the judgment, when the Orang Asli representative, Tok Pangku Pandak Hamid, asked the Minister of Education if the government had any plans to ensure that the hereditary lands of the Aborigines are reserved for their use, Enche Mohd Khir Johari replied:

Steps are now being taken to create these reserves and there are also in existence others which were

gazetted prior to the introduction of the Ordinance... At the moment there are in existence in the Federation, 58 Gazetted Aborigine Reserves covering in all approximately 30 square miles, and including some 5,200 aborigines. An additional 120 areas are currently under consideration, with a view to gazetting as Reserves. They cover about 389 sq. miles and include approximately 21,000 aborigines.

Alas, as the court was later to find out, none of these good intentions were realized. Thus, as a result of the state and federal governments' neglect in both under-gazetting and not gazetting areas which they knew were inhabited by the Orang Asli, the latter's rights in the land were placed in serious jeopardy.

The practice to date has been to use the Aboriginal Peoples Act as the legal basis for compensating the Orang Asli only for their crops and dwellings whenever their lands are taken. The 1954 Act has also been used to argue that the Orang Asli do not hold proprietary interest in their land, and that the state governments exercise wide powers as to the disposal and compensation of these lands. The Orang Asli as such are only tenants-at-will, living on state land at the state's largesse.

Citing a number of legal precedents and justification, Judge Gopal reversed this interpretation. In light of the obvious conflict between the 1954 Act and the Federal Constitution, wherein Article 13(2) states that, "No law shall provide for compulsory acquisition or use of property without adequate compensation," he ruled that relevant portions of the 1954 Act, "had to be brought into conformity with the Constitution."

This is achieved, he says, by not reading the words in section 12 of the 1954 Act, "the State Authority *may* grant compensation therefor" as conferring a discretion on the State Authority whether to grant compensation or not. But by reading the relevant phrase as "the State Authority *shall*

grant **adequate** compensation therefor.” In so doing, the modification is complete.

This is a pro-active move that has the positive effect of restoring justice to a community that has long been denied of their rights by the narrow interpretation of natural resource laws.

The judge added that, “I am aware that ordinarily we, the judges, are not permitted by our own jurisprudence, to do this. But here you have a direction by the supreme law of the Federation (the Federal Constitution) that such modification as the present, must be done.”

The judgment of the Court of Appeal in the case of *Sagong Tasi and 6 Ors v Kerajaan Negeri Selangor and 3 Ors* is without doubt a landmark decision in many aspects. It also shows that there is enough in our local laws to protect the rights of the Orang Asli to their traditional lands and resources —*if we only want to*.

1.5 INTERNATIONAL DOCUMENTS AND DECLARATIONS SPECIFIC TO INDIGENOUS PEOPLES

Notwithstanding the clear protection of Orang Asli rights in the Federal Constitution and the correct interpretation of the Aboriginal Peoples Act, as fleshed out by the 1961 Policy Statement, the rights of the Orang Asli are also recognised in international documents such as the United Nations Declaration on the Rights of Indigenous People and the International Labour Organisation (ILO) Indigenous and Tribal Peoples Convention 169 (1989).

The two documents are the result of a long deliberation, negotiation and education process that saw the need to protect the rights of indigenous peoples who have invariably become marginalized in nation states with dominant mainstream societies. Most of the rights enumerated in these international documents are similar to those enshrined in our Federal

Constitution and Aboriginal Peoples Act as discussed above. However there is one fundamental difference: the international documents seek to accord a 'people' status to the indigenes, with varying rights of sovereignty, autonomy and self-determination.

The principle of self-determination, nevertheless, is what Orang Asli also aspire to. In very broad terms, in the context of the Orang Asli, the call for the right to self-determination would generally include, but not be limited to, the following rights:

- the right to the ownership of their lands as the territorial base for the existence of their populations;
- the right to use, manage and dispose of all natural resources found within their ancestral lands;
- the right to control their own economies, and the right to economic prosperity;
- the right to restore, manage, develop and practise their culture, language, traditions and way of life in accordance with their worldview, and to educate their children to them;
- the right to determine and to uphold indigenous political and social systems;
- the right to form alliances and federations with other indigenous peoples for the attainment of common goals; and
- the right to a life of peace and security.

Self-determination, therefore, not only involves restoring to the indigenous peoples their ownership and control over traditional territories, but also involves allowing them to re-establish their indigenous social order as they themselves determine it.

1.6 WHAT DO THE ORANG ASLI WANT?

Orang Asli today essentially seek recognition, by the Government, of their (special) existence, of their problems, and of their perspectives. They seek recognition that their ancestral lands are essential for their economic, social and spiritual development; and they also want their lands secured in their hands.

They seek recognition that they have been marginalised and discriminated; and they now want to be able to develop their own cultures, languages and customs; and to be able to transmit them to future generations. They seek recognition that they possess complex, flexible and appropriate social institutions; and they now want the right to practise them.

In a broad sense, therefore, the Orang Asli today want to be able to develop and progress as individuals and as a people, based on a social order that they themselves determine. That is: the Orang Asli want to reclaim their right to self-determination.

1.7 SUMMARY

The Orang Asli in Peninsula Malaysia enjoy certain rights by virtue of their primal presence in this peninsula. This is recognised in the Federal Constitution, provided for in the Aboriginal Peoples Act (if read in the spirit in which it was tabled) and fleshed out in the 1961 Policy Statement. All of these rights are consistent with the provisions in various international documents including that of the United Nations Declaration on the Rights of Indigenous People and the International Labour Organisation (ILO) Convention 169 on Indigenous and Tribal Peoples.

It appears that even the Ministry of Rural and Regional Development—the current Ministry responsible for the ‘administration’ of the Orang Asli—is

inclined towards recognising that the Orang Asli have certain special rights and that these rights are to be protected. This is stated in a presentation of the Ministry to an international audience at the International Conference on the Indigenous People, organised by the Centre for Malaysian Pribumi Studies in July 2005 where it was proclaimed that “the Government’s intention is to bring the Orang Asli community into the mainstream of national development *without depriving them of their rights.*” (emphasis added).

PROBLEMS FACING THE ORANG ASLI



PROBLEMS FACING THE ORANG ASLI

This section will look at the problems facing the Orang Asli in their various aspects and contexts. It will assess programmes, activities and achievement rates of the Government against that for the mainstream population, and highlight weaknesses and shortcomings in the enjoyment of the inherent rights to be enjoyed by the Orang Asli as discussed in the preceding section.

As required by Suhakam in the Terms of Reference for this report, the emphasis will be on ‘problems’ faced by the Orang Asli community. This is not to suggest there have been no improvement in the lives of the Orang Asli as a result of Government intervention. On the contrary, many are quick to attribute marked improvements in the condition of the Orang Asli compared to, say, at the time of Independence. Nevertheless, as the evidence below reveal, when compared with the wider mainstream population, the achievement rate for the Orang Asli community on all counts has been largely dismal and in need of urgent redress.

This section is organised along the following broad categories of Orang Asli rights:

- Right to land and natural resources;
- Right to development;
- Right to self-determination;

- Right to culture and identity; and
- Right to security.

2.1 RIGHTS TO LAND AND NATURAL RESOURCES

It is clear that the legislators of our Federal Constitution and the Aboriginal Peoples Act 1954 intended that the Orang Asli enjoy customary rights to their traditional lands and the resources found therein. Recent court decisions have also upheld these noble and just intentions. However, the situation today does not measure up to the expectations of our early legislators.

2.1.1 Insecure Land Tenure

A review of the land-ownership status of the 149,000 Orang Asli living in 869 villages in the peninsula will immediately reveal not only the general non-recognition of Orang Asli rights to their customary lands but a worrying trend whereby whatever security the Orang Asli may have to some lands in the past, even this is being whittled away. The following table, with data from the JHEOA and the Ministry of Lands and Mines, demonstrate this phenomenon.

From Table 1, we note that only 19,222.15 hectares have been gazetted as Orang Asli reserves in accordance with the Aboriginal Peoples Act. This represents only 15.1 per cent of the total land area (127,698.54 hectares) in 2003 that, in the eyes of the authorities, are Orang Asli inhabited places, Orang Asli areas or Orang Asli reserves as stipulated in the same Aboriginal Peoples Act.

Orang Asli are also said to be occupying 9,873.04 hectares of land without authorisation while 644.17 hectares are said to be legally owned by Orang Asli by way of individual lands titles. That is to say, as of 31 December 2003, only 0.5 per cent of Orang Asli had titles to their lands (and most these Orang Asli have done so on their own accord).

Table 1
Orang Asli Land Status, 2003

Land status	Area as at 2003 (ha)	Percentage
Gazetted Orang Asli Reserves	19,222.15	15.1
Approved for gazetting, but not gazetted as yet	28,760.86	22.5
Applied for gazetting, but not approved yet	79,715.53	62.4
Total Orang Asli lands with some form of recognition	127,698.54	100.00

Source: JHEOA

Table 2
Orang Asli Occupied Lands, 2003

Land status	Area as at 2003 (ha)	Percentage
Gazetted Orang Asli land with some form of recognition	127,698.54	92.4
Occupation not authorised by the state	9,873.04	7.1
Individually titled land	644.17	0.5
Total recorded occupied lands by Orang Asli	138,215.75	100.00

Source: JHEOA

Table 3
Orang Asli land status, 1990-2003 (hectares)

Land status	1990	1999	2003	Change/Loss (1990-2003)
Gazetted Orang Asli Reserves	20,666.96	19,507.4	19,222.15	-1,444.81
Approved for gazettement, but not gazetted as yet	36,076.33	28,932.2	28,760.86	-7,315.47
Total Orang Asli land with some legal status	56,743.29	48,439.6	47,983.01	-8,760.28
Applied for gazettement, but not approved yet	67,019.46	78,975.0	79,715.53	12,696.07
Total	123,762.75	127,414.6	127,698.54	3,935.79

Source: JHEOA

The dismal fact is that only 15.1 per cent of all recognised Orang Asli lands were duly gazetted as Orang Asli reserves. Another 22.5 per cent (28,760.86 hectares) had been duly approved for gazettement as reserves but, alas, the actual administrative gazettement was not done.

In some cases, according to the JHEOA's *Data Tanah* of the early 1990s, the approval for gazettement was given in the mid-1960s and mid-1970s, but to date the actual gazettement was never effected.

In other cases, such as in Kuala Krau, Pahang, such lands that were approved for gazettement in the past eventually became re-classified as "*Tanah Kerajaan*" (JHEOA *Data Klasifikasi Kampung* 1997)—frequently without the information or consent of the Orang Asli concerned.

What is also of concern is that even the area of Orang Asli gazetted reserves have been decreasing over the years. From Table 3, it will be seen that a total of 1,444.81 hectares of gazetted Orang Asli reserves were de-gazetted from 1990 to 2003.

Furthermore, another 7,315.47 hectares of Orang Asli lands that were approved for gazetting, was not only never gazetted but their 'approved' status was eventually revoked. Thus, from 1990 to 2003, at least 8,760.28 hectares of recognized Orang Asli lands had their status retracted.

In the same period, nevertheless, there was an increase of applications for Orang Asli reserves, from 67,019.46 hectares in 1990 to 79,715.53 hectare in 2003. It should be noted however that the majority of these new applications for gazetting were to replace Orang Asli lands that were degazetted for development projects (such as the KLIA and Selangor Dam projects) or for new resettlement schemes. Even so, the status of these lands is that of mere 'applications'. They do not have the legal weight of the second category ('approved for gazetting but not gazetted yet') which, it should be added, in itself was also not a good enough category to secure Orang Asli lands.

As noted by the judges in the High Court and Court of Appeal judgments in the *Sagong Tasi* case, the main problems facing the Orang Asli with regard to their customary lands is one in which the government has failed in its statutory duty to protect Orang Asli lands from encroachment, exploitation and appropriation by others (including the government itself). As a result of the state and federal governments' neglect in both **under-gazetting** and **not gazetted** areas which they knew were inhabited by the Orang Asli, the latter's rights in the land were placed in serious jeopardy.

2.1.2 Problems related to Relocation & Resettlement

As a consequence of not being accorded rights to their lands, whole Orang Asli communities are often subject to relocation and resettlement to make way for a development project of a public or private nature. The presumption is that these areas are often chosen because such lands are deemed to be state land or at best, gazetted Orang Asli reserves where little by way of compensation need to be forked out.

This was the case of the construction of the Kuala Lumpur International Airport (KLIA). The original site did not affect any Orang Asli villages. However, due to protests from the landowners in that site, and also because of the high cost of compensation involved, the site for the new airport was moved to Sepang where two established Orang Asli villages—Kampung Air Hitam and Kampung Busut— existed. This site was chosen because, in the words of then Prime Minister Mahathir Mohamed in his speech at the opening of KLIA, “...no one was living there.” And by implication, little had to be paid by way of compensation.

Orang Asli lands have also been taken for projects such as the drug rehabilitation camp in Serendah, or by private housing developers (e.g. Puchong, Dengkil), for golf courses (Bukit Unggul, Bangi), for universities (Bangi, Tapah), recreation resorts (Ulu Yam, Semenyih), dams (KKB, Temenggor), highways (Kampar, Dengkil), a shopping and port complex (Stulang Laut, Johor), and also for commercial agricultural expansion.

All this is possible only because the authorities do not recognise the right of the Orang Asli to their traditional lands. And because they assume that they will face little resistance, if any, from the Orang Asli owners.

Regroupment is also another means by which Orang Asli are required to be resettled and relocated. A major programme of the government since the mid-1970s, the aims of the regroupment schemes or *Rancangan Pengumpulan Semula (RPS)*, are as follows:

- To eradicate poverty or to reduce the number of hardcore poor among the Orang Asli;
- To modernize their way of life through provision of social services and basic facilities such as education, health, housing, water and electricity supply, etc.;
- To regroup and reorganise (*menyusun*) Orang Asli in suitable centres in their traditional areas; and

- To guarantee the security of the Orang Asli from subversive and anti-national elements (JHEOA 1992: Lampiran A).

While the first stated objective was that of poverty-eradication, it has however become evident that the security motive was the overriding reason for the early regroupment schemes. This is attested by the fact that all of the early schemes were along the spine of the peninsula, in areas where communist insurgents were said to be dwelling and getting support from the Orang Asli. Furthermore, in many of the early RPS schemes, the so-called poverty-eradication projects were never delivered in full, or delivered late. As we shall see later, many of the participants in these schemes still live below the poverty line.

In fact, that the regroupment schemes are not achieving their social objectives can be gleaned from the nutritional status of the Orang Asli children living there. Khor (1994: 123) contends that:

Some 15 years after relocation, the nutritional status of Orang Asli children in regroupment schemes can be described as poor with a moderate to high prevalence of underweight, acute, and chronic malnutrition. Their dietary intakes are deficient in calories and several major nutrients. ... There exists an over-simplified assumption that introduction to cash-cropping will lead to increased income, which will provide more money for food, and in turn result in improvement in nutritional status.... In reality, relocation entails cultural uprooting and lifestyle changes which may not be overcome by the provision of physical facilities and economic incentives only.

Regroupment also brings with it a whole gamut of other social problems especially when a community is expected to impinge on another's traditional territory, or if food and other subsistence needs are hard to

come by. The case of RPS Banun in northern Perak illustrates this assertion. The 13 Jahai communities in the Banun area were resettled at the Pulau Tujuh Resettlement Scheme in the mid-1970s—at the recommendation of the National Security Council that saw resettlement of the Orang Asli as a military strategy to isolate the villagers from the communist insurgents. In 1979, when it became obvious that the original Pulau Tujuh site would be inundated by the Temenggor dam being constructed then, the resettlement project was moved to the present site at RPS Banun.

However, just a few months after the Orang Asli were regrouped at RPS Banun, some scheme participants began to withdraw. Traditional food resources within the new area were quickly depleted as a result of the much higher population density. The government rations—and, later, the cash subsidies (RM50.00 per family per month)—were insufficient to sustain them, and the Orang Asli had to place greater reliance on fishing in the lake, which was two kilometres away, and on the sale of rattan for cash incomes, to subsist. The death of 18 Jahais within a short span also prompted many groups to leave the scheme.

Withdrawal from the scheme also grew as a result of conflicts over land. Officially, at least 13 distinct communities, each led by its own *penghulu* or village-head, were technically under the RPS Banun scheme in 1988. However, by 1993, only the group who claimed traditional territorial rights to this part of the Belum area was residing within the 2,529.2 hectares allotted to the Banun scheme.

Furthermore, despite being promised agricultural projects such as rubber and fruit gardens, none were forthcoming, either upon their acceptance of the scheme—not an unusual expectation given that the Jahai's socio-economic system is based on immediate-return activities—or even 20 years after the scheme was established. Apart from unsuitable soils, the JHEOA also recruited incompetent contractors who did not finish their jobs. Another grouse of the Orang Asli of RPS Banun was that as of 1993, only eighteen houses had been built for the 176 households—and of these eighteen,

twelve were for the JHEOA administrative staff. In fact, none of the houses promised under the original resettlement deal has been realised. Those few now being delivered are being done so under the PPRT scheme (which is also available to other Orang Asli communities as a general policy).

To make matters worse, the status of the Orang Asli lands is still that of 'Tanah Kerajaan'. And the land allocated is a mere fraction of their traditional territories. Today, according to the JHEOA's *Data Klasifikasi Kampung*, the two parts of Kampung Sungei Raba is allotted just 14 hectares, while Kampung Sungei Banun itself has only 7 hectares!

As a general rule, we have found that when Orang Asli are required to be resettled or regrouped, they stand to lose from 70 to 80 per cent of their traditional territories. This was the case, for example, in the resettlement for the Sungai Selangor Dam in KKB. Here, one of the two villages involved—Kampung Gerachi—had a total of 404.86 hectares that was approved for gazetting in 1965. However, the actual gazetting was *never* done. When the dam project was introduced, the Orang Asli of Gerachi were promised 2.4 hectares per family in the new resettlement area. With 37 families, this meant that the new resettlement site would have 88.8 hectares for the community. This represents only 21.9 per cent of their earlier-recognised traditional lands. Even so, there is some dispute as to whether the full 2.4 hectares per family has been duly delivered.

Interestingly—or rather, sadly—when in 1999 the Center for Orang Asli Concerns stated that the status of the Orang Asli land in Kampung Gerachi fell under the category 'approved for gazetting' and that the approval was given in 1965, the then Director-General of the JHEOA challenged us on this assertion. According to him, citing the department's 1996 survey (*Data Klasifikasi Kampung 1997*) the land in question was never approved for gazetting and that it is instead 'state forest reserve' (*The Star* 27.4.1999). However, when told that the said approval for gazetting was mentioned in the JHEOA's *Data Tanah* reports in 1990 and subsequent years, and that there was no inkling how the status could have changed to that of 'state

forest reserve' in 1997, the Director-General explained that 1990 entry must have been a "typo"! (*The Star* 7.6.1999).

2.1.3 Problems related to Compensation

Apart from having to deal with the problems associated with resettlement and relocation, Orang Asli also have to contend with the issue of compensation when they agree, either voluntarily or otherwise, to give up their traditional territories for others.

In cases where the Orang Asli are recognised as the inhabitants of the land to be acquired (i.e. where the area to be acquired is a gazetted Orang Asli reserve or an Orang Asli inhabited area), compensation is invariably paid according to the narrow interpretation of the Aboriginal Peoples Act. In practical terms, this means compensation being paid for the loss of dwellings or crops introduced onto the land by the Orang Asli concerned. Compensation is not paid for the value of the land itself.

Also, whenever the valuation is done and reported back to the affected Orang Asli, there is no indication of the basis of the valuation but just a gross amount for the items concerned. Thus, for example, Orang Asli still do not know how much a mature durian tree is valued at, compared to a young tree. Or whether the basis for calculation is the potential loss of revenue from the tree for the rest of its natural life span, or the cost of replacing the tree as a seedling, or until it is the same age as the tree lost.

In some cases, the compensation awards are done without transparency and with much suspicion as to the methods and favouritisms applied. In the case of compensation for the Orang Asli of Kampung Gerachi and Kampung Peretak (for the construction of the Sungei Selangor Dam in KKB), for example, the compensation ranged from as low as RM8,000.00 to a high of RM650,000.00. However, some who had many of their fruit trees destroyed

received low amounts compared to those who had fewer trees that were inundated. Also, it is understood that the one who received the highest amount of compensation was not even listed in any of the census lists done by the consultants involved in the EIA or even in the JHEOA census; nor was he an Orang Asli! Needless to say, the list of recipients and the compensation they received is still being treated as a classified document.

There have also been cases where the promised compensation, especially in kind, was not delivered in full, or not delivered at all. We already mentioned the case of the Jahai in RPS Banun who were resettled for the Temenggor dam in Upper Perak. In the case of Kampung Busut Baru and Kampung Air Hitam Baru, who were resettled to Bukit Cheeding, Banting to make way for the KLIA project, the “five oil palms for every one you have” promise never materialised. In fact, even the one-to-one replacement could only be done several years after the community had resettled due to a lack of funds, poor soils, and basically poor planning. And about 400 acres of the 1,000 promised are still not forthcoming.

However, in apparent contradiction to the above, the Orang Asli living around Cyberjaya and Putrajaya now seem to be enjoying a special status when it comes to compensation for traditional territories acquired by the state. For not only are they being paid for the loss of their crops, fruit trees and dwellings, they are also paid compensation on the basis of the land they had to forego. While the authorities prefer to call this compensation ‘*wang ehsan*’ (compassion money), the amount paid roughly coincides with the market value of the land, and has been taken by Orang Asli to mean compensation for their land. Thus far, several Orang Asli have received compensation for their land at the rate of RM200,000.00 per acre. However, this is not practiced anywhere else in the Peninsula.

All these point to a compensation procedure and valuation that is not consistent, transparent and applied fairly. This in turn causes distrust in the system as well as distrust among the Orang Asli themselves.

2.1.4 Problems related to Encroachment and Appropriation

Because Orang Asli traditional territories are not legally titled with permanent tenure, nor are they vigilantly protected by the state authorities, there is much scope for encroachment by outsiders. These outsiders range from corporations, politically-connected organisations or individuals, and even recent immigrants.

For example, in Batu 7 Jalan Cameron Highlands, a former state assemblyman had staked claim to the traditional territory of the Orang Asli there. In Ulu Teris and Kuala Gandah, individuals and organisations linked to the local ruling party have staked claims to the Orang Asli traditional territories. In Kampung Sungei Buntu, Raub and Kampung Ulu Lui, Ulu Langat, newly-naturalised migrants from Indonesia have aggressively appropriated Orang Asli lands and obtained, or are seeking, state approval for their applications for land titles.

In August 1990, 60 acres of the Orang Asli land at Kampung Sungei Dua Olak, Karak were 'given' to Perkim and the Scout Association. In Bukit Kemandul, Kelang, their 544 hectares is now classified as Malay Reserve Land (although 1,000 hectares was earlier earmarked for an Orang Asli reserve). However, in Kampung Kenor and Sandin in Bidor, the Orang Asli lost their land to Felcra which converted their traditional territories into Malay Reserve Land for new Felcra settlers.

Sadly, all this has been allowed to happen because the authorities concerned chose not to apply the law in the Orang Asli's favour. On the contrary they used their interpretation of the law to victimise and marginalize the Orang Asli further.

2.1.5 Problems related to Natural Resource Rights

The rights of the Orang Asli to the natural resources in their traditional territories have been clearly established in the three landmark court cases mentioned in Part 1. In instances where the state wants to apply these precedents, the extraction of such natural resources—especially timber—is given to so-called Orang Asli cooperatives or enterprises on the mistaken belief that they represent the Orang Asli community affected, or, sometimes knowingly, merely to comply with the letter of the law.

However, more frequently this right is not recognised by those who seek to exploit those natural resources. Frequently also, they have state support in this. The Forest Department, for example, has a long track record of not recognising Orang Asli rights to their traditional forest resources, especially timber. Orang Asli have been arrested and placed in the lockup on at least two instances (in Buluh Nipis and Sungei Miak, Pahang) for stopping logging activities on their land.

In Gedong, Perak, logging activities have been approved by the state and certified ‘sustainable’ by the Malaysian Timber Certification Council, despite environmental and forestry laws being flouted, and causing both loss of subsistence resources for the Orang Asli and increasing the danger of devastating and fatal mudslides *again*.

In Ulu Sungkai, with a view to prevent such a tragedy happening, the Orang Asli have prevented the loggers from entering their area, which prompted the police to arrest three of their elders (on the lame claim by forest officers that they were threatened by the Orang Asli).

In all these cases, the JHEOA gave their consent to the logging, and in some cases even chastised the Orang Asli for protesting and asserting their right to their natural resources.

That the JHEOA, through its local officers, have been ‘active’ in the matter of logging in some districts is not a closely guarded secret. In fact, some time ago, the Johor Menteri Besar had accused the state JHEOA of carrying out illegal activities and wanted the federal government to help investigate the matter. He said the Department had been giving out logging concessions without consulting the state government. In one case, he added, the Department gave out a 10-year logging contract to one Goh Ah Seng without referring the matter to the state (*New Straits Times* 12.9.1996). More recently in Selangor, a JHEOA officer sanctioned the logging of an Orang Asli area in Semenyih on the contention that Orang Asli were to be resettled there.

Apart from outright logging activities, Orang Asli now face ‘selective harvesting’ of their traditional resources. Illegal loggers now go for their high-valued *durian* and *tualang* trees (the latter being used by honey bees to build their hives on). Others harvest the *petai* trees belonging to the Orang Asli on the grounds that the trees were “planted by the bears and the tigers and so are free-for-all to anyone”.

Perhaps a direct denial to Orang Asli rights to their traditional resource rights can be seen in the Forest Department’s practice of tendering our annual licences or ‘*bunds*’ for the collection and trade in *petai* and rattan. The presumption is that all forest resources belong to the Forest Department, which has the right to sell the rights for their extraction to the highest bidder, and the Orang Asli who harvest them are regarded as mere labourers of the license-holders. Clearly, therefore, there are state authorities that refuse to acknowledge Orang Asli rights to their traditional resources.

2.1.6 Problems related to Land Titling

In the past 15 years there have been many pronouncements in the press by politicians and government leaders that all Orang Asli will be titled ‘soon’. In fact, in 1996 the JHEOA, through its then Director-General Haji Ikram

Jamaluddin, declared that it was “confident that it will be able to solve the land woes of the Orang Asli within the next ten years” (*The Star* 25.3.1996). The reality is that, today, only 0.5 per cent of Orang Asli land is currently permanently titled.

The former Director-General had said that state governments had agreed in principle to give land titles to Orang Asli, and that the JHEOA would apply for the lands “on which others had no claim on, those earmarked for cluster agriculture schemes, and those the under planned villages concept approved by the state governments.”

The presumption here is that is not necessary that the titles will be given for land that the Orang Asli are currently residing on, nor will it be anywhere near the size of their traditional territories. This is the issue at stake. The Orang Asli want the traditional territories in which they are residing to be either gazetted as permanent reserves, or else that some form of permanent title be issued to it. The state governments, however, see relocation to another site as a precondition for the granting of land titles—in individual names, not communally.

The policy of the JHEOA, we were told by Hj Ikram, was to give Orang Asli land titles under the National Land Code “just like other individuals in Malaysia”.

It should be noted that, although there are some Orang Asli who want individual titles, there are also those who do not as this will undermine their traditional rights to their communal territories. Also, with individual land titles, individual lots would be fixed in size and number, and their total area would invariably be smaller than what they are asserting traditional rights over. The community will also face problems with fixed-sized lots as it will not be able to cope with expanding households, in contrast to the traditional land tenure system which had the advantage of a relatively large traditional territory to fall back on.

Also, given the experience of the dealings in village committees, and given the potential for individuals in the community to abuse the system of distribution of rights and allotments, the practice of granting individual land titles is likely to cause splits in the community. Furthermore, no assurance has been given that the titled lots would be in their traditional territories. On the contrary, there are indications, discussed in the next section, that to enjoy the security afforded by land titles, the Orang Asli would have to be resettled.

Pursuing a policy of granting individual land titles, without first securing title to the communal ownership of Orang Asli traditional territories, as is now envisioned, reveals the position of the state vis-à-vis the Orang Asli on the question of land. For one, Orang Asli customary rights to their traditional territories are not recognised by the state. So too their traditional systems of land distribution are similarly not recognised. Furthermore, their existence as a distinct people attached to a particular ecological niche, is also not recognised. All these work towards reducing Orang Asli autonomy and threatens the security of their traditional territories and resources.

To make matters worse, those Orang Asli who have opted for these 'individual land titles' in new resettlement sites, found that their 'title' was for a 99-year lease. The acreage varies from state to state, and range from 2 to 6 acres. This contrasts vastly from landless peasants in Felda schemes who get 8 to 10 acres of land, with freehold status.

Thus, the policy on Orang Asli land has the effect of not only reducing the acreage of Orang Asli traditional territories by about 70 to 80 per cent, but they also seek to reduce the status of their ownership to one of a *lease*.²

Thus, the Orang Asli are clearly not being treated as rights-holders to their traditional territories. Instead they are still being regarded as 'tenants-at-will' and the granting of 'land titles' to the Orang Asli in these new resettlement schemes is to be seen as an act of kindness and affirmative action on the part of the government.

In summary, the attachment the Orang Asli have to their traditional lands cannot be over-emphasised. Most Orang Asli still maintain a close physical, cultural and spiritual relationship with the environment. Increasingly, also, Orang Asli are beginning to see the ownership of their traditional lands as an essential prerequisite for their material and economic progress. The JHEOA's dismal record of securing Orang Asli land tenure—coupled with increased intrusion into, and appropriation of, Orang Asli traditional lands by a variety of interests representing individuals, corporations and the state itself—have placed the Orang Asli under much social stress and remains a persistent factor contributing to their continued poverty and marginalisation.

2.2 RIGHT TO DEVELOPMENT

Another major problem that the Orang Asli face is that they, as a community, lag far behind the national society in the enjoyment of the fruits of Malaysia's rapid development. There are several reasons for this scenario, not all of which are attributable to the Orang Asli's own doing, neither are they insurmountable.

This section will concentrate on three aspects of Orang Asli achievement in material development: Poverty and Infrastructure & Health and Education.

2.2.1 Poverty and Infrastructure

In 2002, the Poverty Line Index was RM529.00 for Peninsular Malaysia. Any household of five living below that income would be considered as poor. Also, any household living below half that income (i.e. RM264.50) would be considered as 'hardcore poor'.

While the national poverty rate has been reduced to a commendable 5.6 per cent, JHEOA data reveal that the rate for Orang Asli poverty remains at a high 76.9 per cent (Zainal Abidin 2003). That is, more than three-quarters

of the 149,512 Orang Asli still live in poverty today.

It is also sad to note that more than a third of the Orang Asli community (35.2 per cent) fall under the ‘hardcore poor’ category. This is 25 times the national average of 1.4 per cent hardcore poor.

Other indicators also point to the poor quality of life that the Orang Asli experience. For example, only 48.8 per cent of Orang Asli households had some form of piped water, either indoors or outdoors, the others depending 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).

Another indicator of wealth (or poverty) is the availability (or absence) of selected household items that could provide an approximate measure of material wellbeing.³ About a third of the households in the rural settlements (35 per cent) own a motorcycle, confirming its place as an important means of transportation. A fair proportion of both rural and urban Orang Asli households also have access to a radio or television (this negates the presumption that they are ‘isolated’, or that they are blissfully impervious to outside influences). Significantly also almost a quarter (22.2 per cent) of all Orang Asli households did not have any of the selected household items—indicating a “certain lagging in economic development” (Department of Statistics 1997: 42).

All this is happening against a backdrop of substantial funding being allocated in each annual budget for Orang Asli development. This hovered around RM100 million per year for the first few years this decade, although for 2005 it was reduced to RM77 million. (Even so, as some Orang Asli are quick to point out, if all this money was given to the Orang Asli equally in cash form, there would be no Orang Asli living below the poverty line!).

It should also be added that since the mid-1990s, when many of the original JHEOA functions were handed to other ministries (e.g. Ministry of Education, Ministry of Health), those ministries would also have separate allocations for their Orang Asli projects. Thus, the allocation for Orang Asli development is a considerable one, and the government has frequently gone to great lengths to highlight this. Unfortunately, given the social indicators for the Orang Asli, there appears to be a gap between intention and delivery. Clearly, there must be something wrong in the distribution of economic projects if, while the national poverty rate has decreased to single-digit levels, that for the Orang Asli continues to include more than three-quarters of its population.

Cause of Underdevelopment

The reasons for this state of affairs is, needless to say, multi-faceted. However, I would strongly agree with the comments of the then Minister of Finance, Tun Daim Zainuddin, (when he spoke at the opening of the annual general assembly of the Orang Asli Association of Peninsular Malaysia, POASM in 1999) that the main reason for Orang Asli poverty is that “*they do not own land*” (New Straits Times 10.5.1999).

Without permanent security to their traditional territories, Orang Asli are reluctant to develop it further. This is best captured in the words of one Semai headman from Tapah at a dialogue with a former Director-General of the JHEOA, “*Why are you giving us seedlings to grow, when you know that we will only be growing them for others to enjoy the fruits when they are mature!*”, alluding to the frequent encroachments onto his people’s lands and the impending threat of his community being asked to resettle elsewhere.

Without permanent title to their land, Orang Asli are also not able to use their land as mortgages for bank loans which they may need to expand their businesses or develop it further. For a long time, even government

agencies like Felcra and Risda would not entertain Orang Asli applications for subsidies and other development aid unless the land was in the Orang Asli smallholders' name. Similarly, for Tenaga Nasional Berhad in their provision of electricity to Orang Asli areas.

Cause of Development Shortfall

In cases where, despite sufficient funds have been allocated or arranged for the development of Orang Asli areas, and yet these projects fail, the causes can be attributed to misuse or abuse of the funding allocation, poor planning, incompetence of the development provider, and lack of accountability on the part of the officers concerned.

For instance, at the function of a private developer in the former Orang Asli settlement of Bukit Lanjan, where the then Prime Minister Mahathir Mohamad was officiating the opening of the RM200,000.00 year-long training programme for 17 Orang Asli youths to be construction workers, the JHEOA was asked to bus in around 600 Orang Asli headmen from all over the Peninsula. The total cost to the JHEOA for doing so was around RM320,000.00. Again, this was a project of a private company.

The development target of the Orang Asli have also suffered as a result of the privatisation-of-development programme of the JHEOA (where corporations undertake to develop Orang Asli areas in exchange for rights to the resources found on their areas, especially timber).

The first of such privatised Orang Asli regroupment plans was launched in May 1997, with the signing of an agreement between the Johor State Government and Taktik Sejati Sdn. Bhd. Some 600 Orang Asli from 149 families in Kampung Lenek, Selai, Kemidak, Kudong and Tamok in Segamat district in Johor were to receive assistance in terms of "economic, social, personal, mental and outlook (sic) development". A total of 748 hectares of the land was to be developed for agricultural, housing, infrastructure and

other purposes. Another 290 hectares will be surrendered to the state to be alienated to the Orang Asli once the agreement lapses in the 92nd month (*Berita Harian* 28.4.1997, *New Straits Times* 28.4.1997, *The Star* 28.4.1997).

However, the Orang Asli involved were not happy with this move. They questioned why forest products valued at RM60 million were to be apportioned by the Koperasi Daya Asli Johor Berhad (mainly set up by certain JHEOA officers and Orang Asli leaders) and not by the local community. The older Orang Asli, on the other hand, were not in favour of the project as it would mean that three of the settlements would have to move into the traditional territories of Kemidak and Selai—that is, into a smaller area only in order to benefit from infrastructure facilities that they were already enjoying in their existing settlements.

One of the headmen, Batin Keli Osman of Kampung Lenek, disputed the reason, given in a JHEOA working paper, that the village was too far in the interior and therefore needed to be relocated. “The actual fact is,” he said, “our village is located next to the Malay kampung of Kampung Panca Jaya, about 6 kilometres from the main road. We have easy access to schools, clinics, shops and others, while enjoying the economic stability that comes with cultivating our own land” (*New Straits Times* 12.11.1997). He added that it was puzzling that two other kampungs located about 64 kilometres in the interior would not be relocated, while his should be relocated.

However, the project was compulsorily implemented. Four years later, only 15 per cent of the oil palm and 12 per cent of the houses had been completed. The Johor Menteri Besar attributed the delay to the incompetence of a contractor appointed by the new holder of the privatization project, YPJ Corporation Sdn Bhd. The latter had been given the contract after the original private developer absconded after logging most of the timber concession and before embarking on the promised development project (*New Straits Times* 13.4.1999). Today, not all the promised development has been delivered, and Orang Asli in three of the villages have sought legal redress through the courts.

The non-delivery, or the under-delivery, of development goods, usually occur in resettlement schemes where Orang Asli frequently enjoyed such facilities before they were asked to resettle. Thus, in the case of Kampung Busut and Kampung Air Hitam, where KLIA now sits, these two communities enjoyed *all* the basic infrastructure facilities and were no different than any modern Malay village. However, it was at least three years after they moved to the new resettlement scheme that water was piped in. In the meantime, they could not grow their own crops because of the poor soil condition. And the promised oil palm smallholding, or at least a portion of the promised acreage, was only planted when the Orang Asli were into their 4th year of resettlement.

In the case of the Jahai in RPS Banun and the Temiar in RPS Kemar who had to be resettled for the construction of the Temenggor Hydroelectric dam 25 years ago, it is ironic, yet not surprising, that no community there today enjoys any of the electricity generated by the dam.

2.2.2 Health

The crude death rate for Orang Asli is twice that for all of West Malaysia (Ng *et al.* 1992).⁴ In terms of women's health, sex ratios for Orang Asli today, as in the past, favour men; that is, the women die off at earlier ages (Department of Statistics 1997). Orang Asli women have the highest recorded rates of postpartum haemorrhage and puerperal sepsis, far above the rates for other groups (Hema Apparau 2002).

In terms of infectious diseases, Orang Asli children in Perak have three times the incidence of tuberculosis as the state average, and Orang Asli of all ages have 5.5 times the state average (Jeyakumar 1999). Despite their very small population size, Orang Asli had 51.5 per cent of the malaria cases recorded in Peninsular Malaysia in 2001 (JHEOA 2005: 22). In 2003, this proportion had increased to 53.6 per cent (JHEOA Gombak Hospital 2004).

For 1994, the leprosy rate for Orang Asli was 23 times higher than for others

in West Malaysia (Fadzillah 1997). 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). Data from the JHEOA hospital in Gombak reveal that there were 31 cases of HIV/AIDS among the Orang Asli in 2003.

Orang Asli women and children are especially vulnerable to nutritional deficits and attendant intestinal parasitism. Lim and Chee (1998) found that the nutritional status of the 34 Orang Asli women they examined in Pahang was generally not satisfactory. Their mean nutrient intake levels (except for Vitamin C) were below the required minimum, while their mean iron intakes were about one-quarter to one-third of the required level. In Pahang, 35 per cent of the Semai women studied by Osman and Zaleha (1995) had protein-energy malnutrition and 64 per cent were goiterous; even 35 per cent of the men had goitres.

In Perak, 73 per cent of the Temiar women and 48 per cent of the Temiar men studied had intestinal worms (Karim *et al.* 1995). Moreover, the vast majority of Orang Asli children are underweight and stunted (Zalilah and Tham 2002). This supports the findings of Osman and Zaleha (1995) who found that 80 per cent of Orang Asli children studied were undernourished and stunted. Many of the children also had intestinal worms and protozoa, anaemia, dental caries, and vitamin A deficiency (Karim *et al.* 1995; Ariff *et al.* 1997; Norhayati *et al.* 1995, 1998; Rahmah *et al.* 1997).

It is well to emphasize here that most Orang Asli lack food security (Zalilah and Tham 2002). With the majority of them living below the poverty line,

their narrow margin of survival makes the Orang Asli's health situation precarious. They are also vulnerable to natural hazards and the whims of ecosystem destruction by others.

Scape-goating

Blaming the victim instead of oneself appears to be quite commonplace in administrative dealings with Orang Asli, especially in matters about health. For example, in October 1985, when 23 FELDA settlers in Trolak, Perak, came down with jaundice, the health authorities were quick to blame the nearby Semai village and to call for its resettlement. This call was made on the 'possibility' and 'feelings' that the Semai were contaminating the water supply by their unhygienic practices. Although another 1,057 people in the district had come down with jaundice in the preceding month, no drastic action like resettlement was suggested for non-Orang Asli communities. As it turned out, the cause of the outbreak was insufficient chlorination at the treatment plant (*The Star* 18 October 1985, 2 December 1985).

In February 1997, when two Jah Hut children in Kuala Krau, Pahang died from an overdose of anti-malarials irresponsibly dispensed by a health department team, the authorities denied it was their fault and suggested that the deaths were due to the parents' negligence. A coroner's inquiry, however, ruled that the cause of death was in fact an overdose of anti-malarials (Toh 2000, Nicholas 1997, Baer 1999). Notably, this was the *fourth* fatal incident arising out of the anti-malaria programme in the same state!

In April 2004, when four Semai children died within five days with symptoms of vomiting and diarrhoea, the authorities were quick to attribute the tragedy to *salmonella* poisoning—and, consequently, the poor hygiene of the Orang Asli (Husairy Othman 2004). The government reiterated that it could only provide proper health facilities and infrastructure if the Orang Asli were resettled. The Health Minister who made this comment did not realise that RPS Terisu in Cameron Highlands, where the tragic deaths occurred, was a resettlement scheme and had been so for many years! The cause of the deaths was eventually found to be a rota-virus infection.

The government, however, continues to assert that only with resettlement can Orang Asli be assured of proper health care and services. It refuses to acknowledge that much of the lamentable health conditions in these myriad schemes are due to the narrow subsistence base and psychological disenfranchisement caused by uprooting Orang Asli from their traditional territories.

Even more recently, in July 2004, when a study by UPM found high levels of *Escherichia coli* in Tasik Chini lake that caused rashes and diarrhoea in some Orang Asli living in their five lakeshore villages, the Minister in charge of Orang Asli Affairs immediately suggested that the Orang Asli be resettled into one place “so that they can attain proper amenities”. However, as the village batin pointed out, the problem only started when the authorities dammed the Chini River to prevent the lake water from flowing into the Pahang River. Moreover, the university study plainly said the contamination was due to improper sewage disposal by a local resort and by the Tasik Chini national service camp at the lakeside! (*The Star*, 26 July 2004, 27 July 2004, 29 July 2004).

Such blame-shifting on health problems reveal the underclass status of the Orang Asli. No dominant social group would accept such allegations without a counter-challenge, and no politician would dare to pit himself against a group that could jeopardise his own position. Such attitudes about Orang Asli also clearly show how those responsible for promoting Orang Asli welfare and health are themselves not informed or ignorant of the issues involved. Worse, they wield their authority and dominance by backing measures that would further marginalise the Orang Asli.

Insensitivity

The official stance of authority and dominance, coupled with ignorance of Orang Asli culture, is sometimes reflected in an insensitive technocratic way of handling problems. For example, in 1996, when the President of the Malaysian Association of Maternal and Neonatal Health revealed that 60

per cent of the 42 mothers who died during home births in 1994 were Orang Asli (*Sunday Star*, 29 September 1996), the Minister responsible for Orang Asli Affairs immediately ordered that the seven existing Orang Asli health-transit centres be turned into Alternative Birthing Centres (ABCs) (John 1997, 2004).

This official order may appear to be decisive and prompt, but on the ground, it had drastic repercussions. For one, Orang Asli mothers-to-be were ‘warded’ for about a month before the delivery date to ‘wait out’ their time. Not only was this psychologically stressful for the women, it also placed a heavy burden on the rest of the family, especially for those families living near subsistence. Home births were discouraged and in some cases forbidden by local health staff.

Orang Asli mothers still prefer home delivery because institutional delivery not only creates problems for the rest of the family, it is also culturally ‘unfriendly’. It may be true that by encouraging institutional deliveries, maternal death rates will decline, but a more sensitive way of implementing this policy would be to create conditions that allow Orang Asli mothers to feel more secure and comfortable, as well as mitigate the problems faced by families. Another way to reduce Orang Asli maternal mortality is to train resident midwives and make available telephone and transport services. But these options were not considered.

The State of Orang Asli Healthcare today

The Orang Asli health care services is now made up of 125 treatment centres (designated locations where a mobile clinic visits periodically), 20 transit centres (centres where patients and accompanying persons are housed while waiting to be transferred to a hospital for treatment), and 10 health clinics (JHEOA 2005).

There is an understanding between the Ministry of Health (MOH) and the JHEOA’s Department of Health and Medicine, whereby the MOH provides

services to the areas that are accessible by land transportation, leaving the interior villages, numbering 323 villages out of a total of 869, to the JHEOA.

Nevertheless, there are major shortfalls in health service provision to the Orang Asli. The JHEOA itself, in its Orang Asli Community Health Action Plan (JHEOA 2005), points to the lack of comprehensive health services in the interior villages. The same document attributes the falling admissions rate in Gombak Hospital, now a 166-bed hospital, to the shunting of Orang Asli patients to MOH facilities. There are, however, other organizational problems that may be related to this.

Since the early 1990s, there has been no governmental recruitment of Orang Asli paramedics or health providers. This is diametrically opposite to the policy adopted by Dr. Bolton and his team in the 1960s. There has been no official reason for this but some past officers of JHEOA have attributed this state of affairs to the prejudices of certain JHEOA decision-makers, while the JHEOA on its part contends that there were no qualified applicants from the Orang Asli for these roles.

This time period was also marked by a high level of corruption in the JHEOA as acknowledged by a former senior officer of the JHEOA (Mohd. Tap 1990: 84, 104). Newspapers even reported that hospital staff had turned parts of the Gombak hospital premises into daylight gambling dens (*Berita Harian*, 3 March 1984, 10 March 1984).

Orang Asli were often treated condescendingly or berated when some minor error or omission occurred. As such, many Orang Asli said that they did want to go to the hospital because the employees did not treat them with respect (cf. Gianni 2004: 64) or because they were insensitive, discriminatory, and unfriendly (Harrison 2001).

This is not to suggest that there are no instances of exemplary dedication and sensitive dispensation of healthcare to the Orang Asli today. We

acknowledge that particular individual healthcare providers—be they doctors, nurses or paramedics—have displayed the same genuine concern and responsibility so admirably exhibited by the early volunteer doctors and nurses under the still-remembered supervision of Dr. Bolton in the 1960s and 1970s. However, these individuals are the exception and are more likely to be attached to medical centers of the Ministry of Health rather than the JHEOA medical service.

It is not uncommon to hear JHEOA doctors attributing their “sacrifice” to serve the Orang Asli to their “pity” for the people. Also, it is no longer a priority in the Orang Asli medical service to have first-line Orang Asli health workers who can support and clarify technical matters for their hospitalised ‘relatives’. The introduction of a programme to train village-level Orang Asli Health Volunteers (*Sukarelawan Kesihatan*), although an excellent idea, has unfortunately yet to achieve its desired goals.

Orang Asli health care has indeed taken a beating in the past two decades, not for lack of resources or knowledge of what needs to be done, but primarily because the Orang Asli have been treated as not-so-deserving beneficiaries of government largesse.

2.2.3 Education

In general, there has been significant improvements made in the overall school attendance of the Orang Asli. When in 1994, there were 13,200 Orang Asli children enrolled in primary school, by 2003 the number had risen to 23,807, an increase of 45 per cent. Similarly, while there were 2,694 Orang Asli students in secondary school in 1994, by 2003 their number had increased to 6,675—an increase of 56.9 per cent.

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 Form 5 eleven years later. That is, 94 per cent would have dropped out by then.

The dropout rate is also high between the transition from Primary 6 to Form 1. In 2003, of the 3,333 Orang Asli schoolchildren who finished Standard 6, only 1,869 continued into Form 1. That is, a total of 1,464 (43.9 per cent) had dropped out after primary school. This accounts for the lower enrolment numbers at the secondary level.

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.

Usual Reasons Given for Dropping Out

So why do Orang Asli drop out of school? Many reasons have been proffered as to why Orang Asli schoolchildren drop out of school, especially at the primary level. Very recently, in an attempt to explain why 2,304 (44.6 per cent) of the 5,168 Orang Asli studying in primary schools in Pahang from 2000 to 2004 did not continue to Form 1, the State Health, Social Welfare and Orang Asli Affairs Committee chairman Datuk Ishak Muhammad, citing a study by a local group, said that it was mainly due to boredom and laziness (*The Star* 14.1.2006).

“The children are not interested in studying and are fed up with being scolded by teachers,” he added. According to him, the study also said the children would prefer to help their parents at work or were embarrassed to go to school in towns.

Ishak said that concerted efforts were needed from all parties to educate and create awareness on the importance of education among indigenous people. Among the programmes earmarked were motivational courses for heads of families and women folk, tuition, educational aid, transportation and accommodation for those in remote areas, and scholarships, he added. Ishak also said the Education Ministry had built hostels for Orang Asli students in SK Batau, SK Kuala Koyan and SK Permatang Keledang in Kuala Lipis, SM Tengku Kudin and SM Koyan in Raub, and SM Sultan Ahmad Shah in Cameron Highlands (*The Star* 14.1.2006, 26.1.2006).

The reasons of the state minister above are not very different from those frequently given by those in authority, and even some academics, whenever they are asked to explain the poor staying-power of Orang Asli in schools. To further attest the government’s role in providing all the encouragement and facilities to help stem the dropout phenomenon, statistics such as those given in the Table 4 are often displayed as proof of the government’s concerted effort in this matter.

The insinuation is that all that is needed in terms of infrastructure, motivation, financial support and trained personnel have been fulfilled and if the dropout remains high, the fault must lie at the feet of the Orang Asli schoolchildren themselves and/or their parents.

However, a closer look at the trends in Orang Asli education funding assistance (and delivery) coupled with what is happening at the local level will reveal that there are very serious structural problems that have persistently plagued Orang Asli advancement in education. These ‘problems’ have not been given the weight and seriousness they warrant and in fact have been largely sidelined, causing obstacles to Orang Asli educational achievement.

Table 4
Educational assistance for Orang Asli, 2001-2005 (RM)

ITEM	2001	2002	2003	2004	2005
School uniforms	1,450,000	1,550,000	1,700,000	861,440	826,640
Transport	3,750,000	4,400,000	4,800,000	5,165,000	5,650,000
School fees	1,385,000	1,470,000	2,656,970	3,105,000	3,245,000
Activities	1,150,000	1,250,000	1,400,000	-	-
Food rations	700,000	800,000	1,110,000	860,000	600,000
'Allowances'	150,000	170,000	180,000	150,000	250,000
Scholarships (IPT)	410,000	320,000	450,000	620,000	635,000
TOTAL	8,995,000	9,960,000	12,296,970	10,761,440	11,206,640

Source: JHEOA

Structural Reasons for Dropping Out

It is incorrect and unscientific to lay the blame for the high dropout rate among the Orang Asli solely on factors arising from the culture and attitudes of the Orang Asli, both the students and their parents. From my own personal observations, and from pronouncements by Orang Asli themselves through the media or at various fora (such as the one organised by Suhakam in 2005), it is clear that the reasons for the high dropout rate are multi-faceted and involves more structural rather than attitudinal reasons. These structural reasons can be broadly categorised as follows:

- Factors related to poverty;
- Non-delivery of educational assistance;
- Contrast in the Pedagogy and the Culture;
- Gaps in attendance; and
- Imperfections in the system.

Factors Related to Poverty

It is no coincidence that the Orang Asli should experience both a disproportionately high rate of poverty *and* a disproportionately high rate of school dropouts. The two are intimately related.

As any parent of schoolgoing children will know, it is not a cheap affair to send and keep a child in school, even if only the most basic of schooling needs are to be met. It has been estimated that, without any subsidy or other financial support, a parent would need RM100.00 to RM150.00 per schoolgoing child. With most families having several schoolgoing children at a time, sometimes as many as 4 or 5, Orang Asli parents would have to have a sizeable amount of funds at the start of the school year.

And this is where problem becomes more serious: the start of the school year follows the month of November/December which, because they are the wettest months of the year, are also the months when it is most difficult to get cash incomes. Rubber yield is usually low while collection and sale of forest produce, such as rattan, is both dangerous and not in demand.

Thus, January is a time when already poor Orang Asli are expected to cough out a considerable amount of money for school expenses at a time when there is very little sources of cash income.

In the absence of any form of government subsidy or financial support, Orang Asli parents would also have to fork out recurring expenses such as school fees, transportation, meal allowance and extra-curricular activity expenses. As such, there can be no understating how important the government subsidies mentioned in Table 4 are for the Orang Asli.

To illustrate the point, I can cite the case of the Semai community in Woh, Tapah where prior to 1993 no Orang Asli went to school from that area. However, a parent then was very keen for his child to attend school and asked the JHEOA to help with transport. The JHEOA agreed on the condition that there were more students in order to justify the cost of hiring a school

van monthly. With this assurance, 18 children began school within a month. Clearly it was not a case of the ‘poor attitude’ of the parents towards education.

Similarly, in the Temuan community of Ulu Batu, Selangor, none in the community had ever been to school because of the costs involved, even though the school was only about 5km from the village. However, because of publicity in the press, the JHEOA again agreed to arrange for transport and as a result several children, of varying ages, began to go school. And now that a private company has adopted the village, much of the children school needs are taken care of, thus ensuring that the children remain in school.

Clearly, the single-most important factor that is keeping many Orang Asli children from school is simply—poverty.

Non-Delivery of Educational Assistance

The educational assistance for the Orang Asli, through the JHEOA, showed a 24.5 percent increase from RM8,995,000.00 in 2001 to RM11,206,640.00. This increase closely approximates the increase in Orang Asli enrolment in both primary and secondary enrolment for the corresponding years. This would mean that in real terms there had been no increase in the allocation for Orang Asli educational assistance.

However, it is noted that the one single item that goes directly to help reduce the financial strain on Orang Asli parents—school uniforms—had its budget slashed by 43.4 per cent. And this while school enrolment continued to increase and Orang Asli poverty remaining high at 76.9 per cent.

In fact, many Orang Asli parents have been complaining that subsidies for their children had been withdrawn since 2000.⁵ This was not an across the board withdrawal. In some districts, the Orang Asli parents were told that the financial allocations had not arrived yet even though the school year had well started. In other districts, it was back to normal. Yet for many Orang

Asli parents, they felt the pinch when they were told by the local JHEOA offices that much of the educational subsidies they were used to would not be forthcoming that year. Also, several transport contractors stopped ferrying Orang Asli children to school as they were told that the allocation for the year was not there, or not there yet.

The impact of the withdrawal of the education subsidies in 2000 can be dramatically demonstrated by looking at the Orang Asli dropout rates at the primary level given in Table 5. From a high of 71.6 per cent in 1985, we see that the rate of Orang Asli dropping out has been consistently declining over the years until it reached a commendable rate of 15.1 per cent in 1999.

If not anything else, this gradual decline in the dropout rate shows either the success of government programmes at keeping Orang Asli children in school or else that the attitudes of the Orang Asli parents had changed for the better, or a combination of both.

However, for the year 2000, there was a sudden upsurge in the dropout rate. From 15.1 per cent in the preceding year, it more than doubled to 42.9 per cent in 2000. Sadly, as we noted earlier, the dropout rate further increased to 43.9 per cent in 2003.

It is clearly evident that the sudden jump, and the continuing increase, in the dropout rate are directly related to the full or partial withdrawal of educational subsidies for some Orang Asli schoolchildren. Table 4 itself shows that the allocation for school uniforms continues to be slashed over the years despite increasing enrolment figures—and school uniforms represents the single-most important expense item for Orang Asli parents at the beginning of the school year (assuming that their children continue to be eligible for textbook subsidies).

It is perhaps pertinent to remind ourselves that the stated policy of the government, through the JHEOA, is to grant financial assistance for education to Orang Asli children whose parent's household income is

Table 5
Dropout Rate from Primary 1 To Primary 6, 1980-2000

Year of Admission	No. of registered students in Primary 1	Year completing Primary 6	No. of students completing Primary 6	No. of students dropping out	Dropout rate (%)
1980	2,304	1985	654	1,650	71.6
1981	2,416	1986	783	1,633	67.6
1982	2,729	1987	944	1,785	65.4
1983	2,868	1988	1,000	1,868	65.1
1984	2,651	1989	1,052	1,599	60.3
1985	2,879	1990	1,124	1,755	60.9
1986	2,942	1991	1,031	1,911	64.9
1987	2,988	1992	1,217	1,771	59.2
1988	2,881	1993	1,255	1,626	56.4
1989	2,970	1994	1,466	1,404	48.9
1990	3,078	1995	1,699	1,379	44.8
1991	3,248	1996	1,679	1,569	48.3
1992	3,202	1997	1,825	1,377	43.0
1993	3,379	1998	2,264	1,115	33.0
1994	3,128	1999	2,574	472	15.1
1995	5,505	2000	3,144	2,361	42.9

Source: JHEOA

RM405.00 or below—an income level which the majority of Orang Asli households fall below. Yet at the same time, the department claims there is not enough allocation in the budget (“*tiada peruntukan*”) whenever Orang Asli parents approach them for the educational assistance grants they have missed out on.

Sometimes, there is an allocation for such purposes but bureaucratic processes and less-diligent staff prevent the students from getting their approved assistance in cash or kind. To illustrate this point, I cite the case of a Mah Meri girl from Pulau Carey who entered Lower 6 in 2005. She was already two months into her school term and yet she still had none of the textbooks as promised by the local JHEOA office. In the end, she managed to get some donations and was able to buy the books herself. However, when the JHEOA officer found out about this, he asked for the receipt for the books (totalling RM255.00) saying that he would do the paperwork and reimburse her the amount. It was six months later before the amount was reimbursed. The worry is that if she had not been able to obtain outside financial help, she would have been without textbooks for eight months.

In situations where Orang Asli students do not have access to outside financial help, such a non-delivery of educational assistance will result in them falling behind in their schoolwork or, worse, dropping out of school to avoid the shame of not being able to afford the books.

The provision of hostel accommodation is also another form of education assistance given to Orang Asli. Such facilities are especially important for Orang Asli students who have to move to the bigger towns in order to attend secondary school. Without assistance in board and lodging, it is inevitable that these students will be forced to drop out of school.

I cite the case of an intelligent Semai girl who applied for a place in the JHEOA hostel in Tapah but was told it was full. So too was the regular government hostel (for both Orang Asli and Malay students). As an interim measure, she was forced to stay in a construction site *kongsi*, where her father had taken

up temporary work two months previously—precisely to earn some cash to send his two children to school (another is in primary school nearer to the village). The father sadly noted that once his job ends, she will have to end her schooling as well.

Contrast in the Pedagogy and Culture

The national system of education is one where the government, the teachers, and in the case of the Orang Asli, the JHEOA, determine the nature, content and administration of the school system. In some schools, the parents play a role as well. And for the most part, the responsibility of educating the students are tasked to the teachers.

This is in contrast to the traditional Orang Asli system where the learning process and method is multi-faceted and holistic. Through their indigenous language, a child is taught to be polite, considerate and amicable. Through their arts and crafts, the child learns that with creativity and effort, unlimited utility can be gained. Through songs and rituals, it reminds the child of the other world. And through its legends and folklore, it instills pride and identity in being a member of the community. There is no fixed curriculum or syllabus, nor timetable for learning. Learning is treated merely as a process to be a good Semai; not to compete in the award of a certificate.

The village is the schoolhouse, and the teachers are the child's parents, siblings, uncles, aunties, grandparents, cousins, and neighbours. From the elders, the Orang Asli child learns about the riches of the environment, and how it will forever protect them as long they reciprocate the relationship. The usefulness of the products of the forest—for fuel, medicines, food, building materials, crafts, and for peace of mind—are continually shown to the child. The child itself is encouraged to use the forest as its playground. That the forest is a living entity, with a soul and spirituality of its own is also imparted to the child. Remove this dominion and you remove the very basis of the fabric of Semai society. The child believes in all this because the parents themselves believe in it.

The national school system reduces all this to a fixed curriculum and salaried practitioners, with a rigid *modus operandi*. For an Orang Asli child entering the school system for the first time, he is thrust into a new environment and has to deal with new people with differing cultures and values. This comes as a shock to him. Some may be able to adapt, others may simply choose to withdraw.

An Orang Asli child who is not accustomed to being beaten or scolded, for example, will be fearful of returning to school if such action is committed against the child. Sometimes an innocent threat is enough to cause an Orang Asli to stay away from school. I once came across two Orang Asli primary schoolboys who stayed away from school for the first week because their name tags were not ready. Their headmistress had told the students at an assembly that the wearing of the name tags was compulsory and that those who did not wear them would not be allowed in school. As it turned out, they did not have their name tags because the supplier had run out of raw materials.

Orang Asli first-year schoolers are also generally ‘slower’ than the other students primarily because they do not have the exposure that the others get. For example, not all Orang Asli children have the opportunity to attend kindergarten, and therefore are not able to read and write when they enter Primary 1, let alone be conversant in Malay. Nor do they have the advantage of access to all sorts of educational toys or TV programmes during their preschool years. This puts them at a great disadvantage compared to other students and can sometimes be the reason for them being ‘left behind’ in the academic progress.

Orang Asli schoolchildren are also frequently bullied or ridiculed as a consequence of the prejudice and ignorance of their origins and their culture. Most Orang Asli children are able to cope, but a significant number choose to leave school, usually in the early years, in order to avoid having to face such distressing behaviour from their non-Orang Asli peers. That is, they choose to apply the “flee-rather-than-fight” value of their fore-

fathers—one that has allowed the survival of their communities in the wake of violent attacks and encroachments on them in the past.

Also, when Orang Asli children choose to remain at home during the harvest season, or during the fruit season—two most important periods in the lifecycle of traditional Orang Asli societies—they and their parents are chided for placing a low importance on education. But how many Malay students go to school during Hari Raya, or Chinese students during the Chinese New Year?

Furthermore, for families living in poverty, the fruit season and the harvesting period are about the only times when food is aplenty. Still, this practise (of skipping school to benefit from the bounty of nature) has generally been on the decline in most Orang Asli communities, yet it is still being cited as a reason for their ‘poor attitude’ towards the importance of education.

Cultural factors also come into play in areas such as curriculum content, relevance of subjects taught, indigenisation of teaching modules, medium of instruction, and acknowledgement of indigenous traditions and systems. The point to be stressed is that: on entering the national mainstream school system, the Orang Asli child is at an immediate cultural disadvantage compared to the other communities.

Gaps in Attendance

For Orang Asli schoolchildren who are academically weak to start with, missing out on classes for a stretch of time can push them further back academically such that it will be difficult for them to catch up with their non-Orang Asli classmates. This is especially so since most Orang Asli children do not have the benefit of additional tuition classes or can depend on their parents for such tuition.

And once they realize that they are too far behind in their studies, and without any chance of catching up with the rest, the probability of them dropping out of school is very high.

As mentioned in the preceding section, one such reason for skipping classes is when the school holidays do not coincide with the Orang Asli's preferred time for such holidays—such as during the rice harvest or during the annual fruit season. While these events are applicable for the more traditional Orang Asli who still depend on the subsistence economy for most of their basic needs, and this number is on the decline, the Orang Asli schoolchildren from this sector represents a significant number of those Orang Asli dropping out of school early.

However, Orang Asli children experience breaks in their schooling (i.e. long absences from classes) for other, easily avoidable reasons. The most common is the non-availability or the removal of the transport services from their homes to the school. We have had numerous complain from Orang Asli parents about irregular, or sometimes complete stoppage, of transport services that their children's education are affected.

Transport service contractors, for their part, complain that payments from the JHEOA are slow in coming, sometimes taking as long as 4 to 6 months. In some instances, these contractors have told Orang Asli parents that the JHEOA had withdrawn the allocations altogether.

However, even when there are allocations, the fault frequently lie with the transport contractors. I remember going to the Temuan village in Ulu Batu before noon and day and saw the children busily finishing their homework before changing into their school uniforms. When I came back to this house a few hours later I was surprised to see the children in their normal clothes. When asked why, they said that their school van did not turn up *again*.

In the Chewong village in Kuala Gandah, the old rickety bus owned by the transport contractor broke down. It was not repaired for four months, and neither was a alternative mode of transport sourced. So for four months (i.e. until the end of the school year), none of the children went to school. With all schoolgoing children having missed much of their lessons, it is not surprising that many of them did not continue school the following year.

Thus, while it is important to make sure Orang Asli children go to school, it is equally important to ensure that there are no breaks in their attendance such that they will be left behind academically. If this were to happen, the chances of the Orang Asli dropping out of school is increased.

Imperfections in the system

To a large extent, Orang Asli parents are left out of the education system. There may be some schools where they are part of the Parent-Teachers Associations (PTAs) but their impact in these bodies is invariably negligible. In communities where the dropout rate is highest, they are more likely to be not involved at all.

If parents are not directly involved, however cursorily, in their children's education, it is difficult to see how their needs and aspirations can be advanced and realised. This is especially so if the teachers and the school do not regard the parents as important partners in the education process. They can also provide valuable feedback to ensure a safer and longer stay in school for their children.

I am reminded of an incident involving a JHEOA hostel in Ulu Kinta several years back where the Orang Asli parents were being told by their children that they were being exposed to pornographic videos by some of their teachers. There were also allegations of abuse. Police reports were lodged—something the normally reticent Temiar are not accustomed to doing—and an investigation was promptly conducted by the JHEOA. Needless to say, the JHEOA investigation found no truth to the matter.⁶ And the parents were left with the dilemma of asking their children to drop out of school or to close their eyes as well.

Without formal involvement of the parents in the education of their children, and in decision-making positions as well, it is likely that shortcomings and failings will be allowed to exist and continue.

Sometime in 2005 I was in Pos Gedong, a large Semai settlement about an hour and a half via rough road from Bidor. There was a primary school there, complete with staff quarters. I woke up at about 8.00 am only to see the schoolchildren in the house I was staying still at the fireplace and in no hurry to go to school, which was a 10-minute walk away. When asked why they were not in school yet, their reply stumped me.

“No point going early,” one replied, “as the teachers only arrive at about 8.30 or 9.00am from Bidor.”

I was told all the teachers prefer to commute daily from Bidor despite there being very decent staff quarters available for them. Given the distance they have to travel each day, they regularly arrive late for school. On rainy days, they sometimes do not turn up.

When asked why no one complained to the authorities concerned, the parent there just shrugged her shoulders. She feared repercussions on her children if she did so. Besides, she told me, she was not their employer.

All such imperfections in the delivery of the education good to the Orang Asli can be removed or reduced if it was mandatory for Orang Asli parents to be directly involved in the whole education process, *with the ability to influence decisions as well*. If this were to happen, one can think of some immediate benefits. For one, they would have access to more information about the various scholarship programmes of the government or of other charitable bodies that award special grants for educational assistance.

They will also be able to see to it that the JHEOA ensures that the school uniforms, text books and other supplies arrive on time, and in the right quantity and sizes. They will also be able to keep a check on the way the hostels are run and managed, or check bullying in the schools, or simply to correct prejudices if and when they crop up.

That is to say, they should be allowed to continue to bear the responsibility of educating their children—only this time as equal partners with the education professionals.

Having considered all the above, it is clear that the Orang Asli are once again losing out on education, as demonstrated by the high dropout rate. There is also a need to recognise that the single-most reason why Orang Asli children drop out of school is poverty. Withdrawal of educational assistance on a per capita basis will only mean more Orang Asli children being forced to stop schooling. Parents should also be allowed to be more involved in their children's education and be allowed to take on a more proactive role.

2.3 RIGHT TO SELF-DETERMINATION

An important concept in the context of indigenous peoples that is often overlooked or denied, is that of the right to self-determination. The term has different applications for different indigenous peoples in different countries and can mean the right to sovereignty or the right to autonomy within a nation state.

In principle, the right to self-determination incorporates certain inalienable rights of the indigenous peoples on account of their prior presence on the land. Many of these indigenous communities still maintain exclusive communities, speak their own languages, practice customs according to an adat or customary law, and have their own systems of leadership and governance. The Orang Asli, as a community, clearly satisfy the criteria for being regarded as indigenous peoples. It follows then that they are also entitled to the right of self-determination.

2.3.1 Seeking Recognition

What does self-determination entail for the Orang Asli?

Essentially, Orang Asli today seek recognition—by the Government and the national community—of their special rights, of their problems, and of their perspectives. They seek recognition that their ancestral lands are essential for their economic, social and spiritual development; and they want to secure these lands. They seek recognition that they have been marginalised and discriminated against by the colonial and national governments; and they now want redress. They seek recognition that they possess complex, flexible and appropriate social institutions; and they now want the right to practise them. Orang Asli also want recognition of their right to develop their own cultures, languages and customs; and to be able to transmit them to future generations.

In a broad sense, therefore, Orang Asli want to exercise their right to be able to develop and progress as individuals and as a people, based on a social order that they themselves determine.

It is not as if the Orang Asli never exercised these elements of self-determination before. On the contrary, autonomous self-governing Orang Asli communities, especially in Southern Peninsular Malaysia, were well established before the establishment of the Malay sultanates, with Orang Laut groups even providing crucial military and economic support during the formation of the Johore and Malacca Sultanates. That the Orang Asli were part of the emerging Malay states can also be gleaned from the customary practices in some states, as in Negeri Sembilan and Pahang, where it was necessary to assert genealogical links with Orang Asli ancestry to legitimise local rule.

Today, however, the once politically autonomous and independent people are but a pale likeness of their ancestors. Much of this has to do with the fact that the Malaysian nation state does not recognise the Orang Asli as

a separate *people*—that is, as distinct groups associated with particular territorial bases and requiring ‘government’ on a different basis from that of the other communities.

But, as can be discerned from their demands, Orang Asli are not seeking self-determination in the sense that they want to secede from the Malaysian nation state. Rather, the desire is to exercise full autonomy in their traditional territories, both in the control and ownership of their lands, and in the determination of their way they want to lead their lives.

2.3.2 Self-Determination: What It Implies

In the context of the Orang Asli, the right to self-determination would generally include, but not be limited to:

- The right to the ownership of their lands as the territorial base for the existence of their populations;
- The right to use, manage and dispose of all natural resources found within their ancestral lands;
- The right to control their own local economies, and the right to economic prosperity;
- The right to restore, manage, develop and practise their culture, language, traditions and way of life in accordance with their worldview, and to educate their children to them;
- The right to determine the form of self-government, and to uphold their own indigenous political systems; and
- The right to a life of peace and security.

Self-determination, therefore, not only involves restoring to the Orang Asli their ownership and control over traditional territories, but also involves allowing them to re-establish their indigenous social order as they themselves determine it. In this regard, the Orang Asli community should not be more controlled than any other community in the country. Doing so merely extends the perception that the Orang Asli are wards of the government, incapable of leading their own lives.

2.3.3 Losing Control

As has been argued elsewhere (Nicholas 2000), introducing and maintaining the concept of a ‘mainstream society’ has been politically important insofar as the nation state has been able to assert its logic of a single nationality.

By doing so, the state immediately denies recognition of the Orang Asli as a separate *people*, who are entitled to enjoy the rights as sanctioned by various UN and other international declarations. Instead, by introducing the concept of a ‘mainstream society’, the state makes the presumption that the Orang Asli are to be considered as backward communities in need of government largesse and direction. Hence the expressed objective of the government (and it follows, that of the JHEOA) of ‘integrating the Orang Asli with the mainstream society’.

One Director-General of the JHEOA even considered the Orang Asli as children or wards of the state, whom the government needs to care for “from the womb to the grave”. Thus, this sets the justification to govern the Orang Asli—invariably by more progressive members of the mainstream society.

Such ‘governing’ over the Orang Asli is achieved via the JHEOA, a government agency still currently headed by non-Orang Asli and which has imputed upon itself the role of godparent of all the Orang Asli, often also representing the Orang Asli on their behalf. Sadly, however, the plans and programmes

for Orang Asli development are markedly devoid of autonomy-augmenting objectives as laid down in the 1961 Policy Statement discussed earlier.

The JHEOA has been accused of usurping traditional institutions of leadership such as the *Lembaga Adat* and in its place instituted the Village Security, Development and Welfare committees (JKKKs) or installed village headmen (*batins*) who are frequently perceived to be pro-JHEOA or pro-Government. The JHEOA's 'Procedure and Guidelines for the Appointment of Village Headmen' grants them the opportunity to exercise such discretion should the JHEOA need to apply it.

In a survey of 12 Orang Asli villages in 2003 on the issue of local government (Nicholas, *et al* 2005), most of the respondents felt that the *batins* seldom voice out the problems faced by the villagers to the respective authorities. Even worse, they felt that some *batins* feel it is their duty to convince the villagers to support the programmes of the JHEOA. Thus, for example, in the event that the state wants a particular Orang Asli land, it is not uncommon to find the JHEOA convincing the *batin*, if it cannot convince the community, to accept the State Government's proposals. And, invariably, the *batin's* consent is deemed to be the same as having obtained consent from the community.

In fact, in the appointment of the Orang Asli senator, the JHEOA takes it upon itself to recommend to the minister concerned who, in its opinion, is the best person to represent the Orang Asli in parliament. This is despite the fact that the particular candidate may not have the support of the Orang Asli, or may even be despised by the Orang Asli (as was the case in one candidate).

The JHEOA's perceived role as the Orang Asli's legal guardian also makes it useful for the states to obtain their consent, on behalf of the Orang Asli, should the state want to acquire any Orang Asli land. In all land disputes involving the Orang Asli and the state, the JHEOA has invariably sided with the government side. This has prompted some Orang Asli to comment that

the JHEOA is not a “public servant” but a “government servant”. And much less so a servant of the Orang Asli.

At the SUHAKAM workshop on Orang Asli Rights held in December 2002, the majority of the participants expressed dissatisfaction with the JHEOA. Some strongly believed that the JHEOA was the main culprit for their deplorable situation today, especially when it came to having their lands being taken away. They also said that the JHEOA was also playing an important role in urging the Orang Asli to convert to Islam by equating development with conversion. Most of the Orang Asli also do not have any knowledge about the funds allocated to the local government agencies for the Orang Asli. The others know that there are certain allocations but they are in the dark of the specifics.

Most of the Orang Asli questioned were also of the opinion that for any kind of relations or dealings between the Orang Asli and the local government agencies, the Orang Asli must do this via the JHEOA. This has been the practice for a long time and those interviewed seem to believe that system works this way. In some instances, this has caused problems for the Orang Asli, especially when JHEOA officers are slow to act on their requests or use administrative foot-dragging to sabotage Orang Asli interests in favour of the government or private developer. The case of not gazetting Orang Asli lands that have been approved for gazetting, even if such approvals were given more than three decades ago, is a case in point.

2.3.4 The Response by the JHEOA

At the 2002 Suhakam workshop were representatives from various branches of government, including those from the federal and state government agencies. The Director-General of JHEOA also attended the workshop, and made interventions frequently. Basically, the Director-General denied the accuracy of most of the complaints and was very defensive of the activities of the JHEOA. His responses, and some of the other civil servants, clearly

showed that they were not willing to see the issues as they are and address them accordingly; rather, they saw it as an affront to their leadership and management ability and sought to defend the actions of their staff or their department. Frequently, they resort to repeating written policies, detailing programmes, statistics, allocations, as their proof of the effectiveness of their efforts and the good intention of the government.

However, it is evident from such replies that they are not aware of what was actually happening on the ground, a result perhaps of fleeting working visits or reliance on less than accurate reporting from their subordinates.

The stance taken by officers of the JHEOA whenever the interest of the Orang Asli is juxtaposed against that of the state, can be best illustrated by the following article from *The Star* of 22 March 1998:

The Star, 22 July 1998

A BURNING ISSUE

By Meng Yew Choong

WHILE plantations, which tend to be owned by large corporations, could still get by (albeit at a cost) without using fire, the same cannot be said of the tens of thousands of smallholders or subsistence farmers. These people often do not have the massive resources needed to practise zero-burning agricultural techniques.

For these farmers, fire is a multipurpose tool, says Datuk Ahmad Arshad, president of the National Association of Smallholders.

Fire eradicates pathogens and weeds that may reside in topsoil and vegetation; it loosens soil and prepares it for planting almost immediately -- doing the same with a tractor can cost up to RM250 a day, a sum beyond most smallholders' means; fire also produces fertiliser after the biomass is reduced to ash—a fertiliser that is much cheaper than chemical ones.

However, officialdom is not that sympathetic to small-scale or subsistence farmers. Last month, Department of Environment (DOE) director-general Rosnani Ibrahim “advised” farmers not to use fire to get rid of unwanted biomass.

She also said that there is no reason why the farmers should continue to use fires as there are “various modern techniques” for tilling their fields.

The national no-burn directive apparently also applies to the handful of Orang Asli who still practise rotational agriculture.

Datuk Saleh Sarif, director-general of the Department of Orang Asli Affairs, agrees with the ban as he is not convinced that fire is necessary for these groups of Orang Asli.

“I don’t believe they are subject to any hardship on account of not being allowed to use fire for land-clearing. If they pile the biomass together, it will be a source of nutrients when it rots.

“Anyway, how much nutrient can you get from the ashes? In my observation, all farmers will have to use chemical fertilisers at one point or another.”

However, Colin Nicholas, co-ordinator for the Centre for Orang Asli Concerns, believes Saleh is not well-acquainted with the Orang Asli’s tried-and-tested techniques and their implications for the environment.

“Chemical fertiliser is needed only for land that is cultivated repeatedly like rice fields, but not in rotational agriculture, which has been practised without any problem for hundreds of years.

“Anyway, the Orang Asli practise organic farming, which is in accordance with the general trend of moving away from the use of chemical fertilisers.

“Furthermore, the Orang Asli do not have access to bulldozers and the like that are needed to practise zero-burning agriculture.”

Nicholas argues that if the Orang Asli are denied the right to burn,

they are in effect being denied the right to plant food crops. Hence, they should perhaps be given some form of compensation.

“In the case of the water shortage, you can’t tell the factories not to use any water. By the same principle, this flexibility should be extended to the Orang Asli.”

The assistant director-general of the Fire and Rescue Department, Mohammad Hamdan Wahid, concurs.

“The law must not be overly rigid in this matter. These are the people that you can educate, but you must provide them with some alternative if they are not allowed to use fires. If it is not for their survival, I don’t think these people will start a fire, unless it is an act of sabotage.”

Traditionally, Orang Asli who practise subsistence farming will clear vegetation in April/May and leave the felled material to dry for three months before setting fire to it.

Besides rice, a whole variety of other crops like tapioca, vegetables and sugar cane are also grown on their plots, which are often below 1ha.

Three weeks ago, an Orang Asli in Perak asked this writer: “If we are not allowed to burn, can someone provide us with rice? Maybe one sack per family should be enough to see us through. If that can be done, perhaps we can forego tilling our fields for this season.”

However, Saleh dismisses the possibility of that happening: “We will not give anything like that. Anyway, their children are already receiving food subsidies when they go to school.”

When asked whether the special needs of the Orang Asli have been overlooked in the haste to ensure clear skies, he replies: “There is no question about it, the Orang Asli must follow the Government’s directive, which is intended to prevent the haze. Are you suggesting that they break the law?”

He then adds that the Orang Asli are being helped in “other” ways.

“There are a number of agencies which are helping them, like the Department of Agriculture, Fisheries and so on. Perhaps they can ask for fertiliser subsidies.”

Things aren't completely bleak, however. There appears to be a glimmer of hope for both the orang asli and the smallholders: Rosnani says her department is considering the appeals forwarded by those affected by the nationwide no-burn directive.

“We recognise that there are some specific situations where the use of fire is needed, and we will announce our decision soon,” she says.

Further words of comfort come from Deputy Science, Technology and Environment Minister Datuk Abu Bakar Daud, who said a fortnight ago that the RM500,000 fine (currently being gazetted) for open-burning offenders is “not meant for farmers and smallholders, but those doing it for quick profit.”

That statement will be tested soon. Some lowland Semais in Perak have decided that they cannot afford to wait for the bureaucrats to alleviate their predicament. Two weeks ago, they decided that their hill rice cultivation has to go on, and cleared a small plot of secondary forest near their homes; the debris will be burnt off in August when it's fully dry.

“Last month, the officer (from the Department of Orang Asli Affairs) said we cannot do any burning. But then, if we don't, what are we going to eat?” asks one of them.

Ironically, despite all other government agencies actually supporting the right of the Orang Asli to practice their traditional way of agriculture, the very department that is enacted bylaw to protect the interests and wellbeing of the Orang Asli chose *not* to side with the Orang Asli. Unfortunately, the stand taken by JHEOA officers, especially those at the local level, have not changed significantly in favour of the Orang Asli.

2.3.5 Seeking Self-Determination

For this reason, it is understandable that the Orang Asli should want to reassert their right to self-determination. That is, they want to regain their right to control their lives and their lands, and to be able to negotiate with governments as equals for these and other rights as noted in Section 2.3.2 above.

At first glance, one may say that what the Orang Asli are asking for is unrealistic and politically naive. But if one were to consider that these were the same demands that the indigenous Malays once made—and achieved—it becomes not only realizable but also, hopefully, appreciated. After all, the justification for making those same claims are also the same: prior presence or indigeneity.

In the context of the above, the next two sections will discuss two aspects of Orang Asli self-determination that the Orang Asli hold equally dear today: the right to culture and identity, and the right to security.

2.4 RIGHT TO CULTURE AND IDENTITY

Another problem facing Orang Asli today is that their unique culture and identity are in serious risk of being subsumed or compromised. This is not to suggest that the Orang Asli are being denied the right to practise their culture, or that they are unable to stake claims on their identity. Rather, the assertion is that current policies, programmes and politics work subtly to erode Orang Asli culture and identity whether intentionally or unintentionally.

2.4.1 Modernization, Integration and Orang Asli Identity

The development paradigm adopted by the Malaysian government in its treatment of the Orang Asli remains largely of the modernization model. Here, the overriding prescription for developing the Orang Asli lies in their ‘cultural transformation’ to a politically-defined ‘mainstream’. Social change is thus perceived as a natural and uniform process—which in fact is a process of de-culturation—with ‘modernization’ as its final goal.

Implicit in this model is the perception of the state that the lifestyles of the Orang Asli, and the attachment they have to their traditional territories, are archaic impediments to the progress of modernization. The antagonism is further intensified because the nation state perceives that it cannot modernize effectively if it were to tolerate indigenous minority cultures in its midst. The fear of not being able to exploit the resources that lie within the territories of the Orang Asli, if access to them is impeded by them, is also of concern to the state. Invariably, dispossession of the Orang Asli from their traditional homelands becomes a project of the state, often under the guise of the altruistic goal of incorporation or assimilation into the national economy and dominant culture.

Arguments of ‘primitiveness’ vs. ‘development’ and ‘traditional society’ vs. ‘progress’, further serve to justify the exploitation of natural resources on Orang Asli territories and even their removal from those territories. And because Orang Asli communities derive their history, their culture and their identity from their specific ecological niche, any attempt to erode this traditional territory or to move them out of their homelands is a threat not only to their economic stability and self-reliance but also to their cultural identity.

Thus while the government may be encouraging the development of Orang Asli culture and crafts, “as a tourist attraction” (JHEOA *Programme Summary*, Objective No. 7), its programmes and policies of resettlement, integration, and non-recognition of Orang Asli rights to their traditional

lands in effect works towards removing the very basis on which Orang Asli culture, spirituality and identity are dependent upon.

For it has to be understood that to the Orang Asli, their traditional homeland is more than a collection of water, animals, plants and landforms. It is the basis of their spirituality and the source of their identity. It is also in this specific ecological niche that each community derives its history and its culture—and as such, it is also the schoolhouse of their children.

Thus, because the mainstream education system does not incorporate Orang Asli culture, history, language and spirituality, and because Orang Asli transmit all these to future generations by oral tradition and by practical exposure, the maintenance of the traditional territory is crucial not just for the material survival of the community but for its spiritual and cultural health as well.

2.4.2 Islamisation and Assimilation

When first advanced in 1961 as a state policy, the aim was to integrate the Orang Asli with the Malay section of the community. It has since been restated as the “integration with the wider national society”. Over the years, nevertheless, there have been calls for the Orang Asli to be categorised as Malays.

Towards this end, the Orang Asli have become the target of institutionalised Islamic missionary activity, particularly after 1980 when a seminar on Islamic *dakwah* among the Orang Asli was organised by the Malaysian Islamic Welfare Organisation (Perkim).⁷ The recommendations were largely implemented as strategies to achieve the two-prong objectives of “the Islamisation of the whole Orang Asli community and the integration/assimilation of the Orang Asli with the Malays” (JHEOA 1983: 2).

The *dakwah* programme involved the implementation of a ‘positive

discrimination' policy towards Orang Asli who converted, with material benefits given both individually and via development projects. Community live-in missionaries—*Penggerak Masyarakat*—were also introduced, trained by the Religious Affairs Department and the JHEOA in order to “guide the Orang Asli and to be involved in *dakwah* activities” (JHEOA Kelantan/Terengganu 1996).

The establishment of a special unit called ‘Dakwah Orang Asli’ in Pusat Islam further suggests that this policy has the sanction of the state (*Berita Harian* 23.6.1995). KEMAS (Department of Community Development), which runs the kindergartens in Orang Asli areas, has also been approached to sow the seeds of Islamic living through daily singing of Islamic missionary songs by pre-school Orang Asli children. As one JHEOA state director said, “Such efforts will ensure the dissemination of Islam at an early age and thus make it easier to propagate Islamic values among the Orang Asli” (*Utusan Malaysia* 22.1.1998).

A former Director-General of the JHEOA has even acknowledged that there were official programmes of Islamising the Orang Asli (Ikram 1997). He added that he was “proud to have been involved in various direct and indirect non-compulsion efforts to convey the message of Islam to our Orang Asli cousins” (Ikram 1998). That the JHEOA is directly involved in helping to propagate Islam among the Orang Asli can also be gleaned from the Malay edition of the JHEOA’s *Programme Summary* in which one of the strategies for Orang Asli development to be adopted was, “to increase efforts at introducing a value system based on Islam for the integration of the Orang Asli with the wider society in general and the Malays in particular.”⁷

An opposition PAS Member of Parliament has even suggested that, “instead of being recognised as Orang Asli, they should be assimilated into the Malay race. Their culture should be integrated so that they will no longer be considered separated from Malays” (Mohamad Sabu, *The Star* 26.11.1997).

Hence, while the JHEOA and the government goes to great pains to stress that the policy towards the Orang Asli is one of integration, not assimilation, it cannot deny that the policies, programmes and administration of the Orang Asli has all the ingredients of a policy of assimilation.⁸

Given the above, and considering that there has been no corresponding emphasis on developing, promoting and encouraging Orang Asli culture and spirituality, it can be safely concluded that the right of the Orang Asli to their culture and identity is being curtailed.

2.5 RIGHT TO SECURITY

Article 21 of the UN Declaration on the Rights of Indigenous Peoples state that:

Indigenous peoples have the right to maintain and develop their political, economic and social systems, 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. Indigenous peoples who have been deprived of their means of subsistence and development are entitled to just and fair compensation.

The preceding sections demonstrate how many of these rights are yet to be secured for the Orang Asli. Legal, political, administrative and even personal prejudices and ignorance contribute to the Orang Asli being what they are today —a marginalized and controlled people.

Even in situations where aspects of social security are guaranteed as a result of law or policy, Orang Asli tend to be left out from its enjoyment. For example, there are several scholarship funds, organisations and other mechanisms by which are available to Orang Asli students who are unable to afford their schooling or education in institutions of higher leaning (both public and private). However, such information is not made known to

the Orang Asli or proactively sought out for the Orang Asli, and as such deserving Orang Asli students lose out on them.

Also, given the high rate of poverty among the Orang Asli, it is only to be expected that there should be a proportionately higher number of Orang Asli single-parents, elderly, or poor households enjoying monthly subsistence aid from the welfare department. Yet, from my own observations and queries, this number is disappointingly small. Such aid, despite small and grossly inadequate, can sometimes mean whether a family eats for the day or not. Again, this shortcoming can be attributed to the information system and to the relevant officers not being vigilant and proactive enough in their responsibilities. And the removal of the need for the Welfare Department to get the JHEOA's approval before any monthly aid can be given to an Orang Asli.

Also, as noted by Suhakam itself, the number of eligible Orang Asli without identity cards is high. Again, the poverty is a major reason why many Orang Asli do not get their MyKads processed. The costs involved (travel, photograph, documentation, meals outside) can be very substantial for a person living below the poverty line. And frequently, more than one trip is involved because of incomplete documentation or insufficient funds (e.g. for payment of penalty for late registration). Not surprisingly therefore many Orang Asli choose simply to let this responsibility pass by, thereby further jeopardising the 'security' of their children as citizens. Again, a proactive and sympathetic administrative system will find ways and solutions to this perennial problem.

2.5.1 Securing Orang Asli Social and Cultural Security

The continued marginalisation of the Orang Asli is often the result of misconceptions, myths and prejudices against the Orang Asli that are perpetuated, intentionally or unintentionally, by various parties. Their actions, or sometimes their failure to act, frequently have serious

repercussions on the Orang Asli's social and cultural security. There is a need to identify this phenomenon and to address the issue accordingly.

Flawed Policies and Programmes

Sometimes, seemingly well-intentioned policies and plans for Orang Asli development, for example, can hide in-built injustices and dominance. The offer of 'land titles' to Orang Asli by several states make it appear that the states are being generous and finally acting on the land rights issue. On the contrary, the states are still not recognising the legal and customary rights of the Orang Asli to their traditional lands. Even so, the 'land titles' that are offered are currently for 99 year leases and, invariably, for much smaller areas of land that they traditionally may claim to (and smaller than even what previously landless non-Orang Asli Felda settlers receive).

The policy of contracting out the management of Orang Asli oil palm and rubber smallholdings to Felcra, Risa or other private contractors have had a profound impact on their continued poverty. When other smallholders have been earning in excess of RM1,000.00 per month (some as high as RM3000 per month) for their 4 to 5 acres during the period when commodity prices were high, the Orang Asli smallholders were tied down to management contracts that gave them only RM200-RM400 per month. There is no surprise therefore that the poverty rate among the Orang Asli remains very high despite good commodity prices lately.

In this regard, the Center for Orang Asli Concerns has received several complaints from Orang Asli smallholders who claim abuse and mismanagement of such contracts, allowing only a select few in the management committee to benefit enormously from the higher commodity prices.

Erroneous and Ignorant Misinformation

Orang Asli frequently suffer greatly whenever a person in authority makes statements that are obviously erroneous yet do not get checked or corrected by those who should know better. This leads to the contention that perhaps

the dissemination of such erroneous statements are intentional and with the aim of further faulting the Orang Asli for failures that should be attributed to the function of government.

To illustrate the point, the opinion of the Menteri Besar of Negeri Sembilan can be cited. He wants to resettle all the “scattered Orang Asli settlements so that they can own houses and not live off the reserve land for ever”.

“There are some settlements that are increasingly inhospitable due to hazardous conditions and we do not want the Orang Asli to risk their lives there,” he said. He cited the Kampung Tekir Orang Asli settlement in Labu as an example of a hazardous living environment, due to the location of a quarry near the village. (*New Straits Times* 27.10.2005).

The truth of the matter is that all Orang Asli villages in Negeri Sembilan are very settled, with some having planted rubber since the 1930s. Many of their kampungs are no different from those of the Malays. It is true that the quarry in Kampung Tekir, Labu is posing a danger and a serious health hazard to the Orang Asli there. However, the quarry was given a permit to operate there around 1992 without their Orang Asli’s consent and with much protest to the authorities concerned. But all this fell on deaf ears. The irony is that the Temuans of Kampung Tekir are now asked to move because of the danger caused by the quarry (rather than having the quarry stop its operations now, if not in the early 1990s).

Also, to now say that the village of Kampung Tekir is in an “isolated” area is to reveal a hidden intention. The village folk have been told that they have to be resettled because the state government had given the land to the Majlis Agama Islam Negeri Sembilan for a housing development project.

The question is: who briefed the Menteri Besar and whether he was corrected at all.

Unfortunately, it is not uncommon to hear politicians and other commentators make such erroneous statements and assumptions about the Orang Asli situation such that, because they often go unchecked, the misinformation is imbedded in the memories of the public. Or worse still, they influence policies and plans that go against the true interest of the Orang Asli.

Threats from Orang Asli Elites

A new category of people have entered the fray in exploiting Orang Asli and Orang Asli territories and resources. These are Orang Asli entrepreneurs or those holding management positions in Orang Asli-based cooperatives or committees set up to manage the smallholdings.

A common business activity is to use their ‘Orang Asli’ entity (such as a ‘cooperative’) and apply to log in Orang Asli areas, sometimes against the wishes of the community concerned, and invariably with very low compensation or benefit-sharing arrangements. Many of these entrepreneurs are closely linked to the JHEOA or local politicians.

In conclusion, it can be safely said that the position of the Orang Asli vis-à-vis their inalienable and acquired rights is not secure. In fact, precisely because the situation is such that the Orang Asli remain one of the most vulnerable communities in the country, if not the most vulnerable.

However, it is important to realise that this condition is not brought about by the Orang Asli’s own doing; rather it is the structures and policies put in place by the dominant society that causes, gains from and perpetuates such a situation.

SOLUTIONS

A FRAMEWORK FOR THE RESOLUTION OF
THE ORANG ASLI PROBLEM



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The terms of reference for this report called for the rights of the Orang Asli to be elaborated, the problems currently faced by the Orang Asli in enjoying these rights to be articulated, and for solutions to be offered.

It would be certainly presumptuous to assert that the solutions to all the Orang Asli problems can be enumerated here. For one, there are various categories of ‘solutions’. Some take on the nature of ‘demands’ as listed down by various parties, the Orang Asli especially, at various workshops or symposia.

Some of these call-for-immediate-action resolutions have included the following appeals: government to give permanent land titles to the Orang Asli, revamping the JHEOA so that it is led by an Orang Asli, providing basic infrastructure to all Orang Asli villages, obtaining prior informed consent and requiring participation before commencing on a project, codifying Orang Asli rights to resource in the forest including that of timber, and giving equal opportunities for Orang Asli women in all aspects.

However, suggestions and ‘solutions’ such as these are only realisable if certain fundamental changes are first conceptualized, executed and realized. And these changes are ‘major’. They require both a political and

a personal will to want to resolve the Orang Asli problem in an amicable and just manner. The following are the key major changes needed in the handling of the Orang Asli problem.

3.1 **CONFER RECOGNITION**

The main obstacle to the Orang Asli not being able to enjoy their rights is that they are not given due recognition as the indigenous people of this land. They are instead regarded as child-like wards of the state and treated accordingly.

There are already laws and court decisions that support the contention that the Orang Asli are to be accorded certain rights, especially the rights to their traditional and resources. The 1961 Statement of Policy for the Administration of the Orang Asli, which is still in force, also contains positive elements for the Orang Asli and should be accept and applied. These are important first steps towards recognising the Orang Asli as indigenous peoples.

3.2 **CHANGE THE MINDSET OF THE JHEOA**

The tables need to be turned around on themselves—the department which is used to organising Program Minda sessions for the Orang Asli (to change their mindset to prepare them for modern living) now need to focus on removing decades-old practices influenced by deep-seated prejudices and assumptions of how the Orang Asli problem is to be managed.

The department must no longer see itself as an agency of the government out to serve the government's interest first. Rather it should take as its cue the mandate expected of it in the preamble of the Aboriginal Peoples Act wherein it is clearly stated that it is to provide for the protection, well-being and advancement of the aboriginal peoples of West Malaysia.

As such the JHEOA should deal with other government bodies and states, not as a collaborator but as an advocate for the Orang Asli. In this regard, it should work actively to secure Orang Asli lands, and not hide behind the rhetoric of ‘land is a state matter’. If FELDA, a federal agency like the JHEOA, can get states to set aside land for its programmes, surely the JHEOA can do better (as the Orang Asli’s claim to the traditional lands is stronger, apart from the fact we are only dealing with about 150,000 people).

The JHEOA should also be more pro-active in its functions. If a situation can turn into a potential problem, it should take the initiative on its own to redress the matter. Problems such as late or non-application for ICs and other documents, or Orang Asli having their religion wrongly inserted in the MyKad merely because of their Malay-sounding names, will have been taken care of without it turning into an issue by anyone.

The JHEOA recognises that there is an ‘implementation gap’ between policy and actual realization of it on the ground. This gap must be closed. And no excuses or justifications proffered. The department must also take responsibility for past promises made by former Director-Generals for example, and not merely shrug them off as, “That was in the past. Now we have a new head....”

The JHEOA should also provide the true picture to the public, the politicians and other decision-makers. The latter’s statements, often times erroneous and misleading, are perceived to be attributable to the JHEOA, especially if it is not corrected by it. The goal should be to project the Orang Asli in the eyes of the mainstream society as a people deserving of recognition and attention. And not to embark on a public relations exercise to defend the questionable track record of the JHEOA.

3.3 CHANGE THE MINDSET OF POLITICIANS

Politicians have the most misconceptions and erroneous perceptions of the Orang Asli and the Orang Asli situation. They need to be re-educated and kept informed.

Politicians should also not be allowed to abuse to withhold or delay subsidies and benefits meant for the Orang Asli in order to suit their media objectives. For example, the Orang Asli in Pekan received their Felcra dividends only in mid-January in 2005 simply because the then Deputy Prime Minister, who was also the Member of Parliament for the area, wanted to distribute them himself. The dividends are usually given out at the end of the year before the new school year begins so that parents can purchase the school needs of the children. It seems ironic therefore for the DPM to advise the Orang Asli on the importance of education at the said function.

Politicians and decision-makers should also be more discerning of the data and information they are fed with. And to take it upon themselves to verify the information themselves.

3.4 GREATER ORANG ASLI INVOLVEMENT

Once recognition is accorded to the Orang Asli, it follows that they should have a greater role to play in the administration and governance of their own lives. It is envisioned that, apart from a greater effort to get more Orang Asli occupying positions of decision-making in the JHEOA, there would any number of committees, boards, councils that will allow greater Orang Asli participation and involvement.

This will improve transparency and accountability and will also seek free, prior and informed consent from the Orang Asli for project, programmes and policies involving them and their traditional lands. This would also

mean more Orang Asli participation in PTAs and hostel committees—and, it follows, greater involvement of parents in their children’s education.

3.5 **BIGGER ROLE FOR ORANG ASLI WOMEN**

The breakdown in the indigenous social and values systems have led to the creation of a class of Orang Asli who are more geared towards fulfilling their self-interests. Orang Asli village heads and the new Orang Asli elites, who are generally male, have tended to become increasingly self-serving in their objectives. It is not unusual for Orang Asli community interests to be superseded by their own interests. At stake are not only Orang Asli traditional lands and natural resources but also Orang Asli indigenous systems that have been compromised or even side-stepped in pursuit of individual gain.

It has been established that women, and Orang Asli women in particular, tend to make decisions that place the community and their families before that of themselves. The exclusion of women in many decision-making roles has not only denied an important group their right to participate in matters concerning themselves and their community but it meant that the assurance of greater accountability and project relevance was lost. As such, Orang Asli women’ participation should be mandatory in all Orang Asli affairs.

If all of the above are adopted, it will be the first step towards righting a grave injustice of the past committed on the Orang Asli—the denial of their recognition as the first people on this land.

Notes

1. This case is now on appeal at the Federal Court. However in 2009, the Pakatan Rakyat-lead Selangor State Government decide to withdraw its appeal and allow the decisions of the High Court and the Court of Appeal to hold good.
2. In December 2009, however, the National Land Council formally approved the guidelines for the 'giving' of land to the Orang Asli. About 29,990 Orang Asli families are to get 2 to 6 acres of land (apart from their quarter acre for dwelling and orchard, not on a leasehold status, but freehold. About 50,000 hectares are to be given in such manner. The catch is Orang Asli would no longer have rights to the 79,000 hectares that have been applied for gazetting but not approved yet and to other areas that they authorities have labelled as 'roaming areas'. Also, with the new policy, Orang Asli would not be able to take the government to court over compensation matters. Needless to say, the Orang Asli do not agree with this policy and have made it very clear to the authorities.
3. The selected 'household items' used in the survey by the Department of Statistics included the motorcar, motorcycle, bicycle, refrigerator, telephone, television, video and radio/hi-fi.
4. Much of this section is taken from: Nicholas, C. and A. Baer (2009), *Health Care for the Orang Asli: Consequences of Paternalism and Non-Recognition*, published in Chee Heng Leng and Simon Barraclough (Ed) (2009), *Health Care in Malaysia: The Dynamics of Provision Financing and Access*, Routledge, Oxon.
5. At the time, the JHEOA attributed this withdrawal of education subsidies (school uniforms, transport) to the financial crisis the country was experiencing then. However, it is to be noted that, despite the depressed economic situation then, the government had actually *increased* the education allocation for Orang Asli to RM100 million! This was to reflect the government's realization of the important role that education plays in 'integrating the Orang Asli into the national mainstream'.
6. Like the parents, I remain unconvinced of this result. Somehow this type of 'investigation' reminds me of how the Police Department's own in-house investigators were not able to identify the perpetrator in the Anwar Ibrahim black-eye case such that a full Royal Commission of Inquiry was needed.
7. The Orang Asli are also the targets of Christian missionaries of various sects, each employing varying methods to achieve their goals. Substantial financial and human resources back some of these missions and it is not uncommon for Orang Asli to be attracted to the various socio-economic inducements offered. However, their activities do not have the sanction of policy nor the endorsement of the state, and hence does not enter our scope. It has also been

suggested that, primarily because of the success of the Christian missionaries in the last two decades, the Muslims chose to step up their *dakwah* activities—as if in a race with the Christians to net the last lost souls in the peninsula. See Loh (1993) and Hasan (1996a) for a discussion on Christian missionary activity among the Orang Asli.

8. Item 5(d) of the JHEOA's 1993 *Ringkasan Program* reads: “Mempergiatkan usaha-usaha penerapan satu sistem nilai yang berteraskan nilai Islam ke dalam masyarakat Orang Asli supaya mereka dapat dibawa untuk berintegrasikan dengan masyarakat umum khususnya masyarakat Melayu.”
9. It is now accepted that: **domination** (when one community takes control of the other), **paternalism** (which occurs when one society governs the other in what it views as being the other's best interest) and **integration** (which occurs when single institutions are developed and ethnic origin ceases to be recognised) all occur within the general framework of **assimilation** (which involves an internalisation of the values of the dominant or majority group) (Banton 1967 cited in Armitage 1995: 186).

References Cited

- Adong bin Kuwau & Ors v Kerajaan Negeri Johor & Anor (1997). *Malaysian Law Journal* 1 MLJ [1997], pp. 418-437, (Mokhtar Sidin JCA).
- Ariff, R. H. T., M. Z. Mohd Nazli, M. Z. Mohd Rizam, M. S. Mohd Shahrman, Y. Zakaria, K. Kamal Nazmir and S. Mohd Farid (1997) 'Health Status of Aboriginal Children in Post Brooke, Kelantan', *Malaysian Journal Child Health* 9: 60-64.
- Baer, A (1999) *Health, Disease and Survival: A Biomedical and Genetic Analysis of the Orang Asli of Malaysia*, Subang Jaya: COAC.
- Baer, A. (1999). *Health, Disease and Survival: A Biomedical and Genetic Analysis of the Orang Asli of Peninsular Malaysia*. Center for Orang Asli Concerns, Subang Jaya.
- Banton, Michael (1967). *Race Relations*. Tavistock, London.
- Bedford, J. (2003) 'The Orang Asli of Peninsular Malaysia: Aspects of Illness and Healing.' M.Phil., Social Anthropology, Oxford University.
- Berita Harian* (10 March 1984), 'JOA sahkan kegiatan judi di Hospital Orang Asli Gombak.'
- Berita Harian* (3 March 1984), 'Hospital Orang Asli jadi tempat judi.'
- Bolton, J. M. (1968) 'Medical Services to the Aborigines in West Malaysia', *British Medical Journal* 2: 818-823.
- Bolton, J. M. (1972) 'Food Taboos Among the Orang Asli in West Malaysia', *American Journal Clinical Nutrition* 25: 789-799.
- Bolton, J. M. (1973a) 'Family Centered Hospital Treatment in the Aboriginal People of West Malaysia', *Community Health* 5: 70-74.
- Bolton, J. M. (1973b) 'A Training-Oriented Medical Programme in West Malaysian Aborigines', *Medical Journal Australia* 2: 1122-1125.
- Bolton, J. M., and M. Snelling (1975) 'Review of Tuberculosis Among the Orang Asli (Aborigines) in West Malaysia from 1951-1970', *Medical Journal Malaysia* 30: 10-29.
- Carey, I. (1976) *Orang Asli*, London: Oxford University Press.
- Carey, Iskandar (1976). *The Administration of the Aboriginal Tribes of Western*

Malaysia. In: Banks, David J. (ed.), *Changing Identities in Modern Southeast Asia*, pp. 43-69, Mouton Publisher, The Hague.

Carey, Iskandar (1978). Penempatan Semula Orang Asli Dari Perspektif Pensejarahan. *Dewan Masyarakat*, 15 February, XVI (2), pp. 50-55.

Department of Statistics (1997) *Profile of the Orang Asli in Peninsular Malaysia*, Population Census Monograph Series No. 3, Kuala Lumpur: Department of Statistics.

Department of Statistics, Malaysia (1997). *Profail Orang Asli di Semenanjung Malaysia/ Profile of the Orang Asli in Peninsular Malaysia*. Population Census Monograph Series No. 3, April, Kuala Lumpur.

Eder, James F. (1993). *On The Road To Tribal Extinction: Depopulation, Deculturation and Adaptive Well-being Among the Batak of the Philippines*. New Day Publishers, Quezon City.

Endicott, K. (1997) 'Batek History, Interethnic Relations, and Subgroup Dynamics', in R. Winzeler (ed.) *Indigenous People and the State*, New Haven: Yale University Southeast Asian Monograph 46, pp. 30-50.

Endicott, Kirk (1979). *Batek Negrito Religion: The World-View and Rituals of A Hunting and Gathering People of Peninsular Malaysia*. Clarendon/Oxford University Press, New York.

Fadzillah, K. (1997) 'Strategies to Overcome Infectious Diseases Among the Orang Asli—Leprosy and Tuberculosis', in *Second National Conference on Infection and Infection Control*, Ipoh, pp. 57-59.

Gianno, R. (1986) 'The Exploitation of Resinous Products in a Lowland Malay Forest', *Wallaceana* 43: 3-6.

Gianno, R. (2004) "'Women are not brave enough,'" Semelai Male Midwives in the Context of Southeast Asian Cultures', *Bijdragen Tot de Taal-, Land en Volkerkunde* 160: 31-71.

Harrison, M. (2001) 'Healthcare Decisions Among Semelai Women of Malaysia', Honours thesis, Hanover, NH: Dartmouth College.

Hasan Mat Nor (1996a). Masyarakat Orang Asli dan Agama Kristian: Satu Kajian Terhadap Sejarah Perkembangan Agama Kristian dan Kesannya Kepada Kehidupan Masyarakat Semelai di Perak. Final Report, Project 22/93, Universiti Kebangsaan Malaysia, Bangi.

Hasan Mat Nor (1997). Kajian Keciciran Kalangan Pelajar Orang Asli Peringkat Sekolah Rendah. Jabatan Antropologi dan Sosiologi, Universiti Kebangsaan Malaysia, Bangi.

Hema Apparau (2002) 'Reproductive Health of Orang Asli Women Who Used the Antenatal Services of the Gombak Hospital', B. Med. Sci. Thesis, Serdang: University Putra Malaysia.

Hood Salleh (1991). Dakwah Islam dan Pembangunan Masyarakat Orang Asli di Semenanjung Malaysia. In: Ismail Abdul Rahman and Mohd Nasir Omar (eds.), *Islam: Cabaran dan Isu Semasa*, Dewan Bahasa dan Pustaka, Kuala Lumpur.

Howell, Signe (1984). *Society and Cosmos: Chewong of Peninsular Malaysia*. Oxford University Press, Singapore.

Husairy Othman, M. (2004) 'Spooked by "mysterious" deaths', *New Straits Times*, 2 May.

Ikram Jamaluddin (1997). Kenyataan Ketua-Pengarah Jabatan Hal Ehwal Orang Asli Malaysia. 31 October, JHEOA, Kuala Lumpur.

Ikram Jamaluddin (1998). Orang Asli: The Truth will Prevail. Letter to *Aliran Monthly*, 7 March 1998.

International Labour Organisation (ILO) Indigenous and Tribal Peoples Convention 169 (1989), available at: www.ilo.org/ilolex/cgi-lex/convde.pl?C169.

Jeyakumar Devaraj (1999) 'Between Myth and Reality: Why are Orang Asli More Prone to Illness?' Paper presented at the World Conference of Primary Care Physicians, Kuching.

JHEOA (1961). Statement of Policy Regarding the Administration of the Orang Asli of Peninsular Malaysia. Jabatan Hal-Ehwal Orang Asli, Kuala Lumpur.

JHEOA (1983). Strategi Perkembangan Ugama Islam Di Kalangan Masyarakat Orang Asli. Jabatan Hal-Ehwal Orang Asli, Kuala Lumpur.

JHEOA (1990). Data Tanah Orang Asli. Jabatan Hal-Ehwal Orang Asli, Kuala Lumpur.

JHEOA (1992). Taklimat Bahagian RPS. Jabatan Hal Ehwal Orang Asli, Kuala Lumpur.

JHEOA (1993a). *Programme Summary*. Kuala Lumpur.

JHEOA (1993b). *Ringkasan Program*. Kuala Lumpur.

JHEOA (1994). *Daftar dan Profail Orang Asli Semenanjung Malaysia, 1993*. Bahagian Pembasmian Kemiskinan, Jabatan Perdana Menteri, Kuala Lumpur.

JHEOA (1996). *Majlis Penyampaian Wajikah dan Bonus Penghulu Orang Asli Negeri Kelantan/Terengganu*. Oleh YB Datin Paduka Hj Zaheda bt Ismail. 12 Ogos 1996. RPS Kuala Betis, Gua Musang.

JHEOA (1996). *Programme bulletin*. Majlis Penyampaian Wajikah dan Bonus Penghulu Orang Asli Negeri Kelantan/Terengganu, 12 August 1996, RPS Kuala Betis.

JHEOA (1997a). *Programme booklet, Majlis Pelancaran Program Kampung Berkembar Antara Perkampungan Melayu dan Orang Asli*, Kampung Bawong, Lasah, 16 August 1997.

JHEOA (1997b). *Pelan Strategi Pembangunan Orang Asli 1997-2005*. June.

JHEOA (1997c). *Negeri Data Anutan Agama Bagi Orang Asli Mengikut dan Daerah Seluruh Semenanjung Malaysia*. Bahagian Penyelidikan dan Penerangan, 13 August 1997, JHEOA, Kuala Lumpur

JHEOA (1997d). *Data Klasifikasi Kampung Perkampungan Orang Asli*. Kuala Lumpur.

JHEOA (2005) *Pelan Tindakan Kesihatan Masyarakat Orang Asli*. Kuala Lumpur: Jabatan Hal Ehwal Orang Asli.

JHEOA Gombak Hospital (2004) *Slide presentation by the head of the Public Health Unit of the Health and Medical Division on 7 July 2004 to a group of visiting Fulbright Scholars from the USA*.

JHEOA website. www.jheoa.gov.my/e-hospital.htm (accessed 16 September 2005).

Jimin bin Idris (1983). *Planning and Administration of Development Programmes for Tribal Peoples (The Malaysian Setting)*. Center on Integrated Rural Development for Asia and the Pacific, Kuala Lumpur. (With the assistance of Mohd Tap Salleh, Jailani M. Dom, Abd. Halim Haji Jawi, Md. Razim Shafie.)

John, E. (1997) 'Zaleha Gets Assurance from Police', *New Straits Times*, 28 June.

John, E. (2004) 'Orang Asli Still Plagued by Age-Old Ailments', *New Straits Times*, 2 May.

Karim, R., N. Rahmah, A. Khairul Anuar, R. Mehdi and B. Abdullah (1995) 'Parasitic Infections in the Aboriginal Community at Temengor, Hulu Perak, Malaysia', *Malayan Nature Journal* 48: 425-432.

Kerajaan Negeri Johor & Anor v Adong bin Kuwau & Ors (1998). 2 *Malaysian Law Journal* 2MLJ [1998], pp. 158-166, (Gopal Sri Ram JCA).

Khoo, T. E. (1979) 'Health Priorities in the Resettlement of the Orang Asli', *Federation Museums Journal* 24: 177-184.

Khor Geok Lin (1988). Malnutrition Among Semai Children. *Med. J. Malaysia*, 43 (4), pp. 318-326.

Khor Geok Lin (1994). Resettlement and Nutritional Implications: the Case of Orang Asli in Regroupment Schemes. *Pertanika – Journal of the Society for Science and Humanities*, 2 (2), pp. 123-132.

Khor, G. L. (1994) 'Resettlement and Nutritional Implications: The Case of Orang Asli in Regroupment Schemes', *Pertanika* 2 (2): 123-132.

Kinzie, J., K. Kinzie and J. Tyas (1966) 'A Comparative Health Survey among Two Groups of Malayan Aborigines', *Medical Journal Malaya* 21: 135-139.

Kleinman, A. (1973) 'Medicine's Symbolic Reality: On a Central Problem in the Philosophy of Medicine', *Inquiry* 15: 206-213.

Kuchikura, Y. (1988) 'Food Use and Nutrition in a Hunting and Gathering Community in Transition, Peninsular Malaysia', *Man and Culture in Oceania* 4: 1-30.

Lambros, C., D. Davis and G. Lewis (1989) 'Antimalarial Drug Susceptibility of *Plasmodium falciparum* Isolates from Forest Fringe Dwelling Aborigines (Orang Asli) of Peninsular Malaysia', *American Journal Tropical Medicine Hygiene* 41: 3-8.

Lim Heng Seng (1997). The Land Rights of the Orang Asli. Paper presented at the CAP National Conference on Land: Emerging Issues and Challenges, 12-15 December, Penang.

Lim Hin Fui (1989). Forest-Human Interaction: A Note on Forest-fringed Villages in Perak. Paper presented at Workshop on Social Forestry. 6 December, Fakulti Perhutanan, Universiti Pertanian Malaysia and Multipurpose Tree Species Network Malaysia, Serdang.

Lim Hin Fui (1997). *Orang Asli, Forest and Development*. Malayan Forest Records No. 43, Forest Research Institute of Malaysia, Kuala Lumpur.

Lim, H. F. (1997) *Orang Asli, Forest and Development*. Kepong: Forest Research Institute Malaysia.

Lim, H. M., and H. L. Chee (1998) 'Nutritional Status and Reproductive Health of Orang Asli Women in Two Villages in Kuantan, Pahang', *Malaysian Journal Nutrition* 4: 31-54.

Loh Kee Wey, Henry (1993). *Evolving Semai Identities: Religious Conversion and Social Relations in a Semai Community*. M.A. thesis, Department of Anthropology, Monash University, Melbourne.

Lye Tuck-Po (1997). *Boundary/Quandary: Colliding Modernities, Batek Hunter-Gatherers, and the Nation-State*. Paper presented at the conference on Tribal Communities in the Malay World, IIAS-Institut fur Ethnologie/ISEAS/Engender, ISEAS, Singapore 24-27 March.

Maybury-Lewis, David (1997). *Indigenous Peoples, Ethnic Groups and the State*. Cultural Survival Studies in Ethnicity and Change. Allyn and Bacon, Massachusetts.

McLeod, F. (1971) 'Midwifery among the Aborigines', *Nursing Mirror News* 132: 28-31.

Ministry of Rural and Regional Development (2005). *The Development Of The Orang Asli Community In Peninsular Malaysia: The Way Forward*. Paper and PowerPoint presentation at the International Conference on the Indigenous People, organised by the Centre for Malaysian Pribumi Studies, University of Malaya, 4-5 July, Kuala Lumpur.

Mohd Tap bin Salleh (1990) 'An Examination of Development Planning among the Rural Orang Asli of West Malaysia', Ph.D thesis, University of Bath.

Mohd. Tap bin Salleh (1990). *An Examination of Development Planning among the Rural Orang Asli of West Malaysia*. Ph.D thesis, University of Bath.

Morris, K. (1997) 'Forest Utilization: Commodity and Subsistence Among the Semaq Beri of Peninsular Malaysia', *Civilisations* 44: 194-219.

Musa Hitam (1994). *Speech of the Malaysian Permanent Representative to the United Nations Commission on Human Rights, New York, 16 February*.

New Straits Times (27 June 2006). *Kelantan: Cash and car among incentives for missionaries*.

New Sunday Times (28 May 2006). The long and tough journey to school.

Ng, M. S., K. Van, and J. Pala (1992) *Demographic Situation of the Aborigines in Malaysia*. Kuala Lumpur: Quarterly Review of Malaysian Population Statistics, No. 18, pp. 9-18.

Nicholas, C. (1997) 'Medicines are for Curing, not Killing', *Aliran Monthly* 17 (3): 7-8.

Nicholas, Colin & A. Baer (forthcoming). Health Care for the Orang Asli: Consequences of Paternalism and Non-Recognition. To be published in *Health Care in Malaysia*, ISEAS, Singapore. Edited by Chee Heng Leng.

Nicholas, Colin (1994). *Pathways to Dependence: Commodity Relations and the Dissolution of Semai Society*. Monash Papers on Southeast Asia No. 33, Centre for Southeast Asian Studies, Monash University, Clayton, Victoria.

Nicholas, Colin (1999c). Orang Asli self-Determination and the Control of Resources. *Cultural Survival Quarterly*, Winter, 23 (4), pp. 49-53.

Nicholas, Colin (2000, 2004). *The Orang Asli and the Contest for Resources: Indigenous Politics, Development and Identity in Peninsular Malaysia*. IWGIA Document No. 95. International Work Group for Indigenous Affairs/Center for Orang Asli Concerns, Copenhagen, 2000. Reprinted 2004. (285+xxv pp.)

Nicholas, Colin (2005a). The Orang Asli and the Laws on Natural Resource Management; A Re-Visit. Paper presented at the UNDP-RIPP/PACOS workshop on Indigenous Peoples and Natural Resource Management Laws, 10 November 2005, Donggongon, Sabah.

Nicholas, Colin (2005b). Consolidating the Past, Negotiating the Present, Strategising for the Future. Keynote address at the Conference on "Communities, Cultures and Change in Malaysia: – Indigeneity, Identity and Social Transformation", 6-7 December 2005, Universiti Malaysia Sabah, Kota Kinabalu Sabah.

Nicholas, Colin and Anthony Williams-Hunt (1996). Orang Asli. In: Jomo K.S. and Ng Siew Keat (eds.), *Malaysia's Economic Development: Policies and Reforms*, Pelanduk Press, Kuala Lumpur, pp. 451-76.

Nicholas, Colin, Tjahjok Chopil and Tiah Sabak (2003). *Orang Asli Women and the Forest: The Impact of Resource Depletion on Gender Relations among the Semai*. Center for Orang Asli Concerns, 2003. (131+xi pp.)

Noone, H. D. (1936) 'Report on the Settlements and Welfare of the Ple-Temiar Senoi of the Perak-Kelantan Watershed', *Journal Federated Malay States Museums* 19 (part 1): 1-85.

Norhayati, M., M. I. Noor Hayati, N. Nor Fariza, A. K. Rohani, A. S. Halimah, M. Y. Sharom and A. H. Zainal Abidin (1998) 'Health Status of Orang Asli (Aborigine) Community in Pos Piah, Sungai Siput, Perak, Malaysia', *Southeast Asian Journal Tropical Medicine Public Health* 29: 58-61.

Norhayati, M., P. Oothuman, M. S. Fatmah, Y. Muzain Minudin and B. Zainuddin (1995) 'Hookworm Infection and Reinfection Following Treatment Among Orang Asli Children', *Medical Journal Malaysia* 50: 314-319.

Osman, A., and M. I. Zaleha (1995) 'Nutritional Status of Women and Children in Malaysian Rural Populations', *Asia Pacific Journal Clinical Nutrition* 4: 319-324.

Osman, A., B. A. K. Khalid, T. T. Tan, L. L. Wu, S. O. Sakinah and M. L. Wu (1993) 'Prevalence of NIDDM and Impaired Glucose Tolerance in Aborigines and Malays and Their Relationship to Sociodemographic, Health and Nutritional Factors', *Diabetes Care* 16 (1): 68-75.

Polunin, I. (1953) 'The Medical Natural History of Malayan Aborigines', *Medical Journal Malaya* 8: 55-174.

Proceedings of the Legislative Council of the Federation of Malaya for the period (Sixth session), March 1953 to January 1954.

Rahmah, N., R. H. T. Ariff, B. Abdullah, M. S. M. Shariman, M. Z. Mohd Nazli and M. Z. M. Rizal (1997) 'Parasite Infections Among Aborigine Children at Post Brooke, Kelantan, Malaysia', *Medical Journal Malaysia* 52: 412-415.

Selangor State Secretariat (2852/1895), 'Request for instructions regarding two documents issued by Raja Laut to Sakais of Perual and Lanjan'. Alternate ref: L444/95.

Sjafiroeddin, M. (1968) 'Nursing Among Aborigines in Malaysia's Jungles', *Alumnae Magazine*, Columbia University Presbyterian Hospital School of Nursing 63 (1): 39-44.

Sunday Star (29 September 1996), 'Orang Asli Encouraged to Give Birth in Hospitals'.

The Star (18 October 1985) 'Jaundice outbreak: Dept. wants Orang Asli settlement resited'.

The Star (2 December 1985) 'Why blame the Orang Asli?'

The Star (26 July 2004) 'Danger lake'.

The Star (26 July 2004) 'Orang Asli exposed to danger'.

The Star (26 July 2004) 'Pollution killing Tasik Chini'

The Star (27 July 2004) 'Development blamed for Tasik Chini's woes'.

The Star (27 July 2004) 'Scattered Orang Asli to be resettled in one village'.

The Star (29 July 2004) 'MB wants Tasik Chini cleaned up'.

Toh, A. N. (2000) 'Charge the Guilty Ones, A-G Urged', *The Sun*, 1 April.

United Nations Declaration on the Rights of Indigenous People (2007), available at: www.un.org/esa/socdev/unpfii/en/drip.html

Veeman, V. (1986/87) 'The Delivery of Primary Health Care: A Case Study of the Aborigines of Peninsular Malaysia', Thesis, Diploma of the Royal College of Nursing, London: Institute of Advanced Nursing.

Wolff, R. J. (1965) 'Modern Medicine and Traditional Culture: Confrontation on the Malay Peninsula', *Human Organisation* 24 (4): 339-345.

Zainal Abidin Haji Ali (2003) 'Pentadbiran Orang Asli: Ke Mana Hala Tujunya? Pengalaman dan Cabaran', paper presented at the Seminar Warisan Orang Asli organized by Department of Museum and Antiquities and the Ministry of Art, Culture and heritage Malaysia, Muzium Negara, Kuala Lumpur, 10 May 2003.

Zalilah, M. S., and B. I. Tham (2002) 'Food Security and Child Nutritional Status Among Orang Asli (Temuan) Households in Hulu Langat, Selangor', *Medical Journal Malaysia* 57: 36-50.