

LEGAL PROTECTION OF THE RIGHTS TO
EDUCATION OF ORANG ASLI CHILDREN IN
PENINSULAR MALAYSIA

BY

SITI MARSHITA BINTI MAHYUT

INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA

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degree of Doctor of Philosophy in Laws

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ABSTRACT

This study examines the existing legal framework for the protection of Orang Asli children in Malaysia, focusing on their rights under domestic laws and international treaties, including the United Nations Convention on the Rights of the Child (UNCRC) and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). The research identifies key issues, including gaps in child-centered policies, the absence of a national strategic vision for Orang Asli child welfare, and limited coordination among support services, which impair the effective implementation of laws and guidelines. The research adopts a qualitative methodology, utilizing doctrinal analysis of legal provisions, case studies, and interviews with stakeholders, including government agencies, non-governmental organizations, and social activists. The study highlights ongoing reforms in Malaysia following the ratification of UNCRC and UNDRIP in 2007 and evaluates the effectiveness of these efforts in addressing the unique challenges faced by Orang Asli children. Comparative analysis with jurisdictions such as Australia and New Zealand provide insights into international best practices, emphasizing the importance of integrated legal frameworks and support services. However, the thesis identifies that while Malaysia demonstrates a commitment to reform, there is a pressing need for a holistic, child-centered approach tailored to the Orang Asli context. This approach involves coordinated policies, community-based support systems, and culturally sensitive child welfare initiatives. The research concludes with recommendations to develop a comprehensive legal framework and a strategic vision for Orang Asli child welfare, addressing existing gaps and fostering a more inclusive and effective system of protection. These measures aim to enhance the well-being of Orang Asli children, ensuring their rights are upheld and they are protected from harm.

خلاصة البحث

تتناول هذه الدراسة الإطار القانوني الحالي لحماية أطفال الشعوب الأصلية (أورانغ أصلي) في ماليزيا، مع التركيز على حقوقهم بموجب القوانين المحلية والمعاهدات الدولية، بما في ذلك اتفاقية الأمم المتحدة لحقوق الطفل (UNCRC) وقرار الأمم المتحدة بشأن حقوق الشعوب الأصلية (UNDRIP). وتحدد الدراسة القضايا الرئيسية، بما في ذلك الثغرات في السياسات التي تركز على الطفل، وغياب رؤية استراتيجية وطنية لرعاية أطفال أورانغ أصلي، ومحدودية التنسيق بين خدمات الدعم، مما يعوق التنفيذ الفعال للقوانين والمبادئ التوجيهية. وتعتمد الدراسة على المنهج النوعي، وذلك باستخدام التحليل التأصيلي القانوني للأحكام القانونية، ودراسات الحالة، والمقابلات مع أصحاب المصلحة، بما في ذلك الوكالات الحكومية والمنظمات غير الحكومية والناشطين الاجتماعيين. وتسلط الدراسة الضوء على الإصلاحات الجارية في ماليزيا بعد التصديق على اتفاقية حقوق الطفل (UNCRC) وقرار الأمم المتحدة بشأن حقوق الشعوب الأصلية (UNDRIP) في عام 2007، وتقيم مدى فعالية هذه الجهود في التصدي للتحديات الفريدة التي يواجهها أطفال أورانغ أصلي. ويوفر التحليل المقارن مع ولايات قضائية مثل استراليا ونيوزيلندا رؤى حول أفضل الممارسات الدولية، مع التركيز على أهمية الأطر القانونية المتكاملة وخدمات الدعم. وتحدد الدراسة أنه في حين تُظهر ماليزيا التزاما بالإصلاح، فإن هناك حاجة ملحة إلى نهج شامل يتمحور حول الطفل ومُصمّم خصيصا لسياق أورانغ أصلي وينطوي هذا النهج على سياسات منسقة، وأنظمة دعم مجتمعية، ومبادرات رعاية الطفل الحساسة ثقافيا. وتختتم الدراسة بتوصيات لتطوير إطار قانوني شامل ورؤية استراتيجية لرعاية أطفال أورانغ أصلي، ومعالجة الثغرات القائمة وتعزيز نظام حماية أكثر شمولاً وفعالية، وتهدف هذه التدابير إلى تعزيز رفاهية أطفال أورانغ أصلي، وضمان الحفاظ على حقوقهم وحمايتهم من الأذى.

APPROVAL PAGE

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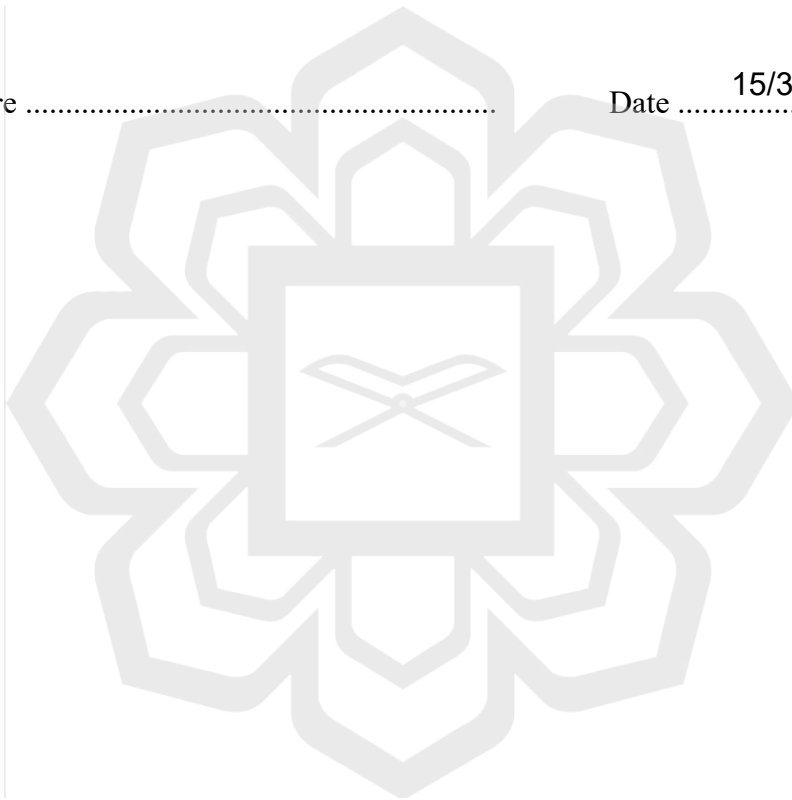
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I hereby declare that this dissertation is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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In the name of Allah, the Most Gracious, the Most Merciful.

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TABLE OF CONTENTS

Abstract	ii
Abstract in Arabic	iii
Approval Page.....	iv
Declaration.....	v
Copyright Page.....	vi
Acknowledgements	vii
List of Tables	xiv
List of Figures	xv
List of Statutes	xvi
List of Cases.....	xvii
List of Abbreviations	xviii

CHAPTER ONE: INTRODUCTION 1

1.1 Introduction	1
1.2 Background to the Study	2
1.3 Problem Statement.....	4
1.4 Objectives of the Research	5
1.5 Research Questions.....	6
1.6 Hypothesis	7
1.7 Research Methodology	7
1.7.1 Justifications for not Interviewing the Orang Asli Community in the Research.....	10
1.8 Significance of the Study.....	11
1.9 Scope and Limitation of the Study	12
1.10 Organisations of Thesis	13
1.11 Literature Review	15
1.11.1 Civil and Political Rights	28
1.11.2 Economic, Social and Cultural Rights	30
1.12 Factors Affecting Educational Access for Orang Asli Children.....	32
1.13 Issues Arising from the Sk Tohoi Tragedy.....	37
1.14 Recommendations on Improving the Educational Rights of the Orang Asli People.....	45
1.15 Conclusion	48

CHAPTER TWO: THEORETICAL FRAMEWORK ON THE RIGHTS OF ORANG ASLI CHILDREN UNDER THE INTERNATIONAL CONVENTIONS.....51

2.1 Introduction	51
2.2 Distinctions Between the Malay, Orang Asli, & the Native of Sabah & Sarawak	54
2.2.1 The Malays.....	54
2.2.2 Orang Asli	55
2.2.3 The Native of Sabah & Sarawak.....	56
2.3 Poverty & Population Decline.....	57
2.4 The Threat of Industrialization & the Orang Asli People Left Behind ..	60

2.5 The Need for Indigenous Children to Receive Greater Protection	64
2.6 The United Nations Convention on the Rights of the Child (UNCRC).....	65
2.6.1 The Malaysian Response to the UNCRC.....	77
2.6.1.1 Education	78
2.6.1.2 Discrimination	82
2.6.1.3 Issue of Forced Conversion	84
2.6.1.4 Issue of Welfare and survival	88
2.7 United Nation Declaration on the Rights of Indigenous Peoples (UNDRIP).....	91
2.7.1 Background of the UNDRIP	91
2.7.1.1 The Position of the UNDRIP in Policy Making	92
2.7.1.2 How UNDRIP aids in defending the rights of indigenous children.	93
2.7.2 The Malaysian Response to the UNDRIP.....	100
2.7.2.1 Life, Liberty and Security.....	100
2.7.2.2 Education	104
2.7.2.3 Child Labour.....	110
2.7.2.4 Welfare	113
2.8 Conclusion	117

CHAPTER THREE: LEGAL FRAMEWORK FOR THE WELFARE AND PROTECTION OF ORANG ASLI CHILDREN IN MALAYSIA119

3.1 Introduction	119
3.2 Child Related Policies in Malaysia.....	120
3.2.1 National Framework for Child Rights in Malaysia.....	120
3.2.2 Policies related to Orang Asli	122
3.2.3 Program Intervensi Khas Murid Orang Asli dan Peribumi (PIKAP).....	124
3.2.4 Sekolah Model Khas Komprehensif (K9).....	125
3.3 Malaysian Legal Framework on Orang Asli Protection.....	126
3.3.1 Federal Constitution.....	126
3.3.2 Education Act 1961.....	128
3.3.3 Education Act 1996.....	129
3.3.4 Penal Code	134
3.3.4.1 Infanticide.....	134
3.3.4.2 Sexual Offences (Rape & Incest)	135
3.3.4.3 Neglect.....	136
3.3.5 Child Act 2001	138
3.3.6 Law Reform (Marriage and Divorce) Act 1976.....	141
3.3.7 Education (Special Education) Regulation 1997	144
3.3.8 Islamic Family Law (Federal Territories) Act 1984	146
3.3.9 Aboriginal Peoples Act 1954 (Act 134).....	146
3.3.10 Statistical Analysis.....	150
3.4 Conclusion	152

CHAPTER FOUR: ROLE OF THE GOVERNMENT AND PRIVATE AGENCIES IN PROTECTING ORANG ASLI CHILDREN IN MALAYSIA.....154

4.1 Introduction	154
4.2 Role of Government	154
4.3 Role of Statutory Body and Private Agencies	156
4.4 Issue on Signing the UNCRC Protecting the Orang Asli Children	162
4.4.1 JAKOA	164
4.4.2 Response from Ministry of Education	164
4.4.3 SUHAKAM	165
4.4.4 NGO - Centre for Orang Asli Concerns (COAC)	167
4.4.5 View Academic Expertise - Dr. Sayuti bin Hassan (UKM)	168
4.4.6 United Nations International Children's Emergency Fund (UNICEF)	168
4.5 Issue on Signing the UNDRIP Protecting the Orang Asli Children	170
4.5.1 Response from JAKOA	170
4.5.2 Response from Ministry of Education	171
4.5.3 Suruhanjaya Hak Asasi Manusia Malaysia (SUHAKAM)	171
4.5.4 Jaringan Orang Asal SeMalaysia (JOAS)	172
4.5.5 View Academic Expertise - Dr. Sayuti (UKM)	173
4.5.6 View Social Activist - Siti Kasim	174
4.5.7 Non-Government Organisation - Centre for Orang Asli Community (COAC) - Colin Nicholas	175
4.6 Issue Rights to Survival	175
4.6.1 Response from JAKOA	177
4.6.2 Response from SUHAKAM	179
4.6.3 NGO - Centre for Orang Asli Concerns (COAC)	180
4.7 Education Policy with Regards to Orang Asli Children	183
4.7.1 Responses from JAKOA	189
4.7.2 Response from Ministry of Education	189
4.7.3 Response from SUHAKAM	190
4.8 Existing Laws Protect the Orang Asli Children	192
4.8.1 Responses from JAKOA	195
4.8.2 Response from SUHAKAM	196
4.9 Solutions and Efforts Done to be in Par with UNCRC and UNDRIP	196
4.9.1 Right to Decide	197
4.9.2 Education Programs and Service	199
4.9.3 Train to Take Responsibility	200
4.10 Findings	201
4.11 Conclusion	202

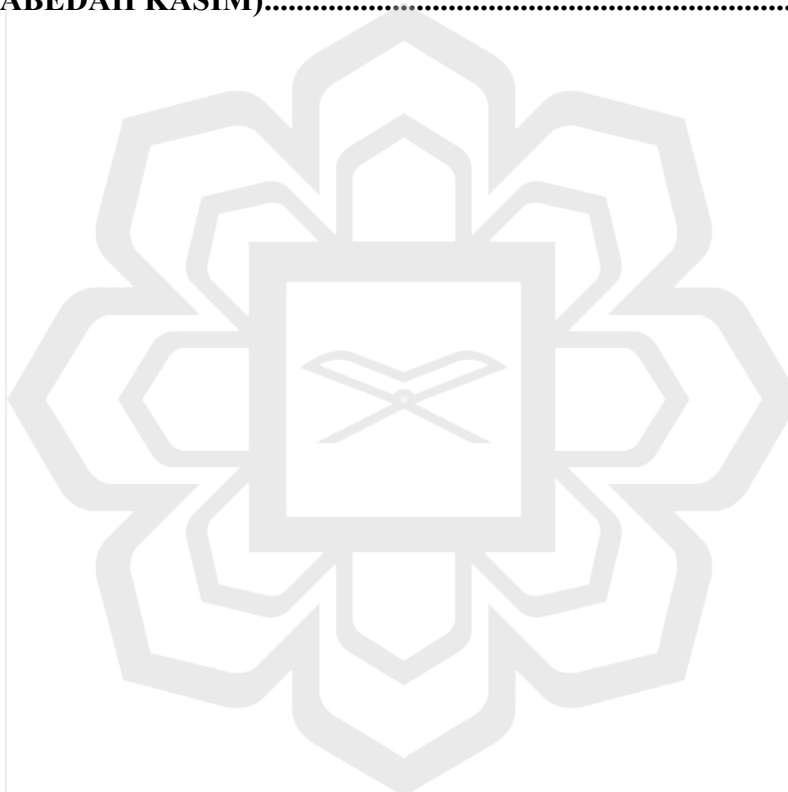
CHAPTER FIVE: THE EXPERIENCES OF OTHER JURISDICTIONS IN ADDRESSING THE PROTECTION FOR ORANG ASLI CHILDREN ..206

5.1 Introduction	206
5.2 Australia	206
5.2.1 Law and Regulations	208
5.2.1.1 Age of Consent	208
5.2.1.2 Education	210
5.2.1.3 Children and Community Services Act 2004	213
5.2.2 National Framework for Protecting Australia's Children 2021- 2031	218
5.2.3 Best Models	223

5.2.3.1 Health Services	223
5.2.3.2 Policy Work	223
5.2.3.3 School Funding and National Reform	224
5.2.3.4 Bringing Them Home Report	226
5.2.3.5 The National Apology and the People's Apology	227
5.3 New Zealand	228
5.3.1 Age of Majority	228
5.3.2 Right to Education	229
5.3.3 Oranga Tamariki Act 1989	233
5.3.4 The Treaty of Waitangi	235
5.4 Best Practice Programs in Other Countries	237
5.4.1 Protecting Aboriginal Children Together (PACT)	237
5.4.2 Child Protection Education and Training for Aboriginal Communities	238
5.4.3 Aboriginal and Torres Strait Islander Higher Education	240
5.4.4 First Nations Child and Family Services	241
5.4.5 Indonesia's Participatory Conservation	241
5.5 Comparative Overview between best Practices in Other Countries to Malaysia	244
5.6 Conclusion	249
CHAPTER SIX: CONCLUSION AND RECOMMENDATIONS	250
6.1 Introduction	250
6.2 Summary of Findings	251
6.3 Implications of Findings	257
6.4 Suggestions and Recommendations	258
6.4.1 Legal Measures and Reforms	259
6.4.1.1 Amendment on Child Act 2001 pertaining to the Best Interests of Orang Asli Children towards Issuance of Child Marriage and Education	259
6.4.1.2 Implementation of Educational rights for the Orang Asli Children under Aboriginal Peoples Act 1954	261
6.4.2 Social Measures	262
6.4.2.1 Development of Policy to Promote Parental Responsibilities	262
6.4.2.2 Development of an Adolescent Pregnancy Focused Policy	263
6.4.2.3 Establishing Sharing Information System at the National, State and District Level	264
6.4.2.4 Preventive Measures through Sexual Reproductive Health Education	265
6.4.3 Political Measures	266
6.4.3.1 Development of National Strategic Vision for the Adolescent Pregnancy Welfare System	266
6.4.3.2 Monitoring Actions from Parents and Independent Body	267
6.4.3.3 The Professionalism of Social Work	268
6.4.4 Spiritual Measures	269
6.4.5 Practical Measures	270

6.4.5.1 Revisiting the Law and Enforcement of Orang Asli's School in Malaysia	270
6.4.5.2 Integrated Special Visit Care Services	271
6.4.5.3 School Based Clinics	272
6.5 Conclusion	272
BIBLIOGRAPHY	274
APPENDIX A: PHOTOGRAPH OF THE RIVER ROUTE TO DAYOK VILLAGE	283
APPENDIX B: PHOTOGRAPH OF ORANG ASLI CHILDREN RIDE RAFTS	284
APPENDIX C: PHOTOGRAPH OF WRITER IN INTERVIEW SESSION WITH ORANG ASLI COMMUNITY.....	285
APPENDIX D: PHOTOGRAPH OF PREMIX ROAD TO DAYOK VILLAGE.....	286
APPENDIX E: PHOTOGRAPH OF ORANG ASLI HOUSE – SEMAI TRIBE.....	287
APPENDIX F: PHOTOGRAPH OF ORANG ASLI CHILDREN BOARDED A JAKOA TRUCK TO GO BACK TO HOSTEL.	288
APPENDIX G: PHOTOGRAPH OF WRITER WITH ORANG ASLI CHILDREN ON THE TRUCK	289
APPENDIX H: PHOTOGRAPH OF WRITER WITH KINDERGARTEN CHILDREN	290
APPENDIX I: PHOTOGRAPH OF ORANG ASLI STUDENTS BACK TO SCHOOL. WAITING FOR TRUCK FROM JAKOA.....	291
APPENDIX J: PHOTOGRAPH OF PRIMARY SCHOOL STUDENT OF ORANG ASLI ON THE BOAT RETURN FROM SCHOOL	292
APPENDIX K: PHOTOGRAPH OF WRITER WITH FAMILY OF ORANG ASLI BATEK	293
APPENDIX L: PHOTOGRAPH OF THE DEATH OF ORANG ASLI DURING PANDEMIC OF COVID 19	294
APPENDIX M: PHOTOGRAPH OF ORANG ASLI TEMUAN TRIBE.....	295
APPENDIX N: PHOTOGRAPH OF ORANG ASLI HOUSE TEMIAR TRIBE	296
APPENDIX O: Letter Confirming Student Status.....	297
APPENDIX P: LETTER TO DR. MUHAMMAD SAYUTI BIN HASSAN (EXPERT IN ORANG ASLI ISSUES)	298
APPENDIX Q: LETTER TO JKM REQUESTING INTERVIEW ACCESS	299
APPENDIX R: LETTER TO DIRECTOR OF HOSPITAL ORANG ASLI...300	300
APPENDIX S: LETTER TO KETUA PENGARAH JKM	301
APPENDIX T: LETTER TO DIRECTOR OF JAKOA.....	302
APPENDIX U: LETTER TO JKM (BAHAGIAN KANAK-KANAK).....	303
APPENDIX V: LETTER TO MOE (BAHAGIAN PENGURUSAN SEKOLAH HARIAN)	304
APPENDIX W: LETTER TO MS. SITI KASIM (EXPERT IN ORANG ASLI ISSUES)	305
APPENDIX X: MOE ERAS FORM	306

APPENDICE I: INTERVIEW WITH THE JABATAN KEMAJUAN ORANG ASLI (JAKOA).....	307
APPENDICE II: INTERVIEW WITH THE MINISTRY OF EDUCATION (MOE)	309
APPENDICE III: INTERVIEW WITH THE JABATAN KEBAJIKAN MASYARAKAT (JKM).....	310
APPENDICE IV: INTERVIEW WITH THE MINISTRY OF HEALTH (MOH).....	311
APPENDICE V: INTERVIEW WITH THE HUMAN RIGHTS COMMISSION OF MALAYSIA (SUHAKAM).....	312
APPENDICE VI: INTERVIEW WITH THE NGO (CENTRE FOR ORANG ASLI CONCERN-COAC).....	313
APPENDICE VII: INTERVIEW WITH THE ACADEMIC EXPERTISE	314
APPENDICE VIII: INTERVIEW WITH THE SOCIAL ACTIVIST – (SITI ZABEDAH KASIM).....	316



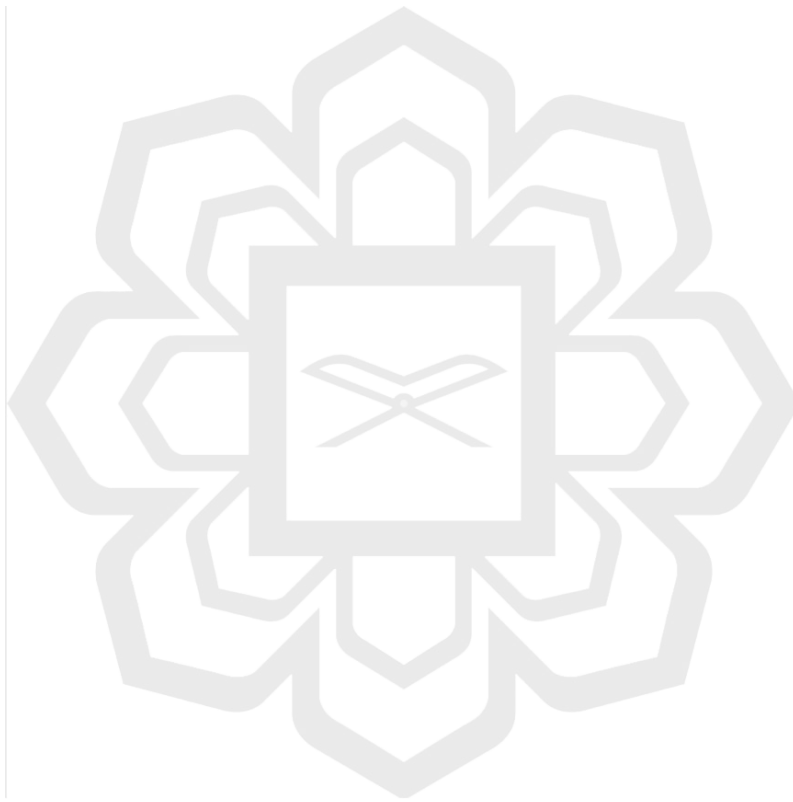
LIST OF TABLES

Table 2.1	List of indigenous groups in Sarawak	58
-----------	--------------------------------------	----



LIST OF FIGURES

Figure 2.1 Categories of ethnics of Orang Asli in Peninsular Malaysia 56



LIST OF STATUTES

Aboriginal Peoples Act 1954 [Act 134],
Aborigines Act 1905 (No. 14)
Aborigines Protection Act 1886 (No. 25)
Adoption Act of 1952 [Act 253]
Age of Majority Act 1970 [Act 21]
Age of Majority Act 1971 [Act 21]
Anti-Trafficking in Person and Anti-Smuggling of Migrants Act 2007 [Act 670]
Child Act 2001 [Act 611]
Children and Community Services Act 2004 (Act No. 034 of 2004)
Criminal Procedure Code [Act 593]
Education Act 1989 (Act No. 080 of 1980)
Education Act 1996 [Act 550]
Federal Constitution
Human Rights Commission of Malaysia Act 1999 [Act 597]
Islamic Family Law Act (Federal Territory) 1984 (IFLA) [Act 303]
Law Reform (Marriage and Divorce) Act 1976 [Act 164]
Native Schools Act 1867
Orang Asli Peoples Act (1954, revised 1974).
Oranga Tamariki Act 1989
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Private Hospital Act of 1971
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Tūhoe Claims Settlement Act [2014]
Te Arawa Lakes Settlement Act [2006]

LIST OF ABBREVIATIONS

ACCHSs	Aboriginal Community Controlled Health Service
AHRC	Australian Human Rights Commission
APA	Aboriginal Peoples Act of 1954
ATHAM	Human Rights Best Practices Program
ATSICPP	Aboriginal and Torres Strait Islander Child Placement Principle
CCC	Children's Consultative Council
CCPC	Coordinating Council for the Protection of Children
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
COAC	Centre for Orang Asli Concerns
COVID-19	Coronavirus Disease 2019
CSE	Comprehensive Sexuality Education
CSOs	Civil Society
DAP	Democratic Action Party
DTP	Diplomacy Training Program
FACS	Family and Community Services
FASD	Foetal Alcohol Spectrum Disorders
FELDA	Federal Land Development Authority
FPIC	Free, Prior and Informed Consent
ICESCR	International Covenant on Economic, Social, and Cultural Rights
ICT	Information and Communication Technology
IFLA	Islamic Family Law Act (Federal Territory) 1984
ILO	International Labor Organization
IPPF	International Planned Parenthood Federation
IPT	Institutions of Higher Learning
ISC	Indigenous Services Canada
JAKOA	Jabatan Kemajuan Orang Asli
JKM	Jabatan Kebajikan Malaysia
JKOSM	Peninsular Malaysia Orang Asli Villages Network
JOAS	Jaringan Orang Asal SeMalaysia
KAP	Orang Asli and Penan Curriculum,
KEDAP	Kelas Dewan Orang Asli dan Peribumi
KIA	Reading and Writing Intervention Class
KKM	Malaysian Ministry of Health
KPM	Ministry of Education
KPWKM	Ministry of Women, Family, and Community Development
LRA	Law Reform (Marriage and Divorce) Act 1976
MARA	Majlis Amanah Rakyat
MOE	Ministry of Education
MOH	Ministry of Health
MOHR	Ministry of Human Resources
MSC	Malaysia Super Corridor
MWFCD	Ministry of Women, Family, and Community Development

NACC	National Advisory and Consultative Council for Children
NAPFL	National Action Plan on Forced Labour
NCER	Northern Corridor Economic Region
NCIA	Northern Corridor Implementation Authority
NGO	Non-governmental Organisation
NIAA	National Indigenous Australians Agency
NSW	New South Wales
NT	Northern Territory
PACT	Protecting Aboriginal Children Together
PAM	Pertubuhan Arkitek Malaysia
PERMAT	National Permata Program
PIKAP	Program Intervensi Khas Murid Orang Asli dan Peribumi
PIPOA	Pusat Intelpek Pelajar Orang Asli
PKKS	Pusat Kegiatan Kanak-Kanak dan Remaja
PLFOA	Program Literasi Fungsian Orang Asli
PMPS	Professional Development Program
PPRT	Projek Perumahan Rakyat Termiskin
PTA	Parent-Teacher Association
RB	Rumah Belajar
RTD	Roundtable Discussion
SA	Sekolah Adat
SEANF	South East Asia National Human Rights Institutions Forum
SRS	Schooling Resource Standard
SUHAKAM	Suruhanjaya Hak Asasi Manusia Malaysia
SUKA	Persatuan Kebajikan Suara Kanak-Kanak Malaysia
SWD	Social Welfare Department
TV	Television
TVET	Technical and Vocational Education and Training
U.N.	United Nation
UDHR	Universal Declaration of Human Rights is one of them
UKM	Universiti Kebangsaan Malaysia
UNCRC	United Nations Convention on the Rights of the Child
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations International Children's Emergency Fund
UPSI	Universiti Perguruan Sultan Idris
UPSR	Ujian Penilaian Sekolah Rendah
YPMAN	Indigenous Peoples' Education Foundation

CHAPTER ONE

INTRODUCTION

1.1 INTRODUCTION

Malaysia is a multi-racial country and there are lots of different cultures being practiced here. However, there is a group of people which are known as the Orang Asli people, who often seem to be excluded in this society. Orang Asli people are also known as ‘Orang Asli’, ‘original people’ or ‘natural people’. There are mainly three main groups according to their customs, namely Proto-Malay, Senoi and Negrito.¹

They practice different kinds of lifestyles and speak different languages. The Jabatan Kemajuan Orang Asli (JAKOA) is entrusted to oversee the affairs of these Orang Asli people. Furthermore, numerous laws have been implemented in order to enhance the lives of the Orang Asli people. However, the Orang Asli and tribal people rights are still often being compared with the rights of other members in this community. Despite the existing laws and policies which have been implemented, their rights still seem to be less protected when compared to common citizens in the cities. The most obvious difference or comparison drawn is regarding the right of education that is accessible by the Orang Asli people. Hence, this research will investigate the reasons behind this scenario and further explanation will be provided to support the statements. Rights of Orang Asli children at national and international level will be discussed in detail. In addition, this research also provides the ways or steps which could be implemented to overcome the problems that lead to this situation.

¹ Edwin Michael and et al, “Orang Asli”, *Southeast Asia: A Historical Encyclopedia from Angkor Wat to East Timor*, vol 2, no.15 (2013): 997–1000.

Thus, it is significant to identify and analyse existing laws which are applicable to protect the rights of Orang Asli children and to determine its adequacy and compatibility in regulating the law in Malaysia. This is pertinent to propose solutions for the implementation of protecting the Orang Asli children in Malaysia that are adequate and compatible with the present legal regime.

Therefore, the focus of this chapter is a brief overview of the background to the study, with a focus on Orang Asli children, and a description of selected contemporary problems experienced by these orang-asli children. This explanation leads to the problem statement, the research questions and the objectives of the study.

1.2 BACKGROUND TO THE STUDY

Malaysia is a multi-racial country, home to diverse cultural practices and traditions. Among its population, the Orang Asli, or “original people,” represent the Indigenous communities of Peninsular Malaysia. Despite being recognised as the earliest inhabitants of the region, the Orang Asli remain one of the most marginalized groups in Malaysian society, facing challenges in education, healthcare, and socioeconomic opportunities. This study focuses on the unique vulnerabilities of Orang Asli children, emphasizing their rights under both domestic and international frameworks².

The Orang Asli consists of three main groups: Proto-Malay, Senoi, and Negrito, each with distinct languages, customs, and traditions. These communities often reside in rural or remote areas, which further isolates them from access to basic social services. According to the Department of Orang Asli Development (JAKOA), more than 50% of

² Colin Nicholas, *The Orang Asli and the Contest for Resources: Indigenous Politics, Development, and Identity in Peninsular Malaysia*, (Copenhagen: International Work Group for Indigenous Affairs, 2000).

Orang Asli lives below the poverty line, with children representing the majority of this vulnerable population.³

Educational opportunities for Orang Asli children remain limited due to systemic issues such as inadequate infrastructure, lack of culturally relevant curricula, and insufficient teacher training. Reports highlight that dropout rates among Orang Asli children are significantly higher than the national average, with only a small percentage progressing to secondary education.⁴ This situation reflects broader socioeconomic inequalities and underscores the need for targeted interventions to address these disparities.

The purpose of this research is to explore the gaps in the existing legal frameworks and policies protecting the rights of Orang Asli children. In doing so, it draws attention to the disparity between international conventions, such as the United Nations Convention on the Rights of the Child (UNCRC) and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and their implementation in Malaysia. These instruments advocate for equality, non-discrimination, and affirmative policies aimed at safeguarding the rights of Indigenous children.⁵

This study also examines the broader implications of these legal gaps on the well-being of Orang Asli children. For instance, the SK Tohoi tragedy in 2015—where several Orang Asli students went missing and were later found deceased—raised critical questions about the adequacy of government policies and the safety standards in schools

³ Department of Orang Asli Development (Jabatan Kemajuan Orang Asli), “Annual Report on Orang Asli Communities in Malaysia,” Jabatan Kemajuan Orang Asli.

⁴ United Nations Children’s Fund, “The State of the World’s Children 2019: Children, Food, and Nutrition,” UNICEF, 2019 <<https://www.unicef.org/reports/state-worlds-children-2019>> (accessed 12 February, 2026).

⁵ Committee on the Rights of the Child, “Concluding Observations on Malaysia’s Report on the Implementation of the United Nations Convention on the Rights of the Child,” Office of the United Nations High Commissioner for Human Rights, 2018.

serving Indigenous communities. Such incidents highlight the urgent need for reform in both legal and policy frameworks.⁶

The background introduces the broader context of the study without referring into detailed analysis or presenting recommendations. Graphs, charts, and other visual data have been relocated to subsequent chapters where they are more contextually appropriate. This streamlining ensures the background serves its intended purpose: to provide an overview of the research area while setting the stage for subsequent discussions.

To align with the feedback, the background has been expanded to include a more detailed examination of the historical, social, and economic factors affecting Orang Asli children. The key conceptual underpinnings, including equality and affirmative policies, are briefly introduced, providing a foundation for the research focus.

1.3 PROBLEM STATEMENT

The protection of the rights of Orang Asli children in Malaysia remains a critical issue, hindered by systemic gaps in legal and policy frameworks. Despite existing laws and policies, such as the Child Act 2001 and the Aboriginal Peoples Act 1954, the implementation of these measures often fails to address the unique challenges faced by this marginalized community. These challenges include limited access to quality education, inadequate healthcare, and the erosion of cultural identity, exacerbating the socioeconomic disparities between Orang Asli children and the broader Malaysian population.

⁶ Lim Kit Siang, "Post-SK Tohoi tragedy: Revamping education for Orang Asli students," <http://blog.limkitsiang.com/2015/10/12/post-sk-tohol-tragedy-the-need-for-revamp-of-the-education-prprogram-for-orang-asli-students/> (accessed 30 October 2022).

The lack of alignment between domestic laws and international standards, including the United Nations Convention on the Rights of the Child (UNCRC) and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), further undermines the protection of Orang Asli children's rights. Key issues include insufficient enforcement mechanisms, fragmented policies, and a lack of culturally sensitive approaches to child welfare.

Moreover, incidents such as the SK Tohoi tragedy underscore the urgent need to reassess the effectiveness of existing frameworks and policies. These incidents reveal systemic failures in ensuring the safety, education, and overall well-being of Orang Asli children, raising questions about the adequacy of governmental and institutional responses.

This research seeks to address these gaps by critically analyzing the legal, policy, and social dimensions of the challenges faced by Orang Asli children. By identifying deficiencies and proposing reforms, this study aims to contribute to the development of a comprehensive, child-centered legal framework that aligns with international standards and addresses the unique needs of the Orang Asli community.

1.4 OBJECTIVES OF THE RESEARCH

The primary aim of this research is to propose solutions to enhance the implementation and reform of legal and policy frameworks protecting the rights of Orang Asli children in Malaysia. This includes ensuring that the existing laws align with international standards and addressing any inadequacies in their application.: -

1. To evaluate existing laws, policies, and regulations protecting the rights of Orang Asli children in Malaysia, with reference to international instruments such as the UNCRC and UNDRIP.

2. To analyze the incorporation and ratification of the UNCRC and UNDRIP into Malaysian law, assessing their strengths and weaknesses in addressing on-the-ground issues related to Orang Asli children. This includes evaluating the role of government agencies, NGOs, and social activists.
3. To examine approaches and best practices from other jurisdictions in protecting and promoting the welfare of Orang Asli children.
4. To recommend amendments or propose a comprehensive legal framework aimed at addressing gaps and ensuring the protection and welfare of Orang Asli children in Malaysia.

1.5 RESEARCH QUESTIONS

In order to fulfill the research, aim and specific objectives as stated above, four research questions have been formulated as follows: -

1. What are the existing laws, policies, and regulations in Malaysia that protect the rights of Orang Asli children, and how effectively do they incorporate international standards such as the UNCRC and UNDRIP?
2. Are the current legal and policy frameworks adequate and compatible in providing comprehensive protection for Orang Asli children? What roles do government agencies, NGOs, and social activists play in strengthening their implementation?
3. What lessons can be drawn from the approaches and best practices of other jurisdictions in safeguarding the rights of Orang Asli children?
4. How can a reformed or new legal framework be developed to address the gaps and improve the welfare of Orang Asli children in Malaysia?

The input from these research questions will be used to propose solutions for the implementation of law in protecting the Orang Asli children in Malaysia that are adequate and compatible with the governing laws.

1.6 HYPOTHESIS

In view of the above background, the research hypothesises that the existing governing laws are not adequate and compatible to protect the rights of Orang Asli children in Malaysia. As such, this research predicates possible legal conflicts and legal problems on the implementation of the governing laws on protection of right on Orang Asli children in Malaysia. The inadequacy and incompatibility of laws requires amendments or enhancements of the existing legislation.

1.7 RESEARCH METHODOLOGY

The methodology consists of two steps: first, library research on reports, papers, and journals relating to the contemporary problems that orang asli children face. Second, conducting in-person interviews with relevant representatives from government agencies, non-profit organisations, and social activists to grasp the issues at hand and pinpoint the steps taken by the relevant organisations to resolve the issue.

Among the agencies interviewed were the Jabatan Kemajuan Orang Asli (hereinafter referred to as “JAKOA”), the Jabatan Kebajikan Masyarakat (hereinafter referred to as “JKM”), the Suruhanjaya Hak Asasi Manusia (hereinafter referred to as “SUHAKAM”) and the non-government organisation Centre of Orang Asli Community) (hereinafter referred to as “COAC”), also a social activist cum a human rights lawyer, Siti Zabedah Kasim. Open-ended inquiries were employed so that the informants may further elaborate on the issues they ran into, as well as their own efforts

and contributions. However, some information was gathered through news and documentaries on YouTube, in newspapers, and in reports because it was impossible to reach the Ministry of Education and Ministry of Health representatives.

Meanwhile, Associate Prof. Dr. Ramy Bulan rejected for an interview on the ground that the topic was not relevant to the respondent's role as the discussion are only cover orang asli in Peninsular Malaysia, while Prof. Madya Dr. Izawati Binti Wook, an expert on Indigenous Law and Human Rights Law claimed that it was not her area of expertise, but suggested the Dr. Muhamad Sayuti bin Hassan as the proper respondent to be interviewed with regards to the issue of protecting orang asli children.

The goal of the fieldwork research is to assess how well government agencies and non-governmental organisations (NGOs) are improving and putting laws and policies into practise via programming and care facilities to safeguard the wellbeing of orang asli children in Malaysia. The data's outcome suggests inadvertently how well laws are implemented and how well the current support systems are working to solve difficulties of orang asli children in Malaysia. The information, however, supports the original facts in some way. The implementation strategies outlined in this chapter are valid throughout May 2022.

To start with, the Orang Asli people are the localities of Malaysia and are also known as the indigenous minorities in Peninsula Malaysia. They are divided into two statuses in current times that are typically Malaysian citizens and Orang Asli as indigenous people themselves. In this chapter the researcher will be explaining how the Government body and non-governmental body plays a role in securing the rights of the Orang Asli Children in Malaysia and also have highlighted some problems and some initiatives that have been taken by the two bodies respectively.

The reason why the internet research has been carried out is because since everything has been so cyber based, many recent and latest issues will always be uploaded online and therefore in order for this research to reach its peak level, the internet research was used, and many articles and journals were used to fill in the gaps in the research. Besides that, the reason why fieldwork interview was carried out was to have a personal connection with the bodies so as to evaluate the roles of the government and NGOs in strengthening and implementing the laws and policies through programmes and care institutions in protecting the welfare of Orang Asli Children. The outcome of the interview was promising as there are programs and laws that are adequate to protect and support the issues relating to Orang Asli Children in Malaysia.

This study employs qualitative research designs a mixed-methods approach to qualitative research, combining fieldwork and library research as primary data collection methods. The methodology is designed to explore the adequacy of legal frameworks and policies protecting the rights of Orang Asli children in Malaysia. The study focuses on comparative analysis focuses on the legal frameworks and policies of Australia and New Zealand. These jurisdictions are selected for their advanced practices in safeguarding the rights of indigenous children and their relevance as Commonwealth nations sharing historical ties with Malaysia. Key features of their frameworks, such as Australia's Indigenous Advancement Strategy and New Zealand's Treaty of Waitangi, are analysed to draw lessons for Malaysia. The earlier reference to the United Kingdom has been excluded to maintain clarity and focus.

In order to gather information for the fieldwork study, face-to-face interviews were conducted with relevant officials from the Jabatan Kemajuan Orang Asli (JAKOA), Jabatan Kebajikan Malaysia (JKM), Ministry of Health (MOH), Ministry of

Education (MOE), Suruhanjaya Hak Asasi Manusia Malaysia (SUHAKAM), and the NGO (COAC), as well as a social activist with knowledge of the issue of the rights of Orang Asli children.

Open-ended inquiries are employed so that the informants may further describe the issues they encountered as well as their own efforts and contributions. However, some information is sourced from news and documentaries on YouTube, newspapers, and publications due to the difficulty in reaching the Ministry of Education (MOE) and Ministry of Health (MOH) representatives.

The aim of the fieldwork study is to assess the implementation of the legal and policy framework and to identify the legal and social concerns pertaining to the rights of Orang Asli children in Malaysia. The outcome of this data inferentially demonstrates the capability of service delivery in resolving the issues faced by Malaysia's Orang Asli children. The information, however, supports the primary facts in some way.

1.7.1 Justifications for not Interviewing the Orang Asli Community in the Research

- i) The decision not to interview the Orang Asli community was based on several carefully considered factors. First, the primary focus of the research was to analyse policies, programs, and interventions designed for the Orang Asli, which are predominantly developed and implemented by government agencies, NGOs, and social activists. These stakeholders were better positioned to provide detailed insights into the formulation, challenges, and outcomes of these initiatives, aligning with the research objectives.
- ii) Second, logistical, and cultural challenges posed significant barriers. The Orang Asli is often located in remote areas, making access challenging and

time intensive. Additionally, linguistic, and cultural differences could complicate effective communication, requiring specialized resources such as translators and cultural mediators.

- iii) Third, ethical considerations were paramount. Direct engagement with the Orang Asli might have raised concerns about potential exploitation or misrepresentation of their views, especially regarding sensitive issues such as their rights, traditions, and interactions with external parties. Ensuring respectful representation of their perspectives was a key priority.
- iv) To address these limitations, the research incorporated secondary data, reports, and case studies from NGOs, activists, and government agencies with extensive experience working with the Orang Asli. This approach ensured that their experiences and challenges were represented accurately and responsibly without direct interviews.

Lastly, the scope and feasibility of the study necessitated focusing on systemic and structural aspects rather than individual lived experiences. By concentrating on the perspectives of government and non-governmental stakeholders, the research aligned effectively with its objective to highlight gaps in policy and implementation while maintaining methodological rigor.

1.8 SIGNIFICANCE OF THE STUDY

This study is important because it offers a foundation for the protection of Orang Asli children's rights in Malaysia. It is anticipated that the information from this study will serve as a significant reference for policy makers in addressing the issues of the rights of Orang Asli children in Malaysia given the current effort of the Malaysian government to strengthen the child's rights through the formulation of policies and laws in Malaysia.

The advice should help the relevant government in the future with law reform, developing policies that are focused on Orang Asli children, strengthening the institutional framework, and coordinating with all government departments, NGOs, and the public to establish a framework for the protection and welfare of the Orang Asli children rights.

1.9 SCOPE AND LIMITATION OF THE STUDY

This study defines Orang Asli children as the heterogeneous indigenous population forming a national minority in Malaysia of age below 18 years old. Since the scope of the study on Orang Asli is wide, this research emphasizes on the welfare and protection of rights of Orang Asli children in the legal context of basic pillars. Civil, political, economic, social, cultural rights, family law, sexual-related offences and support systems in Malaysia. Although there are many other legal implications affecting Orang Asli for all range of ages, however, children have special needs to be protected by the laws as they are vulnerable, and they are very much affected in the absence of a legal framework to protect them.

The research delves into the unique challenges faced by the Orang Asli population within the geographic boundaries of Peninsular Malaysia. It seeks to analyses and understand the socio-cultural, economic, and legal aspects that influence the lives of the Orang Asli in this specific region.

It is important to note that this study intentionally excludes the consideration of native communities in the states of Sabah and Sarawak. This exclusion is based on the fact that the Orang Asli populations are specific to Peninsular Malaysia, while the natives' communities in Sabah and Sarawak, such as the Kadazan-Dusun, Murut, and

Iban, have distinct cultural, geographical, and legal contexts that differ significantly from those of the Orang Asli.

While recognising the significant contributions and experiences of Orang Asli communities across Malaysia, this study focuses solely on the Peninsular Malaysia region. The research outcomes and conclusions are thus applicable only to the Orang Asli residing within this geographical scope.

This disclaimer serves to clarify the specific area of investigation and emphasizes the exclusion of Orang Asli communities in Sabah and Sarawak from the scope of this study. The findings and recommendations of this research should be interpreted with consideration of this limitation.

The scope of this thesis focuses specifically on the educational aspects and challenges faced by the Orang Asli community. While the role of religion, including Islamic Law, is acknowledged as an important facet in broader societal studies, it is not included in the scope of this thesis. This decision was made to ensure that the research remains focused on systemic, cultural, and institutional factors influencing Orang Asli education, irrespective of specific religious frameworks. Furthermore, Islamic Law, as applied in Malaysia, is not inconsistent with the Federal Constitution and existing legal frameworks. Therefore, its exclusion from this thesis does not imply any conflict but rather reflects the necessity to maintain a clear and manageable scope. Future studies may explore religious perspectives to provide a more holistic understanding of the subject.

1.10 ORGANISATIONS OF THESIS

In order to discuss the topic extensively, this study is structurally organised into six chapters. Chapter one discusses the introduction and the background of the research,

the problem statement, research objectives, research questions, hypothesis, methodology, scope and limitations also, literature review of the research.

Chapter two focuses on the theoretical framework on the rights of Orang Asli children in different perspectives; namely the two international conventions. A content analysis and comparative study are applied to compare the theoretical principles relating to Orang Asli children's rights under UNCRC and UNDRIP. This chapter also analyses the responses of the Malaysian government to both conventions pertaining to Orang Asli children's rights and welfare.

Chapter three analyses the existing legal framework for the welfare and protection of Orang Asli children in Malaysia. The discussion of this chapter examines the Malaysian development and strategies in formulating various policies after Malaysia's independence to strengthen children's rights in Malaysia. It also analyses the legislative reforms to the domestic laws in response to the ratification of UNCRC and UNDRIP after 1995 which include discussions on Child Act 2001. The focus of the discussion is to identify the strengths and weaknesses of the existing laws relating to the rights of Orang Asli children in Malaysia.

Chapter four emphasises on how the Government body and non-governmental body plays a role in securing the rights of the Orang Asli Children in Malaysia and the researcher has highlighted some problems and some initiatives that have been taken by the two bodies respectively. The data was collected via face-to-face interviews with relevant authorities such as JAKOA, JKM, MOE and MOH to measure the gravity of the problems and the efforts taken by the respective bodies in addressing the issues.

The information collected is explored to analyse the present programmes and care systems in Malaysia as well as the effectiveness of the service deliveries and

intervention programmes run by government departments and NGOs such as SUHAKAM and COAC.

Face to face interviews also has been done with the expertise of the Orang Asli Law area, Dr Muhammad Sayuti bin Hassan, Senior Lecturer from Universiti Kebangsaan Malaysia and as well as social activist, Dr Colin Nicholas founder of the Centre for Orang Asli Concerns (COAC) Malaysia. Dr Colin Nicholas was a participant in the inaugural Diplomacy Training Program (DTP) training, held at the University of Sydney in 1990. Since then, he has accumulated over three decades of experience and service to Indigenous rights work in Asia. Colin founded the Center for Orang Asli Concerns (COAC) in Malaysia in 1989. An also opinion from human rights lawyer and social activist, Siti Zabedah Kasim, who is the co-deputy chair of the Bar Council committee on Orang Asli rights, who also frequently champions for the orang asli community on legal rights issues.

Chapter five analyses the Orang Asli children protection approaches and best practices models in other selected jurisdictions. New Zealand and Australia are selected based on their similarities with Malaysia as Commonwealth countries and their advancement in addressing matters pertaining to adolescent rights. The best practices of other countries are also examined in this chapter.

Finally, chapter six concludes the findings of the research and provides suggestions for a legal framework for the protection of the rights of Orang Asli children in Malaysia.

1.11 LITERATURE REVIEW

Definition of children in Malaysia regulate what constitutes a child in accordance with their particular goals. Despite the numerous laws, Malaysia's definition of a child under

civil and Syariah law is in accordance with Article 1 of the CRC, with the exception of the Adoption Act of 1952 [Act 253], which defines a child as a person under the age of 21. Relevant laws include those listed below⁷:

- (a) The Child Act 2001 [Act 611] defines a “child” as a person under the age of eighteen years⁸.
- (b) Under the Age of Majority Act 1971 [Act 21], the age of majority is eighteen years⁹.
- (c) Under the Law Reform (Marriage and Divorce) Act 1976 [Act 164], the minimum age for marriage is eighteen years. However, the Chief Minister of a particular State may in his discretion grant a license authorising the solemnisation of a marriage of the girl child who is under the age of eighteen years and has completed her sixteenth year¹⁰.
- (d) The Islamic Family Law Act (Federal Territory) 1984 (IFLA) provides that the minimum age for marriage is eighteen years for male and sixteen years for females. If any person wishes to marry below the minimum age requirement, section 18 (1)(a) provides that an application may be made to a Syariah Judge to obtain permission to solemnise such marriage¹¹.

In relation to criminal proceedings, section 82 of the Penal Code [Act 374] stipulates that the minimum age of criminal responsibility is ten years old.

A child (a person who has attained the age of ten years and below the age of eighteen) who is alleged to have committed an offence may be arrested

⁷ State Parties, “Definition of the Child (Art.1)”, *Committee on the Rights of the Child Consideration of Reports*, vol. 128, no.1 (2006): 1–2.

⁸ Child Act 2001 (Act 611) (Revised 2006).

⁹ Age of Majority Act 1971 (Act 21) (Revised 2006).

¹⁰ Law Reform (Marriage and Divorce) Act 1976 (Act 164) (Revised 2006).

¹¹ Islamic Family Law (Federal Territories) Act 1984 (Act 303) (Revised 2006).

with or without a warrant and may be detained for the purpose of investigation under section 117 of the Criminal Procedure Code [Act 593]. When an investigation on a child cannot be completed within the period of twenty-four hours, the police officer making the investigation shall transmit immediately to a Magistrate a copy of the entries in the investigation diary relating to the case. The child shall at the same time be produced before the Magistrate who may authorise the detention of the child in such custody as he thinks fit for a term not exceeding fifteen days in whole. The Magistrate authorising the detention shall record his reasons for doing so. The Magistrate also has a responsibility to inquire whether the child has any complaints to make and to record and make an order in relation to the complaint. Section 85 of Act 611 provides for the separation of a child from adults while being detained in a police station¹².

- (e) Under section 375 of Act 374, it is an offence for a man to have sexual intercourse with a woman under sixteen years of age with or without her consent¹³.
- (f) Under the Syariah law, the liability for criminal acts is attributed to the act of a person who has attained baligh, of sound mind and of free will. A Muslim child is not held responsible for any criminal act until the child reaches the age of puberty. This is reflected in the provision of the Syariah Criminal Offences (Federal Territories) Act 1997 [Act 559] and the respective states' legislations pertaining to Syariah criminal offences which provide that "nothing is an offence which is done by a child who is not

¹² Penal Code of Malaysia (Act 574) (Revised 2006).

¹³ Ibid.

baligh”. The provision of Act 559 and the respective states’ legislation pertaining to Syariah criminal offences further provides that “baligh means having attained the age of puberty according to Islamic law”¹⁴.

The Orang Asli people are the aborigin 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 Orang Asli 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. Around the world, in rural and urban areas alike, Orang Asli children frequently constitute one of the most disadvantaged groups, and their rights - including those to survival and development, to the highest standards of health, to education that respects their cultural identity, and to protection from abuse, violence and exploitation - are often compromised. At the same time, however, Orang Asli children possess very special resources: they are the custodians of a multitude of cultures, languages, beliefs and knowledge systems, each of which is a precious element of our collective heritage. Thus, this research aims, the most effective initiatives to promote the rights of Orang Asli children build upon these very elements. Such initiatives recognise the inherent strength of Orang Asli communities, families and children, respect their dignity and give them full voice in all matters that affect them.

In pursuant thereto, this research employs a qualitative method in identifying and analysing the existing laws which consist of regulatory laws, substantive laws and procedural laws that include The Federal Constitution and The Orang Asli Peoples Act (1954, revised 1974). This research finds that whilst some of the existing laws do protect

¹⁴ Syariah Criminal Offences (Federal Territories) Act 1997 (Revised 2013).

them in Malaysia, the present legal provisions are still inadequate and incompatible with the implementation of protecting the rights of Orang Asli children. The research also finds a significant number of legal issues derived from the implementation of the laws which require legal reform. Therefore, this research proposes solutions in terms of amendments to the existing legal regime in order to enhance the implementation of protecting the Orang Asli children. The proposed solutions should prove to be adequate and compatible to govern all rights of Orang Asli children in Malaysia, thus resolving legal conflicts and problems in the current legal framework.

Even though there is numerous research done pertaining to Orang Asli people, nothing is entirely referred to the protection of Orang Asli children. One should note that the needs of an adult and child can be said to be of different categories. As such the center of this research will be focusing on the Orang Asli children's protection from the aspect of problem and solutions in implementation of the law.

The Orang Asli Act was first drafted to protect the Orang Asli people from exploitation and cultural contact with outsiders who were perceived as detrimental to the community. In this framing, the Orang Asli were labeled as 'primitives' and 'simple' people who needed protection. It is indicated that the government viewed the Orang Asli as a potential security threat in need of protection from the subversive ideology of communist guerrillas during the communist insurgency. In the post-independence era (1960s-present), the focus shifted from one of protection to 'advancement' of the community. The Orang Asli people are now framed as 'backward', 'anti-development', and needing to be brought in line with the nation's ambitious economic development agenda and aspirations of modernity.

Therefore, it is essential to perceive the Orang Asli as a community that requires development and integration into the mainstream society to ensure they receive equal

protection under the law. The evolving perceptions of the Orang Asli people are significant, as they will influence the laws and policies that govern their rights and welfare¹⁵. It is a fact that in 1960, after the end of the communist insurgency in the then Malaya, the government decided to continue the institution of the Department of Orang Asli, now renamed the Jabatan Kemajuan Orang Asli (JAKOA) in order that it will be able to realize the mandate of the Federal Constitution and the Orang Asli Peoples Act that the welfare and progress of the Orang Asli people are taken care of.

Since then, the JAKOA has introduced several 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 people that is still in force today. This being so, it is clear that the intention of the Government in 1961 was to accord the Orang Asli people with various rights. But Orang Asli’ parents are concerned that their children are looked down upon because they are Orang Asli, a common complaint among Orang Asli, many of whom say they suffer racism and discrimination¹⁶.

Quoting Dendi Johari (the tribal leader), who spoke to Al-Jazeera, “It’s obvious that we are left far behind,”. And that explains every aspect of life including the fundamental rights of the people. Not only that, but he also mentioned how sad the condition of Orang Asli children is in leading their lives as compared to other children. They are being deprived of all technological advancement. Dendi Johari, an Orang Asli from the Temiar community, expressed his sadness regarding the ongoing efforts by the

¹⁵ Ridzwan, Idrus, “The Discourse of Protection and the Orang Asli in Malaysia”, *Kajian Malaysia*, vol. 19, no.1 (2011): 1–20.

¹⁶ “Malaysia’s forgotten indigenous children”, *Week in the Middle East*, (2016).

state government and developers to strip the forest of its natural resources without concern for the community, stating, “It makes me sad and angry”¹⁷.

He went further to say that “We’re living in another era in terms of development. We are so fed up with the Malaysian government, because every year they’ve made us promises but we get nothing in the end.”

The government department in charge of taking care of the Orang Asli rejects these allegations. The director general of the Department of Orang Asli Development, Hasnan Hassan expressed his frustration and disappointment when the community of Orang Asli failed to recognise every single change that are being made for the benefit of the community. “Whatever we do, it is never appreciated by the people,”

Lawyer Siti Kasim has long campaigned for the rights of the indigenous but says the situation has now reached a tipping point. “If we don’t do anything to help them, to maintain their heritage and culture through education, we will eventually lose all Orang Asli,” says Siti, who is helping the tribe to take legal action over the children’s deaths.

Referring to the latest incident or tragedy¹⁸ that involving 7 missing Orang Asli kids, though it is reported that the families of the missing kid would be given donations amounting to RM62,000 by Welfare and Charity Organization of Wives of Ministers and Deputy Ministers (BAKTI) and National Permata Program (PERMATA); the organisations which are headed by Prime Minister’s wife, it is a question as to what extend the donations will be adequate in addressing the bigger issues faced by the community of Orang Asli.

While it is admitted that the basic medium of communication is being provided, the coverage is not comprehensive. In the case of an emergency, the very leader of the

¹⁷ Dendi Johari, quoted in Kate Mayberry, “Malaysian Indigenous People Fight for their Land Rights,” *Al Jazeera*, 1 March, 2017.

¹⁸ Ibid.

group should take responsibility. It clarifies the facts of the high death rate among Orang Asli. It is well-acknowledged that children nowadays make use of communication to gain knowledge apart from attending class in school. If there is mal-communication coverage in Orang Asli residential areas, how can one say that there is equal treatment between Orang Asli and other ethics.

The idea has been portrayed by the Orang Asli leader when he prescribed that the action of the school is very disappointing for Orang Asli. The perception of the people has always been that Orang Asli don't want to go to school, and the parents don't want to send their children to school¹⁹.

Citing the thoughts of Kelantan Orang Asli Village Network youth chief, Dendi Johari, *"...actually we do, we send from when they're seven-years-old to boarding schools. But now we are not sure about sending them to school because their safety is at risk. Also, I heard all the Orang Asli saying they don't want to send their children to school because their safety isn't guaranteed..."*²⁰

Be that as the current situation, one cannot deny the fact that among the major problems faced by Orang Asli is lag far behind the national society in the enjoyment of the fruits of Malaysia's rapid development. While is admitted that certain community or part of Orang Asli refuse and reject the development on the ground that their life have been embedded with the culture, tradition and lifestyle of Orang Asli so much so that they are unable to accept the development and consider the advantage of the development itself, one should consider on how to educate these people in appreciating the modernization of the world.

¹⁹ Ibid.

²⁰ Ibid.

It is shameful to report that though the Orang Asli community is being accorded by the Special Privileges under our Supreme law of the land, they are actually leading a poor quality of life. It is a fact found that only 48.8 percent 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. In this article mentioned that the availability of toilet facilities as a basic amenity was lacking in 43.7 percent of the Orang Asli housing units, compared to only 3 per cent at the Peninsular Malaysia level. For lighting their homes, 51.2 percent of Orang Asli households depend on kerosene lamps or pelita²¹

It is a question as to how to protect Orang Asli children when it is a sad truth that the crude death rate for Orang Asli is twice that for all of West Malaysia. Besides, 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. Unfortunately, it contended that Orang Asli women have the highest recorded rates of postpartum hemorrhage and puerperal sepsis, far above the rates for other groups²².

In general, there have 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

²¹ Abdullah Khoso and Vivien W. C. Yew, "Promotion and Protection of the Rights of Orang Asli in Peninsular Malaysia: A Study of the Suruhanjaya Hak Asasi Manusia Malaysia", *Malaysian Journal of Society and Space*, vol. 11, no.13 (2015): 86–95.

²² M. Apparau, "Health Issues Among the Orang Asli Community", *Malaysian Journal of Public Health Medicine*, vol. 20, no.1 (2020): 45–53.

be desired. Studies done by the JAKOA and by independent consultants all reveal that the dropout rate among the Orang Asli

Though, 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. 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 examinations²³.

Although much effort has been made to enable the Orang Asli to acquire education at all levels, the task of providing a formal education to the Orang Asli remains arduous and challenging as the majority of the Orang Asli community have a low level of awareness of the importance of formal education. Thus, they do not give priority to the education of their children and also do not share the enthusiasm of the various authorities involved in the implementation of educational programs and delivery of education services.

On the other hands, looking the bad incidents, experiences and from the bright side, Datuk Seri Ismail Sabri Yaakob is currently serving as the Leader of the Opposition in Malaysia. He previously held the position of Prime Minister from August 2021 to November 2022 and has been involved in various ministerial roles throughout his political career. Regarding his influence on policies, as the Leader of the Opposition, Ismail Sabri continues to advocate for the rights and welfare of marginalized communities, including the Orang Asli. His previous experience as Minister of Rural and Regional Development allows him to leverage his understanding of indigenous issues to push for improvements in their living conditions and rights. It is said that the

²³ Colin Nicholas, Tijah Yok Chopil, and Tiah Sabak, *Orang Asli Women and the Forest: The Impact of Resource Depletion on Gender Relations Among the Semai*, (Kuala Lumpur: Centre for Orang Asli Concerns, 2010).

government has already come out with the plans to install an Orang Asli as the head of JAKOA, and Orang Asli kids would get transport home every 2 weeks.²⁴.

Previous education director-general Datuk Seri Dr Khair Mohamad Yusof said the committee would include various parties and agencies and would look at development, safety, welfare and health aspects at the hostels. The ministry would also organise training sessions on the culture and way of life of the Orang Asli in stages to teachers in Orang Asli schools²⁵.

In this sense, it is very much significant to appreciate what is really wanted by Orang Asli. In the report of SUHAKAM it was mentioned that Orang Asli today essentially seek recognition by the government in the aspect of problems faced by their community, their views and opinions and the most important aspect is the recognition of their special existence. As they are being raised by the unique culture, the government seeks to recognise that their ancestral lands are essential for their economic, social and spiritual development; and they also want their lands secured in their hands²⁶.

It is the objective of Orang Asli that they want to have their own culture, languages and customs developed; and to be able to transmit them to future generations. Further, the community of Orang Asli insists on addressing the fact that their life has been put under repercussions and discrimination. Be that as the case, Orang Asli hopes to possess an appropriate social institution that will notify all issues and concerns.

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

²⁴ Bernama, "Orang Asli Reserve Land Issue to Be Resolved This Year, Says Minister," *Bernama*, 19 February, 2016, <https://www.bernama.com/en/news.php?id=1216954> 15.1.2026.

²⁵ Ibid.

²⁶ Suruhanjaya Hak Asasi Manusia Malaysia, "Annual Report 2020," Malaysian Human Rights Commission, 2020, <<https://suhakam.org.my/wp-content/uploads/2021/08/Annual-Report-2020-English.pdf>> (accessed 22 September 2022).

high, the fault must lie at the feet of the Orang Asli schoolchildren themselves and/or their parents. The initiative, despite being a much belated one, would be a good start but it must not be merely public relations exercise²⁷.

Indeed, SUHAKAM has compiled a report “Good Practices in Promoting and Protecting the Rights of Indigenous as part of the Southeast Asia National Human Rights Institutions Forum (SEANF). In the report, SUHAKAM has highlighted mainly two good practices and indicated about various challenges and problems faced by the Indigenous Peoples including the Orang Asli²⁸.

As a whole, despite the claim made by the government and relevant authorities that the Orang Asli community has been served with upgrading facilities and other essential infrastructures, one should consider the real situation of Orang Asli. There are many factors that can be looked at and an objective man will easily infer that the Orang Asli community are not being treated well as Malaysian citizens.

As Orang Asli is also part of Malaysian, do Malaysians really care about this community? If a child of Orang Asli is being bullied or abused, will Malaysians react the same as other cases? If yes, why were there incidents of 7 missing children of Orang Asli in PosTohoi, Kelantan.

As there are so many questions, issues and concerns that can be raised pertaining to Orang Asli children, this research carries its own significance and is important to find out the real situation of Orang Asli. There had been no research or study done to cover the lifestyle of Orang Asli especially regarding the growth of their younger generation. Therefore, this research is able to fill the gap of knowledge that is being left by previous research.

²⁷ Nicholas, Chopil, and Sabak, *Orang Asli*.

²⁸ Suruhanjaya Hak Asasi Manusia Malaysia, “Annual Report,”

As of 2019, the 18 tribes that make up Peninsular Malaysia's 217,000 Orang Asli population are each a separate people group with its own culture, language, and social customs. They are Malaysia's poorest and most marginalised population, with more than 50% classified as poor and 33% living in extreme poverty, compared to 0.7% of the country's average²⁹.

The Orang Asli peoples of Malaysia were estimated to account for 13.9% of the 31 million total populations³⁰. More than 55% are children under 18 years of age³¹. To protect the interest of the Orang Asli people, The Aboriginal Peoples Act 1954 was enacted and the basic right of the Orang Asli is to maintain cultural autonomy.

Though it recognises certain rights of the Orang Asli people, it failed to cover all elements of fundamental rights. Few rights are left unentertained and for the purpose of this thesis, the focus shall be on the Orang Asli children. After a few unfortunate incidents occurred upon Orang Asli child, it is doubtful as to the protection of the law towards this community.

Around the world, in rural and urban areas alike, Orang Asli children frequently constitute one of the most disadvantaged groups, and their rights - including those to survival and development, to the highest standards of health, to education that respects their cultural identity, and to protection from abuse, violence and exploitation - are often compromised³². At the same time, however, Orang Asli children possess very special resources: they are the custodians of a multitude of cultures, languages, beliefs and knowledge systems, each of which is a precious element of our collective heritage.

²⁹ Ooi, K. H., "Poverty, Inequality and the Lack of Basic Rights Experienced by the Orang Asli in Malaysia," Special Rapporteur on Extreme Poverty and Human Rights, Office of the United Nations High Commissioner for Human Rights.

³⁰ Khoso and W. C. Yew, "Promotion and," 86-95.

³¹ Edwin Michael and et al., "Education and Health Awareness Among Indigenous People: A Study in Perak, Malaysia", *ARPJN Journal of Science and Technology*, vol. 2, no.8 (2012): 754-758.

³² Idrus, "The Discourse," 1-20.

Thus, this research discusses the most effective initiatives to promote the rights of Orang Asli children built upon these very elements. Such initiatives recognise the inherent strength of Orang Asli communities, families and children, respect their dignity and give them full voice in all matters that affect them.

1.11.1 Civil and Political Rights

Children's civil rights and freedoms include the right to an identity; respect for the child's views; free expression; freedom of thought, conscience and religion; and freedom of association and peaceful assembly. Recognising children as citizens, and guaranteeing the rights that flow from that recognition, gives substance to children's abilities rather than just focusing on their vulnerabilities and dependencies³³. The civil element is composed of the rights necessary for individual freedom-liberty of the person, freedom of speech, thought and faith, the right to own property and to conclude valid contracts, and the right to justice.³⁴ This understanding requires a change of attitude and perspective towards seeing Orang Asli children as part of society and as full members and citizens with rights in their own right, and not just as objects of legal protection and/or social welfare. The civil rights and freedoms of the Orang Asli child give practical expression to Orang Asli children's citizenship on the basis of participation/right to be heard, recognising and respecting the developing capacities of children as they grow from stage to stage.

Historically, in order to recognise and protect the special rights of Orang Asli people, it has become essential to define the legal identity of individuals. British administrative authorities had to determine which groups were Orang Asli, what

³³ Henry Hamilton and T. H. Marshall, *Citizenship and Social Class and Other Essays*, (Cambridge: Cambridge University Press, 1950).

³⁴ Ibid.

specific criteria were needed to prove belonging to those groups and, in the event of disputes, determine which individuals had a legitimate claim to belonging³⁵. They also had to decide if the rights and privileges were accorded on a group or individual basis. These decisions are neither ahistorical nor apolitical³⁶. Orang Asli have drawn on international legal frameworks to claim special privileges not available to other Malaysians based on their identity.

This can be seen in three significant court cases that review the rights of Orang Asli children regarding their engagement in commercial activities, recognition of native title, and proprietary rights to land. The first case addresses the right to engage in commercial activities in aboriginal areas, affirming the economic rights of indigenous communities³⁷. The second case recognises native title and usufructuary rights, establishing that indigenous peoples possess inherent rights to their traditional lands, which are essential for their survival and cultural practices³⁸. This judgment was upheld in subsequent appeals, reinforcing the legal recognition of these rights. The third case further emphasizes proprietary rights in and to the land, affirming that Orang Asli have legitimate claims to their ancestral territories based on customary practices and highlighting the necessity of protecting these rights against encroachment and exploitation³⁹.

Together, these rulings illustrate a growing acknowledgment within Malaysian law of the rights of indigenous peoples, particularly concerning their land and economic activities.

³⁵ Nah, A. M., “Recognising Indigenous Identity in Postcolonial Malaysian Law Rights and Realities for the Orang Asli (Aborigines) of Peninsular Malaysia”, *Bijdragen tot de Taal-, Land- en Volkenkunde*, vol. 164, no.2–3 (2008): 212–237.

³⁶ Ibid.

³⁷ *Koperasi Kijang Mas Bhd & Ors v Kerajaan Negeri Perak & Ors* (1991) 1 MLJ 1

³⁸ *Adong Kuwau v Kerajaan Negeri Johor* (1997) 1 MLJ 418

³⁹ *Sagong Tasi and Ors v Kerajaan Negeri Selangor and Ors* (2002) 2 MLJ 591

According to a survey carried out in August–October 2011 involving 1120 respondents, the Orang Asli have a variation in their ways of life, but all are closely tied to their land. Traditionally, the Orang Asli are animists and in recent years, some have become Christians and Muslims⁴⁰. For Orang Asli, whose legal definition as aboriginal is primarily derived from a demonstration that they still practice an aboriginal way of life, they risk losing their legal aboriginal identity if they convert to Islam, speak Malay and die practice of Aboriginal customs replaced with practice of Malay customs⁴¹

Freedom of religion is guaranteed in Article 3(1) and Article 11 of the Constitution for all non-Muslims, as is freedom of peaceful assembly in Article 10(1) (b) and the right of individuals not to receive instruction or take part in any ceremony or act of worship other than his/her own (Article 12(3)). Furthermore, each state has laws that empower state Islamic departments to regulate the activities of Muslims, a significant one being the observation of the fasting month, Ramadan⁴².

1.11.2 Economic, Social and Cultural Rights

Malaysia is a multi-racial country and there are lots of different cultures being practiced here. However, there are a group of people which are known as the indigenous people, who often seem to be excluded in this society. Indigenous people are also known as ‘Orang Asli’, ‘original people’ or ‘natural people’. There are mainly three main groups according to their customs, namely Proto-Malay, Senoi and Negrito. They practice different kinds of lifestyles and speak different languages. The Jabatan Kemajuan Orang Asli (JAKOA) is entrusted to oversee the affairs of these Orang Asli people.

⁴⁰ Bala, P., & Tan, C. E., “Digital inclusion of the Orang Asli of Peninsular Malaysia: Remote virtual mechanism for usability of telecentres amongst indigenous peoples”, *Electronic Journal of Information Systems in Developing Countries*, vol. 87, no.4 (2021): 1–14.

⁴¹ Idrus, “The Discourse,” 1–20.

⁴² Ibid.

Furthermore, lots of legislation or laws have been implemented in order to improve the living of the Orang Asli people. However, the indigenous and tribal people rights are still often being compared with the rights of other members in this community.

Despite the existing laws and policies which had been implemented, their rights still seemed to be less protected when compared to common citizens in the cities. The most obvious difference or comparison drawn is regarding the right of education that is accessible by the indigenous people. Hence, this subtopic will investigate the reasons behind this scenario and further explanation will be provided to support the statements. Right of their education at a national and international level and child labour will be discussed in detail.

In Malaysia, SK Tohoi Tragedy 2015, set as one of the examples where the question arises whether the Convention laid down, has effectively served the purpose of protection to the indigenous and tribal people. In this tragedy, seven students went missing where two of them were later found alive and the remaining were found dead. It was suggested that the rights of education of the children of the indigenous and tribal people have been infringed due to the neglect of the school authority. First, the lamentable condition in the school. The facts suggested that there is often no water in the hostels and the fences have been broken down, which may allow the students to find access out of the hostel's ground and bathe in the river.

Secondly, there's no Orang Asli teachers in the school and male teachers are the majority in a school full of female students, and during the incident, the headmaster was absent⁴³. It can be noted that the facilities provided by the school were not of the safety standards and therefore has infringed the rights to education of the orang asli children.

⁴³ Siang, "Post-SK Tohoi,".

The right to education is a fundamental and essential right of all human beings. The United Nation and United Nations Educational, Scientific and Cultural Organization (UNESCO) have laid down international legal obligations towards the right to education to all human beings. There are three major aims to the rights of education laid down, where everyone has the access to enjoy good quality education, without discrimination, and without exclusion⁴⁴.

This is to say that everyone must be given the rights to education without any hindrances. For such, it is to say that the SK Tohoi Tragedy has indeed infringed the children's right to education by infringing the rights to deserve good quality education. In the United Nation Children's Emergency Fund (UNICEF), it was also stated that 59 million children were being denied the right to education and girls are of the majority classes.

However, the association is working on improving the situation in order to provide the rights that the children deserve⁴⁵.

In order to succeed in achieving the universal right to education, it is crucial to involve all relevant authorities into the progress including the schools' headmasters, chairman and board of directors, as well as all the departments holding certain power over the control of the education industry and government, Ministry of Education.

1.12 FACTORS AFFECTING EDUCATIONAL ACCESS FOR ORANG ASLI CHILDREN

Indigenous people of Malaysia, normally known as Orang Asli or Orang Asli, are the original peoples or first people in Malaysia. Some of these indigenous people stay in

⁴⁴ United Nations Educational, "Scientific and Cultural Organization," Right to Education, <<http://www.unesco.org/new/en/right2education>> (accessed on 18 November 2022).

⁴⁵ Compassion International, "Education facts," <<http://www.compassion.com/poverty/education.htm>> (accessed on 20 November 2022).

isolated areas with only minimal infrastructure while some others are starting to change their lifestyle in accordance with the changing surroundings and circumstances. Based on the record from JAKOA, which is the Department of Orang Asli affairs, there are more than half of these indigenous people being categorized in the poor category and within it, 32.34% of them are hard core poor. Furthermore, 49.2% of them are uneducated⁴⁶. In addition, on a global scale, indigenous children's literacy rate is rather lower as compared to national one. As an example, in India, indigenous children have a literacy rate of 29.6% while the national rate is at 52%.

The issue on education accessibility of the indigenous people is often being debated or discussed as the illiterate rate of the indigenous people is much higher than what people expected it to be. Though there might be some ways taken to lower the illiterate rate, it is still undeniable that there are still some indigenous people who are not educated or studying. There are several reasons why the indigenous people are not accessing education provided and these include poverty, child labour and lack of teachers and study materials.

i) Poverty State of Indigenous People

First and foremost, the first factor why indigenous unable to access education is because of the poverty state that they were in. In order to reduce poverty within indigenous community, Jabatan Kemajuan Orang Asli, abbreviated as JAKOA, had established several programmes such as 'Program Peningkatan Pendapatan', 'Program Bimbingan Usahawan', 'Program Pembangunan Ekonomi Negeri' and others⁴⁷. However, these

⁴⁶ Md Nor, S. N., "Dropout prevention initiatives for Malaysian indigenous Orang Asli children" (Paper presentation, 12th International Conference on Education (ICE), Kuala Lumpur, Malaysia, 2011). <http://files.eric.ed.gov/fulltext/EJ962372.pdf>

⁴⁷ Jabatan Kemajuan Orang Asli, "Pembangunan Ekonomi," <<http://www.JAKOA.gov.my/>> (accessed on 20 December 2022).

programmes were useless and helpless in the eyes of indigenous people as the amount of the monthly income being paid for them is insufficient to support all their children to be sent to the school.

Besides the low income being provided by the government, the parents do not make much money in early January because it is difficult for them to earn money at the year-end due to the wet conditions as the forest produce will not be in high demand. The table illustrates the allocation of educational assistance provided to the Orang Asli community, highlighting the support dedicated to improving educational opportunities for Orang Asli.

Although there is monetary assistance for education, there are still some parents who suffered the problem whereby the financial assistance was too late to reach the parents. Even when the schooling period started, the parents might not receive that financial allocation. Thus, with the small amount of income of the parents, it is obvious that they could not afford the educational fees and later it might affect the indigenous parents' decision of sending their children to the school. This is because besides the educational fees, the parents will need to pay also for the uniform, the school meals and the transport. Hence, this is why poverty could be one of the reasons affecting the education accessibility of the indigenous children nowadays.

ii) Child Labour

Secondly, another reason that might be considered to have cause inaccessibility of education among the indigenous children is child labour. Child labour is a conduct which is known worldwide and is being paid attention to worldwide. The graph below shows the facts and figures provided by International Labour Organization with regards to the child labour rate all over the world.

The distribution of children involved in child labor varies significantly across regions. Asia and the Pacific have the highest number, with 75 million children engaged in child labor, followed by Sub-Saharan Africa, where 60 million children are affected. Latin America ranks third, with a lower number of children in child labor compared to Asia and Africa. The Middle East and North Africa report the smallest number of children involved in such activities. These figures highlight regional disparities and underline the need for targeted efforts to address child labor in the most affected areas.⁴⁸

Child labour takes many forms which involve the harvest works to prostitution. It has been clearly defined by the International Labour Organisation Convention 182 as slavery, prostitution, illicit activities and works which would likely cause harm to the children⁴⁹.

Anyway, child labour is thought to have linkage with literacy rate. This is because the children might not have the time to study. Besides, long working hours might tire out children and cause them loss of concentration in studying. As time passes, it might also reduce the interest of children in studying or learning study materials in school. As an example, children who work in tobacco farming. Most of the labour in tobacco farming is children⁵⁰.

This is not only seen to have a direct impact on children's health, it also indirectly affects their interest towards education because when children start performing seasonal work, they might feel more wanting to contribute to their family financially. This will cause them to lose interest in learning in school and feel unwilling to return to school.

⁴⁸ International Labour Organization, "Child Labour," <<http://www.ilo.org/global/topics/child-labour/lang--en/index.htm>> (accessed on 22 December 2022).

⁴⁹ International Labour Organization, "C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)," <http://www.ilo.org/ipec/Campaignandadvocacy/Youthinaction/C182-Youth-orientated/C182Youth_Convention/lang--en/index.htm> (accessed on 22 December 2022).

⁵⁰ Association for Childhood Education International, "Child Labor Impacts Health and Education," <<https://www.acei.org/news/child-labor-impacts-health-and-education>> (accessed on 25 December 2022).

However, this is for the children who are given the right to choose what they want. On the other hand, there are some children who are not given any single chance to make any choice in their life. They do not have the chance to choose whether to study or to work as their parents wanted them to earn some living to support their big families. Besides, some might be involved in child labour due to force of others. Although there are lots of provisions or laws made on the prevention of child labour, there are still always ways to cover the condition of using children as labour. There is still a loophole in today's policy. A significant loophole in addressing the education of Orang Asli children in Malaysia is the lack of culturally sensitive and inclusive education policies. The mainstream curriculum often fails to integrate the unique cultural, linguistic, and traditional practices of the Orang Asli communities, resulting in disengagement and high dropout rates among these children. Thus, child labour is believed to be one of the factors affecting the literacy or education rate in Malaysia and many other international countries.

iii) Lack of Teachers and Study Materials

Thirdly, lack of study materials and teachers could be another reason why the indigenous children are less likely to involve in education field. In the rural area, it is possible that a teacher will need to be in charge or be responsible for around 200 students as there is condition of lackage of teachers⁵¹. This might indirectly reduce the quality of education provided in the rural area. Teachers might not focus on any particular students. Teachers might not be able to help every single student to solve all their problems. Hence, this might indirectly cause the students to drop out from school.

⁵¹ Tiwari, J., *Child Abuse and Human Rights*, vol. 2 (New Delhi: Isha Book, 2004).

In addition to the issue of a shortage of teachers, even when a teacher is available, they may not possess the same qualities or teaching methods as those found in schools in urban areas. The qualification of the teachers teaching in rural, indigenous areas might be way different from normal schools' educators. Other than that, the compulsory education laws often are not being enforced in the indigenous or rural areas. This causes the children who are unwilling to study to escape from schooling.

In addition, poor infrastructure might affect the education rate of the indigenous children. Poor education conditions might sway the mood of the learners. If the surrounding or school environment is unsafe, it is obvious that it will negatively affect indigenous children's access towards formal education. The poor conditions might be in the sense of a lack of desks or chairs in the school or even break down of electricity and poor ventilated classrooms.

1.13 ISSUES ARISING FROM THE SK TOHOI TRAGEDY

On 23rd of August 2015, a frightening incident evoked when six girls and one boy by the name of Haikal Yaakob, 8; Juvina David, 7; Linda Rosli, 8; Ika Ayel, 9; Norieen Yaakob, 10; Sasa Sobrie, 8 and Mirsudiar Aluj, 11, were reported to be missing from their remote school in Gua Musang, Kelantan⁵². All of them were students of Sekolah Kebangsaan Tohoi in Gua Musang, Kelantan. After being cautioned of punishment by schoolteachers for swimming in a nearby river without permission, the students felt threatened and subsequently ran into the forest surrounding their school.

⁵² "Orang Asli Development Department to fund survivors' Education Up to Tertiary Level," <<http://says.com/my/news/school-issues-expulsion-letter-for-missing-orang-asli-children>> (accessed on 20 January 2023).



The Missing of 7 Orang Asli Kids

It has been evidently found that only two children were found alive, in terribly undernourished condition, on the edge of death, almost after 50 days of pervasive search and rescue by the authorities namely, the Department of Orang Asli Development (JAKOA) and not forgetting, with the help of the villagers in that same area. It was determined that the survivors have been recognised as Norieen Yaakob, 10 and Mirsudiar Aluj, 11. In consequence, medical staff were assigned at the school to provide instantaneous health service to both, before they were transferred to the General Hospital of Gua Musang⁵³.

It has been stated that the family members of the missing children alleged that the main authorities searched had searched their homes in the midst of the search,

⁵³ “Who is responsible for the Orang Asli children tragedy of Pos Tohoi?,” <<http://says.com/my/news/no-comment-says-education-ministry-s-representative-over-the-orang-asli-children-tragedy>> (accessed on 14 January 2023).

arraigned the families for hiding their own children. Nevertheless, the authorities have been condemned by the coordinator of the Centre for Orang Asli Concerns (COAC), Dr. Colin Nicholas, for only seeking the cooperation of the Orang Asli trekkers, 10 days after the search. The rest of the missing children were asserted to have been deceased after their disintegrated bodies and skeletal remains were cobbled up and are still assumed to be missing.

The most important question that has been haunting everyone is the reason is the children ran away from the school without notifying anybody. Losing their young children in the most unbelievable manner and still doubtful of what really drove the kids to run away to escape from the school that was promised to protect them, the parents of the deceased children or in the hope of being still missing, have been left grief-stricken. It has been said by the majority that the children decided to run away from the school because some older children had been punished whereas they were beaten by one of the teachers for swimming in the river without any permission and thus, they feared they would be next. Subsequently, on the morning of 23rd of August, Norieen Yaakob, her seven-year-old brother Haikal Yaakob, Miksudiar Aluj and four other girls aged between seven and nine, escaped from the school, ran into the forest.

Regretting what has happened involving the 7 Orang Asli kids, there are several things that could have been done to improve the situation involving the Orang Asli kids⁵⁴. Firstly, the search and rescue operations could have started faster. Prior to the tragedy, The Rakyat Post reported that Police were initiating their search efforts only on the 26th of August, which is only after 3 days the children were missing in action. Thus, there should be an inquiry to find out why it took the authorities in charge for the

⁵⁴ “3 Ways the Orang Asli Kids’ Tragedy Could’ve Been Less Painful,” *CILISOS*, October 12, 2015 <<http://cilisos.my/3-ways-the-orang-asli-kids-tragedy-couldve-been-less-painful/>> (accessed 15 January, 2026).

search, which is the search and rescue operations, for such a long period of time to encounter the missing Orang Asli children in Pos Tohoi.

Besides that, amidst criticism of the local authorities' search efforts, it has also been reported by the family members' of the missing children that the Police in charge for the search had conducted a check or search at their houses in the night as the Police suspected that the parents' of the missing children could be concealing their kids in their homes and also have claimed that the parents' of the missing children had kidnapped their own children for a vague reason.

Midah Angah, mother of Norieen Yaakob and Haikal Yaakob, as quoted by The Malaysian Insider, said that "The police came to our villages three days after they went missing and searched our homes. They said we were hiding the children. What kind of notion is that? Never in our history have we ever done such a thing. It was very upsetting"⁵⁵.

In consequence, the family members of the missing children were unhappy and extremely disappointed about being accused of hiding the children in the village or in their own respective homes and also alleged that the authorities in charge of the search for the missing children should stop playing the blame game and should be focused on trying to find the missing children instead. These kids were missing for a total of 5 days before the authorities in charge actually started to look for them, much to the disappointment of the parents of the missing children. Thus, there was a delay in the search and rescue mission and that they should have started their search and rescue operation to find the missing kids right after they were alerted of it when it was reported that the kids were missing from the school.

⁵⁵ Ibid.

Furthermore, the teachers could have been better trained to handle the students. It was initially thought that the 7 kids first ran away to escape from being punished for swimming in a nearby river without permission. However, the Centre of Orang Asli Concerns (COAC) was in the opinion that that the ones' who were caught swimming in the river were actually, believed to be the older siblings of the 7 Orang Asli school children and when these older siblings were out swimming in the river nearby the school, the 7 Orang Asli schoolchildren were in speculation that they had gone back home, and in consequence, they left the school without notifying anybody.

Nevertheless, the Centre of Orang Asli Concerns (COAC) mentions that the 7 Orang Asli schoolchildren chose not to return to their school out of fear of being brutally punished. Prior to that reasoning, there should be an inquiry to analyse why the parents were not immediately informed by the school that their children were missing and why the children felt that they needed to run away and hide to escape punishment for swimming in the river. Consequently, in the light of the above, the parties that are liable for causing the missing and the death of the 7 Orang Asli school children should be punished to the highest order, to ensure that such a tragedy will never happen again in the future in Malaysia. Besides that, The Malay Mail Online had even reported a declaration about the truth from parents expressing how the teachers in school have been punishing schoolchildren in a brutal and unbelievable manner.

According to Sobrie Latip, father of Sasa Sobrie, one of the 7 missing Orang Asli kids, as quoted by The Malay Mail Online, said that “Sasa even told me she saw some seniors getting slapped across the face, and some were kicked like a football repeatedly”⁵⁶. Nevertheless, that is only one of the many problems faced by the children

⁵⁶ Ibid.

of SK Tohoi. Through this disheartening tragedy, the majority of the villagers have brought up the necessity to take care and not forget to guard the welfare of all Orang Asli schools.

In conjunction with that, reports have also come into view on allegations of abuse, on how Orang Asli schoolchildren have been ill-treated or even brutally abused to some extent by certain teachers' in the local school, with some schoolchildren asserting to have been hit and caned for no specific or particular reason to conclude on why such actions had taken place on them in first place. Having their faith lost in the local schools, following the unsettled and unresolved incident or tragedy that took place in SK Pos Tohoi, a large group of Orang Asli's parents' have repudiated and have also completely refused to send their children to any of the local schools', in fear of losing their children to similar incident or tragedy.

Despite being one of the most aged inhabitants of this country, Malaysia, the Orang Asli society has been undervalued, neglected and also forgotten over the years, with many still living in discriminated conditions, below underdevelopment level. Prior to that, an article by Free Malaysia Today even discussed a few cases on how teachers are punishing school children in other Orang Asli schools. For instance, like how a 10-year-old girl was beaten by her 3 male teachers in the local school itself⁵⁷. In that case, a 10-year-old Temiar student was tied up, brutally kicked, and also beaten up barbarously by three of her teachers in school after being arraigned for stealing money from one of them. The said incident happened on 15 June at Sekolah Kebangsaan Kuala Betis in Gua Musang, Kelantan, wherein the schoolgirl in her primary 4, had suffered

⁵⁷ "Teachers Tie Up and Beat a 10-Year-Old Orang Asli Schoolgirl for Allegedly Stealing Money," <<http://says.com/my/news/10-year-old-student-accused-of-stealing-money-tied-up-and-kicked-by-her-teachers>> (accessed on 14 February 2023).

incurable bruises on her face, arms, and thigh because of the barbarous beating by three of her teachers in school.

Besides that, knowing that education is the only way to improve the lives of Orang Asli, children in rural Sarawak attend schools that look like it is abandoned. Students at most schools in rural Sarawak will have to reach their schools on time, through high current rivers and also by walking for hours just to get to their school. It can be said that every day is a struggle and battle to be won for these children to attend their schools' and that they have to go through hardship every day, living in rural villages in Sarawak. For instance, a primary school in Lawas, SK Long Sukang, was subsisting for many years with a contemptible wooden school building, until the ministry came into action in the year 2010 when things got severely worse⁵⁸. Prior to that, the ministry provided nothing but an abandoned and unfinished school building for the students to get educated.

When speaking to the Malaysian Insider, the deplored SK Long Sukang Parent-Teacher Association (PTA) head, Yaris Semayong, claimed that they had no choice but to shift into the unfinished school building that looked like it was abandoned, as they just could not bear staying in the contemptible wooden dorms not any longer. It was also alleged that they waited for a long period of time for the new school to be furnished and yet it was grievously incomplete. In consequence, not having anywhere else to shift the students to the school, the teachers at the school were compelled to move the students into the perilous and unsanitary school quarters that the ministry had provided.

Nevertheless, SK Long Sukang is not the only school that was undervalued to the extent of being a danger to the students. Prior to that, SK Lubok Mawang in Kapit

⁵⁸ "This May Look Like an Abandoned Building but it's Actually a School in Sarawak," <<http://says.com/my/news/collapsing-buildings-and-leaky-roofs-the-horrible-state-of-rural-schools-in-sarawak>> (accessed on 20 February 2023).

is also dilapidated and has dormitory floorboards that can crack anytime⁵⁹. SK Lubok Mawang is more than half a century old school, built back in 1952 and ever since then, it has not been through much of a renovation or maybe not at all. According to the Borneo Post report a couple of years ago, the wooden buildings of the school are so frail to the point of shaking if a group of students just run around in it. Meanwhile, the ministry has clearly done little or almost nothing at all to address the accelerating problems in relation to the institution of schools for the Orang Asli students. Therefore, it is the bitter truth that Orang Asli students in rural areas of Malaysia have to go through such inequitable conditions while they continue hankering to educate themselves.

Moreover, the authorities could have been more understanding with the parents of the missing children. Siti Kasim, whom some have reported to be a lawyer representing the families of the 7 missing Orang Asli children, draws out that when the 2 surviving girls, Norieen Yaakob and Mirsudiar Aluj were found, Jabatan Kemajuan Orang Asli (JAKOA) went ahead to organize a press conference at the hospital without even informing the parents' of both the girls that their daughters had been found.

According to Nora Tegeu, mother of Ika Akel, as quoted by Today Online, said that 'It is our children who have gone missing, and we deserve to be informed first and not those not directly concerned''⁶⁰. Prior to that, the families of the missing children were brought up to date by the village members.

All in all, assistance should be provided to the Orang Asli community to maintain their heritage and culture otherwise, there is a high capability of losing them due to our neglect of behavior and neglect of an action to be taken for the well-being of the Orang Asli community.

⁵⁹ Ibid.

⁶⁰ "3 ways the Orang,".

1.14 RECOMMENDATIONS ON IMPROVING THE EDUCATIONAL RIGHTS OF THE ORANG ASLI PEOPLE

The education of the Orang Asli people, may it be nationally or internationally, is a core challenge that most of the countries face. While the issue is one of the least popular topics among others, it raises fundamental contradictions of national priorities, reflecting the balance of domestic political power, affordability and choices in national spending, rights of Orang Asli groups versus larger majorities, and the role of the international community setting priorities in the face of national sovereignty.

From a human rights perspective, education is essential in achieving growth and stability in society. Education is a tool of empowerment, strengthening communities and societies in all parts of the world. If education struggles aren't resolved by actions, the indigenous people/culture will go extinct causing an even bigger gap in social, economic, and political barriers; possibly causing illegitimate conflict amongst large populations. The lack of equality and access to education, will affect the future continuity and interaction of Orang Asli people with other populations, thus segregating and weakening the states' sovereignty.

With those in mind, improving the educational rights of the Orang Asli people are one of the important elements to rectifying the causes above.

The first would be educating the Orang Asli people in the ways of communication, or rather, teaching them the common tongue of the land itself. Most Orang Asli people have their own common language that they speak to each other. While not exactly different from other languages, they are mostly looked down upon when they are not able to converse in the common tongue with others when they are in a more social setting. This is one of the problems that are faced by the Orang Asli people.

Discrimination comes in many forms and one of those is that people tend to look down and make others feel embarrassed when they cannot understand what the other party is saying and are not able to reply. Therefore, communication is the first step in improving their education rights. If the Orang Asli children are made to feel ashamed every time they go to school, sooner or later, they will not feel welcomed and would sooner drop out of school rather than face this kind of situation again. The fear of inferiority is a chief problem that many face. It takes a special kind of courage for a child to continue to face adversity unless encouragement and support are given by the right party, and actions are taken to curb such bad behavior of discrimination from happening again.

While the ILO Convention has taken steps to ensure that the rights of the indigenous people to education are protected, Malaysia has not implemented the same laws here in the country. The indigenous people, known as “Orang Asli,” in Malaysia, still fare poorly in education⁶¹.

According to State Assemblyman Dennis Ngau, the number of indigenous students in most of the primary schools in Sarawak is dropping⁶². There are several reasons for this.

Firstly, some natives do not take education seriously. They are of the opinion that education does not matter, well, among their people in the tribe that is. They feel that it is alright if their children do not go to school, since they have been able to survive in a rural setting all this while. Indigenous students in class.

⁶¹ Bernama, “Education News,”.

⁶² Then, S., “Orang Asli Issues: Access to Education Still Difficult,” *The Star Online*, 24 March, 2015, <http://www.thestar.com.my/lifestyle/family/features/2015/03/24/orang-asli-issues-access-to-education-still-difficult/> 27.4.2024.



Another thing is that the indigenous tribes are afraid of losing their roots, or rather, their own identity. Most youngsters are encouraged to pursue their education in a more appropriate setting, which means that they must leave the security of their tribal village to obtain education.

The dropout rate has also been increasing as stated above, as some of the students live too far from the schools and transport is a problem. Some others drop out because they did not put consistent effort into their studies and their grades dropped. Others would drop out as they were needed back home to help their family with their crops and livestock.

Some families take their children's education seriously and move into towns in order to allow their children the chance to attend school. However, financial problems cause most indigenous families to move around constantly finding places to rent. If the family is unable to settle down, then the children are unable to attend school.

In order to curb this, the government is planning to expand centralized special model schools to tackle the high dropout rates among the 'bumiputera' in Malaysia by combining primary school and secondary school under the same school management. They also plan to provide more boarding facilities for students, so they do not have to travel back and forth to attend classes.

Another way to encourage indigenous students to attend classes is by encouraging them through other means like sports and technical courses. This can appeal to their inner nature as indigenous children prefer the outdoors and are very prone to hands-on work since their childhood.

The Malaysian government can also adopt a Federal Land Development Authority (FELDA) style of approach by providing land to the Orang Asli community. They will then be able to work on the land provided by the government by making it a farm or for other uses. The Orang Asli previously depended on jungle resources, but it is no longer the case because the forest resources have depleted. By having the land, they are able to turn it into new economic resources. Having a good education would help here as they would be able to use their knowledge to make their work successful.

Without good education, it will be very difficult to face the increasing challenges brought about by the advancement in society. The natives would always remain in the grip of poverty and the vicious cycle will continue generation after generation. Therefore, by having good education and skills, the Orang Asli community will then be able to compete with the rest through their own means.

1.15 CONCLUSION

Education is a vital part of human life. Education clearly indicates a group's or a population's success on how far they have come about since the civilization period. Sadly, the education of the indigenous and tribal people remains critical due to several factors that have been discussed above.

The indigenous and tribal people still face discrimination in the aspect of basic social services which includes education. Education is the major problem that has been faced by the indigenous and tribal people as there is a lack of contribution to it.

The indigenous people's educational rights are stipulated under the [ILO Convention No. 169 on Indigenous and Tribal Peoples](#), specifically under Article 26 till Article 31 and the [United Nations Declaration on the Rights of Indigenous Peoples \(UNDRIP\)](#), specifically under Article 14.

The Orang Asli are the indigenous people in Malaysia and their population grew from 54,033 in 1969 to 92,529 in 1994. Since attaining its independence in 1957, the Malaysian government has introduced various programmes to improve the lifestyle of the Orang Asli. The Ministry of Education is committed to providing education for the children of Orang Asli.

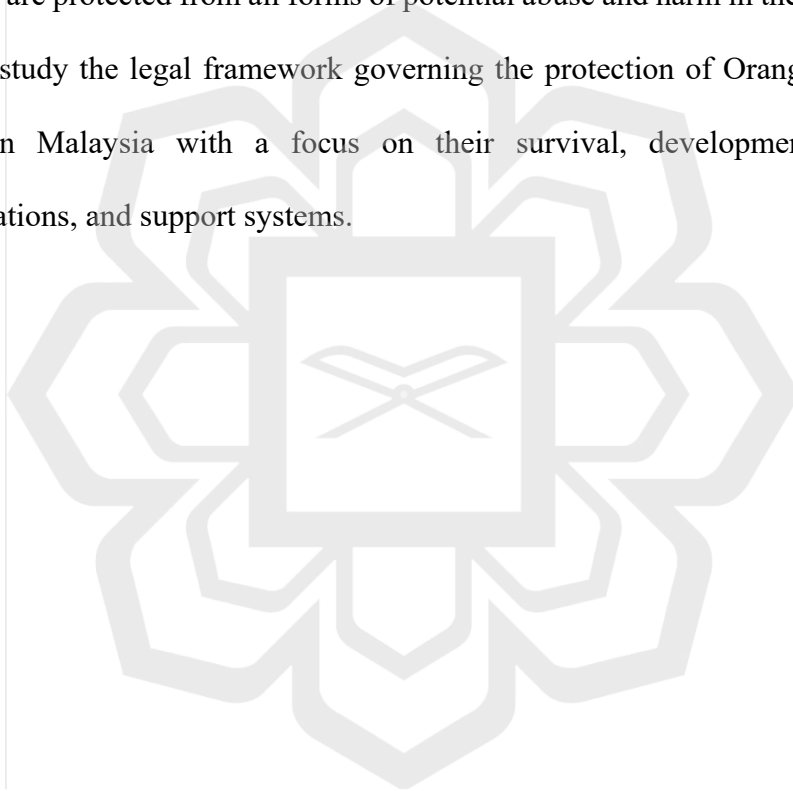
The education of the indigenous people, nationally or internationally, is a core challenge that most of the countries face. This issue raises fundamental contradictions of national priorities, reflecting the balance of domestic political power, affordability and choices in national spending, rights of indigenous groups versus larger majorities, and the role of the international community setting priorities in the face of national sovereignty.

Education is essential in achieving growth and stability in society. If education struggles aren't resolved by actions, the indigenous people/culture will go extinct causing an even bigger gap in social, economic, and political barriers; possibly causing illegitimate conflict amongst large populations. The lack of equality and access to education, will affect the future continuity and interaction of indigenous people with other populations, thus segregating and weakening the states' sovereignty.

Improving the educational rights of the indigenous people is one of the most important elements in a society. Therefore, measures should be taken wisely and with much precaution to address the issues and problems faced by the indigenous people with respect to education. Education provides a channel for the indigenous people to

improve themselves and provides opportunity to blend with the general population without facing any discrimination.

In order to strengthen a legal framework and design out tactics to ensure successful execution, laws and policies must be revised. Since Orang Asli children are particularly vulnerable and their welfare is severely impacted by the lack of a legal system to safeguard them, they have a specific need to be protected by the law. In order to ensure that Orang Asli children can enjoy their rights, achieve greater fulfillment in life, and are protected from all forms of potential abuse and harm in the future, it is now time to study the legal framework governing the protection of Orang Asli children's rights in Malaysia with a focus on their survival, developments, protections, participations, and support systems.



CHAPTER TWO

THEORETICAL FRAMEWORK ON THE RIGHTS OF ORANG ASLI CHILDREN UNDER THE INTERNATIONAL CONVENTIONS

2.1 INTRODUCTION

The aim of the chapter is to formulate a comprehensive theoretical framework that clarifies and analyses the rights of Orang Asli children within the context of International Convention. An in-depth examination on international convention's provisions, relevant international and domestic legal frameworks, as well as the circumstances of the Orang Asli community shall be stipulated in this report. The goal is to establish a robust conceptual framework that outlines and addresses the rights, protection and challenges faced by Orang Asli children. The task of synthesizing a legal framework based on existing conventions shall provide a nuanced understanding of how these provisions stipulated in international conventions can be applied in our own constitution to better develop the Orang Asli children, while respecting their cultural identities and indigenous heritage.

This chapter investigates the theoretical foundation for the perspectives on children's rights, namely the international treaties. The United Nations Convention on the Rights of the Child (1989) (hereinafter referred to as "UNCRC")¹ and the United Nations Declaration on the Rights of Indigenous Peoples (hereinafter referred to as "UNDRIP")² are specifically discussed in this chapter's analysis of the two main international documents on children's rights and the rights of indigenous children. The

¹ United Nations Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC), Art 1.

² Ibid.

discussion of the two international conventions will rely on Malaysia's government's responses to both conventions as they relate to the rights of Orang Asli children.

Issues affecting indigenous peoples in recent years have received greater attention domestically and internationally, and significant progress has been made to promote their rights. In the process, it is encouraging, but native kids no longer usually acquire the specific care they deserve. In any case, certain situations have become ambiguous due to other issues of greater interest to the indigenous people, including land rights and political representativeness (UNICEF Innocenti research center). These concerns, of course, are fundamental to the indigenous community but are important to consider along with the measures of the Goal to protect the unique identities of indigenous kids and sell the conclusion of human rights.

The first feasible undertaking to strengthen kids' privileges emerged as the Declaration of the Rights of the Child, drafted through the manner of approach of Eglantyne Jebb in 1923 and took on through the manner of approach of the League of Nations in 1924. On 20 November 1959, the United Nations General Assembly embraced an extended variant as its very own Declaration of the Rights of the Child, with ten necessities instead of the number one five. The United Nations Convention on the Rights of the Child (UNCRC) emerges as the precept lawfully limiting international devices to fuse the whole scope of easy liberties, depicting toddler particular requirements and rights. These easy freedoms included common, social, monetary, political, and social rights, truly as factors of philanthropic law. The UNCRC emerged as endorsed in 1989 and went to power in 1990. As of May 2010, it hosted 193 gatherings that had endorsed, acknowledged, or consented with expressed reservations

or understandings, which incorporates anybody from the United Nations aside from Somalia and the United States, which have truly marked³.

Countries that verify this international show are positive to it via global law. While every one of the rights contained withinside the Convention complies with all aboriginal children if nearby, the Convention on the Rights of the Child turns out to be the precept center now no longer unusual place liberties affiliation to preserve in thoughts explicit references to nearby children for numerous arrangements. Despite accelerated attention of the privileges of nearby human beings withinside the global gathering, nearby children stay at a maximum of the most minimized gatherings internal our society⁴. Further, in Australia, Canada, New Zealand, and In the United States, the nearby to non-nearby new baby little one mortality proportions range from 1.6 to 4.0.

The right of Orang Asli Children to appreciate their conventional culture, religion and language. In 1991, UNICEF's Executive Board took on a goal by submitting UNICEF to further developing the manner by which its activities assist aboriginal children with partaking in this right. In Asia, Latin America and Africa, UNICEF projects center around schooling, wellbeing, sustenance and rustic advancement to work on the day-to-day environment of native ladies and children, while advancing their right to partake in their strict and social life. UNICEF's Research Center, situated in Florence, embraces research on the necessities of aboriginal children, and UNICEF's headquarters produces instruction and preparing materials the Convention on the Rights of the Children explicitly for Orang Asli children.

³ United Nations Convention on the Rights of the Child.

⁴ International Work Group for Indigenous Affairs, "The Indigenous World 2019," <<https://www.iwgia.org/en/resources/publications/355-the-indigenous-world-2019.html>> (accessed on 14 February 2023).

2.2 DISTINCTIONS BETWEEN THE MALAY, ORANG ASLI, & THE NATIVE OF SABAH & SARAWAK

2.2.1 The Malays

The word “Malay” is interpreted as a person who professes the religion of Islam, habitually speaks the Malay language, conforms to Malay customs, and was born before Merdeka Day in the Federation/Singapore, or is domiciled in the Federation⁵. Islam is the official religion of Malaysia, and this criterion reflects the cultural and religious identity of the Malay community, which is historically associated with Islam. Other than that, the Malay language (Bahasa Malaysia) is the national language of Malaysia⁶. The second criterion requires that a person identified as a “Malay” habitually speaks the Malay language. Language is an essential marker of cultural identity and community, and the Malay language is integral to the Malay culture. This criterion of conforming to Malay customs indicates that a “Malay” person follows and upholds the traditional customs and practices associated with the Malay culture. Customs encompass various aspects of life, including social interactions, ceremonies, and ways of living that define the cultural identity of the Malay community.

This legal definition of “Malay” plays a significant role in various aspects of Malaysian society, including issues related to identity, citizenship, and cultural representation. It’s important to note that the term “Malay” has both ethnic and legal connotations in Malaysia, and this interpretation helps establish a framework for identifying individuals who can be officially recognised as Malays within the country’s legal framework.

⁵ Federal Constitution, art. 160(2) (Malaysia) (Definition of “Malay”).

⁶ Ibid.

2.2.2 Orang Asli



Figure 2.1 Categories of ethnics of Orang Asli in Peninsular Malaysia

The Orang Asli is known to reside within Peninsular Malaysia. This is based on the interpretation of “Aborigine” in the Federal Constitution, which clarifies an aboriginal individual of the Malay Peninsula⁷. They are recognised as the original inhabitants of the Malay Peninsular prior to the arrival of the Malacca Sultanate. Their race is categorized into three main tribal groups which are Semang (Negrito), Senoï and Proto Malay (Aboriginal Malay)⁸. These three groups would consist of a total of 19 different ethnic groups among the Orang Asli community. As of 2021, the Department of Orang Asli Development (JAKOA) reported a total Orang Asli population of 178,197 in Peninsular Malaysia. The Senoï group remains the largest, followed by the Proto-Malays, with the Negrito (Semang) group constituting the smallest percentage. While specific percentages for each group are not detailed in the 2021 report, earlier data from

⁷ Federal Constitution, art. 160(2).

⁸ Tarmiji Masron, Masami, F., and Ismail, N., “Orang Asli in Peninsular Malaysia: Population, Spatial Distribution, and Socio-Economic Condition”, *Ritsumeikan Journal of Human Sciences*, vol. 6, (2007): 115–131.

2018 indicated that the Senoi comprised approximately 54% of the Orang Asli population, the Proto-Malays about 43%, and the Negrito around 3%⁹.

2.2.3 The Native of Sabah & Sarawak

The natives of Sabah and Sarawak hold a special position granted to them under Article 161A of the Federal Constitution¹⁰. The Article recognises the unique status of the indigenous people of these states and outlines their rights, privileges, and land-related matters. The term “native” differs between the two states.

In Sarawak, Clause (6)(a) of the Article¹¹ provides that a native is a citizen belonging to one of the indigenous races listed in Clause (7) of the same Article¹². It also adds that a person of mixed blood with any of those races/groups also falls under the definition of the Clause. In Sabah, Clause (6)(b) of the Article¹³ provides that a native is a citizen who is the child or grandchild of a person belonging to an indigenous race of Sabah. The individual must have been Sabah-born or came from a father domiciled in Sabah at the time of the birth. Article 161A was put in place to safeguard the interests and cultural heritage of these indigenous communities within the context of the broader Malaysian legal framework.

⁹ Norliza Mohamed and et al., “A Nationwide Population-Based Study of Diabetes among the Orang Asli in Peninsular Malaysia: Prevalence, Risk Factors and Healthcare Seeking Behaviour”, *BMC Public Health*, vol. 21, no.1221 (2021), <https://doi.org/10.1186/s12889-021-11266-7>.

¹⁰ Federal Constitution, art. 161A (Malaysia) (Special position of the natives of the States of Sabah and Sarawak).

¹¹ Ibid, art. 161A(6)(a) (Malaysia) (Definition of “native” in Sarawak).

¹² Ibid, art. 161A(7) (Malaysia) (List of indigenous groups in Sarawak recognised by the Federal Constitution).

¹³ Ibid, art. 161A(6)(a).

Table 2.1 List of indigenous groups in Sarawak

1. Bukitans	11. Lugats
2. Bisayahs	12. Lisums
3. Dusuns	13. Malays
4. Sea Dayaks	14. Melanos
5. Land Dayaks	15. Muruts
6. Kadayans	16. Penans
7. Kalabits	17. Sians
8. Kayans	18. Tagals
9. Kenyahs (including Sabups and Sipengs)	19. Tabuns
10. Kajangs (including Sekapans, Kejamans, Lahanans, Punans, Tanjongs and Kanowits)	20. Ukits.

In summary, Malays are defined by a combination of religion, language, customs, and birth/domicile, Orang Asli are the indigenous peoples of Peninsular Malaysia with distinct tribal groups, and the natives of Sabah and Sarawak have a special legal position recognised under Article 161A based on their indigenous status within their respective states.

2.3 POVERTY & POPULATION DECLINE

The Orang Asli community in Peninsular Malaysia faces significant challenges related to poverty and population decline, as indicated by the provided information. This indigenous community, alongside the broader population of Malays, Chinese, and Indians, constitutes the diverse human population of the region. However, the Orang Asli face distinct issues that have led to their disadvantaged socio-economic status.

Orang Asli population below the poverty line.	76.9%
Hardcore poverty rate.	35.2%

As of 2019, the Orang Asli population in Peninsular Malaysia was estimated at approximately 217,000 individuals. Despite various development initiatives, poverty remains a significant issue within this community. In 2019, the national poverty rate was 5.6%, whereas the poverty rate among the Orang Asli was alarmingly high at 89.4%. This stark contrast underscores the persistent socio-economic disparities faced by the Orang Asli compared to the broader Malaysian population¹⁴.

Moreover, within the Orang Asli population, 35.2% were classified as living in hard-core poverty, a situation characterized by extreme deprivation and limited access to basic necessities. This is in stark contrast to the national figure of 1.4% living in hard-core poverty, indicating the severity of the economic challenges faced by the Orang Asli.

Average infant birth rate.	1,000
Infant mortality rate (Orang Asli population).	51.7%
Infant mortality rate (national).	8.9%

Health indicators further emphasize the marginalized condition of the Orang Asli community. The infant mortality rate among the Orang Asli stands at a high of 51.7 per 1,000 live births, which is significantly higher than the national average of 8.9. This

¹⁴ United Nations Children's Fund, "The State of the World's Children 2019: Children, Food, and Nutrition," UNICEF, 2019 <<https://www.unicef.org/reports/state-worlds-children-2019>> (accessed 12 February, 2026).

statistic reflects inadequate access to quality healthcare and essential services, contributing to the vulnerability of infants within the community.

The mortality rate among Orang Asli children is significantly higher compared to children from major ethnic groups, as indicated by data from consultant pediatrician and researcher Dr Amar-Singh¹⁵.

Orang Asli children in Peninsular Malaysia are 11 times more likely to die under the age of five than children from the main ethnic groups. This alarming disparity in child mortality rates reflects the substantial health care disparities faced by marginalized communities, with indigenous children in Sabah and Sarawak also experiencing a mortality rate 1.7 times higher than children from the Malay, Chinese, and Indian ethnicities. These health disparities are compounded by factors such as high poverty rates, childhood malnutrition, limited access to healthcare, and lack of attention from local health authorities. Additionally, the Orang Asli children experience intercultural trauma due to the challenges of integrating their indigenous languages, customs, and values with mainstream society. This situation highlights the urgent need to address not only the healthcare disparities but also the broader socio-cultural issues affecting the well-being of the Orang Asli children¹⁶.

Additionally, the average life expectancy for the Orang Asli is only 53 years, compared to the national average of 73 years. This significant gap highlights the substandard living conditions and limited access to healthcare, education, and other resources that have contributed to a shorter life expectancy within the community.

¹⁵ Alifah Zainuddin, "Under-Five Orang Asli Children Death Rate 11 Times Higher Than Main Ethnicities," *CodeBlue*, 22 February, 2022, <https://codeblue.galencentre.org/2022/02/22/under-five-orang-asli-children-death-rate-11-times-higher-than-main-ethnicities/>.

¹⁶ Ibid.

The combination of high poverty rates, particularly hard-core poverty, elevated infant mortality rates, and lower life expectancy underscores the urgent need for comprehensive interventions to address the socio-economic challenges faced by the Orang Asli community. These interventions should encompass initiatives aimed at improving healthcare access, providing educational opportunities, enhancing livelihood prospects, and promoting cultural preservation. Addressing these issues is crucial not only for the well-being and dignity of the Orang Asli people but also for the broader goal of achieving equitable development and social progress in Peninsular Malaysia¹⁷.

2.4 THE THREAT OF INDUSTRIALIZATION & THE ORANG ASLI PEOPLE LEFT BEHIND

Advancements and industrialization have posed significant threats to the well-being of Orang Asli children, leaving them behind and marginalized by society. As an example, we based this view of the previous statement on the study of the Semai people¹⁸. Historically, the Semai people maintained a self-sustaining and egalitarian economy rooted in subsistence and communal values¹⁹. However, after the 1950s, the state and merchant capital began to influence the Semai community, leading to a transformation of their traditional way of life. As industrialization took hold, several detrimental consequences emerged that disproportionately affected Orang Asli children.

Industrialization disrupted the Semai's traditional means of livelihood, pushing them towards cash-cropping and animal husbandry as part of integration policies. This transition left them vulnerable to economic fluctuations, impacting their ability to

¹⁷ Ibid.

¹⁸ Colin Nicholas, "Theories of Development and the Underdevelopment of the Orang Asli", *Akademika*, vol. 35, (1989): 55–66.

¹⁹ Ibid.

provide for their families and leading to increased dependence on external assistance, including the Jabatan Kemajuan Orang Asli (JAKOA).

The rapid advancement of society may have some effects in the loss of cultural identity. The exposure to modern consumerist culture introduced by merchant capital eroded the indigenous cultural values of the Semai. This cultural assimilation resulted in a decline of mutual cooperation, economic redistribution, and indigenous religious practices. Orang Asli children were deprived of the opportunity to learn and engage in traditional practices, disconnecting them from their cultural heritage.

Other than that, discrimination and unfair treatment had left the Orang Asli communities, including children, with limited access to essential facilities and services. This inequality extended to credit, marketing assistance, and educational opportunities. Orang Asli children were left without the same support as other communities, hindering their participation in the exchange economy.

It is also important to acknowledge the fact that the Orang Asli communities and the rest of Malaysian society have long limited the exposure of the two worlds. To a certain extent, the isolation allowed for the preservation of the Orang Asli communities' way of life. The JAKOA organization has made it one of their primary efforts in preserving it. However, it has proven to be a 'double-edged sword' as the role of the JAKOA as the sole government agency responsible for Orang Asli affairs resulted in their isolation from the broader Malaysian society²⁰. Interaction between the Semai and other Malaysians was restricted, perpetuating their marginalization and limiting their exposure to opportunities for growth and development.

²⁰ Ibid.

The challenges have deeply impacted Orang Asli children, pushing them to society's margins and compromising their traditional lifestyle, cultural identity, and economic well-being due to rapid industrialization. To uplift them, a holistic, people-centered approach prioritizing livelihoods, cultural preservation, and well-being is essential. Empowering the Orang Asli community, fostering self-reliance, and promoting active participation are crucial. Such comprehensive efforts can enable them to overcome industrialization's challenges, integrate fully into society, and preserve their cultural integrity²¹.

There are four area keys for promoting the rights of Orang Asli children. should be carefully considered in developing effective policies for Orang Asli Children at all national and local levels, respectively. Digest leverages effective innovative tasks round the sector to focus on treasured training that could tell destiny conduct and attention on understanding the following rights of youngsters of Orang Asli peoples.

- Highest standards of health and nutrition.
- Quality education.
- Effective safety and support. And,
- Voices within the decision-making procedure influencing them²²

Under UNICEF sponsorship, a coordinated, socially sensitive software has been running seeing that 1989 withinside the maximum denied and remote local areas of Bolivia, Colombia, Ecuador, Peru and Venezuela. The PROANDES software – which is classified to have contacted greater than 1.5 million people in its preliminary 10 years – changed into installation as a simple help conveyance software but is seeing that

²¹ Ibid.

²² Colin Nicholas, Tijah Yok Chopil, and Tiah Sabak, *Orang Asli Women and the Forest: The Impact of Resource Depletion on Gender Relations Among the Semai*, (Kuala Lumpur: Centre for Orang Asli Concerns, 2010).

superiority to show right into a far-achieving youngster rights-primarily based totally software. Its middle intention is to defeat the social prohibition that continues aboriginal kids and women from expertise their simple liberties withinside the Andean Region²³.

All the greater explicitly, the critical desires are to assure that:

- All aboriginal children partake in a decent beginning throughout everyday life and all ladies partake in protected parenthood.
- All aboriginal children, paying little heed to their nationality or sexual orientation, procure the information and abilities important to create to their maximum capacity through essential schooling; and
- All aboriginal children and ladies are shielded from savagery, misuse and double-dealing.

The enjoyment of PROANDES has exhibited the importance of prevailing each close by and public authorities' responsibility (counting financial obligation) to the execution of development designs which are youngster focused. It has moreover featured the importance of making sure that networks are educated, suggested and participate for the duration of the entire interaction²⁴. Likewise, it has accentuated how first-rate practices and physical games found out on the community stage ought to be evaluated, unfold and joined in public, public and international arrangements. Since 1993 in Peru, close by councils counting civic chairmen, wellbeing, education and fairness authorities, retailers of public establishments, community NGOs, agrarian specialists', nearby region and ladies' institutions have added and carried out every year interest plans for aboriginal children. These have been crammed in as a version for the general public authority supported Integrated Committees to Fight Poverty (Mesas de

²³ United Nations Children's Fund, "PROANDES: A Program for the Rights of Indigenous Children," United Nations Children's Fund, 1999.

²⁴ Ibid.

Concertación de Lucha contra l. a. Pobreza)²⁵. In Bolivia, the decentralization cycle in development has begun out to transport substantial dynamic and financial duties to community governments, altogether increasing the spending plans of usually helpless districts. Both Colombia and Ecuador have fostered a coordinated right-primarily based totally manner to address improve institutional reactions²⁶.

In this load of cases, local and nearby regions' hobby in dynamic and community authorities has been a simple issue for carrying out substantial and supportable outcomes. To take best one version, PROANDES labored with close by authorities withinside the province of Zulia, Venezuela to accumulate nearby region oversaw oral rehydration units, with the final results that under-5 mortality due to unfastened bowels become dwindled through 54%²⁷.

2.5 THE NEED FOR INDIGENOUS CHILDREN TO RECEIVE GREATER PROTECTION

As a means of addressing these pressing issues, a multi-pronged approach is required. First, acknowledging and respecting the cultural identity of the Orang Asli is paramount. Policies that prioritize cultural preservation and respect for their distinct heritage should be implemented. Secondly, socio-economic empowerment through education and skill development programs can break the cycle of poverty. Access to quality healthcare, especially for children, should be a priority, along with cultural sensitivity training for healthcare providers. Moreover, initiatives should be designed to bridge the intercultural gaps and foster mutual understanding between the Orang Asli and mainstream society. This requires collaborative efforts from government bodies,

²⁵ Boaventura de Sousa Santos, "The Rise of the Global Left: The Case of Indigenous Movements in Latin America", *Journal of World-Systems Research*, vol. 15, no.1 (2009): 1–25.

²⁶ Ibid.

²⁷ Ibid.

civil society organizations, and the broader community to create a conducive environment for the growth and well-being of Orang Asli children. By addressing these issues holistically, Malaysia can ensure that the Orang Asli community, especially its children, can thrive while maintaining their cultural integrity and embracing a brighter future.

2.6 THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (UNCRC)

Since time immemorial, the subject of the rights of children were never of much concern to society at large. Instead, children were merely viewed as objects that belonged to their parents or adults in training. Such was the common conception of society which suited the cultural norms at the time. In particular, traditional indigenous structures provided sufficient protection for children and young people.

By the turn of the 19th century, societies across the world began to experience a tectonic shift in terms of technological advancement and industrialization with the onset of the Industrial Revolution. Such advances in science and technology inevitably improved upon the quality of life of millions of individuals. Even so, humanity's political and cultural values failed to keep pace with the galloping pace of industrialization. For the indigenous communities across the world, their long held social structures concerning children eventually succumbed to the pressures of a rapidly industrialising society due to environmental change, economic exclusion, and displacement²⁸.

²⁸ United Nations Children's Fund Innocenti Research Centre, "Ensuring the rights of indigenous children," Innocenti Digest, 2003 <<https://www.unicef-irc.org/publications/pdf/digest11e.pdf>> (accessed on 22 February 2023).

The ugly facade of industrialization was exposed to the world by photographer Lewis Hine, who photographed the appalling conditions of child labour in factories across America²⁹. In a society which only began to understand the impact of industrialization on the human condition, civil society advocated for the abolition of child labour across the United States. For the first time, children were recognised as vulnerable individuals with rights which required state-sanctioned protection from the exploitative tides of society.

In 1924, the League of Nations endorsed the Declaration of the Rights of the Child, a precursor to the UNCRC.

By 1989, amidst the backdrop of globalization with the winding down of the Cold War and the onset of a new century, the United Nations General Assembly adopted the Convention on the Rights of the Child (UNCRC). It came into force on 2 September 1990. As of 2023, every member state of the United Nations is a member of the UNCRC except the United States. Malaysia has been a party to and ratified the Convention since 1995. Therefore, the Malaysian law on the rights of children must be bound and modeled after the contents of the UNCRC.

The relation between the UNCRC and the status of indigenous children are encapsulated in the preamble of the Convention, whereby state parties are bound to implement the contents of the convention while *‘taking due account of the importance and cultural values of each people for the protection and harmonious development of the child’*. While the UNCRC is not strictly limited in its application to only indigenous

²⁹ Madison Horne, “These Appalling Images Exposed Child Labor in America,” *History Channel*, 10 March, 2021, <https://www.history.com/news/child-labor-lewis-hine-photos>.

children, it stands out as the first human rights treaty to specifically refer to indigenous children in several provisions³⁰.

There are several Articles within the UNCRC which expressly provides for the rights of indigenous children. Firstly, Article 17(d) provides that state parties must encourage the mass media to have particular regard to the linguistic needs of indigenous children.

This is to ensure the continuity and prevalence of indigenous languages within modern society. Left to their own devices, indigenous languages may be drowned out and become irrelevant in modern society. It is also an important facade in preserving the cultural identity of indigenous children and provides them with the freedom to express themselves.

The importance of such a legal framework is evidenced by the attempted erasure of Maori Language in New Zealand. In the late 19th century, the New Zealand Parliament passed the Native Schools Act 1897 pursuant to the government's policy of assimilating Maoris into the European-descent-dominated society. Maori communities may petition the government for the schools to be constructed and funded for their respective communities. However, such schools must only employ English as the medium of instruction³¹. The usage of the Maori language saw a steep decline in New Zealand thereafter.

³⁰ Jane Freemantle, "Indigenous Children - Their Human Rights, Mortality, and the Millennium Development Goals," UN Chronicle, 2010 <<https://www.un.org/en/chronicle/article/indigenous-children-their-human-rights-mortality-and-millennium-development-goals>> (accessed on 8 March 2023).

³¹ Katherine Pawley, "Ngā Kura Māori: The Native Schools System 1867–1969," *University of Auckland Libraries and Learning Services Blog*, October 6, 2017 <<https://www.news.library.auckland.ac.nz/2017/10/06/native-schools/>> (accessed 15 January, 2026).

A firm international framework such as Article 17(d) of the UNCRC encourages the distribution of information in indigenous languages and thereby maintaining its relevance in modern society.

Secondly, Article 29 mandates education to prepare children for a responsible life in a free society, in the spirit of “understanding, peace, tolerance, equality of the sexes, and friendship among all peoples, ethnic, national, religious groups and persons of indigenous origins”. This provision is founded on the premise that education is a tool to equalise society by providing every person with the same opportunities and fostering a sense of understanding among individuals of different backgrounds.

The education of indigenous children is an important tool to overcome the continuous marginalisation of indigenous people by encouraging participation in the wider society. Proper education breaks the vicious cycle of poverty and allows indigenous children to enjoy a better quality of life. Furthermore, the right to education also empowers indigenous children to exercise their civil and political rights and engage with society at large to better protect their own community from further infringement³².

An important point to note is the provision only provides for the right to education but does not extend to the right of using indigenous languages in education. Therefore, governments are not bound to educate indigenous peoples in their mother tongue as part of a national education system. Instead, governments tend to opt to educate them in a mainstream language. Realistically, this hinders any efforts towards providing education towards indigenous children due to the presence of a language

³² Committee on the Rights of the Child, “General Comment: Indigenous Children and their Rights Under the Convention,” Office of the United Nations High Commissioner for Human Rights, 2009 <https://www2.ohchr.org/english/bodies/crc/docs/GC.11_indigenous_New.pdf> (accessed on 10 March 2023).

barrier. Studies have shown that indigenous children require more time than their mainstream-language speaking peers to comprehend the materials they are being taught.

In the Malaysian context, studies have shown that some teachers are unsuccessful in conveying their teaching materials to *Orang Asli* students as some students were unable to understand the language used. This is due to the fact that most teachers were ethnic Malays who did not speak the language of the *Orang Asli*. Ultimately, this results in a disruption of the teaching and learning process and students lose interest in education given the perceived incompetence of the teachers³³.

As such, this reveals an outstanding loophole within the UNCRC in the context of indigenous children's right to education: although indigenous children may have the enforceable right to education, they do not have proper practical access to it given that the UNCRC does not compel governments to educate them in the indigenous language or provide a bilingual syllabus to facilitate the communication of knowledge.

Even if governments decide to implement a bilingual education system for indigenous children, logistical and infrastructural problems such as the lack of qualified teachers and limited resources for teaching still pose significant barriers. Such problems are compounded by the lack of indigenous teachers and the reluctance of non-indigenous teachers to teach at indigenous villages.

A similar situation is also reflected in the education of India's indigenous people, the Adivasi. They experience a higher dropout rate than the national average at all levels of education due to unavailability of schools, unsatisfactory facilities, and conditions of household levels. In situations of extreme poverty which the indigenous community is all too familiar with, education is not a significant priority due to it being a long-term

³³ Ramle Abdullah and et al., "Teaching and Learning Problems of the Orang Asli Children: Students' Perspective", *Asian Social Science*, vol. 9, no.12 (2013): 12–18.

investment which does not bear any immediate returns or gratification³⁴. Faced with infrastructural and linguistic obstructions, it should therefore come as no surprise that the indigenous children in India, Malaysia and quite possibly the rest of the world lag behind their mainstream peer's education-wise.

Thirdly, Article 30 protects the rights indigenous people to enjoy their own culture, to profess their own religion, and to use their own language. This, along with Article 2 which imposes a duty upon the state to protect the rights of children irrespective of race, language, religion, or any other denominators, form the bulwark of the Convention against discrimination of indigenous children.

The express existence of such provisions highlights the regular discrimination and of indigenous people across the world and the need for safeguards. As a minority group, indigenous people often experience discrimination which in turn leads to cultural, economic, and political marginalisation. Such aspects are often intertwined and related to one another³⁵.

An extreme example of such discrimination is the conflict between the indigenous tribe of Kuki against the Meitei people in Manipur, India. The Meitei-controlled state government of Manipur enacted a policy of discriminating against Kuki people by forcefully evicting them and branding them as illegal immigrants. Tensions between the two groups reached a boiling point when a Meitei mob was accused of murdering and raping a family of five, an act allegedly supported by the state government³⁶. In the absence of proper democratic and legal safeguards, ethnic

³⁴ K. M. Joshi, "Indigenous Children of India: Enrolment, Gender Parity, and Drop-Out in School Education", *International Journal of Sociology and Social Policy*, vol. 30, no.11/12 (2010): 545–559.

³⁵ Edwin Michaela and et al, "Orang Asli", *Southeast Asia: A Historical Encyclopedia from Angkor Wat to East Timor*, vol. 2, no.15 (2013): 997–1000.

³⁶ Hannah Petersen, "Manipur: Why Is There Conflict and How Is the Government Responding?," *The Guardian*, 21 July, 2023, <https://www.theguardian.com/world/2023/jul/21/manipur-india-why-is-there-conflict-and-how-is-the-government-responding>.

discrimination spirals into political marginalization and eventually, the perpetration of mob violence. All this ultimately leads to the endangerment of indigenous children.

Article 6 of the UNCRC guarantees every child's right to life, survival, and development. In the context of indigenous children, the enforcement of such a right is frustrated by the disproportionately high degree of poverty and rampant marginalisation plaguing the community. Indigenous children often face barriers in accessing basic services such as healthcare, education, clean water, and sanitation. Geographical remoteness, lack of infrastructure, and discrimination can limit their access to essential services, affecting their well-being and development. The welfare of indigenous communities is also often overlooked by governments, thereby reducing their access to state-sponsored initiatives meant to uplift the poor such as subsidised healthcare facilities.

Without the necessary economic capital to access quality healthcare and nutritious foods, indigenous children run the risk of suffering from malnutrition and other diseases, whether communicable or noncommunicable. During the COVID-19 pandemic, Native Americans faced a disproportionately higher degree of fatalities compared to other ethnic communities in the United States. This was especially true in communities which lacked an indoor plumbing system, as this hindered proper cleaning and sanitation to stem the spread of COVID-19 virus. Additionally, COVID-19 cases were also more likely to occur in non-English speaking families. Such correlation was due to their inability to comprehend the government's public health information due to a language barrier³⁷.

³⁷ Randall Akee, "How COVID-19 Is Impacting Indigenous People in the U.S.," PBS, 2020 <<https://www.pbs.org/newshour/nation/how-covid-19-is-impacting-indigenous-peoples-in-the-u-s>> (accessed on 12 March 2023).

Inability to access adequate healthcare also leads to a high infant mortality rate among indigenous children. According to a study by the US Department of Health and Human Services, Native American infants have almost twice the infant mortality rate as white infants. Furthermore, Native American mothers are almost 3 times more likely to receive late or no prenatal care compared to their white counterparts³⁸.

Although Native American mothers understand the importance of prenatal care, they are nevertheless unable to obtain it due to poverty³⁹.

Native Americans are often overlooked in public health planning mainly due to 2 reasons. Firstly, they constitute a minuscule minority which is often neglected by national census and reports. As such, Native Americans do not constitute a population sizable enough to attract the attention of Federal Government Agencies. Secondly, Native American infants are often misclassified and reported as racially white by physicians. Consequently, the official infant mortality rate of Native Americans is a gross underestimate of the actual figure⁴⁰.

The Convention on the Rights of the Child was one of the first international human rights treaties to clearly address the status of indigenous children. While all of the Convention's provisions apply to these children, Article 30 expressly addresses their situation:

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origins exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to

³⁸ Office of Minority Health, "Infant Mortality and American Indians / Alaska Natives," U.S. Department of Health and Human Services, n.d., <https://www.minorityhealth.hhs.gov/omh/browse.aspx?lvl=4&lvlID=38> (accessed on 16 March 2023).

³⁹ Lucy Truschel and Cristina Novoa, "American Indian and Alaska Native Maternal and Infant Mortality: Challenges and Opportunities," Center for American Progress, 2018 <https://www.americanprogress.org/article/american-indian-alaska-native-maternal-infant-mortality-challenges-opportunities/> (accessed on 18 March 2023).

⁴⁰ Ibid.

profess and practise his or her own religion, or to use his or her own language.⁴¹

The simple fact that such a piece exists demonstrates worry on the requirement for extra security measures to ensure the enjoyment of indigenous culture, religion, and language. It emphasises the significance of the indigenous child taking pleasure in these aspects “in community with other members of his or her group.”

A number of child protection conferences held in the first third of the 20th century provided the foundation for later international policies that culminated in the Convention on the Rights of the Child, which made children the subject of rights for the first time. In terms of treaties on children’s rights, there have been a number of significant international legal instruments prior to the United Nations Convention on the Rights of the Child (UNCRC). The Geneva Declaration of 1924 marked the beginning of international efforts to adopt laws pertaining to children’s rights, which were then followed by the 1948 United Nations Declaration of Human Rights, the 1959 United Nations Declaration of the Rights of the Child, and the 1989 United Nations Convention on the Rights of the Child⁴².

The UNCRC is the most significant and comprehensive document on children’s rights. It attempts to recognise kids as entire human beings with all of their basic rights, including the right to live, grow, be protected, and participate in society. The UNCRC’s 54 articles are divided into four main categories: non-discrimination⁴³, the best interests of the child⁴⁴, right to life, survival, and development⁴⁵, and respect for children’s

⁴¹ United Nations Convention on the Rights of the Child.

⁴² Andrés Payà Rico, and Jaume Bantulà Janot, “Children’s Right to Play and Its Implementation: A Comparative, International Perspective”, *Journal of New Approaches in Educational Research*, vol. 10, no.2 (2021): 279–294.

⁴³ United Nations Convention on the Rights of the Child, art. 2.

⁴⁴ Ibid, art. 3.

⁴⁵ Ibid, arts. 6, 27.

opinions⁴⁶. Notably, article 2 asserts the general principle of non-discrimination “irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”

In essence, the UNCRC emphasises that the child’s best interests should always take precedence in all circumstances. In most jurisdictions, addressing children’s rights and welfare has been guided by the best interest’s principle⁴⁷. It serves as the guiding principle for putting all of the UNCRC’s substantive Articles into practise.

The best interests of the child, however, have never been defined and are uncertain in practise. When interpreting the phrase in light of other UNCRC Articles, it can be assumed that acting in the best interests of the child entails taking all necessary precautions before making a decision involving a specific child in a given situation⁴⁸.

The best interest’s principle has the benefit of being broad and flexible to fit in with the changing demands of society and adaptable to the culture of different legal systems because it has not been defined precisely⁴⁹. However, because of its adaptability, the concept may also alter in tandem with the swift societal evolution, necessitating the necessity to periodically reinterpret the roles of parents and the State from a new point of view. These traits highlight the concept’s adaptability as well as some of its possible drawbacks. Uncertainty in a concept could theoretically prevent the comprehension of children’s rights and make the policy appear unfair. To the detriment of the kid, for instance, it will favour the interests of the State or of the parents⁵⁰.

⁴⁶ Ibid, art. 12.

⁴⁷ Mary George Noor Aziah Mohd Awal, “The Best Interest Principle Within Article 3(1) of the United Nations Convention on the Rights of the Child”, *International Journal of Business, Economics and Law*, vol. 19, no.4 (2019): 30–36.

⁴⁸ Ibid.

⁴⁹ The United Nations Convention on the Rights of the Child.

⁵⁰ Fatma Hassan Beshir, “Prepared for: Public Policies and Child Rights Diploma Course: Child Rights in Law”, (2011).

According to the UNCRC Committee, the current idea is highly general since it offers a framework for evaluating and establishing the child's best interests without dictating what is appropriate for the child in any particular circumstance at any given time. The major goal is to improve understanding and implementation of children's rights to have their best interests evaluated and taken into account first. This idea seeks to encourage a genuine shift in mentality that will result in children receiving full respect as holders of rights⁵¹.

Instead of using the phrase "best interests of the child," some nations prefer to use the term "welfare" of the child. The definitions, interpretations, and applications given to terms by the law and other competent authorities matter more than the phrases themselves⁵².

The rights of indigenous peoples in Malaysia, especially the Orang Asli, to education are recognised by a number of international legal treaties. The 1948 Universal Declaration of Human Rights is one of them (UDHR). According to Article 26(1) of the UDHR, basic education shall be made compulsory and free.

Furthermore, Article 29(2) of the UDHR specifies that children's education should aim for the full development of human individuality as well as the development of respect. Aside from that, the CRC guarantees indigenous children the right to an education. In this regard, Malaysia was one of the countries that ratified the CRC in February 1995⁵³.

⁵¹ United Nations Convention on the Rights of the Child (February 12, 2009).

⁵² Beshir, "Prepared for: Public".

⁵³ Suruhanjaya Hak Asasi Manusia Malaysia, Laporan Status Hak Pendidikan Kanak-Kanak Orang Asli – Bab 6 - Isu Pendidikan Kanak-Kanak Orang Asli: Keprihatinan Guru-Guru di Sekolah, (2010) <<http://www.suhakam.org.my/wp-content/uploads/2013/12/Laporan-Status-HakPendidikan-Kanak-Kanak-Orang-Asli-2010.pdf>> (accessed on 18 March 2023).

Article 2 of the Convention on the Rights of the Child stipulates that children should be protected from all forms of discrimination and that all rights are reserved for them without exception. Article 28 of the Convention on the Rights of the Child ensures compulsory free primary education for all; free progressive secondary education for all; and access to higher education based on aptitude, whilst Article 29 specifies the objective of education. Article 30 of the Convention on the Rights of the Child empowers children of minority ethnic and indigenous peoples to enjoy their own culture, language, and religion. Furthermore, the International Labour Organization's Indigenous and Tribal Peoples Convention 1989, often known as ILO Convention 169 (ILO No.169), is an international legal document that respects indigenous rights. There are several articles in ILO No.169 connected to indigenous peoples' education, notably Article 26, which stipulates that indigenous peoples have the same chance to get an education at all levels as the majority of the community⁵⁴.

As indicated in Article 28 of the ILO No.169, educational programmes must be tailored to the requirements of indigenous peoples and taught in their local language. Furthermore, Article 30 holds the government accountable for taking steps in accordance with indigenous peoples' traditions and cultures to ensure that they are aware of their rights and responsibilities, and that general knowledge and skills are provided to indigenous peoples in full and equal terms, as guaranteed by Article 29 of this Convention. Article 31 stipulates that efforts should be made to guarantee that history textbooks and other educational materials depict indigenous peoples and their culture in a fair, accurate, and instructive manner.

⁵⁴ GreenNet, "Right to Education: International Labour Organization Instruments," 2018, <<https://www.right-toeducation.org/page/ilo-instruments>> (accessed on 24 March 2023).

The recognition offered by ILO No.169 is thought to be capable of ensuring indigenous education's acceptability in theory and practise. Educational rights are also included in the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which aims to protect people's economic, social, and cultural rights⁵⁵. Article 13 of the ICESCR recognises the universal right to education without discrimination of any kind and establishes a framework for achieving the full realisation of this right, including the obligation to make free primary and secondary education generally available and accessible through the progressive implementation of free education, as well as equal access to higher education based on capabilities and measures to improve educational quality. It also allows parents to choose the type of education they want to provide for their children, as well as to establish and direct an educational institution while adhering to the basic requirements imposed.

2.6.1 The Malaysian Response to the UNCRC

In 1995, Malaysia's government endorsed the United Nations Convention on the Rights of the Child (UNCRC)⁵⁶ a global human rights agreement safeguarding the rights of individuals under 18. The UNCRC, established by the UN General Assembly on November 20, 1989, centers on four main principles: non-discrimination, prioritising the child's best interests, ensuring their right to life, survival, and development, and involving children in decisions affecting them based on their age and maturity⁵⁷.

⁵⁵ J. B. Henriksen, *Key Principles in Implementing International Labour Organization Convention No. 169*, International Labour Organization, 2008), https://www.ilo.org/wcmsp5/groups/public/ed_norm/normes/documents/publication/wcms_118120

⁵⁶ Seyed Mohammad Mousavi, Mohammad Nazri bin Abdul Razak, and Muhammad Azam bin Mohd Adnan, "When Do the Rights of Children Begin? A Legal Overview on the United Nations Convention on the Rights of the Child and Malaysian Laws", *Current Law Journal*, vol. 2, (2014).

⁵⁷ Committee on the Rights of the Child, *General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (Art. 3, Para. 1)* (Office of the United Nations High Commissioner for Human Rights, 2013).

Aligned with the tenets of the UNRC, Malaysia has established the Department of Orang Asli Development, known as the Jabatan Kemajuan Orang Asli (JAKOA) in Malay. JAKOA stands as the esteemed custodian of Orang Asli affairs, entrusted with the pivotal responsibility of vigilantly overseeing and steering the course of action pertaining to this indigenous community⁵⁸. Operating within the administrative purview of the Malaysian Ministry of Rural Development, JAKOA was inaugurated in the year 1954, marking a significant milestone in the nation's commitment to uplifting the Orang Asli populace.

2.6.1.1 Education

Article 28 of the UNCRC states that Every child has the right to education, especially primary education is compulsory. Education is important as it teaches children how to understand their rights as indigenous people and the school itself should be disciplined and respect the children's rights⁵⁹.

About 50% of Orang Asli students do not attend secondary school, according to a 2008 Fatan Hamimah study. This demonstrates that immediately following the completion of primary school, 50% of Orang Asli children leave school. Only 30% of Orang Asli kids graduate from secondary school, according to the study. This is considerably below the national average. In the same year, Zainal Abidin conducted a study that revealed that secondary school dropout rates among Orang Asli children were higher than those for primary school⁶⁰.

⁵⁸ S. T. Wee, Abdul Rahman Embong, and Ahmad Fadzil Shamsuddin, "Pembangunan Sosioekonomi Komuniti Orang Asli di Malaysia," in *Persidangan Kebangsaan Geografi & Alam Sekitar Kali Ke-4*, organised by Universiti Pendidikan Sultan Idris, (Tanjong Malim: Universiti Pendidikan Sultan Idris, 2013), 755–761.

⁵⁹ United Nations Convention on the Rights of the Child, art. 28.

⁶⁰ H. Samath, "Indigenous Children in the Malaysian Education System," The Indigenous Foundation, 2021 <<https://www.theindigenousfoundation.org/articles/indigenous-children-in-malaysian-education>> (accessed on 26 March 2023).

Research findings reveal that the main obstacle for Orang Asli children in education is their parents' attitudes. Many Orang Asli parents are hesitant about traditional schooling methods. Several significant issues contribute to this challenge, including poverty, difficulty in communication, people's opinions, biases from the larger community, influence from friends who dropped out of school, lack of good school facilities, not giving much importance to education in their culture, geographical challenges, and getting married at a young age. All these factors together make it harder for Orang Asli children to succeed in their education.

A potential solution to address this challenge involves providing education to teachers about Orang Asli culture and languages. However, previous attempts aimed at facilitating the integration of Orang Asli children into mainstream education have yielded disappointing results. This can be attributed to a critical shortcoming in the government's approach, specifically its failure in 1995 to adequately train educators in Orang Asli languages and culture.

In addition to what was mentioned earlier, there are teaching-related factors that also affect the education of Orang Asli students. Some researchers like Razaq Ahmad and his team found that students don't like strict and tough teachers⁶¹. They also get demotivated when teachers use old-fashioned methods. For example, students feel bored when teachers just make them watch TV (Astro) during lessons. Another study by Aminuddin and his colleagues found the same thing. Students are more excited to learn when there's a new and fun way of teaching, like using 'edutainment'. For example, the teacher can take the Orang Asli children jungle trekking in the forest to

⁶¹ International Work Group for Indigenous Affairs, "Indigenous World 2020: Malaysia," 2020 <<https://www.iwgia.org/en/malaysia/3605-iw-2020-malaysia.html>> (accessed on 28 March 2023).

teach them about the wildlife there. Lessons should be both enjoyable and suitable for their needs.

However, proper improvement has been made in providing better education for the Orang Asli children in recent times. Rural and Regional Development Ministry secretary-general Datuk Seri Ramlan Harun announced that an allocation of RM64.8 million has been provided to the Orang Asli Development Department (JAKOA) for the education of Orang Asli children. He emphasised that this funding encompasses expenses from primary schools to Institutions of Higher Learning (IPT) to ensure a comprehensive and proper education for Orang Asli children⁶².

During the JAKOA 2022 excellent students award ceremony, Ramlan Harun shared that various forms of aid were disbursed, including RM36.9 million for transport assistance, RM12 million as pocket money, and RM638,000 for various types of fees⁶³. Ramlan Harun expressed confidence in the potential of the Orang Asli community to excel globally with the right mindset, understanding, and life direction. He emphasised the importance of nurturing Orang Asli children, particularly those in rural and interior areas, through an effective education system that can empower them to positively impact their community's way of life.

The secretary-general revealed that currently, 751 Orang Asli students are pursuing higher education in various courses at Institutions of Higher Learning, showcasing a heightened awareness of the significance of education within the Orang Asli community in Malaysia. Ramlan Harun highlighted the success of these students

⁶² Ibid.

⁶³ Aizuddin Saad, "Gov't Allocates RM64.8 Mln to Jabatan Kemajuan Orang Asli for Orang Asli Education," *New Straits Times Press*, 21 July, 2023, <https://api.nst.com.my/news/nation/2023/07/933365/govt-allocates-rm648-mln-JAKOA-orang-asli-education>.

as evidence that they can compete on par with other communities, challenging the erroneous perception of Orang Asli as a backward group.

Ramlan Harun also highlighted those seven Orang Asli students received the opportunity to study abroad through Majlis Amanah Rakyat (MARA) scholarships last year, showcasing their potential for academic excellence. For those Orang Asli children who may not excel academically, Ramlan Harun mentioned that the Ministry, in collaboration with JAKOA, offers them opportunities to partake in Technical and Vocational Education and Training (TVET) programs⁶⁴. This initiative aims to equip them with practical skills that align with industry requirements, enabling them to secure jobs and contribute to their community's progress. He also mentioned that Technical and Vocational Education and Training (TVET) is pivotal for empowering children with relevant skills that cater to industry demands⁶⁵. By providing access to TVET, the Ministry and JAKOA are collectively facilitating individual development and overall progress within the children Orang Asli community.

The UNCRC's Article 28(1)(a) has to do with Malaysia's educational system. This objection was based on the argument that Malaysia was not in a position to offer compulsory education at the time of accession and that primary education was not required in Malaysia⁶⁶. The 2002 revision to the Education Act 1996, which made elementary education mandatory and provided financial help and other types of assistance from the government, should, however, have changed this reservation. The question of this amendment's conflict with domestic legislation is resolved because it appears to be in accordance with the UNCRC⁶⁷. With regard to custody and punishment,

⁶⁴ Ibid

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Education Act 1996 (Act 550) (Revised 2016).

Article 37 of the UNCRC is reserved on the ground that it conflicts with Malaysian law, which imposes life imprisonment and the death penalty on children under the age of 14⁶⁸.

These reservations are a clear indication of the government's commitment to upholding the religious and cultural traditions of Malaysian society. Despite the United Nations members' objections, the government's progressive commitment to upholding and preserving the interests of children means that the measures enacted remain flexible and appropriate for Malaysian society's norms⁶⁹.

By looking at the above, it is evident that Malaysia is going in the right direction of providing education to the Orang Asli children in accordance with Article 28 of the UNCRC.

2.6.1.2 Discrimination

Art 2 of the UNCRC⁷⁰ unequivocally proclaims that children possess inherent rights, irrespective of distinctions based on race, religion, country of origin, skin colour, or beliefs. It firmly asserts that these rights are universally applicable, transcending factors such as gender, language spoken, religious affiliations, political convictions, nationality, ethnic identity, economic status, and even physical ability. In essence, every child is entitled to these rights, underscoring the principle of inclusivity and equality that forms the foundation of this pivotal international treaty. Malaysia is a multicultural and multiracial country. Race and religion are a sensitive topic in Malaysia and some

⁶⁸ Child Act 2001 (Revised 2001).

⁶⁹ Rojanah Binti Kahar, "A Study on Policies and Laws Affecting Children in Malaysia: An Appraisal of the Children's Best Interests," (unpublished PhD thesis, International Islamic University Malaysia, 2010).

⁷⁰ United Nations Convention on the Rights of the Child, art. 2.

politicians use it for their own gain which undermines the harmonious relationship between the citizens of Malaysia⁷¹.

Dr. Mahathir Mohamad, a former Malaysian prime minister, said that even though the Orang Asli were natives of the land, they did not have more rights than Malays. His comments about the Orang Asli have since drawn criticism. He wrote about the Orang Asli in Malaysia in comparison to Native Americans in the US, Maori in New Zealand, and Aborigines in Australia on his blog. His statement would expose their land to businessmen and loggers, according to spokespeople and advocates for the Orang Asli, who claimed that they wanted to be recognised as Malaysia's natives and were offended by the criticism⁷².

Despite being the “original” Bumiputera's of the land, the Orang Asli encountered numerous criticisms and faced racism. During a forum in Petaling Jaya in 2019, five panel speakers expressed their distress over the discrimination faced by the Orang Asli, which played a role in the recent tragedy where 15 Bateq tribespeople lost their lives in Kuala Koh.

Colin Nicholas, the director of the Centre for Orang Asli Concerns, emphasised that the issue isn't solely medical; rather, it directly stems from the consequences of disregarding people's rights to their ancestral lands, leading to land destruction⁷³.

He remarked, “Just seven to 10 years ago, if you visited them, they were perfectly healthy and psychologically happy. However, their land has been seized, in this case by the Kelantan government, resulting in the depletion of their resources.”

⁷¹ C. M. Ding, “Some Challenges in Managing Cultural Differences in a Multi-Ethnic Country: Malaysia”, *International Journal of the Malay World and Civilisation (IMAN)*, vol. 2, no.1 (2014): 67–76.

⁷² Karen Arukesamy, “Mahathir Slammed for Belittling Orang Asli,” *The Sun Daily*, 20 June, 2019.

⁷³ Martin Vengadesan, “Activist: Orang Asli Deaths Direct Result of Environmental Destruction,” *Malaysiakini*, 11 June, 2019, <https://www.malaysiakini.com/news/479092>.

Dr. Steven Chow, an outreach doctor who visited the community on April 28, a week before the tragic deaths, echoed Nicholas' sentiments. He stated, "This is a community that has been neglected and is deteriorating. After their land was taken for plantations, these people were essentially abandoned and isolated from the jungle resources they had relied on for survival.

Therefore, children of the Orang Asli need to know about their rights so they can protect themselves from discrimination against others.

In essence, the situation of the Orang Asli in Malaysia serves as a poignant reminder of the importance of upholding Article 2 of the UNCRC, which unequivocally states that no child should face discrimination. Their struggles highlight the urgent need for comprehensive efforts to ensure the protection of children's rights, the recognition of indigenous heritage, and the promotion of inclusivity and equality for all.

2.6.1.3 Issue of Forced Conversion

In 2006, reports emerged that the state government of Kelantan offered a financial incentive of 10,000 Malaysian Ringgit to Muslim preachers who married Orang Asli women, implying their conversion to Islam⁷⁴. A similar incentive was offered to female preachers who married Orang Asli men, along with additional perks such as free lodging, a vehicle, and a monthly allowance of up to 1000 Malaysian Ringgit. SUHAKAM, however, did not view this as merely a politically sensitive religious matter; instead, it strongly condemned the state government's actions. SUHAKAM asserted that the use of public funds to encourage religious conversion through marriage constitutes an abuse of power and a violation of fundamental rights, particularly the

⁷⁴ Abdullah Khoso and Vivien W. C. Yew, "Promotion and Protection of the Rights of Orang Asli in Peninsular Malaysia: A Study of the Suruhanjaya Hak Asasi Manusia Malaysia", *Malaysian Journal of Society and Space*, vol. 11, no.13 (2015): 86–95.

freedom of thought, conscience, and religion, as such inducements undermine the Orang Asli's right to choose their beliefs. SUHAKAM further contended that these assimilation efforts run counter to the Orang Asli's freedom of religion.

The Orang Asli of Peninsular Malaysia faced both political and economic marginalisation compared to the natives of Sabah and Sarawak. Despite sharing common challenges such as land dispossession and erosion of cultural identity, the government's assimilation and integration policies disproportionately targeted the Peninsular Orang Asli. This approach contradicts the Orang Asli's way of life, cultural heritage, and belief systems.

In addition, there is also a case of mass force conversion of Orang Asli people to Islam which affected generations of Orang Asli families. A group of 137 Orang Asli from the Bateq Mayah tribe is seeking to nullify their Islamic status, claiming they were deceived into converting during a mass conversion event that took place 30 years ago.

The indigenous individuals reside in Kampung Bechah Kelubi, also known as Kampung Batu Jalang or Kampung Tom Ki Ying, situated in Merapoh, Kuala Lipis, Pahang⁷⁵.

According to their claim, the conversion occurred around April 1993 when 57 of the plaintiffs were not yet born. These 57 individuals are descendants of the remaining 56 plaintiffs or others who lived in the village at the time of the incident. The defendants in the case include Bakar Unus, the Orang Asli Development Department (JAKOA), Pahang Islamic Religious Council, Pahang state government, and the federal government.

⁷⁵ Farah Solhi, "137 Orang Asli Claim They Were Duped into Conversion and Seek To Nullify Islam Status," *New Straits Times Press*, 27 March, 2023, <https://www.nst.com.my/news/crime-courts/2023/03/893244/137-orang-asli-claim-they-were-duped-conversion-and-seek-nullify>.

The group alleges that the defendants exploited their influence over the indigenous community and used coercion to force their conversion to Islam. They argue that the defendants violated their duty to protect and preserve their cultural and religious beliefs. The lawsuit was filed through the law firm Messrs. Fahri, Azzat, and Co. The plaintiffs contend that the conversion took place after a JAKOA representative visited the village and compelled two tribal leaders to attend a course in Kuantan. During the course, the leaders were coerced into converting to Islam and were instructed to convince other villagers to do the same.

Following their refusal to convert, the villagers were threatened and coerced by the JAKOA representative, who warned them that they would lose their homes, crops, and even face physical harm if they did not convert. Under this duress, the villagers gathered in an open area and recited the “Kalimah Syahadah” (proclamation of faith). In the years that followed, they received new identity cards indicating their Muslim status and were assigned Muslim names without their consent.

The plaintiffs, who continue to practise the cultural and religious beliefs of the Bateq Mayah aboriginal group (which can be described as animism), are seeking the court’s declaration that the mass conversion was illegal and null and void. They argue that they did not fully comprehend the “Kalimah Syahadah” and were illiterate at the time of the conversion. Alternatively, they claim that any utterance of the proclamation was coerced and not of their own free will.

In addition to nullifying the mass conversion, the plaintiffs are seeking general and exemplary damages. Their legal action is rooted in their fight for the right to self-determination, which includes the freedom to determine their cultural development and maintain their cultural institutions.

The federal legislature in Malaysia is empowered by the federal constitution to approve international treaties, conventions, and agreements. However, only after being approved by Malaysia's Parliament can those accords be incorporated into Malaysian law⁷⁶. Therefore, ratification of a treaty does not give it the authority to supersede national laws.

Malaysia ratified the UNCRC in 1995 with 12 initial reservations. Malaysia has modified domestic law to incorporate the UNCRC into Malaysian laws that suit the multi-racial population,⁷⁷ which is made up of different races, religions, customs, and practices, in an effort to respect the Convention's principles. There are currently 5 reservations left, including Articles 2,⁷⁸ 7⁷⁹, 14,⁸⁰ 28(1)(a),⁸¹ and 37.⁸²

The Malaysian government's policies, constitutional clauses, and other regulations are incompatible with the reservation to Article 2 of the UNCRC on non-discrimination. The Federal Constitution firmly emphasises the equality principle.⁸³ However, as was previously said, there are disparities between the rules that apply to Muslims and non-Muslims. Males and females are not treated equally under the law even under Islamic law. Therefore, in terms of the doctrine of non-discrimination, the UNCRC concept does not comply with national laws.⁸⁴

A child has the right to be given a name at birth and the right to nationality, according to Article 7 of the UNCRC. However, the ability to obtain nationality in

⁷⁶ Federal Constitution (Malaysia, 2010).

⁷⁷ Rojanah Binti Kahar, "A Study on Policies and Laws Affecting Children in Malaysia: An Appraisal of the Children's Best Interests," (unpublished PhD thesis, International Islamic University Malaysia, 2010).

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Federal Constitution, art. 8(1) (Malaysia, 2010).

⁸³ Kahar, "A Study on Policies".

⁸⁴ Ibid.

Malaysia is not¹¹⁶ a given and is governed by several legal rules depending on the location of the child's birth.⁸⁵

A child has the right to freedom of thought, conscience, and religion, according to Article 14 of the UNCRC. The government contends that this right does not apply to everyone, though. Such reservations are appropriate given that Malaysian domestic law prohibits the spread of any religious system or belief among those who profess Islam.⁸⁶

2.6.1.4 Issue of Welfare and survival

There are several rights listed under the CRC. Firstly, right to health wherein; (i) In places where such necessary services are not provided by public hospitals, or in extraordinary situations, to review the Private Hospital Act of 1971 and/or other Acts to minimize red tape in applying for Government financing for treatment in private hospitals; (ii) to evaluate current laws and regulations to guarantee that all children, including those with immigration status and those without documentation, have equal access to health and medical treatment; (iii) to establish separate wards for young people in need of medical attention; to place equal emphasis on children's mental and emotional well-being. Facilities for children's psychological wellbeing should also be accessible in terms of health; (iv) creating programmes and policies for sexuality education in schools; and lastly (v) to pass laws and policies that ensure fair access to natural resources, effective resource management, and the preservation of resources for future generations.

A clear example of how the Orang Asli children is deprived of this right is seen in how there is a lack of clean water made accessible to them.⁸⁷ Water supplies may be

⁸⁵ Federal Constitution, art. 15(1) (Malaysia, 2010).

⁸⁶ Kahar, "A Study on Policies".

⁸⁷ Emma L. M. Rhule and Ashley Thoo, "Health for All: Indigenous Peoples Included," International Institute for Global Health, 2018 <<https://iigh.unu.edu/publications/articles/health-for-all-indigenous-peoples-included.html>> (accessed on 12 April 2023).

far from populated areas for those who live in woodlands. In order to collect and transport heavy pails of water back home, this causes families to travel great distances. Due to these difficulties, water is viewed as a valuable resource and frequently used for both bathing and washing clothes. On plantations where pesticides are frequently used, some communities exist.

Despite this, people still utilise water from open wells for drinking, cooking, and domestic tasks. The Global Peace Foundation actively addressed these water-related health issues by putting WASH (water, sanitation, and hygiene) programmes into place. Communities Unite for Purewater (CUP) is one such effort. The Global Peace Foundation and the Orang Asli villages are working together on it. To guarantee that everyone has access to clean water, villages have been provided with simple-to-use water filters. Along with this, a lively, engaging community awareness programme teaches people—mostly women and children—the value of handwashing, how to do it properly, and other crucial hygiene behaviours. Life is changed by clean water. In 2016, a group of Orang Asli people from Kampung Binjal, Pahang, participated in the CUP pilot programme. As opposed to before, they no longer have to travel far to obtain water from wells. Instead, a storage tank and filter system are located inside the hamlet, where the installed pump collects water from wells. Each residence receives filtered water via interconnected pipes.

In relation to the right to survival, CRC is responsible for redefining inner-city poverty in light of the current state of the economy and the quality of life. Whereas for the right to adequate housing, it is important to ensure that there are enough playgrounds for leisure and recreational activities and that all housing types have at least three rooms. Besides that, children are also entitled to the right to leisure whereby it is important to build enough parks for kids and the environment, with improved amenities, especially

in densely populated regions, build additional recreational or sporting facilities, and to increase the use of sporting venues in schools. This right is often mislooked which is the right of the indigenous children.

It should be noted that the indigenous children do not only have the right to access safe drinking water as well as adequate sanitation, nevertheless CRC is responsible for placing the indigenous children in livelihood programmes that will give native children better ways to support themselves; to cut red tape, especially in Jabatan Orang Asli, hospitals, and schools, to guarantee re-settlement and progressive integration without loss of livelihood as well as to priorities accessibility to education and incorporate and develop elements of their cultures into the school curriculum.

The welfare and survival of indigenous people have come under scrutiny as a result of the deaths among the Orang Asli Batek tribe in Kelantan⁸⁸. The truth is that a lot of Malaysians do not know much about the Orang Asli or how the destruction of the rainforest due to human activity could endanger their traditional ways. The recent deaths of Batek tribal members in Kelantan have brought attention to the struggles faced by the Orang Asli. Many villages and settlements have not advanced despite the government creating the Orang Asli Development Department (JAKOA) to look into their wellbeing. Some towns lack access to basic necessities including power, running water, schools, healthcare facilities, good roads, and contemporary housing. JAKOA made an effort to make life better for the Semai villagers in Ulu Ruai a few years ago by constructing a water supply system with pipes, water pumps, and storage tanks, but tragically, that effort was unsuccessful, reported by a member of Pusat Kegiatan Kanak-Kanak dan Remaja (PKKS), Choy Lee Wan.

⁸⁸ Amir A. S. and A. Saad, "Old Way, New Days: Can Orang Asli Survive?," *New Straits Times*, 14 June 14 2019, <https://www.nst.com.my/news/nation/2019/06/496132/old-way-new-days-can-orang-asli-survive>.

The right to receive adequate housing wherein it is to ensure that all types of housing have at least three rooms and that there are adequate playgrounds for leisure and recreational activities. The Orang Asli villages have long struggled with a wide range of problems brought on by growing urbanisation. The 2019 Kuala Lumpur Architecture Festival (KLAF) was held from June 21 to July 7, and its organiser, Pertubuhan Arkitek Malaysia (PAM), aimed to address the problems currently and in the near future that the Orang Asli community faces⁸⁹. The Tropical Houses for Orang Asli design competition held by Epic Homes as part of the KLAF was one of the highlights. The preparation of practical and weather-resistant dwellings was a top priority in this situation. This is in fact a good initiative for the Orang Asli community, especially for the children to be sheltered from bad weather.

2.7 UNITED NATION DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (UNDRIP)

2.7.1 Background of The UNDRIP

A historic text outlining the collective rights of indigenous peoples worldwide is the United Nations Declaration on the Rights of Indigenous Peoples, or UNDRIP. With a resounding majority of member states voting in favour, the United Nations General Assembly adopted it on September 13, 2007, with the intention of defending and advancing the rights and welfare of indigenous peoples all over the world.

The long-standing efforts and advocacy of indigenous peoples for recognition, autonomy, and the protection of their traditions, languages, territories, and resources are at the heart of the history that led to the adoption of UNDRIP. Indigenous populations have experienced many different types of discrimination, marginalisation, and rights

⁸⁹ "Designing Homes for the Orang Asli," *Daily Express Property*, 6 January, 2020, <https://www.dailyexpress.com.my/interest/312/designing-homes-for-the-orang-asli/>.

abuses throughout history, frequently as a result of colonisation, forced assimilation, uprooting, and exploitation.

2.7.1.1 The position of the UNDRIP in policy making.

Within the context of international law, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is sometimes seen as a type of “soft law” that carries moral duties rather than legally enforceable ones. Instead of focusing on enforceable laws, UNDRIP’s core principles are moral obligations. UNDRIP plays a significant role in creating national and worldwide standards for the recognition and defence of indigenous rights despite the fact that it is not legally obligatory. Governments are urged to maintain UNDRIP’s ideals, which are consistent with the fundamental principles of the UN Charter, in the preamble and Article 46(3) of the treaty.⁹⁰

Beyond its non-binding nature, the UNDRIP is significant. In addition to providing further support for the creation of customary international law, it also offers interpretative insights into legislation dealing to indigenous peoples. It functions as a framework to supplement other international legal instruments. Furthermore, UNDRIP’s importance as a key tool within the frameworks of the United Nations, the International Labour Organisation, and UNESCO is highlighted in the 2010 Conference Report on Indigenous Rights by the International Law Association.⁹¹

According to experts, UNDRIP has significant legal ramifications. Former UN Special Rapporteur Anaya emphasises its function as the world’s leading authority in advancing indigenous rights. The fact that UNDRIP is widely accepted internationally

⁹⁰ United Nations, “The United Nations Charter,” 1945 <<https://www.un.org/en/about-us/un-charter/full-text>> (accessed on 14 April 2023).

⁹¹ S. Weissner, “The Hague Conference 2010,” (Rights of Indigenous Peoples, 2010), <<https://www.un.org/esa/socdev/unpfii/documents/2016/Docs-updates/Conference-Room-Paper1.pdf>> (accessed on 14 April 2023).

shows how well-received its standing as customary international law is. UNDRIP is also strongly rooted in a number of human rights norms and concepts found in human rights treaties, such as the basic right to self-determination.⁹²

In conclusion, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is a “soft law” document that imposes moral responsibilities as opposed to requirements that are legally enforceable. Its importance stems from its function as a standard for the local and international recognition and defence of indigenous rights. The fact that UNDRIP is non-binding does not lessen its significance; rather, it shows a dynamic framework that supports other international agreements and echoes universal human rights ideals.

2.7.1.2 How UNDRIP aids in defending the rights of indigenous children.

Firstly, we call focus on article 7(2), which prohibits removing indigenous children forcibly from their homes and communities. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) accomplishes this by defending their right to self-determination, requiring governments and other organisations to make decisions that respect their aspirations for political, economic, and cultural development, and forbidding actions that might result in their forced relocation. Second, it’s important to follow the free, prior, and informed consent concept. Forced child relocation can be avoided by consulting with indigenous groups prior to taking any activities that might impact their lands or resources. Furthermore, the protection of indigenous children against displacement that would sever their ties to their culture and loved ones is ensured by UNDRIP’s acknowledgement of the importance of cultural identity and familial ties.

⁹² J. Anaya, “Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People,” United Nations Digital Library, 2008 <<https://digitallibrary.un.org/record/634646?ln=en>> (accessed on 24 April 2023).

If properly carried out, such initiatives can stop atrocities like the Canadian residential school system. The consequences that the children who were forcefully relocated and sent to residential schools endured were severe, and they are still being felt by Indigenous people. These consequences cover social, cultural, psychological, emotional, and physical aspects. Children who are sent to these schools may experience impacts like losing their culture and identity. Residential school students were forcibly taken away from their villages, family, and cultural practices. They frequently faced restrictions on speaking their own tongues, carrying out their traditions, and taking part in ritualistic celebrations. As a result, they lost touch with their cultural roots and their Indigenous identity. Second, those assigned to Canadian residential schools had their family ties broken. Residential school students usually spend a significant amount of time away from their family. Due to the breakdown of familial relationships and the weakening of intergenerational communication, cultural heritage was lost, and in other cases, ethnicity was completely eradicated⁹³.

Second, the right to education for indigenous children is protected under Article 14 of the UN Declaration on the Rights of Indigenous Peoples. It gives indigenous communities the power to create and manage their own educational frameworks that are representative of their cultural learning styles. The article promotes the provision of education in indigenous languages and traditions and guarantees that indigenous people, particularly children, have

unequal access to all levels of education. Additionally, it requires states to end prejudice against indigenous peoples in education, promoting equality of opportunity and treatment. In summary, Article 14 works to address historical inequalities while

⁹³ E. Hansen, "The Residential School System," Indigenous Foundations, 2009 <https://indigenousfoundations.arts.ubc.ca/the_residential_school_system/> (accessed on 25 April 2023).

upholding the importance of culturally relevant education and equitable access for indigenous children⁹⁴

In Canada, the commitment to protect the right to education for indigenous children is represented in a number of international accords, including the UN Declaration on the Rights of Indigenous Peoples. The federal government is responsible for ensuring that all children, especially those in indigenous communities, have access to school, even though education is a matter of provincial and territorial responsibility. Disparities do, however, still exist, particularly for marginalised groups like Indigenous peoples. Initiatives like First Nations schools and educational support programmes try to close these disparities in spite of difficulties. Organisations like World Vision also support early children's development and education in times of crisis. The right to education for indigenous children in Canada is being protected and improved via activism, awareness campaigns, and focused initiatives⁹⁵.

Furthermore, The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) states in Article 17(1) that indigenous peoples and persons have the legal right to exercise all of the rights guaranteed by applicable national and international labour laws. This clause safeguards indigenous children from exploitation by guaranteeing that they are given equal protection under labour laws and recognises their claim to the same labour rights as others. This protects the welfare of indigenous children and guarantees that their labour rights are protected by preventing circumstances in which they can be subjected to unfair or abusive working conditions.

⁹⁴ "United Nations Declaration on the Rights of Indigenous Peoples," Office of the United Nations High Commissioner for Human Rights, 2007 <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf> (accessed on 26 April 2023).

⁹⁵ K.-L. Sison, "Protecting the Right to Education: What You Should Know," World Vision Canada, 2023 <<https://www.worldvision.ca/stories/education/protecting-the-right-to-education>> (accessed on 12 May 2023).

Additionally, article 17(2) is dedicated to protecting indigenous children from economic exploitation and dangerous activities. It requires states to put into place specific measures meant to protect indigenous children from employment that is likely to be detrimental to their education, health, and general development in consultation and cooperation with indigenous communities.

This clause provides strong protection against labour exploitation by emphasising their particular vulnerability and the value of education for empowerment. It emphasises the necessity to put their welfare and educational possibilities first in order to keep them from being compelled into work that would hamper their development and overall progress.

In the Philippines, indigenous communities are coping with the disturbing fact that more of their children are being dragged into risky labour practices on their ancestral lands, such as mining and commercial agriculture. The infringement of communal land rights and the lack of necessary social services worsen this depressing scenario. These problems are exacerbated by the inability to enforce Article 17 of the UNDRIP, which calls for special measures to protect indigenous children from economic exploitation and harmful labour that might obstruct their schooling and general well-being. As a result of the government's lack of collaboration and engagement with indigenous people, companies are allowed to intrude on ancestral lands and exploit external resources, frequently forcing youngsters into dangerous jobs because there are few alternatives.⁹⁶

⁹⁶ E. Crey, "Eliminating Discrimination against Indigenous and Tribal Peoples In," International Labour Organization, 2006, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_097727.pdf.> (accessed on 12 May 2023).

As a result of this insecure situation, more indigenous children and teenagers are moving to non-indigenous rural or metropolitan regions, where they are forced into positions like domestic labour, prostitution, and other types of exploitative employment. Children are compelled into these occupations owing to a lack of opportunity and assistance, which is the result of the disregard of their rights to education and protection from hazardous labour, creating a cycle of vulnerability. The terrible situation where indigenous children lack the protection and opportunity for empowerment that are guaranteed by Article 17 of the UNDRIP is a result of the lack of proper protections mixed with the violation of indigenous rights.

This chapter also examines how precise standards and criteria are provided by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) for identifying and defending the rights of indigenous children. The declaration elaborates on current human rights norms and fundamental freedoms as they relate to the particular circumstances of indigenous peoples, and it establishes a universal framework of minimal criteria for the survival, dignity, and well-being of the world's indigenous peoples.

The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) protects the rights of indigenous children. When implementing the UN Declaration and when taking steps to enhance the economic and social situations of indigenous peoples, Articles 21 and 22 of the Declaration urge for special consideration to be given to indigenous children and youth. Article 21 provides that Governments will take steps to support indigenous peoples in enhancing their economic and social well-being, paying special regard to the rights of indigenous elders, women, youth, children, and individuals with

disabilities.⁹⁷ Also provides in Article 22 that Governments will guarantee that the rights of indigenous elders, women, youth, children, and individuals with disabilities are upheld after consulting with the appropriate indigenous groups. Governments shall make sure that all types of violence and discrimination against indigenous women and children are prohibited.⁹⁸

Article 7.2 from the Declaration also guarantees the right to live in freedom, peace, and security, which includes the protection of children from being forcibly separated from their family.⁹⁹ Every indigenous person has the right to life, the freedom to live a life, and the security to be safe. Indigenous peoples collectively have the right to live in freedom, security, and safety without being subjected to violence. For instance, it is prohibited to forcibly remove indigenous children from their families.

The obligation to pursue education at all levels without bias provided in Article 14.2. Indigenous peoples have the right to establish and run their own educational institutions.

Indigenous people, especially children, have the same right to education as everyone else and cannot be excluded on the basis of their ethnicity. Governments are therefore required to make sure that indigenous people, especially children, who live in or outside of their communities receive the same benefits from the educational system as everyone else while also respecting their rights, cultures, and languages.¹⁰⁰

The right to be safeguarded against economic exploitation, dangerous employment, as well as violence and discrimination. Article 22.2 provides again that Governments will ensure that such rights of indigenous elders, women, youth, children,

⁹⁷ United Nations Declaration on the Rights of Indigenous Peoples.

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

and individuals with disabilities are upheld after consulting with the appropriate indigenous groups. Governments will work together to stop all types of violence and discrimination against indigenous women and children.¹⁰¹

Last but not least, Article 21(2) of the UNDRIP imposes a significant duty on governments with regard to the care of indigenous children. The state is required under this clause to make sure that no kind of prejudice is applied to children from indigenous communities and that they are given access to practical safeguards for their wellbeing. It emphasises how crucial it is to address the particular risks faced by indigenous children and take preventative measures to safeguard their rights. This article emphasises the state's responsibility to put laws and measures in place to avoid any injury, exploitation, or marginalisation of indigenous children by taking into account the unique cultural, social, and economic situations of indigenous people. In summary, Article 21(2) emphasises that the state has a responsibility to foster an environment that supports the cultural identity, growth, and development of indigenous children while also ensuring their access to healthcare, education, and a life free from prejudice¹⁰².

Given its responsibility for preserving human rights and guaranteeing the welfare of all its inhabitants, including indigenous communities, the government should be responsible for the welfare of indigenous children. Due to their particular cultural, social, and economic conditions, indigenous children frequently live in marginalised and vulnerable situations and need specific care and protection. The obligation of the government to maintain the ideals of equality, nondiscrimination, and the best interests

¹⁰¹ Ibid.

¹⁰² Bala, P., & Tan, C. E., "Digital inclusion of the Orang Asli of Peninsular Malaysia: Remote virtual mechanism for usability of telecentres amongst indigenous peoples", *Electronic Journal of Information Systems in Developing Countries*, vol. 87, no.4 (2021):1–14.

of children as stated in several international human rights frameworks like the UNDRIP and the Convention on the Rights of the Child is the source of this obligation.

In order to address the unique issues these children confront, such as labour exploitation, a lack of educational opportunities, and social marginalisation, the government must be able to dedicate resources, pass legislation, and execute regulations. Indigenous communities' cycles of poverty and disadvantage may be prolonged if these problems are not addressed. The government guarantees that indigenous children's rights are upheld, their cultural identities are safeguarded, and they are provided equal opportunity to live a healthy and respectable life by taking up the responsibility for their care. The ideals of social justice, human rights, and inclusive growth, all of which are essential to a just and equitable society, are all in line with this strategy¹⁰³.

2.7.2 The Malaysian Response to the UNDRIP

2.7.2.1 Life, Liberty and Security

Frequently, authorities have taken the controversial step of revoking land protected under reservation status and repurpose them for development endeavours. This practice often occurs without adhering to the principles of Free, Prior and Informed Consent (FPIC) and without offering compensation to the Orang Asli community. Despite the acknowledgment of Indigenous land rights, the reality on the ground paints a different picture, where government authorities wield significant control over land use decisions. They retain the power to convert native customary lands into reserved lands, grant logging concessions, and prioritize large-scale resource extraction and plantation

¹⁰³ Ibid.

projects¹⁰⁴. Disturbingly, the majority of lands earmarked for development belong to Indigenous Peoples, harbouring untapped natural resources like timber and minerals. This unsettling situation has birthed tensions involving the government, private investors, and Indigenous communities, who persistently assert their claims to customary lands.

Within the context of Indigenous children, this predicament takes on an even more profound significance. The removal and transformation of ancestral lands for development often bring about severe disruptions to their cultural heritage, traditional knowledge, and overall well-being. These lands carry not only economic value but also immense spiritual and cultural importance. The failure to adhere to the principles of FPIC places Indigenous children on the periphery, as their voices and perspectives are brushed aside when decisions that will shape their future are made.

The repercussions are disproportionately borne by them, encompassing the loss of access to vital natural resources, disruption of age-old practices, and a possible disconnection from their cultural roots. The exploitation of these lands without genuine consultation and consent perpetuates a cycle of inherited disadvantage and disempowerment among Indigenous children. It deprives them of the opportunity to flourish within an environment that values their heritage and upholds their rights.

On October 12, a heart-wrenching incident underscored the vulnerability of Indigenous children in Malaysia. In the state of Kelantan, situated in the northeastern region of the country, seven children - six girls and a boy aged between seven and eleven - were discovered deceased after spending 48 days lost in the jungle. Their tragic journey commenced as they fled from their residential school. During their ordeal, two

¹⁰⁴ UN-REDD Programme, “Frameworks for and Implementation of FPIC over Land and Knowledge in Sarawak,” <https://www.un-redd.org/sites/default/files/2021-09/FPIC_Malaysia.pdf> (accessed on 18 May 2023).

girls managed to survive by subsisting on grass and wild fruits¹⁰⁵. This heartrending incident underscores the precarious situation many Indigenous children find themselves in, often grappling with challenging circumstances and facing perilous journeys. These circumstances draw attention to Article 7(2) of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which emphasizes the right of Indigenous children to survive, develop, and thrive in a safe and nurturing environment. This incident serves as a stark reminder of the urgent need to address the vulnerabilities faced by Indigenous children and to ensure their rights are upheld in accordance with international principles.

Article 7(2) of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) underscores the collective right of Indigenous peoples to live in freedom, peace, and security as distinct cultural entities, safeguarded from acts of violence, including the forced removal of children from their communities. Numerous global instances underscore the gravity of this provision and the urgent need for its protection.

One poignant example resides in the historical legacy of Australia's Stolen Generations¹⁰⁶, a grim chapter marked by the systematic abduction of Indigenous children from their families in an effort to assimilate them into non-Indigenous culture. This policy's profound repercussions persist in the ongoing struggle to preserve Indigenous identities and overcome psychological scars.

¹⁰⁵ Asia Sentinel, "Malaysia's Educational Genocide," *Asia Sentinel*, 2015, <https://www.asiasentinel.com/p/malaysia-educational-genocide>.

¹⁰⁶ A. M. O'Loughlin, "The Stolen Generation," *The Australian Museum*, 2020, https://australian.museum/learn/first-nations/stolen-generation/?gclid=CjwKCAjw8symBhAqEiwAaTAOzeGXXOXWhiDvnXfIPzK0ibr40a3rshII5j7Zp7dt0MqmFd_7s-hoCDh0QAvD_BwE.

These instances illuminate the pressing need for governments and institutions to acknowledge and rectify historical injustices, prevent further displacement, and ensure the well-being of Indigenous children. Concerted efforts must be made to promote awareness, implement policies that protect Indigenous lands and rights, and establish mechanisms for redress and reconciliation. By doing so, the world can work toward a future where Indigenous children are not subjected to the violence of forced removal and displacement, but instead are able to thrive within their communities, preserving their cultures and enjoying the security and peace that every child deserves.

Malaysia has the opportunity to glean valuable insights from the interpretations and practices of other countries in the context of Article 7(2) of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Drawing inspiration from countries like Australia can provide Malaysia with a roadmap to safeguard the rights of Indigenous children and prevent their forced displacement. By studying the legal frameworks, policies, and initiatives of these nations, Malaysia can tailor its approach to protect the unique identities and well-being of its Indigenous communities. Learning from global experiences can guide the establishment of legislation that aligns with Indigenous rights, such as recognising land ownership and cultural preservation. Malaysia can ensure that Indigenous voices are heard and respected.

Emulating restorative justice efforts, capacity-building programs, and international collaboration can aid Malaysia in creating an environment where Indigenous children can live in freedom, peace, and security, without fear of violence or displacement.

UNDRIP is a declaration, not a treaty or a convention. Although a Declaration is not legally binding by itself, it may be regarded as legally binding to the extent that

it has become or has the potential to become customary international law through conforming state practise and *opinio juris*.

According to the language of UNDRIP, it was declared to be “an achievement standard to be achieved in a spirit of partnership and mutual respect.” In order to identify how UNDRIP may be represented in the laws that touch on the numerous subject areas covered by UNDRIP and may alter the direction of government policy in those areas, “implementing” UNDRIP necessitates substantial interpretation.¹⁰⁷

2.7.2.2 Education

In a recent study, it was unveiled that a mere 30% of Orang Asli students managed to successfully complete their secondary education. This disheartening statistic stands in stark contrast to the significantly higher national average of 72%, underlining a profound challenge that plagues the Orang Asli community¹⁰⁸. Delving deeper into the matter, an in-depth analysis carried out by a dedicated government department focused on the welfare of the Orang Asli community provided additional insights. This analysis zeroed in on a specific cohort of 3,200 Orang Asli students who embarked on their secondary education journey by enrolling in Form One in 2014 across the entire peninsula. As these students progressed through various levels of education, a disconcerting pattern emerged.

Among the initial 3,200 students, a mere 2,062 managed to persevere and continue their educational journey until they reached Form Five. This sobering revelation paints a troubling picture, indicating that a significant 1,138 students—equivalent to 42.12% of the total enrollment in 2014—ultimately dropped out of the

¹⁰⁷ Ibid.

¹⁰⁸ Bernama, “High Dropout Rate Among Orang Asli Schoolchildren a Never-Ending Concern,” *Bfocus*, 2022, https://www.bernama.com/en/b_focus/v2/news.php?id=2151344.

secondary education system before reaching completion¹⁰⁹. This high dropout rate exposes a critical challenge that demands immediate attention in order to secure equitable educational opportunities and a brighter future for the Orang Asli youth.

Efforts to curtail the dropout rate have yielded visible progress, yet a substantial gap in educational attainment remains. This underscores the imperative for sustained efforts and targeted interventions aimed at addressing the multifaceted obstacles faced by Orang Asli students. These challenges encompass aspects such as accessibility, socio-economic disparities, and cultural contexts, all of which intricately shape the educational journey of Orang Asli students. As the non-completion rate decreases, it highlights a step in the right direction. However, a comprehensive approach is essential to tackle underlying issues, ensuring that every Orang Asli student receives a fair and inclusive educational experience.

Moreover, in liaison to upholding Article 14 (2) of UNDRIP Malaysia has an active implementation of Aboriginal Peoples Act of 1954, Specifically tailored to the Orang Asli community, the Aboriginal Peoples Act of 1954 serves as a pivotal legal framework designed to ensure that no Orang Asli children encounter obstacles to their education based on their indigenous status. This legislation underscores Malaysia's commitment to providing equal educational opportunities for all, irrespective of their cultural or ethnic background. Malaysia's implementation of this act is manifested through a multifaceted approach that involves both policy measures and practical initiatives.

First and foremost, the act enshrines the right of Orang Asli children to access education, thereby acting as a safeguard against any form of discrimination in

¹⁰⁹ Ibid.

educational institutions. This legal protection sets the foundation for a more inclusive and equitable education system.

In line with the Act, Malaysia has taken strides to establish indigenous education policies that recognise and respect the unique cultural contexts and needs of the Orang Asli community. These policies aim to integrate cultural sensitivity into the curriculum, ensuring that educational materials and methods resonate with the Orang Asli's heritage and way of life.

In light of enforcing UNDRIP and the virtues of Article 14, Malaysia, The Ministry of Education (KPM) is resolutely committed to executing the Orang Asli Education Transformation program as outlined in the Malaysia Education Blueprint 2013-2025¹¹⁰. This initiative aims to ensure that the Orang Asli community receives education that is both high in quality and relevance, aligning with contemporary needs.

Senator Datuk Dr Mah Hang Soon, Deputy Education Minister 1, affirmed that several key initiatives were underway within this transformation endeavour. Among them are the establishment of Comprehensive Special Model Schools spanning from K9 to K11, a testament to the government's dedication to fostering inclusive education. To enhance the educational experience for Orang Asli students, KPM has set up residential facilities within schools catering to a 100% Orang Asli student population¹¹¹.

Additionally, special programs tailored for Orang Asli students and a comprehensive education transformation scheme for the community are being

¹¹⁰ Ministry of Education, "Malaysia Education Blueprint 2013-2025 (2013)," <<https://www.moe.gov.my/muat-turun/penerbitan-dan-jurnal/dasar/1207-malaysia-education-blueprint-2013-2025/file>> (accessed on 18 May 2023).

¹¹¹ The Star Online, "Programme to Help Improve Education for Orang Asli," *The Star*, 10 January, 2022, <https://www.thestar.com.my/metro/metro-news/2022/01/10/programme-to-help-improve-education-for-orang-asli>.

implemented, with the overarching goal of elevating attendance rates and introducing intervention programs.

In line with this commitment, a substantial allocation of RM275 million has been allocated under Budget 2022, specifically geared towards enhancing the living standards of the Orang Asli community. This funding encompasses a range of support measures, including subsidies, school aid, and welfare assistance, poised to benefit nearly 200,000 individuals¹¹². Notably, the budget also includes an increase in secondary school student pocket money to RM4 per day, reflecting the government's dedication to ensuring a conducive learning environment for Orang Asli students. In essence, this comprehensive approach, firmly rooted in the Malaysia Education Blueprint, underscores the government's dedication to not only fostering an inclusive educational landscape for the Orang Asli community but also enhancing their overall quality of life through a multifaceted support system.

Article 14 (3) emerges as a beacon of hope for indigenous communities. This commitment gains tangible expression in initiatives such as the work undertaken by the NGO Borneo Komrad. In the heart of Borneo, this organization has risen to the challenge, providing a transformative alternative education for 150 undocumented native children¹¹³. Their learning centers in Kota Kinabalu, Tawau, and Semporna serve as beacons of inclusivity, offering a space where education is not just imparted but is crafted around the unique needs and circumstances of marginalized children who require special consideration.

At Borneo Komrad's alternative school, the syllabus is not a static entity, but a responsive tool that adapts to the realities of each child. This approach recognises that

¹¹² Ibid.

¹¹³ Ibid.

education cannot thrive in a vacuum; it must be sensitive to the diverse backgrounds, challenges, and aspirations that each student brings to the classroom. By providing this tailored education, Borneo Komrad amplifies the essence of Article 14 (3) by ensuring that the cultural context and language of these native children are central to their learning experience.

The efforts of Borneo Komrad and similar organizations resonate with the shared vision of education as a transformative force that empowers individuals to transcend barriers and emerge as confident contributors to society. As we explore the profound implications of Article 14 (3), it's inspiring to witness tangible embodiments of its principles in action. Through initiatives like Borneo Komrad's alternative school, we glimpse a future where education truly honours cultural diversity, celebrates linguistic richness, and empowers indigenous individuals to write their own narratives of success and fulfillment.

The UNDRIP is the most comprehensive international legal instrument that protects indigenous rights, including educational rights. Despite its non-binding character and soft law status, UNDRIP has developed a universal framework with minimal requirements for indigenous peoples' survival, dignity, and well-being worldwide¹¹⁴. Article 14 of the UNDRIP supports indigenous peoples' right to construct and govern their own educational systems and institutions, as well as to deliver education in their language, in a way consistent with non-discrimination teaching and learning culture¹¹⁵.

¹¹⁴ United Nations, "Department of Economics and Social Affairs: Indigenous Peoples," 2019 <<https://www.un.org/development/desa/indigenouspeoples/declarationon-the-rights-of-indigenous-peoples.html>> (accessed on 20 May 2023).

¹¹⁵ S. Ferris, "United Nations Declaration on the Rights of Indigenous Peoples Article 14: Right to Education," Cultural Survival, 2019 <<https://rights.culturalsurvival.org/UNDRIP-article-14right-education>> (accessed on 20 May 2023).

Article 15 states that indigenous peoples have the right to have their cultures, traditions, histories, and ambitions respected and reflected in education and public information. These provisions are crucial for policymakers to consider enacting at the grassroots level in the indigenous education system. According to the international legal documents listed above, education is necessary and should be delivered while taking into account the community's culture and lifestyle, as well as its use of language, and should be non-discriminatory. Education is a human right, and it has the potential to change lives.

In the Malaysian context, the Malaysian government should fulfill its commitment to implement indigenous educational rights at the primary level and give them the skills needed to pursue lifelong learning. However, such worldwide acknowledgement still necessitates vigorous measures and initiatives to impose this recognition inside the Malaysian environment, particularly for indigenous peoples in Peninsular Malaysia¹¹⁶

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which was approved by the UN general assembly in 2007, was endorsed by 144 nations, including Malaysia. The 46 articles that make up the UNDRIP list particular rights and the steps that governments must take to preserve them. Each article is crucial, interconnected, and provides a framework for governments to use to guarantee the protection of indigenous peoples' rights specifically for the children.

In Malaysia, the National Human Rights Institution of Malaysia; SUHAKAM referred at UNDRIP as a popular reference to their rights, requires the protection of the right to education of Orang Asli children. In addition to UNDRIP, there are three

¹¹⁶ G. Cosentino, "World Economic Forum: Indigenous Peoples Have a Right to Quality Education: But So Far, We've Failed Them," World Economic Forum, 2016 <<https://www.right-toeducation.org/page/ilo-instruments>> (accessed on 22 May 2023).

international instruments that focus on guaranteed traditional rights and the right to education of indigenous children and children.

This is the 169th International Labor Organization (ILO) Convention on Indigenous Peoples and Indigenous Peoples in the Independent States (ILO 169) (Article 27 (1), (2), (3), 28 (1), (2), (3)), 29 (1), (2) and 31), reviewing the United Nations Convention on the Rights of the Child (CRC) (Articles 2, 28, 29 and 30) and the United Nations Universal Declaration of Human Rights. (UDHR) (Article 26, paragraph 1 and Article 29, paragraph 2). All the assignments assigned to the world show that schooling is important and requires planning, discussion of cultural factors, non-discriminatory use of your language, and social networking.¹¹⁷

2.7.2.3 Child Labour

A recently published United Nations report has brought attention to the concerning issue of extreme poverty and human rights violations in Malaysia. The report highlights that the palm oil sector's oppressive quota systems are driving families to resort to using their children as unpaid labourers. This alarming situation raises the pressing issue of child labour, which is defined by the International Labour Organisation (ILO) as work that robs children of their childhood, potential, and dignity, while also hindering their physical and mental development.

Malaysia's standing in terms of child well-being is a source of concern, as it was ranked 76th in the 2021 Global Childhood Report, which considers indicators like child labour, education, marriage, and health¹¹⁸. The situation becomes all the more

¹¹⁷ Fernanda Venzon Schona Jolly and Camilla ter Haar, "An Opinion on the Land Rights of the Malaysian Orang Asli," *Environmental Defender Law Centre*, (2014): 88–100.

¹¹⁸ Wiki Impact Team, "Whitepaper - Child Labour in Malaysia: A Persistent Problem And Reasons Why," Wiki Impact, 2021 <https://www.wikiimpact.com/wp-content/uploads/2021/12/Whitepaper-Child-Labour-in-Malaysia_-A-Persistent-Problem-And-Reasons-Why_v2-.pdf> (accessed on 22 May 2023).

distressing when examining marginalised communities such as the Bajau Laut in Sabah¹¹⁹.

This community's nomadic lifestyle, coupled with their generational statelessness due to citizenship issues, renders them invisible in the eyes of the country. As a result, they are denied fundamental rights like education and healthcare. Without proper schooling, many Bajau Laut children remain illiterate, pushing them into begging and odd jobs to earn money. Unfortunately, these vulnerable children often face violence, exploitation, and abuse due to their lack of protection and support mechanisms.

The multifaceted problem of child labour, human trafficking, and exploitation is deeply rooted and poses a significant challenge to Malaysia's commitment to safeguarding its vulnerable population. Addressing this complex issue requires not only legal measures but also robust enforcement, social support systems, and a comprehensive approach that ensures the rights, dignity, and well-being of all children are upheld.

In the ongoing effort to combat the pervasive issues of child labour, human trafficking, and exploitation in Malaysia, Article 17(2) of UNDRIP has played a pivotal role in catalyzing positive change. One noteworthy initiative that embodies this commitment is the establishment of Yayasan Chow Kit, a registered non-profit organization that operates as a 24/7 center dedicated to identifying the needs of vulnerable children and devising effective strategies to provide them with the necessary assistance¹²⁰. Yayasan Chow Kit serves as a lifeline for these children, offering them a safe haven where their well-being is prioritized, and their rights are safeguarded.

¹¹⁹ Ibid.

¹²⁰ Ibid.

Another influential player in this arena is Persatuan Kebajikan Suara Kanak-Kanak Malaysia (SUKA) Society, an NGO that tirelessly advocates for the best interests of children¹²¹. This organization takes a multifaceted approach to its mission, both by seeking justice for children ensnared in trafficking situations and by empowering children in dire need. SUKA Society's dedication to promoting children's rights, ensuring their well-being, and protecting them from the clutches of exploitation is aligned with the spirit of Article 17(2), which underscores the importance of eradicating all forms of child labour and abuse.

In a concerted effort to align with the principles of Article 17(2), the Malaysian Ministry of Human Resources (MOHR) has taken significant strides towards eradicating forced labour¹²². Backed by the International Labour Organization (ILO), the National Action Plan on Forced Labour (NAPFL) for the years 2021 to 2025 serves as a comprehensive strategy that encompasses awareness-raising, robust enforcement mechanisms, labour migration management, and access to essential remedies and support services¹²³. By setting the ambitious goal of eliminating forced labour within Malaysia by 2030, NAPFL reflects the dedication of both the government and international partners to creating an environment in which children are protected from exploitation and labour abuse.

In conclusion, the revelations brought forth by the recent United Nations report shed a harsh light on the pressing issue of child labour, exploitation, and human rights violations in Malaysia. The distressing circumstances faced by children engaged in unpaid labour within the palm oil sector, coupled with the challenges experienced by marginalized communities, underscore the urgent need for comprehensive action. As

¹²¹ Ibid.

¹²² Ibid.

¹²³ Ibid.

the nation grapples with its ranking in the Global Childhood Report and its Tier 3 status on the Trafficking in Persons report, the implementation of Article 17(2) stands as a symbol of optimism. Initiatives like Yayasan Chow Kit, SUKA Society, and the Earthworm Foundation, alongside the commitment demonstrated by the Malaysian Ministry of Human Resources through the National Action Plan on Forced Labor, collectively reflect a nation's determination to rewrite the narrative for its vulnerable children. The path ahead is arduous, yet the concerted efforts to protect, uplift, and empower children to epitomize the resilience of a nation striving for a brighter, more just future for its youngest citizens.

2.7.2.4 Welfare

Childhood malnutrition is a pressing issue among the indigenous population of Peninsular Malaysia, known as Orang Asli. The extent of this problem is revealed through a comprehensive analysis of growth charts. Within this context, 41.4% of children were identified as underweight, but the distressing fact is that 71.5% of them received inappropriate care management¹²⁴. The implications are grave; 283 underweight children were identified, and yet 194 (68.6%) received subpar care.

Financial constraints further restrict healthcare accessibility. Despite government-funded healthcare services being ostensibly free, substantial transportation fees are often required to reach facilities. This challenge is exacerbated by the practice of indigenous kinship, where sick individuals require their entire families to accompany them. However, government subsidies for travel and meals are absent, placing additional financial burdens on families. Moreover, for those living in remote areas,

¹²⁴ C.-C. Chew and et al., "The Challenges in Managing the Growth of Indigenous Children in Perak State, Malaysia: A Qualitative Study," *PLoS One*, 23 March, 2022, <https://pubmed.ncbi.nlm.nih.gov/353>

accessing healthcare in urban settings becomes even more complex due to additional expenses incurred during travel.

A critical underlying factor contributing to childhood malnutrition among Orang Asli is poverty. Limited income constrains parents' ability to provide nutritious food for their children, rendering them vulnerable to food insecurity. As a consequence, children are compelled to rely on calorie-dense but nutrient-deficient foods, jeopardising their growth and development. Notably, poverty's influence is evident in contrast between children relying solely on forest resources for sustenance, who often experience malnourishment, and those with parents employed in factories or plantations, who tend to fare better.

In response to the pressing issue of undernutrition among Orang Asli children, the Ministry of Health in the country has undertaken several initiatives. These efforts include the introduction of nutrition programs aimed at addressing the nutritional needs of this vulnerable population. While these initiatives mark a step in the right direction, there is room for improvement. Notably, the success rate of food basket programs for Orang Asli children is significantly lower, with a recent study revealing that it is merely one-fifth of the success rate observed in Malay children.

One notable concern within these programs is the lack of a structured method for monitoring the consumption of food baskets by Orang Asli children. This oversight presents a gap in the overall effectiveness of the initiatives. To further bolster the nutritional status of these children, a supplemental feeding component has been introduced as part of the community feeding program. The supplemental feeding program is unique in that it involves direct supervision, with children consuming their meals in the community hall under the watchful eye of a local village volunteer. Despite its merits, this program's limitation lies in its provision for meals only five days a week,

leaving potential gaps in nutritional intake. It's noteworthy, however, that the food basket supply itself is designed to last for a month, presenting an opportunity for continuous nourishment.

In the context of Article 21(2) of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which focuses on improving the economic and social conditions of indigenous peoples while ensuring their cultural integrity, it's essential to examine how the welfare factor intersects with the social conditions of Orang Asli children. This perspective sheds light on how governments make efforts to address poor living conditions impact various aspects of their lives, including education. In this context, the welfare of Orang Asli children cannot be considered in isolation from the broader challenges faced by their families and communities.

A tangible example of this complex dynamic can be observed in the housing conditions of the Orang Asli community, particularly in a location like Pos Sinderut. These houses, predominantly constructed from bamboo, serve as a testament to the resourcefulness of the community in their efforts to provide shelter. Some villagers, however, reside in fully brick houses, a result of the government's intervention through initiatives such as the Projek Perumahan Rakyat Termiskin (PPRT), a housing project designed for the poorest segments of society. This diversity in housing conditions mirrors the multifaceted approach adopted to address living conditions. Some villagers are beneficiaries of government-backed projects, while others have been assisted by Christian non-governmental organizations (NGOs) in acquiring half brick and half bamboo houses. The existence of such collaborations showcases the significance of both governmental and non-governmental efforts in enhancing the living conditions of the Orang Asli community. While these endeavours undeniably improve the quality of life for the Orang Asli, the challenge lies in reconciling the prioritization of immediate

needs with the long-term welfare and educational prospects of the children. Brick houses provide greater stability and comfort, contributing to an improved standard of living. Yet, the focus on addressing housing needs can potentially divert resources and attention from educational initiatives. In the realm of the UNDRIP's Article 21(2), the case of housing highlights the delicate balance required between addressing present socio-economic challenges and ensuring the well-rounded development of Orang Asli children. It underscores the complexity of creating holistic strategies that align with the cultural integrity of the community, ensuring that improved living conditions don't inadvertently hinder educational opportunities.

In the Malaysian context, the application of Article 21(2) of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) underscores the critical importance of addressing the unique challenges faced by the Orang Asli community, particularly children, within the framework of their cultural identity. The efforts to enhance the economic and social conditions of these indigenous children must go beyond merely providing basic needs. It involves recognising the rights and special needs of different segments of the community, including indigenous elders, women, youth, children, and persons with disabilities. This comprehensive approach requires the government to not only focus on immediate interventions such as nutrition programs and housing initiatives but also to invest in equitable education systems that respect their cultural heritage. By doing so, Malaysia can pave the way for a future where the welfare and development of Orang Asli children are prioritized, and their cultural integrity is preserved, thus reflecting the true spirit of Article 21(2) of the UNDRIP.

2.8 CONCLUSION

The research on the theoretical framework surrounding the rights of Orang Asli children under international conventions highlights the intricate web of challenges, aspirations, and potential solutions that shape their lives and futures. The analysis of international conventions such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the United Nations Convention on the Rights of the Child (UNCRC) underscores the collective commitment to recognising, safeguarding, and promoting the rights of indigenous children.

The exploration of Malaysia's response to these conventions reveals both progress and gaps in safeguarding the well-being and development of Orang Asli children. While the government's initiatives to allocate funds for education and provide culturally relevant programs are promising steps, challenges such as discrimination, exploitation, and cultural erosion persist. Through the study, it was able to shed light upon the experiences of other countries, such as Australia, Canada, and India, which offer comparative perspectives that emphasize the global nature of these challenges and the importance of cross-border collaboration in addressing them.

Evidently, education emerges as a recurring theme throughout the research, signifying its pivotal role in empowering indigenous children. It revealed the disheartening dropout rates among Orang Asli students, coupled with language barriers and cultural insensitivity, highlight the urgent need for tailored approaches that respect their identities and offer equitable opportunities. This research serves as another reminder of the importance of collaborative efforts between governments, indigenous communities, NGOs, and international organizations that are essential to bridge the education gap and ensure that indigenous children receive quality education that nurtures their growth and identity.

Discrimination, exploitation, and forced conversion stand as alarming threats to the rights of Orang Asli children. The experiences of different countries demonstrate the importance of combating discrimination, preserving cultural heritage, and safeguarding religious freedom.

As the research ventured into the international landscape, it became evident that the challenges faced by the Orang Asli children echo in indigenous communities worldwide. The struggles for recognition, self-determination, and socio-economic well-being are shared experiences that demand international solidarity and collaboration. The international conventions of UNDRIP and UNCRC provide a framework for action, urging governments and stakeholders to work together to ensure that the rights of indigenous children are respected, protected, and upheld.

It can be concluded that the research underlines the urgent need for concerted efforts to address the complex challenges faced by Orang Asli children. Immediate call for actions in prioritizing education, promoting non-discrimination, safeguarding cultural heritage, and empowering indigenous communities, governments can fulfill the objective in creating a just and equitable society. The experiences of indigenous communities around the world emphasize the universality of these challenges and the collective responsibility to create a world where every child, regardless of their background, can thrive, learn, and grow in an environment that respects their rights, preserves their identity, and nurtures their potential.

CHAPTER THREE

LEGAL FRAMEWORK FOR THE WELFARE AND PROTECTION OF ORANG ASLI CHILDREN IN MALAYSIA

3.1 INTRODUCTION

This chapter discusses the legal framework for the protection of Orang Asli children in Malaysia. Three sections make up the discussion of this chapter. The first section looks at how Malaysia progressed economically and socially after independence and how different regulations were created to support the rights of Orang Asli children in Malaysia.

The second section describes the criminal penalties and analyses the specific legal changes that focus on the rights of the Orang Asli children, such as the right to an education under the Education Act 1996¹. With regards to the criminal penalties, this study focuses on matters related to abortion, infanticide, rape and incest, neglect including crimes under Anti-Trafficking in Person and Anti-Smuggling of Migrants Act 2007². Notably, this study also examines the implications of the Sexual Offences Against Children Act 2017, a pivotal piece of legislation aimed at addressing and combating the exploitation and abuse of children in Malaysia. This Act establishes stricter legal frameworks to protect children from sexual offenses, including online exploitation, child pornography, and grooming. It also enhances penalties for perpetrators and introduces measures to ensure the safety and well-being of victims during legal proceedings.

¹ Education Act 1996 (Act 550) (Amendment 2012).

² Anti-Trafficking in Person and Anti-Smuggling of Migrants Act 2007 (Act 670) (Amendment 2010).

By highlighting the Act's significance, the study underscores its relevance in safeguarding the rights of vulnerable groups, including Orang Asli children, who are often at heightened risk due to their marginalized status and limited access to resources and protective mechanisms.³ Additionally, this study will also be focusing on several other laws found in Child Act 2001⁴, Law Reform (Marriage and Divorce) Act 1976⁵ and Education (Special Education) Regulation 1997

The national and state fatwas on abortion in Malaysia are covered in the third section. The goal of the debate in this chapter is to highlight the advantages and disadvantages of the current laws and policies pertaining to the welfare and defence of teenage Orang Asli mothers in Malaysia.

3.2 CHILD RELATED POLICIES IN MALAYSIA

3.2.1 National Framework for Child Rights in Malaysia

The government decided to withdraw some of the reservations made earlier to some of the Articles under the CRC. For instance, Article 1, which defines the age of a child, Article 13 that talks about freedom of expression as well as Article 15 which guarantees the freedom to assemble and participate. The two Optional Protocols to the CRC, which address the sale of minors, child prostitution, and child pornography as well as the role of children in armed conflict, were also signed by the government in 2011.

The National Child Policy or National Policy for Children and accompanying Plan of Action were launched by the government in 2009 based on the CRC's General Principles⁶. The National Child Protection Policy and the National Plan of Action for

³ Sexual Offences Against Children Act 2017 (Act 792) (Gazetted 2017).

⁴ Child Act 2001 (Act 611) (Gazetted 2001).

⁵ Law Reform (Marriage and Divorce) ACT 1976 (Act 164) (Gazetted 1976).

⁶ Child Rights Coalition Malaysia, "Status Report on Children's Rights in Malaysia," Child Rights Coalition Malaysia, 2012, 1–40.

Child Protection, which concentrated on raising awareness and demonstrating commitment to child protection, were also adopted that same year. Both National Plans of Action adopt a preventive approach, prioritising the expansion of programmes for at-risk neighbourhoods as well as the encouragement of clever collaborations throughout all spheres of society to raise public awareness of the need to defend children's rights. Even if these actions are praiseworthy, there are still certain loopholes that need to be filled. The definition of the child under national legislation continues to be inconsistent, with numerous, incompatible definitions of the child under both civil and Syariah law, despite the removal of the reservation to Article 1. The policies and conditions in place have not altered, and little has been done to implement the practical intent of Articles 13 and 15 of the CRC.

Additionally, reservations for five core Articles of the CRC are still maintained by the government. These reservations include Article 2 which covers non-discrimination, Article 7 regarding birth registration and right to a name and nationality, freedom of thought, conscience and religion stipulated under Article 14, Article 28(1)(a) which governs compulsory and free primary education and lastly, Article 37 that handles matters relating to torture, cruel, inhuman or degrading treatment or punishment and unlawful deprivation of liberty. Some elements of national legislation, such as those to which the Malaysian government has not expressed any reservations, continue to be incompatible with the CRC. One significant instance is the absence of legal or administrative safeguards for minors seeking asylum or refuge. The government stated its intention to study and alter national laws that conflict with the CRC in 2009. As of 2012, no proposal for these adjustments has been made.

3.2.2 Policies related to Orang Asli

Since gaining its independence in 1957, Malaysia has launched a number of extensive development initiatives to enhance and develop the standard of living for Orang Asli. As part of its commitment to enhancing the way in which education is provided to Orang Asli, the Ministry of Education took over control of Orang Asli education from the Department of Orang Asli Developments on January 1st, 1995⁷. The dropout rate among Orang Asli children continues to be a major reason for worry, despite the fact that the number of Orang Asli children enrolled in primary and secondary schools has increased dramatically over the past ten years. The pupils' subpar academic performance is one of the key contributing factors to the issue.

Various aspects on the topic of Orang Asli education were mentioned in reports from 1995 to late 2013. To make sure that Orang Asli receives good education, issues like assimilation, equity, rights, mainstreaming, and closing the gap continue to be emphasised. After the adoption of the school from JAKOA in 1995, it began. A step toward integrating Orang Asli into society through the educational system, the JAKOA appears to fail in administering Orang Asli schools. Although its main purpose is to give the Orang Asli rights and equity, its execution fell short of the objectives. Assimilation and disadvantages are the government's two primary strategies at the moment. The goal of this integration process is to adapt the Orang Asli into modern society so they can access the educational system and escape poverty. The government is attempting to integrate Orang Asli into the mainstream education system in an effort to address the problem of poverty as a result of the JAKOA's failure to manage Orang Asli education. However, several government organisations stated that although they are committed to

⁷ M. R. Rosnon, "Indigenous Education Policy in Malaysia: A Discussion of Normalization in Schooling", *Journal of Education and Social Sciences*, vol. 4, no.2 (2016), <https://www.jesoc.com/wp-content/uploads/2016/08/Edu-25.pdf>.

giving all Orang Asli equal educational rights, the group continues to feel excluded from the current educational system. Their history, culture, and native tongue don't appear to be taken into account by the current educational system.

One of the significant flaws revealed by official discussions is that none of the studies addressed the actual problems the Orang Asli face in their educational system. The infrastructure for education is more the main focus. The government neglected to touch on and highlight element rights and recognition in cultural, indigenous knowledge, language, and history in order to ensure that the educational system is designed to see Orang Asli achieve its goals and objectives. According to UNDRIP, the involvement of the Orang Asli

The community should therefore be able to transcend different levels, particularly in the development of policy and programmes, to provide feedback and perspectives from their standpoint.

Many governments publications emphasis involvement while talking about it. The Malaysia Education Development Plan 2013–2025 made numerous mentions of this, and nearly every plan is the same each year. This strategy leaves no space for improvement. Although the KAP placed a strong focus on the participation aspect, the Orang Asli community has not yet asserted its right to self-determination. This is in part because the government has focused on aspects of integration that will not help the neighbourhood. The Orang Asli should be included in the creation of Indigenous education policies by contributing their thoughts and inspirations.

In terms of bridging the gap, the government's main priority between the end of the 1990s and the beginning of the 2000s was to close the educational divide between Orang Asli and the general population. The government has defined a comprehensive range of steps to ensure that the education gap between Orang Asli and mainstream

people can be overcome through various initiatives performed through the Action Plan for Orang Asli Education Development. Equity and the rights of Orang Asli are two prominent themes in this period. However, the government's strategy of integrating the Orang Asli community and introducing parental involvement in the educational system remains the same. The parents' involvement in schools is not a thorough endeavour, however; it just serves to draw pupils to the institution. The Orang Asli community's creative perspectives can be immediately incorporated into the national education system through thorough participation in all stages and decision-making. As a result, the strategy employed to address the education gap is not inclusive. It is obvious that the Orang Asli educational system continues to ignore cultural distinctions, which causes Orang Asli children to experience pressure through the mainstream educational system. Other problems that affect children of Orang Asli, like isolation and prejudice in mainstream education, are a result of this problem.

3.2.3 Program Intervensi Khas Murid Orang Asli dan Peribumi (PIKAP)

Beginning in late 2017 and continuing through 2018, the MOE changed the Orang Asli and Penan Curriculum, known as KAP⁸. The renamed module was given the initials PIKAP. The goals of PIKAP are the same as KAP, which aims to enhance Orang Asli dan Peribumi students' fundamental literacy and numeracy abilities with the addition of three more subjects (Malay language, English, and math's). The module would be useful for Orang Asli students because the mastery levels are appropriate for the pupils, according to one of the professors who has used PIKAP for English education. The

⁸ W. Ya Shin and R. Idrus, "Contextualising Education Policy to Empower Orang Asli Children," *Institute for Democracy and Economic Affairs*, (2021), https://www.researchgate.net/publication/357525536_Contextualising_Education_Policy_to_Empower_Orang_Asli_Children.

activities make the PIKAP sessions more engaging for the kids, despite the fact that the levels in the modules do not deviate significantly from the mainstream curriculum and are not too diverse. Most teachers are unsure of how PIKAP will be implemented, and its application is still in its early phases. To make sure that PIKAP is successful in assisting teachers in creating appropriate and adaptive lesson plans for Orang Asli pupils, more training and assistance are required. PIKAP has the potential to be a useful manual for teachers who want to increase the classroom involvement of Orang Asli kids.

3.2.4 Sekolah Model Khas Komprehensif (K9)⁹

In order to provide indigenous pupils and students from rural communities with education from standard one to form three for a total of nine years, Sekolah Model Khas Komprehensif (K9) is a special school with residential facilities. In order to stop these pupils from dropping out during the year between standard six and form one, these schools were established. The implementation of Sekolah Model Khas Komprehensif K11 under the Twelfth Malaysia Plan was announced by the government in September 2021. Similar to K9 schools, K11 schools will educate students from standard one to form five over the course of 11 years. According to the interviews conducted, the only differences between K9 schools and non-K9 schools are that K9 schools provide dormitory amenities and secondary school lessons from form one to form three are offered there. Since pupils automatically continue on forming one following standard six, one of the administrators who was questioned said that since their school became a K9 school, there are less incidents of dropout, indicating that this K9 school is

⁹ Ibid.

succeeding in its primary goal. When children must attend a secondary school more away from their communities than their initial primary schools, dropout rates are most common. The results showed that these programmes have improved pupils' academic performance. For instance, the academic achievement for the Ujian Penilaian Sekolah Rendah (UPSR) or primary school achievement test has increased due to K9 schools, with the grade average rising from 3.65 in 2014 to 3.77 in 2015.¹⁰ Additionally, there has been a large increase in the minimal controlling rate for papers in the UPSR, rising from 41.2% in 2014 to 45.6% in 2015. With a national average domination rate of 84.9%, however, Orang Asli kids still perform poorly compared to their peers in reading, writing, and counting.

3.3 MALAYSIAN LEGAL FRAMEWORK ON ORANG ASLI PROTECTION

3.3.1 Federal Constitution

The Federal Constitution of Malaysia does not explicitly guarantee the right to education, including for aboriginal children. However, there are indirect protections in place. The aboriginal people, known as Orang Asli in Peninsular Malaysia and indigenous peoples (Orang Ulu, Dayak) in East Malaysia, are recognised in the constitution under Article 153. This Article entrusts the Yang di-Pertuan Agong (the Malaysian King) with the responsibility to safeguard the special position of the Malays and natives of any of the States of Sabah and Sarawak, which includes the Orang Asli. This special position includes educational benefits, although the specifics are determined by policy rather than the constitution itself.

¹⁰ Z. Aini, A. G. Don, and N. I. Mohd Isa, "Education Development Program to Orang Asli by the Ministry of Education Malaysia (MOE)", *Malaysian Journal of Learning and Instruction*, vol. 16, no.1 (2019): 1–20, <https://myjurnal.mohe.gov.my/public/article-view.php?id=149065>.

For instance, Article 8 of the Federal Constitution of Malaysia provides for equality before the law and protection from discrimination on grounds of religion, race, descent, or place of birth in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.

The Constitution also has a provision, Article 12, that broadly touches on rights to education, but it does not make specific provisions for aboriginal or indigenous peoples. It says that there shall be no discrimination against any citizen on the grounds only of religion, race, descent or place of birth - (a) in the administration of any educational institution maintained by a public authority, and, in particular, the admission of pupils or students or the payment of fees; or (b) in providing out of the funds of a public authority financial aid for the maintenance or education of pupils or students in any educational institution (whether or not maintained by a public authority and whether within or outside the Federation).¹¹

Additionally, it is essential to remember that while the Constitution itself might not make explicit provisions, other laws or policies may be in place to support education for aboriginal people. For example, Malaysia is signatory to several international conventions that stress the importance of universal education.

¹¹ Z. Kamaruddin and et al., "Education for All and Childrens' Right to Education in Malaysia", *Educational Awakening, Journal of the Educational Sciences*, vol. 2, no.2 (2005): 1–15, http://irep.iium.edu.my/40/1/40_Education_for_All_ocr.pdf.

3.3.2 Education Act 1961

Before Education Act 1996¹² was brought into force, Education Act 1961 was being utilised whereby it was designed in accordance to the Abdul Rahman Talib Report (1960)¹³. It is a monument to the steps the Malaysian government took to regain the confidence of the populace and help them comprehend the education policies that were put in place for the benefit of the whole Malaysian society¹⁴. Enacting the Act served a number of purposes, including extending the range of pre-school education to the level of public and private higher education, increasing technical education, establishing the national language as the primary medium, and more including establishing the position of the tribal language.

One might ponder what makes the latest Education Act 1996¹⁵ better than the previous Education Act 1961 in relation to the indigenous in Malaysia? We can compare the Act's foundation ahead of all else.

The National Philosophy of Education and the goals of Vision 2020 served as the cornerstones for the Education Act 1996¹⁶. On the other hand, the explicit goal of Education Act 1961 is to bring together various ethnic groups, as stated in the National Education Policy, according to the Razak Report, but there is no concrete confirmation of this. While the Education Act 1961 does not make any provisions for teaching indigenous languages, the Education Act 1996¹⁷ specifies that they may be taught under

¹² Education Act 1996, (Act 550) (Amendment 2012).

¹³ Muhammad Azizi Abdullah and et al., "The Differences and Equations between Education Act 1996," *Scribd*, (2012).

¹⁴ R. Nordin and et al., "Indigenous Education for the Orang Asli: Legal Perspectives and Best Practices", *Journal of Nusantara Studies (JONUS)*, vol. 5, no.2 (2020): 365–380.

¹⁵ Education Act 1996.

¹⁶ Ibid.

¹⁷ Ibid.

two circumstances: upon request of more than 15 parents, and if it is deemed acceptable and practicable.¹⁸

In addition, if we were to compare the two Acts based on elementary education, the Education Act 1996¹⁹ specifies a duration of between five and seven years while taking into account three student groups: brilliant, average, and weak. However, the Education Act 1961 only stipulates a 6-year primary education period. Additionally, on the basis of post-secondary education, the Education Act 1996²⁰ includes provisions for Form 6 and Matriculation students as well as those attending national secondary schools, colleges, or other educational institutions. The Education Act 1961, on the other hand, makes no explicit stipulations. Even though there are clear provisions inserted that provide basic education rights to the indigenous people, nevertheless, they still face a lack of access to education as not all of the indigenous people in Malaysia are schooling.²¹

3.3.3 Education Act 1996

The Universal Declaration of Human Rights and other human rights treaties make it abundantly apparent that the right to education has been established as a universal standard²². Articles 28 and 29 of the UNCRC as well as Article 10 of Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) guarantee that children have the right to an education, and almost all nations in the world have vowed to protect these rights. In Malaysia, all citizens are guaranteed the right to an

¹⁸ Ibid.

¹⁹ Ibid

²⁰ Ibid.

²¹ Ibid.

²² Rojanah Binti Kahar, "A study on policies and laws affecting children in Malaysia: An appraisal of the children's best interests," (unpublished PhD dissertation, International Islamic University Malaysia, 2010).

education without discrimination based on their religion, race, ancestry, or place of birth²³. The National Education Policy of 1961, a government policy in Malaysia, placed a high focus on children's rights to an education. Six regulatory frameworks had been implemented by the government of Malaysia to support the delivery of education²⁴. These legislative frameworks were created and updated in accordance with the government's educational agenda. The principal piece of legislation governing both primary and secondary education is the Education Act of 1996²⁵.

It should be mentioned that the Education Act of 1996 (Malaysia, 1998) has undergone major reform in recent years to allow for the implementation of compulsory primary school education. The introduction of Section 29A of the Education Act 1996 in 2002 added a new dimension to the Malaysian education system with the adoption of compulsory elementary education, which went into force on January 1, 2003. This policy assures that every child in Malaysia, including those with physical disabilities, has the right to primary education beginning at the age of six, regardless of gender, social and economic background, or residence location.

As a result, Malaysian parents must ensure that their children have access to compulsory primary education at the age of six, or on the first day of the current school year when the child would be six years old.

With the amendment to the Education Act, the law stipulates that it is the responsibility of parents to offer basic education to their children. In the event that the parents fail to fulfill this commitment, they will face a fine of up to 5,000 ringgit or a period of imprisonment of up to six months, or both (Malaysia, 1998). According to the

²³ Federal Constitution of Malaysia, art. 12.

²⁴ Education Act 1996; Private Higher Education Institution Act 1996; National Council on Higher Education Act 1996; National Accreditation Board Act 1996; Universities and University Colleges (Amendment) Act 1996; National Higher Education Fund Board Act 1997.

²⁵ Education Act 1996.

aforesaid amendment, there is unquestionably a strong link between the rights and duties of the state and the rights and duties of parents and children. The Federal Constitution affirms the right of a person, including a child, to proper education, although parents are responsible for meeting a child's educational needs. On the other hand, the Malaysian government should offer a platform for educational programmes to grow in the country. The "platform," which includes the aims, tactics, facilities, and instructional content, should become the guiding principles of Malaysia's educational system.

A comprehensive examination of the provisions in Part IV, Chapter 3 of the Education Act of 1996 appears to suggest that, while parents are responsible for ensuring that their children get compulsory primary schooling, the Act does not obligate them to send their children to government schools. As a result, parents have the freedom to pick the type of education they want their children to receive, whether it is in government or private schools, as long as the children's right to basic education is met in accordance with the law. Although elementary education is compulsory in Malaysia, the Act allows for a kid to be removed from compulsory education with the Minister's approval if he believes it is desirable and in the best interests of the pupil or the public (Malaysia, 1998). So yet, no case has been filed to challenge this provision. The rule can be read broadly to encompass a child with chronic health problems, such as being infected with a chronic disease and thus prevented from attending school because of the disease's potential to harm others.

With the introduction of obligatory elementary education in 2003, the issue of homeschooling has arisen. In this context, parents who intend to self-educate their children at home may apply to the Ministry of Education under the interpretation of section 29A (3), which states that the Minister's consent is the only option for

exemption from attending primary school. There are numerous reasons why the government has remained mute on this issue. The government would like all Malaysian students to receive an equal basic education at the primary level and adhere to a national curriculum tailored to meet the country's social and economic needs. The fear is that children who are taught at home by their parents may miss out on key benefits such as physical, emotional, psychological, and social abilities. It is possible that the children would be deprived of adequate teaching and learning facilities. It should be highlighted that a child's right to basic education includes more than just fundamental literacy abilities like reading. Education should assist children in reaching their full potential, and the curriculum should promote complete and balanced physical, mental, intellectual, and spiritual growth. The ultimate goal is to ensure that all children receive a free, meaningful basic education.

The duration of compulsory schooling is set at six years by Section 29 of the Education Act of 1996, but it can be completed in five to seven years. On this point, it is argued that the Act takes into account the many developmental stages of a child during the gestation period of five to seven years. This moderate approach clearly demonstrates that the primary school system is not intended to burden children. The ultimate goal is to ensure that children's rights to equal and high-quality education are met. This advancement has also brought Malaysia's education system into compliance with the United Nations Conventions on the Rights of the Child on compulsory schooling in primary education.

Although Malaysia was a signatory to the convention before the change, it reserved certain aspects for further examination, including Article 28, which deals with free compulsory schooling. Despite the fact that compulsory education is only relevant at the primary level, the Malaysian government has insisted on completing eleven years

of basic education. Primary and secondary schools are included²⁶. This may be observed in the government's efforts to provide numerous types of schooling, such as academic, technical, vocational, and religious schools, to meet the many needs and interests of pupils in the upper secondary level. Secondary schools are divided into two levels: lower and upper. Lower secondary age ranges from 13 to 15 for a 3-year school programme and 16 to 17 for a 2-year upper secondary programme. Lower secondary education is a continuation of primary education. The fundamentals of literacy and mathematics are reinforced, and all disciplines require core topics. Students in upper secondary schools learn to specialise in the sciences, arts, technical, vocational, and religious fields, in addition to the general education programme. Malaysia has implemented compulsory primary education. The concern is whether this level of education is offered for free to all, as urged by the UN agreement. The duty of states to make primary education free indicates that governments should remove financial barriers to allow all children, regardless of socioeconomic status, to complete primary school²⁷. Parents, on the other hand, have the general obligation to fund their children's education in order to cover the costs of books, transportation, school meals, clothes, stationery, or sports equipment.

Poverty has also been noted by the Ministry of Education as a major contributor to dropouts among elementary and secondary school pupils. The Ministry has put in place a number of programmes to promote the policy of compulsory elementary education.

²⁶ Ministry of Education, *The Development of Education: National Report of Malaysia*, (Kuala Lumpur: Ministry of Education, 2004).

²⁷ K. Tomasevski, *Free and Compulsory Education for All Children: The Gap between Promise and Performance*. Primers No. 2. Gothenburg: Novum Grafiska; Lund, Sweden: Raoul Wallenberg Institute of Human Rights and Humanitarian Law, (2001): 8.

First, since the early 1980s, the Ministry has implemented a variety of programmes to support children from low-income households. The Ministry's continuous aid includes the textbook lending scheme, the school lunch programme, scholarships, and school-boarding facilities. Steps are also being attempted to improve the support system by offering financial aid to academically brilliant pupils and children from low-income households and from outlying places. Several trust funds and financial support programmes have been established to ensure that every child has the opportunity to have a quality education.

In terms of postsecondary education, the age limit has no bearing on admission to Malaysian universities or colleges. However, in order to be admitted to these higher educational institutions, all candidates must meet the minimum requirements established by the respective institutions. Even though postsecondary courses are not required in Malaysia, the government places a high value on education at this level. The presence of tertiary educational institutions in Malaysia is critical to the development of the country's workforce.

3.3.4 Penal Code

3.3.4.1 Infanticide

Infanticide is the deliberate taking of a child under the age of one year. Infanticide is illegal and typically takes the form of baby dumping or abandonment that results in a baby's death²⁸. Infanticide occurs when a mother who is raising an unwanted, illegitimate child is depressed and desperate. For instance, baby dumping is becoming widespread in societies that do not recognise infants born outside of marriage. Infanticide was first made a crime by the law in order to address the issues of baby

²⁸ Penal Code, Act 574 (Revised 1997), s. 309A.

dumping and abandonment by punishing those who are accountable for the death of such a baby.

Research has shown that the sentencing approach is effective and has helped to lower the number of baby dumping instances in Malaysia. However, it appears that punishing the Orang Asli children for infanticide stands in contrast to international standards that call for greater child protection. Some argue that rather than punishing them, the laws and authorities should help the young mothers of the Orang Asli manage the situation subtly through preventive measures like raising awareness at all levels of society and in schools, encouraging parental, teacher, and friend monitoring actions by strengthening the support system for the Orang Asli adolescents, and offering constructive and nonjudgmental advice in dealing with the unwanted²⁹.

3.3.4.2 Sexual Offences (Rape & Incest)

A man who engages in sexual activity with a woman is said to have committed “rape” if it was done against her will or without her consent.³⁰ Whereas, if a person engages in sexual activity with someone who is related to them in a way that prevents them from marrying that person under the applicable law, religion, custom, or usage, it is said that they have committed incest³¹. Rape and incest crimes have increased in frequency, particularly when Orang Asli children are the victims. Nevertheless, it is one among Malaysia’s most under-reported crimes³². Recently, at the sessions court, it was reported

²⁹ Abdul Halim Abdullah, “A Systematic Review of What Malaysia Can Learn to Improve Orang Asli Students’ Mathematics Learning from Other Countries”, *Sustainability*, vol. 14, no.20 (2022): 198, <https://doi.org/10.3390/su142013201>

³⁰ Penal Code, Act 574 (Revised 1997, Reprint 2009), s. 375.

³¹ Penal Code, Act 574 (Malaysia) (Revised 1997) (Reprint 2009), s. 376A.

³² Mohd Idham Mohd Yusof, Nor Azah Abd Aziz, and Norazlina Abdul Wahab, “Social Stigma of Incest in Malaysia”, *International Academic Research Journal of Social Science*, vol. 1, no.2 (2015): 113–120.

that three Orang Asli males were charged for killing a 14-year-old Orang Asli girl at the Pekan magistrates' court were also accused of raping the victim.

They were both accused of raping the girl between 11.15 a.m. on August 20 and 7 a.m. on August 21 in a woodland area at Bukit Ibam in Muadzam Shah, Rompin³³. The charge carries a potential prison sentence of 10 to 30 years³⁴. The Report on Children's Rights in Malaysia states that there are a number of reasons why people may be reluctant to report sexual abuse instances, including a concern about social stigma and discrimination. Due to fear, the victims have chosen not to speak up, demand redress, or plead for assistance by disclosing the abuse to the relevant officials.³⁵

3.3.4.3 Neglect

Anyone who abandons a child under the age of twelve years old in any location with the intent of completely abandoning that child, whether they are the child's father or mother or have custody of that child, will be punished with up to seven years in prison, a fine, or a combination of the two³⁶. The exposure and abandonment of a child under the age of 12 by a parent or guardian is considered to be neglected. The failure to meet a child's essential physical, emotional, and developmental requirements in the areas of health, education, emotional growth, nourishment, housing, and a safe living is another definition of neglect. When guardians fail to give children the necessities such as food, clothes, shelter, medical treatment, education, nurturing, and love, neglect happens.

³³ "Trio Accused of Murdering Orang Asli Girl Now Face Rape Charge," *Free Malaysia Today*, 30 August, 2022, <https://www.freemalaysiatoday.com/category/nation/2022/08/30/trio-accused-of-murdering-orang-asli-girl-now-face-rape-charge/>.

³⁴ Penal Code, Act 574, s. 375B.

³⁵ Child Rights Coalition Malaysia, "Status Report on Children's Rights in Malaysia," Child Rights Coalition Malaysia, 2012, 1–40; Maya Fachrani Faisal and et al., eds., *Child Protection System In Malaysia: An Analysis of the System for Preventive and Response to Abuse, Violence and Exploitation against Children* (Kuala Lumpur: Child Rights Coalition Malaysia, 2012), 80–81.

³⁶ Penal Code, Act 574, s. 317.

Over the years, levels of childhood undernutrition in the Orang Asli population have been observed at levels that are significantly greater than those found in other rural or underprivileged communities in Malaysia³⁷. Children under the age of five are frequently labelled as underweight and at risk of malnutrition. In Pahang and Selangor State, the percentage of under-five Orang Asli children who were underweight ranged from 39% to 64% [16, 22, 23]. The state of Perak had the second-highest percentage of Orang Asli (53,299, 29.9%) after Pahang State (67,506, 37.9%) and nearly 33% of Orang Asli children under the age of five and over 40% of Orang Asli infants under the age of two were reported to be underweight³⁸.

Another long-standing dietary issue afflicting the Orang Asli is anemia, which is a sign of iron deficiency and helminthic infestation³⁹. The main prenatal and postnatal determinants of undernutrition among the Orang Asli children include short mother stature, low birth weight, preterm, low dietary diversity, parasite diseases, inadequate sanitation and hygiene, and short maternal stature. The bulk of this group suffers from food and nutrition insecurity, which may be a key cause of the poor health and nutritional status of the Orang Asli children. Part of the reason for the food and nutrition insecurity in this population can be attributed to the Orang Asli's evolving food systems, which may be a result of the difficulties in maintaining traditional food systems as well as the growing availability, acceptability, and accessibility of westernised food. Due to a lack of resources, children are likely to have poor growth and development if they consume cheaper, nutrient-poor, energy-dense diets.

³⁷ G. L. Khor and Z. M. Shariff, "Do Not Neglect the Indigenous Peoples When Reporting Health and Nutrition Issues of the Socio-Economically Disadvantaged Populations in Malaysia," *BMC Public Health*, 16 December, 2019, <https://bmcpublichealth.biomedcentral.com/articles/10.1186/s12889-019-8055-8>.

³⁸ C.-C. Chew et al., "The Challenges in Managing the Growth of Indigenous Children in Perak State, Malaysia: A Qualitative Study," *PLoS One*, 23 March, 2022, <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0265917>.

³⁹ Khor and Shariff, "Do Not Neglect,".

The majority of indigenous peoples experience socioeconomic and political disadvantages on a global scale. Poverty is frequently linked to the socioeconomic restrictions of the indigenous community, and this has been a key risk factor for underweight. Geographically, the majority of indigenous people reside in remote regions or locales, making it difficult for them to access services and facilities.⁴⁰ As a result, they are unable to acquire clean drinking water, toilets, shelter, or fuel for cooking. Native American children are more likely to be underweight due to poverty and unfavourable environmental conditions. One local study found three characteristics linked to being underweight among Orang Asli children, similar to the phenomena of indigenous people in other nations: poverty, no or little maternal education as well as maternal unemployment.

3.3.5 Child Act 2001

The Child Act 2001 (hence referred to as “CA 2001”) controls the care, protection, and rehabilitation of children and serves as the legislative basis for child protection in Malaysia. CA 2001⁴¹ was adopted to fulfill its UNCRC responsibility, namely, to promote the best interests of children. The Juvenile Courts Act of 1947⁴², the Women and Girls Protection Act of 1973⁴³, and the Child Protection Act of 1991⁴⁴ were all repealed by this Act.

CA provisions founded on four basic UNCRC principles: non-discrimination, the best interests of the child, the right to life, and respect for the child’s views. CA

⁴⁰ Chew and et al., “The Challenges,”.

⁴¹ Child Act 2001.

⁴² Juvenile Courts Act 1947 (Act 90).

⁴³ Women and Girls Protection Act 1973 (Act 106).

⁴⁴ Jal Zabdi Mohd Yusoff, “Child Protection Laws in Malaysia; The Changing Trend” (paper presentation, 6th International Malaysian Studies Conference (MSC6), Kuching, Sarawak, 2008).

2001 addresses a wide range of critical issues concerning children, including parental duty and responsibility, the obligation to report suspected abuse, and the formation of a court for children. This Act governs four main categories of children: 1) children in need of care and protection, particularly those who have been abused; 2) children in need of protection and rehabilitation, such as those who have been exploited for prostitution; 3) children who are out of control; and 4) children who are in conflict with the law.

Children in need of special protection are generally classified as children who are at risk of being abused or neglected by their parents or guardians, whether physically, emotionally, or sexually⁴⁵. Children in this category may be removed from the custody of their parents or guardians under this Act in order to prevent ongoing harm to the children and to place them in a safe place for care and protection⁴⁶. Under this Act, the child abuser will also face appropriate punishment.⁴⁷

Children in need of care and protection, on the other hand, are often children who are being influenced to commit any type of sexually associated act or any physical or social environment that will lead to the performance of such activities.⁴⁸ It has been assumed that sexual abuse victims' behaviour leads to the crime of becoming a prostitute. As a result, individuals exploited for prostitution are included in the concept of abuse for children, implying that they require care and protection⁴⁹.

A female kid who is pregnant out of wedlock, for example, is considered to be in need of immediate protection and should be placed in care and rehabilitation under

⁴⁵ Child Act 2001, s. 17.

⁴⁶ Ibid, s. 54.

⁴⁷ Ibid, s. 31.

⁴⁸ Ibid, s. 38.

⁴⁹ Ibid, s. 41(2)(d).

this Act.⁵⁰ Another section of CA 2001 discusses youngsters who are out of control. The Act does not define children who are beyond parental authority. It simply indicates that if the parent or guardian is unable to exert sufficient control over the child, he or she will submit a written request to the Court for Children for the child's detention in an institution.⁵¹ There was no explanation to clarify the meaning of out-of-control behaviour or the parent's proper control over the youngster. As a result, the meaning remains hazy and ambiguous. The Child Rights Coalition Malaysia describes children beyond control as having a behavioural problem, but the Social Welfare Department (SWD) defines it as behaviour that will lead to criminality or moral danger.⁵²

The National Advisory and Consultative Council for Children (NACC) and the Coordinating Council for the Protection of Children (CCPC) were established by the government to ensure the seamless implementation of CA 2001. (CCPC). The Ministry of Women, Family, and Community Development (MWFCD) chairs the NACC, which serves as Malaysia's national focal point for children's care and development. The council is responsible for advising the government on policies and programmes in accordance with the UNCRC and the National Plan of Action for Children. They are also in charge of facilitating and monitoring the country's plan's evaluation and execution. The CCPC, on the other hand, is an active council whose primary purpose is to protect children, particularly through monitoring of CA 2001.

Malaysia has closely followed the law contained in the preamble of the Child Act 2001 to ensure that a child's rights are fully protected. Among other things, the preamble recognised a child as an important component of society and vital to civilization's survival, progress, and prosperity. As a result, it is the people's

⁵⁰ Ibid, s. 55.

⁵¹ Ibid, s. 46(1).

⁵² Child Rights Coalition Malaysia, "Status Report," 11-12.

responsibility to support and defend this precious entity. The root of the problem is that, notwithstanding the Child Act of 2001, children are not completely recognised as unique citizens with individual rights. This is most likely due to the fact that citizens' rights typically imply obligations, which do not sit well with the position of children. This is stated in Federal Constitution which declares that every Malaysian citizen, regardless of religion or race, has equal access to education⁵³. This demonstrates Malaysia's strong commitment to providing equal access to education for all of its inhabitants, regardless of religious or racial origin. Furthermore, according to the Conventions on the Rights of the Child, it is the responsibility of states to educate children. States are recommended not merely to offer education, but also to make primary education mandatory and free for all.⁵⁴

3.3.6 Law Reform (Marriage and Divorce) Act 1976

The Law Reform (Marriage and Divorce) Act 1976 (hereinafter referred to as "LRA 1976") is an Act relating to family matters applicable to non-Muslim. Under LRA 1976, As previously said, parents are responsible for ensuring that their children receive a proper education. A child is defined as someone under the age of 18, and how parents are responsible for providing their children with an education, including financial support. A relevant problem concerning financial support is presented by the Federal Court in *Karunairajah all Rasiah v Punithambigai alp Poniah*⁵⁵.

In granting the appellant's appeal, the court ruled that a parent is not required to provide maintenance to his child who is over the age of 18 for the purpose of pursuing or finishing tertiary or vocational education. In his decision, the judge, Abdul Hamid

⁵³ Federal Constitution, art. 12.

⁵⁴ United Nations Convention on the Rights of the Child, art. 28.

⁵⁵ *Karunairajah all Rasiah v Punithambigai alp Poniah*.

Mohamad J., stated that children's personal views on parents' moral responsibility to their children should be disregarded. A case must be decided in accordance with the law as it stands, regardless of a judge's personal feelings on the subject, and moral obligations must never take precedence over the law.

In the case of *Karunairajah a/l Rasiah v Punithambigai alp Poniah*⁵⁶ The Court of Appeal recognised involuntary financial independence as a physical and mental impairment. The Federal Court, however, overruled the decision that a child's involuntary financial dependency to complete postsecondary education did not fall within the scope of physical or mental handicap. What makes this case so significant is that the judge stated that the Islamic Family Law Act (Federal Territories) 1984 appears to be more evolved than existing civil family law. Section 79 of the Act⁵⁷ provides an exception where maintenance shall expire when a child who reaches the age of 18 is incapable of maintaining himself due to some mental or physical disability, a court may make an order to a child in order to extend the duration of maintenance "to cover such further period as it thinks reasonable, to enable the child to pursue further or higher education or training"⁵⁸.

In another case, a 22-year-old son sued his father, businessman Foo Woon Keat, for RM81,421 to pay for his tertiary education in the United Kingdom (Jaspal Singh, 2004). The Deputy Registrar of the Ipoh High Court granted permission for the matter to be heard in the High Court on the grounds that a student has the right to sue his parents to pay for his tertiary education⁵⁹. However, the son, Foo Dui Geng, was unsuccessful in his claim (Lim, 2004). Based on the above examples, it may be inferred

⁵⁶ Ibid.

⁵⁷ Islamic Family Law (Federal Territories) Act 1984.

⁵⁸ *Karunairajah a/l Rasiah v Punithambigai a/p Poniah* [2004] 2.

⁵⁹ "Student Can Sue Father, Deputy Registrar Rules," *New Straits Times*, 29 January, 2004.

that under Malaysian law, a father is liable for giving financial assistance to his kid under the age of 18 as maintenance, according to the Law Reform (Marriage & Divorce) Act 1976. Parents, on the other hand, are morally responsible for paying for their children's higher education until graduation and until he or she enters the labour force, but they are not legally required to do so once the children reach the age of eighteen. This is still a source of contention in Malaysia's family law system. It is advised that legislators take into account a practical approach indicated in the Islamic Family Law Act (Federal Territories) 1984 in prolonging the term of support from a father to a kid when he/she is unable to take care of himself/herself after the age of eighteen. This would increase, rather than restrict, parental responsibility for their children.

On the other hand, in regard to child marriages for girls, they are not allowed to marry if they are below 16 years of age. However, if she is between 16 to 18 years old, she is allowed to marry only with the consent of the Chief Minister. If she is between the ages of 18 to 21 years old, the parents must consent to the marriage. Only at the age of 21 years old and above can she have her own prerogative consent. Under this Act, both parties must willingly consent to the marriage. Or else, it is an offence to force or threaten someone to compel him or her to marry against his or her will. The Penal Code also criminalise forced marriage of a woman where it is affected through kidnapping and abduction. Forced marriage is unacceptable and a serious breach of an individual's rights, including the child's right.

There are many forced indigenous child marriage happening around the world including Malaysia, and the perpetrators are usually the parents or close family members of the child. Girls are more likely to be forced marriage victims, with some marrying as young as eight years old. According to a UNICEF report, around 720

million women worldwide today married as children⁶⁰, and approximately 15 million girls are still married before the age of 18.⁶¹ The child will have to agree to the marriage as they are emotionally and psychologically pressured to consent, due to their care, maturity and full reliance on the family. It is clear that their decisions to marry have been impaired by all the surrounding circumstances. Only if they know they have the right to choose either to marry or not, will they still be reluctant to come forward since they are afraid that the parents will be prosecuted or face any criminal sanctions.

In regard to pregnancy of a child outside marriage, it is taboo in our country and heavily sanctioned as it is considered a humiliation and disgrace for the girl. However, the impact is different when the girl is married, and the burden of responsibilities comes along with the marriage occurs. Therefore, the best interests of the child vary accordingly and, in this context, parental consent to child marriage is arguably insufficient to satisfy the best interests' principle and ensure the protection of the child.

3.3.7 Education (Special Education) Regulation 1997

In response to children with exceptional needs or impairments, the Education (Special Education) Regulation, 1997 states that only educated children are eligible to attend special education⁶². A learner with special needs is educable if he can handle himself without assistance and is verified as capable of undertaking the national educational programme by a panel consisting of a medical practitioner, an official from the Ministry of Education, and an officer from the Department of Welfare⁶³. The regulation also

⁶⁰ United Nations Children's Fund, "Ending Child Marriage: Progress and Prospects," 2014 <https://data.unicef.org/wp-content/uploads/2015/12/Child-Marriage-Brochure-HR_164.pdf> (accessed on 2 June 2023).

⁶¹ United Nations Children's Fund, "The State of the World's Children 2016: A Fair Chance for Every Child," 2016 <https://www.unicef.org/publications/files/UNICEF_SOWC_2016.pdf> (accessed on 2 June 2023).

⁶² Education (Special Education) Regulations 1997, r. 3(1), P.U. (A) 532/1997.

⁶³ Ibid.

states that when implementing the special education curriculum, teachers may modify the teaching or learning methods or techniques, the time for and sequence of activities, the subjects, and the teaching and learning resources in order to achieve the objectives and aims of special education⁶⁴.

The law also specifies exceptions to the above rule, stating that children with physically disabling conditions but with the mental ability to learn like normal students, as well as students with multiple disabilities, a profound physical handicap, or severe mental retardation, are ineligible to attend school⁶⁵. As a result of the exclusion, it appears that a special child's entitlement to an education is limited in certain cases⁶⁶.

In this case, there is concern that certain students with impairments may be denied access to fundamental education. It is humbly urged that a child's right to an education should not be denied as long as he is capable of following and comprehending any curriculum organised at the special school. However, if he is unable to participate in any programme, the parents should take on the job of caring for their children themselves, with suitable instruction and financial aid from the government.

This is due to the fact that special children typically require additional care in the form of medication and specialised learning tools, which are not available to low-income families. Parents require moral support and must learn how to manage these children; some will leave their careers to care for their children. As a result, the government and society should show more concern for this specific group, including their families, by offering aid and meeting their basic needs, such as moral and financial

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ L. Rangel-Diaz, "Ensuring Access to the Legal System for Children and Youth with Disabilities in Special Education Disputes", *Human Rights Journal (American Bar Association)*, vol. 27, no.1 (2000): 10–14.

support. These measures are critical to ensuring that all impaired children have equal educational chances, which are also reflective of a caring and compassionate society.

3.3.8 Islamic Family Law (Federal Territories) Act 1984

In personal or familial problems, Muslims in Malaysia are generally governed by Islamic law. The regulation of Islamic law in Malaysia is established in several acts based on each state. As a result, each state has its own legislation and Shariah court to oversee Islamic Family Law.

There are numerous reasons for consenting to marriage, but most are based on religion, ethnicity, custom, physical indicators of puberty, parental agreement, pregnancy, or other broadly defined or ambiguous reasons relating to the specific situations of children, couples, and families.

Although Islamic Family Law does not penalise forced marriage, they are nonetheless subject to the Penal Code (Act 574) which criminalises forced marriage of a woman by kidnapping and abduction. Pregnancy outside of marriage, on the other hand, is substantial evidence of immorality. They could be charged under the Shariah Court (Criminal

Jurisdiction) Act 1965 if the action is proven by four witnesses or a confession by the perpetrator. However, if the pregnancy is the consequence of rape or incest, the doer can be sanctioned under the Penal Code (Act 574).

3.3.9 Aboriginal Peoples Act 1954 (Act 134)

Aboriginal Peoples Act 1954 is an act that has been enforced towards any person who is aborigine and natives which is mainly known as the Indigenous people. This act has been enforced under Aboriginal People Ordinance No.3 1954 which then amended in

1974 to ensure that the enforcement is applied towards Indigenous people. Furthermore, in accordance with Section 3(1)⁶⁷ It stated that any person entitled to the enforcement of Aboriginal Peoples Act 1954 shall be those whose father is a member of the Indigenous ethnic group as well as communicating in Indigenous language which habitually resides with the practices of Indigenous people. Moreover, in accordance with Section 3(3)⁶⁸, it applies to a child who birth with the knot tied between an Indigenous woman and a man from another ethnicity, shall be required to practise the language of Indigenous fluently and practising the Indigenous belief and yet still a member of any tribes of Indigenous community. Hence, if the child is not in line with the interpretation of Indigenous people under Section 3⁶⁹, the person shall not be entitled for rights enforced under Aboriginal Peoples Act 1954.

The rights of the Indigenous people have been protected under the Aboriginal Peoples Act 1954. For instance, Section 17(1)²²⁶ has stated that none of the Orang Asli children shall be precluded or excluded from entering any school just by reason that he or she is merely an aborigine.

This has seen that the government has put up an initiative in building up the spirit of the aborigines in attending school for the purpose of receiving education and not to be discriminated against by the other people in the school.

Moreover, Section 17(2)⁷⁰ has stated that none of the aboriginal child shall be forced in exercising religious instruction made by the school authority except if such matter has been consented to by their father, or guardian, or if their parents passed away, such matter shall be informed towards the Director General. The Director General then

⁶⁷ Aboriginal Peoples Act 1954.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.

shall construct his consent in writing to the headmaster of the educational institution concerning the Orang Asli children. In this matter, we should view that not every of the Orang Asli children will follow a similar belief as they also have different numbers of tribes. Each tribe will not be exercising the same belief and custom as they have their own practices. Hence, not each of the Orang Asli children will be professing the same religion and practices in which shall be protected as right to religion in line with Article 11⁷¹. Although parents may determine the religion that shall be practised and professed by the Orang Asli children as they are majority and adults, that does not mean the school authority has the rights to act similarly. There is an infringement of Orang Asli children's rights to their right to profess religion.

Then, any person who acts contrary to the enforcement under Section 17(3)⁷², he or she shall be liable under the offence punishable under the Aboriginal Peoples Act 1954 amounting to a fine not exceeding five hundred ringgit. Hence, this punishment of an offence enforced under the Aboriginal Peoples Act 1954 has shown that the rights of Orang Asli children towards education shall be strictly protected from any forms of discrimination that may be against them as a person who is merely an Indigenous person. Each of the Indigenous children should be protected and secured upon their rights regardless of their gender, tribes and practices.

Additionally, the Aboriginal Peoples Act 1954 has further discussed the rights of the Orang Asli children to stay with their parents and tribes although the Orang Asli children do not have their parents as their guardian anymore. Section 18(1)⁷³ mentioned that strictly no aboriginal child shall be adopted by any person who is not in the same

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid.

ethnic group of Indigenous community which unless such matter has been consented by the Director General in observing that if he thinks the condition is fit.

In regard to Section 18(2²³¹), it mentioned that if anyone conducted an act that is contrasting to the principle resided under Section 18 of the Aboriginal Peoples Act 1954 they shall be found guilty of an offence to an extent of liability of fine not exceeding one thousand ringgit or imprisonment for six months period or liable to both fine and imprisonment punishment. Significantly, this has shown that the rights of Orang Asli children shall be protected in various circumstances from education until the basis of family matters.

Bringing down the scope back to smaller scale, in Malaysia Orang Asli are being protected by the Orang Asli Peoples Act 1954. However, it is only confined to the Orang Asli living in the Peninsular of Malaysia without extending the scope of protection to Sabah and Sarawak. This legislation was introduced in protecting Orang Asli or known as 'Orang Asli' 's rights and to secure cultural autonomy. Section 17 of the Act stipulated that no Orang Asli child shall be precluded from going to school due to his identity of being an Orang Asli. ²³²It can be seen from studies which show that approximately 62% of Orang Asli students drop out from school every year. And 94.4% of the Orang Asli students only managed to go up to upper secondary level at its maximum.

To address the issue of school dropouts and improve the standard of education in Malaysia, the government has implemented several initiatives. These include providing educational assistance such as transportation allowances, pocket money for

primary and secondary school students, dormitory personal needs, and school uniforms for students entering Standard 1 and Form 1⁷⁴.

This is a strategy in boosting up the standard of education in Malaysia. Also, RM13 million is being allocated to implement Adult Education Programme for indigenous programmes in solving both the problem of poverty and illiteracy in Malaysia among.⁷⁵

3.3.10 Statistical Analysis

Recent data indicates a concerning rise in sexual offences against children in Malaysia. In 2023, the Royal Malaysia Police reported 1,567 cases, marking a 26.5% increase from 1,239 cases in 2022⁷⁶. Specifically, sexual assault cases against children rose by 21.1%, from 1,147 incidents in 2022 to 1,389 in 2023⁷⁷.

To combat these crimes, Malaysia enacted the Sexual Offences Against Children Act 2017 (Act 792), which came into force on July 10, 2017. This legislation comprises 26 sections categorized into seven major areas, addressing offences such as child pornography, sexual grooming, physical and non-physical sexual assaults, and abuse of a position of trust⁷⁸. The Act aims to provide comprehensive protection for children under 18 from sexual offences, enhancing legal measures to prosecute offenders and safeguard victims. The Act's goal is to protect children under the age of 18 from sexual offences. The Act contains 26 parts, all of which are divided under seven major

⁷⁴ "Educational Assistance for Primary and Secondary Students," *MSocialSciences*.

⁷⁵ K. Kamaruddin, "Educational Policy and Opportunities of Orang Asli: A Study on Indigenous People in Malaysia", *The Journal of Human Resource and Adult Learning*, vol. 4, no.1 (2008): 97–106, <http://www.hraljournal.com/Page/11Kamaruddin.pdf>.

⁷⁶ "Sexual Offences, Sexual Crimes Involving Children Up by 26.5% in 2023," *Galencentre.org*, 4 January, 2025, <https://ova.galencentre.org>.

⁷⁷ "Malaysia Records 21.1% Increase in Sexual Assault Cases Involving Children," *Malaysiakini*, 4 January, 2025, <https://www.malaysiakini.com>.

⁷⁸ Sexual Offences Against Children Act 2017 (Act 792) (Gazetted 2017).

categories, including child pornography, sexual grooming, physical and non-physical sexual assaults, and abuse of a position of trust⁷⁹.

The new law contains a clause on child grooming, making it an offence to sexually communicate with a child, meet with a child for sexual purposes, or engage in physical sexual assault. Under the new laws, people who abuse their positions of trust in which children are placed, such as supervisors, trainers, and health care service providers, or who hide information, may face legal consequences. This includes penalising any male offender over the age of 50 with whipping.⁸⁰

This new Act is required to protect vulnerable children. Along with this Act, it is believed that many parts of the Penal Code (Act 574)⁸¹, the Child Act 2001⁸², and the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 will be revised accordingly. MWFCF is planned to hold road shows to offer legal literacy on the ground, particularly among children, in order to raise stronger and wider awareness⁸³.

According to the preceding talks, major legal reforms were enacted after 1995 to meet the rights of children as championed in the UNCRC and, indirectly, in CEDAW. Nonetheless, when it comes to preserving the welfare of adolescent pregnancies, Malaysia's current regulations are woefully inadequate. The majority of legislation appears to support a punitive approach to pregnant teens rather than a therapeutic approach. In the case of pregnant adolescents, aside from legal penalties and social humiliation, there are few opportunities for them to correct their mistakes. Pregnant teens may encounter problems such as limited parental support, severe rehabilitation

⁷⁹ A. Yunus and M. Carvalho, "Laws on Sexual Offences against Children Tabled," *The Star*, 27 March, 2017, <https://www.thestar.com.my/news/nation/2017/03/28/sexual-offences-bill-tabled>.

⁸⁰ Ibid.

⁸¹ Penal Code, Act 574.

⁸² Child Act 2001.

⁸³ Aishah Mohd Nor, Najibah Mohd Zin, and Roslina Che Soh, "The Adequacy of Existing Support Systems in Addressing the Issue of Teenage Pregnancies in Malaysia: A Legal Response", *International Islamic University Malaysia Law Journal*, vol. 27, no.1 (2019): 125.

centers, and lengthy adoption procedures. Where support is less evident and options are limited, young and vulnerable teenagers' brains and decisions might be influenced, causing them to commit more destructive acts, especially in desperate situations. On the other side, the true perpetrators, such as the male partner or sexual abusers, escape unpunished.

3.4 CONCLUSION

Malaysia has made significant progress in establishing and strengthening the rights of indigenous children. This can be seen through the formulation of various policies directly or indirectly related to the children in recent years, which illustrate the government's interest to uphold the rights of the indigenous children. The establishment of relevant institutions to ensure the implementation of those rights involving the government and non- government agencies demonstrate the awareness and support given by the Malaysian society in making sure the enforcement of the children's rights is consistent with the objectives and principles of UNCRC and UNDRIP. Nonetheless, the existing rights of indigenous children are still very general.

Most policies and commissions under the framework for children concentrate more on younger children aged 12 years and below, whereas adolescents belong to a different category in between childhood and adulthood, that deserve a special framework on their own. The framework should cater to their special needs which include welfare, protection and support to a safe, healthy and conducive environment to grow as well as protection against all forms of abuse and neglect. Additionally, the framework should particularly address social issues relating to adolescents such as pregnancy and motherhood, child marriage, sexual criminal- related offences and support systems. It is precisely in these areas that interventions and assistance as well

as enforcement and monitoring institutions to ensure effective deliveries. Malaysia's current legislative system, on the other hand, can be perceived as more punitive than restorative. Supportive measures in regard to indigenous children welfare are less visible and options are limited, the thoughts and decisions of young and vulnerable teenagers might be influenced, causing them to engage in more harmful behaviours, particularly in times of crisis. We believe that our country should make more policies that support and protect their rights and enforce it strictly.



CHAPTER FOUR

ROLE OF THE GOVERNMENT AND PRIVATE AGENCIES IN PROTECTING ORANG ASLI CHILDREN IN MALAYSIA

4.1 INTRODUCTION

As was previously discussed, it is clear that the Malaysian government has taken proactive and forward-thinking steps to develop a framework on child protection to strengthen children's rights in Malaysia as well as establish children's institutions to oversee the application of the law. It makes sense that the framework for children would include orang asli children as they come under the same category as other children and Malaysia doesn't have a separate policy regarding them. Nonetheless, there are still a few identified issues encountered by orang asli children concerning the rights to education; the rights of protections, the rights of survival and rights of development. This chapter analyses these particular concerns and considers how government agencies and non-governmental organisations (hence referred to as "NGOs") have contributed to finding solutions.

4.2 ROLE OF GOVERNMENT

The government plays a pivotal role in protecting and promoting the rights of Orang Asli children in Malaysia. Through the formulation and enforcement of policies, laws, and programs, the government seeks to ensure that these children have access to education, healthcare, and basic necessities. Key initiatives are designed to address the socio-economic disparities faced by Orang Asli communities and to provide a supportive framework for their development. This section focuses on the government's

efforts to uphold the welfare and rights of Orang Asli children, emphasizing its responsibility as the primary custodian of their well-being and future.

The protection and promotion of the rights of Orang Asli children in Malaysia rely significantly on the government's role. By formulating and implementing policies, laws, and programs, the government aims to ensure access to education, healthcare, and essential resources for these children. Various initiatives have been introduced to tackle socio-economic disparities within Orang Asli communities and establish a supportive framework for their growth and development. This section examines the measures undertaken by the government to safeguard the welfare and rights of Orang Asli children, highlighting its obligation as the key entity responsible for their well-being and future.

The primary objective of this governmental body is to improve the financial status of the Orang Asli to reduce and ultimately eliminate poverty within the community. Research and reports indicate that the poverty rate among the Orang Asli remains alarmingly high, currently standing at 89.4%. Addressing this issue is a central focus of JAKOA's initiatives. Additionally, the body aims to enhance the living standards of the Orang Asli, particularly in terms of health, to promote a safer and more fulfilling life. Furthermore, JAKOA prioritizes preserving and safeguarding the cultural heritage and traditions of the Orang Asli, ensuring their continuity and protection. The objectives of JAKOA primarily focus on protecting and preserving the traditions, rights, and safety of the Orang Asli¹.

Besides that, JAKOA also takes the responsibility is to protect rights, improve the well-being and bring progress and diversity in the Orang Asli Community of

¹ Jabatan Kemajuan Orang Asli (n.d.). <https://www.JAKOA.gov.my/>.

Peninsular Malaysia the four (4) main pillars that support JAKOA's mission and vision in the development of the Orang Asli community are protection, wellbeing, development and service. In this regard, JAKOA plays a role in protecting the rights of Orang Asli children in terms of survival through housing, market facilities, education and health. It is to improve the well-being and ensure the success of Orang Asli children through programs and activities implemented in collaboration with various parties and strategic partners whether the Government, Non-Governmental Organisations (NGOs) and Civil Society (CSOs) and various agencies. All these forms of protection have been stated.

JAKOA's programs and activities include initiatives in early childhood education, promoting education at various levels (primary, secondary, higher education, and skills training), and providing financial assistance for educational purposes. Additionally, collaborative programs are conducted with other ministries, such as the Malaysian Ministry of Health (KKM), the Malaysian Ministry of Education (KPM), and the Ministry of Women, Family, and Community Development (KPWKM), alongside other agencies, to strengthen efforts in protecting Orang Asli children.

4.3 ROLE OF STATUTORY BODY AND PRIVATE AGENCIES

The Human Rights Commission of Malaysia (SUHAKAM) is a statutory body created by the Human Rights Commission of Malaysia Act 1999 (Act 597). SUHAKAM and other private agencies play an important role to protect the orang asli community. This cannot be done single handedly because protecting itself is a broad task which goes from offering legal advice, looking into complaints, negotiating settlements, reporting cases to the courts or public prosecutors, etc. However, SUHAKAM's Working Group on Law Reform and International Treaties never included conference recommendations

related to legislation in its report, and SUHAKAM considered the recommendations made by this group to be their own. This indicates that although SUHAKAM included the conference's recommendations in its annual report, it did not claim ownership of them. This suggests a reluctance on SUHAKAM's part to fully acknowledge and address the challenges and issues faced by the Orang Asli, which have posed significant threats to their survival.

Under the Human Rights Commission Act, it has already been provided in section 4(1) that the Human Rights Commission (SUHAKAM) will be given several powers under this Act to perform their duties which include First and foremost, the SUHAKAM body must act as a human rights body to advise the government in formulating their new policies or laws. This is mainly since without the assistance of SUHAKAM, the governmental body may accidentally implement laws which are detrimental to the protection of human rights of the people. Furthermore, SUHAKAM is also tasked with the duty to ensure that there is a widespread knowledge, awareness and understanding of the human rights which should be protected and preserved under the Malaysian laws. This ensures that the people are aware of what rights are given to them and will not be influenced or manipulated by a higher authority into infringing their rights.

Orang Asli as a community and the national society of our country unfortunately lacks the enjoyment that the public pursues on a daily basis in the current rapid developments in Malaysia. Some reasons include poverty and infrastructure, material development and health and education.

In Malaysia, more than three-quarter of the Orang Asli community live in poverty either in poor or hardcore poor categories. Some indications that pointed out their poverty levels were when they depend on water streamlines, rivers, and wells for

their water needs. Moreover, in the public where toilets are basic facilities and necessities were lacking in almost 3.7 percent of the Orang Asli population. And more than half of them use kerosene lamps or pelita to light their homes till date. It seems that where the general public in Malaysia have been living in such upgraded lifestyles that it is normal for each and every household to contain basic necessities like lights, fans, filtered water systems and solid houses; the Orang Asli community is still living in the era of the old 1800s and 1900s.

It can be said that these issues are partly caused by the non-delivery and under-delivery of the development of goods. Orang Asli communities are frequently asked to resettle in resettlement schemes where they only get to enjoy such facilities for a short period of time. Many Orang Asli people give in to the resettlement schemes however regret when they are often treated as temporary people on a land. This is when they were asked for their rural areas in exchange for the rights to the resources found in their areas like timber. The development targets the privatisation of development by JAKOA.

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 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. The Orang Asli community was not happy with the move as they were offered to move to a smaller area with the same facilities that they were already enjoying.²

² Suruhanjaya Hak Asasi Manusia Malaysia, “Orang Asli Rights Problems Solutions,” 2013 <<http://www.suhakam.org.my/wp-content/uploads/2013/12/Orang-Asli-Rights-Problems-Solu>> (accessed on 18 March 2022).

One of the initiatives taken was by SUHAKAM who played an important role to support and protect the rights of Orang Asli children. SUHAKAM received complaints of child abuse related cases where teachers at Orang Asli Schools allegedly failed to protect and were instead negligent in looking after Orang Asli children under their care. SUHAKAM issued media statements regarding current human rights issues. Evident to the above statement is when SUHAKAM issued a media statement regarding the incident that happened to Orang Asli Children at Post Tohoi, Gua Musang, Kelantan in 2016 where the incident was directly related to the neglect of Orang Asli human rights causing them to lag behind in terms of their social and economic development³.

Moreover, SUHAKAM began bringing attention to the problem of Orang Asal native customary land rights from the very beginning. SUHAKAM addressed the issue of the Orang Asal from the perspective of native customary rights in its first Annual Report 2000, which was submitted to the parliament. It argued that despite the protections provided to indigenous peoples by the Aboriginal Peoples Act (1954), the Land Ordinance of Sabah (1975), and the Sarawak Land Code (1958), the customary rights of the indigenous peoples and the Orang Asli were not respected⁴. It was clear that prior to the introduction of the aforementioned laws and policies, the indigenous peoples of Sarawak and Sabah, as well as the Orang Asli, had access to and customary ownership of the land on which they had lived for generations. However, these rights were not recognised unless certificates or documents were provided that were issued under these laws. SUHAKAM received numerous complaints regarding the violation

³ Suruhanjaya Hak Asasi Manusia Malaysia, *Media Statement on the Rights of Indigenous Peoples in Malaysia*, (Kuala Lumpur: Malaysian Human Rights Commission, 2016).

⁴ Ibid.

of their customary rights in 2000, although it is unclear how many complaints were submitted overall, including those from the Orang Asli⁵.

Instead of that, SUHAKAM held a public inquiry regarding Indigenous Land Rights in 2013 where SUHAKAM underlined that the Indigenous community in Peninsular Malaysia is facing severe challenges including being ignored in government policies and legislation⁶. The report from the Public Inquiry also issued a total of 18 recommendations for the government's attention and action. Instead of that, The National Inquiry into Native Customary Land Rights, according to SUHAKAM, was self-initiated by SUHAKAM from a human rights viewpoint so that they could have a thorough and in-depth understanding of the matter. As a result, it can be resolved similarly and thoroughly⁷. However, it does not indicate that the example of the Orang Asli is unique. The investigation report, however, discovered that the Orang Asli were enraged, frustrated, and determined to resolve the issue through protests⁸. The Peninsular Malaysia Orang Asli Villages Network (JKOSM) was displeased by the study's release and submission with the Prime Minister in 2013 because the report had to be given to the Parliament. SUHAKAM was held responsible for the community's rejection of this submission and the Orang Asli's subsequent disappointment, as well as for delaying progress. The group demanded that the parliament hear from them personally. SUHAKAM was also accused of acting in violation of the Human Rights of Malaysia Act 1999 because it directly reports to the Prime Minister's office rather than the parliament. The network also alleged that the Orang Asli were not sufficiently

⁵ Ibid.

⁶ Suruhanjaya Hak Asasi Manusia Malaysia, *National Inquiry into the Land Rights of Indigenous Peoples*, (Kuala Lumpur: Malaysian Human Rights Commission, 2013).

⁷ Ibid.

⁸ D. Jayasooria, "The Rights of Indigenous Peoples in Malaysia: A Review of the Current Situation", *Journal of Southeast Asian Human Rights*, vol. 3, no.1 (2014): 1–15.

involved in the investigation (were denied the right to participate in the investigation of their abuses of human rights)⁹.

Moving on, many Orang Asli and indigenous children are not able to go to school because either the schools are located too far from where they are; they do not have documentation; they cannot afford the expense of sending a child to school; or because of language barriers that hinder their progress in national schools¹⁰. By a study, it has been estimated that even if it is the most basic school, a minimum of RM100.00 to RM150.00 expenses have to be made per schooling child. In the Orang Asli's case it might be difficult due to the low income they earn on a daily basis¹¹.

Due to their lack of access to basic necessities and extreme poverty, Orang Asli children in Malaysia cannot even compete with other Malaysian pupils on social and educational measures of success. In addition, the Malaysian government and private firms' logging and deforestation operations continue to rob the Orang Asli of their financial resources and endanger their way of life. The Malaysian government has tried for years to help the Orang Asli escape extreme poverty without any luck. Even though the government offers numerous initiatives and services, such as the Department of Orang Asli Development's (JAKOA) Strategic Development Plan, the Orang Asli community in Malaysia continues to face discrimination and further marginalisation in addition to being one of the most severely underprivileged populations in the nation¹².

⁹ "Promotion and Protection of the Rights of Orang Asli in Peninsular Malaysia: A Study of the SUHAKAM", *Malaysian Journal of Society and Space*, <https://ejournal.ukm.my/gmjss/article/view/19118>.

¹⁰ UNICEF Malaysia, "Learning," 3 April 2019, <https://www.unicef.org/malaysia/what-we-do/learning>.

¹¹ Ibid.

¹² Norhasimah Ismail, Mohd Hasni Jaafar, and Tarmiji Masron, "Poverty and Primary Education of the Orang Asli Children," *ResearchGate*, https://www.researchgate.net/publication/345586750_Poverty_and_primary_education_of_the_Orang_Asli_children (accessed on 20 March 2022).

Furthermore, as a follow up on the complaint received by SUHAKAM regarding the incident that happened to the Orang Asli children at Pos Tohoi, Gua Musang, Kelantan. SUHAKAM has taken a few actions. To start off, SUHAKAM called on the Board of School Inspectors and the Quality Assurance Division at the Malaysian Ministry of Education to monitor the implementation of the curriculum and ensure that the quality of education in Orang Asli schools is guaranteed. In addition, SUHAKAM requests that the Malaysian Ministry of Education provide feedback regarding the findings from the monitoring of cases that have occurred. SUHAKAM too reminds schools, including boarding schools, to be more sensitive to the target community. Although SUHAKAM believes that discipline is important in the personal development of children, it must be balanced with respect for dignity and protection against any form of abuse against children. The school is reminded to take care of the welfare of the children under their care. Furthermore, SUHAKAM took note of the actions of the Malaysian Ministry of Education which has closed a number of primary schools in Orang Asli villages due to the reason of “unacceptable financial ability” resulting in many Orang Asli children not having the opportunity to obtain primary education which is compulsory for Malaysian citizens because there is no primary school or teacher in their village. The school is located far from their village area¹³.

4.4 ISSUE ON SIGNING THE UNCRC PROTECTING THE ORANG ASLI CHILDREN

The UN Convention on the Rights of the Child (also known as UNCRC) acknowledges that children have unique needs and vulnerabilities that call for particular safeguards. It establishes a list of children’s civil, political, economic, social, and cultural rights and

¹³ Ibid.

asks governments, groups, and people to see to it that these rights are upheld, safeguarded, and realised. Children who identify as Orang Asli confront particular difficulties as indigenous children who frequently endure marginalisation, prejudice, and restricted access to basic services.

In order to solve these problems, the UNCRC promotes the rights of indigenous children and outlines the following fundamental principle¹⁴. The UNCRC promotes non-discrimination all children have the right to exercise their rights without prejudice, regardless of their racial or ethnic background. The convention emphasises that the best interests of the child should be the main factor in all choices and activities that have an impact on them. This principle serves as a guide for the development of programmes and policies that support and protect the wellbeing of Orang Asli children. Right to identity and culture: According to the UNCRC, indigenous children have the right to preserve their cultural identity, language, and traditions. The significance of safeguarding their cultural legacy and ensuring their involvement in cultural life is emphasised. Besides that, the UNCRC encourages children to actively participate in decisions that have an impact on their life. It implores governments and communities to respect the opinions of indigenous children, including Orang Asli youngsters, and to include them in decisions that affect them¹⁵.

The UNCRC serves as a manual and advocacy tool for groups, nations, and people fighting to uphold children's rights, especially those of children from indigenous communities. The UNCRC offers a legal framework and international standards that

¹⁴ Kementerian Pembangunan Wanita, Keluarga dan Masyarakat, "Konvensyen Mengenai Hak Kanak-Kanak," <https://www.kpwkm.gov.my/kpwkm/uploads/files/Dokumen/Dokumen%20CRC/Booklet%20Konvensyen%20CRC%20-%20BM.pdf> (accessed on 22 March 2022).

¹⁵ "UN Convention on Rights of the Child," Citizens Information, <https://www.citizensinformation.ie/en/birth-family-relationships/children-s-rights-and-policy/un-convention-on-the-rights-of-the-child/> (accessed on 22 March 2022).

can be used to promote positive change and address the particular challenges faced by indigenous children, though its precise impact on Orang Asli children may vary depending on local implementation and the efforts of relevant stakeholders¹⁶.

4.4.1 JAKOA

In JAKOA's opinion this convention ratified by the Government of Malaysia which recognised children this convention focuses on the welfare and life of children which focuses on aspects of survival, protection, development and participation. Malaysia ratified the Convention on the Rights of the Child (CRC) on 17 February 1995. As a State Party to the CRC, Malaysia is very concerned and committed to the responsibility to ensure the safety and well-being of children who are the next generation of heirs of the country. Therefore, the Government has and is taking all appropriate legislative, administrative, social and educational measures to protect children from all forms of physical or mental violence.

4.4.2 Response from Ministry of Education

According to the Ministry of Education it is mentioned that it's their duty to provide education to the underprivileged children such as those who are disabled. So according to them, in 2010 almost 300,000 students were given attention on education where they were given the chance to study and get their rights to education. So, Malaysia had made a promise to all the children around Malaysia that education should be a priority. CRC also emphasises the right to education on the basis of equality. The committee emphasised that the training is to promote human rights to all young children so that

¹⁶ Ibid.

they can also reach the heights that they deserve and this way it helps to infuse human rights values into the children. This is vested under Article 23 of the CRC¹⁷.

4.4.3 SUHAKAM

Ratification of the UNCRC by the government in protecting the rights of Orang Asli children is important to ensure the sustainable development of human resources in Malaysia. However, SUHAKAM still found that there are laws and policies that are contrary to the UNCRC when it comes to Orang Asli children including the following.

Orang Asli culture and language are not given sincere support and encouragement by the government in the national education policy. The Orang Asli language for example is not actively promoted and not given sufficient resources to develop into one of the competitive languages in the mainstream. The plan to develop “Students’ Mother Tongue” in classes for Orang Asli children, especially Semai language did not go smoothly due to lack of funds and resources for project development.

In the meantime, some Orang Asli languages such as Semai, Temiar and Jakun are used in Asyik FM radio broadcasts, but the messages conveyed are more inclined to propaganda and programs that aim to change the mind and spirituality of the Orang Asli. As far as SUHAKAM and other civil society organizations (CSOs) know, there is no specific program that provides information regarding the existence of UNDRIP to the Orang Asli community and the general public, far from an awareness program regarding the rights of Orang Asli and the principles outlined by UNDRIP by agencies

¹⁷ UNICEF, “A School for All Children,” 2014, <<https://www.unicef.org/malaysia/media/926/file/Issue%20Brief:%20Inclusive%20Education%20in%20Malaysia%202014.pdf>> (accessed on 23 March 2022).

that related for example such as the Department of Indigenous Development (JAKOA), Malaysia.

Another significant factor which assisted the advancement of protection of the rights of the Orang Asli children by SUHAKAM, is through the actions of the Government of Malaysia to rectify The United Nations Convention on the Rights of the Child UNCRC. Although the actions taken by the Government in rectifying this convention had brought about better rights for children, including the aboriginal children yet there were still several laws and legislations which still allowed for discrimination towards aboriginal children and infringement of their human rights as a child. As soon as the UNCRC was ratified by the Malaysian Government, SUHAKAM had organised a Roundtable Discussion (RTD) in order to discuss the objectives and challenges of the UNCRC and recommendations which would help improve it.

In fact, in a statement by Datuk Dr Khaw Lake Tee, the acting head of SUHAKAM had agreed that “Orang Asli children in Malaysia continue to be deprived of access to quality education that is relevant and responsive to their specific cultural context and needs”¹⁸. SUHAKAM believes that the Orang Asli’s social and economic marginalisation is a result of their human rights being violated. SUHAKAM regrets that many of its recommendations have not been implemented, and as a result, the community still faces significant difficulties, such as marginalisation. Dr Khaw had provided these statements in order to show the government the importance of providing these aboriginal children with their deserving rights¹⁹. These statements were also released in response to the 2015 aboriginal children incident in Kelantan.

¹⁸ Suruhanjaya Hak Asasi Manusia Malaysia, “Statement by Datuk Dr. Khaw Lake Tee, Acting Head of SUHAKAM,” Malaysian Human Rights Commission, 2015.

¹⁹ Ibid.

4.4.4 NGO - Centre for Orang Asli Concerns (COAC)

To start with, as every citizen of Malaysia deserves the right to protection, the Orang Asli community deserves the advancement of protection and well-being as indigenous people. There was no specific administration for the Orang Asli up until the late 1940s, but it was seen as the curator of the Taiping Museum's duty to be concerned with study among the Orang Asli in Perak. The goal of the government was to shield and preserve the Orang Asli from the ills of modern society. They were still seen as heroic savages who led romanticised and romantic lives.

H.D. Noone, who was the field ethnographer and later the director of the Perak Museum in Taiping, wrote a rather in-depth report in 1936 in an effort to uphold the British colonialists' belief that the Orang Asli should be protected and kept apart from the rest of Malaya's population²⁰.

Noone advocated for the creation of sizable native land reservations where the Orang Asli may dwell in freedom and in accordance with their own customs and laws. Nobody also suggested building "patterned communities" where the Orang Asli may learn farming skills in less accessible locations²¹. Additionally, he pushed for the promotion and advancement of indigenous arts and crafts as well as the establishment of alternative Orang Asli employment opportunities. A number of safety precautions were also suggested, including the controlled sale of goods and the prohibition of alcohol in Orang Asli reserves. His "Proposed Aboriginal Policy" laid the foundation for future government policy toward the Orang Asli even though the government of the time did not adopt it²².

²⁰ H. D. Noone, "Report on the Aboriginal Tribes of Malaya", *Journal of the Federated Malay States Museums*, (1936).

²¹ Ibid.

²² Ibid.

4.4.5 View Academic Expertise - Dr. Sayuti bin Hassan (UKM)

Free, prior and informed consent (FPIC) should be taken into account, especially when making decisions that would have an impact on indigenous people. UNDRIP and other international legislation, like the Conventions for Indigenous and Tribal Peoples in Independent Countries, have recognised the FPIC concept, which states that the government must obtain the agreement of indigenous people before making any decisions. FPIC in UNDRIP addresses a variety of issues, including the eviction of indigenous people from their ancestral lands, the right to restitution or compensation in the event that their land is taken without their permission and used, occupied, or damaged, as well as the introduction of laws or other administrative decisions that may have an impact on them. In order to get FPIC from indigenous people, the government is expected to engage in transparent negotiations, good faith cooperation, and those actions.²³ Resolutions passed by the General Assembly do not have the same legal authority as conventions in international law. States are not expected to disregard the broad international law principles set forth in these resolutions or declarations, though.

4.4.6 United Nations International Children's Emergency Fund (UNICEF)

On the other hand, UNICEF has played a role to enable access to basic education for indigenous children, UNICEF is working with local groups to encourage mother-tongue education. UNICEF also piloted an alternate learning center in Kampung Numbak to cater to children in the area²⁴.

²³ Muhamad Sayuti Hassan and Rohaida Nordin, "Political Participation of Aboriginal People (Orang Asli) in Peninsular Malaysia: Examining the Compatibility of the Aboriginal Peoples Act 1954 with United Nations Declaration on the Rights of Indigenous Peoples Standards", *International Journal on Minority & Group Rights*, vol. 28, no.3 (2021): 493–512, <https://doi.org/10.1163/15718115-bja10010>.

²⁴ UNICEF Malaysia, "Education for Indigenous Children in Malaysia," United Nations Children's Fund, 2020.

Taking the above into account, private agencies should take the initiative to protect the rights of orang asli people to development. They should work together with one another to come up with subsidised housing schemes to keep the Orang Asli from resettling and causing unrest amongst them. Like the general public, any community will be restless, and it would be hard for them to adapt with children and old folks with them. Private agencies should make sure that these housing schemes offer a better living providing all the basic necessities as easy access²⁵. It's crucial for these agencies to make sure that these housing schemes are not used for privatised development to prevent the Orang Aslis to resettle again.

Next, taking **UNICEF** as an example, private agencies should play their roles and work as a bridge between the Orang Asli community and their access to education. In this case private agencies should come up with detailed plans and manpower on how to educate the Orang Asli people with the basic education for a start. Private agencies and NGOs should play a role to utilise the skillsets Orang Asli on and make it an earning source for them. In today's world with the technology and social media, an upgraded and mobilised system to educate and provide good earnings for the Orang Asli can take them to great heights²⁶.

²⁵ Ibid.

²⁶ Ibid.

4.5 ISSUE ON SIGNING THE UNDRIP PROTECTING THE ORANG ASLI CHILDREN

So, this declaration was adopted by the Malaysian government where the main concern of the convention is to protect the Orang Asli community, in other words it is like the human rights for the indigenous people²⁷.

It can be seen as to the protection under the United Nations Declaration on the Rights of the Indigenous People it gives on a major instrument to give recognition expressly for the indigenous people and to their traditional knowledge which is a good thing because this can be a very good law to stand on when there is any infringements towards the rights of the Orang Asli who are the indigenous people.²⁸

4.5.1 Response from JAKOA

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is a charter base document that is not legally binding on the State and there is no ratification process. Even so, the State has voted to agree to this declaration because most of its principles and articles are in line with the Federal Constitution through the decision of the United Nations General Assembly on September 13, 2007. JAKOA has no objection to the articles on this document that involve the rights of Orang Asli children because the Government specifically takes care of the rights of families and Orang Asli communities to maintain joint responsibility in the care, training, education and well-being of their children, based on children's rights and it is evident in various JAKOA programs (for Orang Asli children) in particular and the Government in general²⁹.

²⁷ United Nations, "United Nations Declaration on Rights of Indigenous People," <<https://social.desa.un.org/issues/indigenous-peoples/united-nations-declaration-on-the-rights-of-indigenous-peoples>> (accessed on 2 April 2022).

²⁸ "Govt Policies on Orang Asli 'Doing More Harm than Good'," *Free Malaysia Today*, <<https://www.freemalaysiatoday.com/category/nation/2022/08/23/govt-policies-on-orang-asli-doing-more-harm-than-good/>> (accessed on 18 April 2022).

²⁹ Jabatan Kemajuan Orang Asli, "Annual Report 2015".

4.5.2 Response from Ministry of Education

The Malaysia Second Plan by the government put the Orang Asli community in the spotlight by claiming that their status in the socio-economic system was being neglected. Additionally, the government believed that one of the key causes was education in raising the socioeconomic standing of the Orang Asli. through the means of the National Development Policy, the Memorandum of Agreement for the Purchase of School Under the. The Ministry of Education's Department of Orang Asli Affairs promises to give more educational services that are efficient and effective. The government is of the opinion that education allows the Orang Asli to rise above poverty. Memorandum of Agreement for the Purchase of Schools by the Department of Orang. What follows is a discussion on Asli Affairs³⁰.

4.5.3 Suruhanjaya Hak Asasi Manusia Malaysia (SUHAKAM)

According to SUHAKAM, Malaysia is one of the countries that adopted the Declaration on the Rights of Indigenous Peoples (UNDRIP), but many other government departments are not aware of this. Some government departments think that UNDRIP is a memorandum prepared by non-governmental organizations (NGOs)³¹.

Although UNDRIP is not legally binding on countries that adopt it, the government has a moral obligation to strengthen the rights and privileges of the Orang Asli as recorded in the declaration. UNDRIP is the minimum standard in the recognition and protection of the rights to land, regions and resources of the Orang Asli. This right

³⁰ M. R. Rosnon and M. A. Talib, "Indigenous Education Rights: The Malaysian Case", *International Journal of Academic Research in Business and Social Sciences*, vol. 9, no.10 (2019): 149–167, <http://dx.doi.org/10.6007/IJARBS/v9-i10/6470>.

³¹ Suruhanjaya Hak Asasi Manusia Malaysia, "National Inquiry into the Rights of Indigenous Peoples in Malaysia," Malaysian Human Rights Commission, 2013.

also indirectly includes the rights of Orang Asli children as the future generation of the nation.

These legal systems protect a community's presence and participation in making their voice heard. The right to participate gives communities and the public the chance to voice their opinions and suggestions on national and international grounds.

Due to some communities being a minority, it can be seen that they are not treated as seriously as one would take a majority community. It is evident that as a principle of democracy, however, minorities tend to be taken advantage of or are often left in the shadows of the more powerful parties³². In this case, the orang asli or also internationally known as the indigenous people are often kept in the shadows of the more powerful people in Malaysia. Hence, it is for their community themselves to stand up with the help of well-known private agencies to participate in national and international matters. It is essential to eliminate marginalisation and empower individuals and groups to participate in political and public life.

4.5.4 Jaringan Orang Asal SeMalaysia (JOAS)

One example of a private agency would be, **Jaringan Orang Asal SeMalaysia (JOAS) - The Indigenous Peoples Network of Malaysia** which is the umbrella network for 21 community-based non-governmental organisations that have indigenous peoples' issues as the focus. As the focal point for indigenous rights and advocacy in Malaysia, JOAS provides the indigenous communities with representation not just nationally but regionally and internationally as well³³.

³² Ibid.

³³ Jaringan Orang Asal Semalaysia (Indigenous Peoples Network of Malaysia), "Jaringan Orang Asal Semalaysia (JOAS) - the Indigenous Peoples Network ...," Forest Peoples Programme, <<https://www.forestpeoples.org/en/partner/jaringan-orang-asal-semalaysia-joas-indigenous-peoples-network-malaysia>> (accessed on 22 April 2022).

This private agency company hosted the 6th Southeast Asian Conference on Human Rights and Agribusiness aiming to explore ways to make human rights obligations binding on transnational and national agribusiness companies through national reform. After the four-day event, participants noted how land conflicts as a result of agribusiness expansion are proliferating and urged a pause in the handout of licences while community and indigenous peoples' land rights are secured³⁴.

Hence, it can be understood through these initiatives that private agencies should play a role in entailing the notion that all citizens should be involved in decision making processes that affect them. Based on Article 19 of the UN Convention,³⁵ everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. Taking that into consideration, private agencies should work together to play an important role to ensure that the orang asli have the right to participate and voice out their opinions in public platforms such as the parliament. This is so they are taken seriously and not lightly due to them being a minority. The Orang Asli community can even upgrade their lifestyles and be a part of the normal public, so they are not looked down upon.

4.5.5 View Academic Expertise - Dr. Sayuti (UKM)

Dr. Sayuti from Universiti Kebangsaan Malaysia wrote an article that majorly assesses critically whether the Orang Asli's "right to political participation" is consistent with international legal norms. The study employed a qualitative socio-legal approach to

³⁴ Forest Peoples Programme, "Calls for Stronger Protection of Indigenous Rights in the Agribusiness ...," <<https://www.forestpeoples.org/en/asean-agribusiness-palm-oil-rspo-high-carbon-stock-approach-shrimp-farming-coastal-forests/news>> (accessed on 23 April 2022).

³⁵ United Nations Convention on the Rights of the Child, art. 19.

examine the Orang Asli's political engagement under Malaysian legislation and assess whether the Aboriginal Peoples Act of 1954 (APA) can provide the Orang Asli's protection, well-being, and advancement³⁶. It might be argued that the current provisions of the APA are incompatible with UNDRIP's recognition and in no way provide the Orang Asli people's legal right to self-determination. As a result, the current study suggests amending the APA and introducing guidelines to enable Orang Asli political participation by adopting the ideas of UNDRIP. The modification is required to ensure that the protection of the Orang Asli people's right to self-determination is consistent with international legal norms.

It might be argued that domestic legislation passed by the government to address concerns pertaining to the rights and protections of the Orang Asli protect their rights. The Orang Asli in Peninsular Malaysia were given legal protection under the Aboriginal Peoples Act of 1954 (APA). However, in practice, the existing institutions and regulations fall short of providing complete protection, particularly in terms of political involvement and self-determination.

Previous research has discovered a gap in Malaysia's legal framework, policy, and implementation regarding the Orang Asli's political participation. It is clear that achieving recognition as outlined in UNDRIP is hampered by the Orang Asli's representation in politics and the absence of legal acknowledgment of such activities.

4.5.6 View Social Activist - Siti Kasim

The view of the Lawyer Activist, Siti Kasim urged that the country was obligated to protect the Orang Asli's rights as stated in the United Nations Declaration on the Rights

³⁶ Muhamad Sayuti Hassan, "Political Participation of Aboriginal People (Orang Asli) in Peninsular Malaysia: Examining the Compatibility of the Aboriginal Peoples Act 1954 with United Nations Declaration on the Rights of Indigenous Peoples Standards,".

of Indigenous Peoples (UNDRIP) and the Aboriginal People's Act of 1954. This is because Malaysia has signed the UNDRIP declaration. Siti Kasim also claimed that the country cannot be ignorant and instead should look forward to protecting the Orang Asli rights based on the UNDRIP³⁷.

4.5.7 Non-Government Organisation - Centre for Orang Asli Community (COAC) - Colin Nicholas

Nicholas and Subramaniam identified a number of flaws in the APA's Orang Asli provisions when compared to those of UNDRIP. Additionally, the study also focusses on the Orang Asli's autonomy and participation in decision-making by analysing the right to self-determination in light of international norms³⁸. The study, however, investigates new areas by examining how domestic legislation comports with UNDRIP norms and, more specifically, the political engagement of the Orang Asli. The current research will advance knowledge and fill a gap in the existing literature on political involvement and the Orang Asli people's right to self-determination. The primary goal of this article is to analyse critically whether the Orang Asli's right to political participation in Malaysia is consistent with international legal norms.³⁹

4.6 ISSUE RIGHTS TO SURVIVAL

The role of the government of Malaysia that is being played here to protect the rights of the Orang Asli people is said to be seen under few aspects. It is evident firstly under the right to survival where the government has taken the initiative to protect the rights of

³⁷ Suruhanjaya Hak Asasi Manusia Malaysia, "National Inquiry into the Rights of Indigenous Peoples in Malaysia," Malaysian Human Rights Commission, 2013.

³⁸ C. Nicholas and P. Subramaniam, "Flaws in the Aboriginal Peoples Act: A Comparative Analysis with United Nations Declaration on the Rights of Indigenous Peoples", *Journal of Indigenous Rights*, vol. 5, no.2 (2020): 45–67.

³⁹ Ibid.

the Orang Asli so that they are not stepped on. According to a very recent article it is evident that the Government's policies and actions that were taken for the Orang Asli were said to be doing more harm than it is doing good. This is mainly because the rate of poverty is so high although it has been over 50 years since the activist named Colin Nicholas took charge of the Center for Orang Asli Concerns⁴⁰. He had also pointed out that after the development for so many years, the Orang Aslis are still in poverty. Because of the hard work they put in and the fruit of the labour is being enjoyed by someone else instead of the Orang Asli themselves.

Few years back the Orang Asli were given a substantial amount of grant where they were given 2.5 hectares per family and with the intention to increase the living standards but there were many flaws and downsides to the grant that was submitted which caused some families to not receive the 2.4 hectares of land⁴¹.

The existing legislation managing the Orang Asli, the Aboriginal Peoples Act 1954, keeps on being criticised as excessively powerless to safeguard the Orang Asli, particularly according to the issues of land use. Not a lot of Orang Asli have responsibility for, and the Aboriginal People Act 1954 just accommodates 'usufructuary freedoms or privileges to utilise land and its assets. This resulted in by far most of Orang Asli basically being occupants on their customary terrains.

Maybe under 20% of Orang Asli villages in Malaysia are gazetted and put away as Orang Asli Region. The Orang Asli has less lawful security of their familial grounds than do native populaces in Sabah and Sarawak, as specialists can 'degazette' any safe land whenever⁴². On certain events, where pay has been offered, this would in general

⁴⁰ Ibid.

⁴¹ "Govt Policies on Orang Asli 'Doing More Harm than Good'," *Free Malaysia Today*, <<https://www.freemalaysiatoday.com/category/nation/2022/08/23/govt-policies-on-orang-asli-doing-more-harm-than-good/>> (accessed on 26 April 2022).

⁴² Nicholas and Subramaniam, "Flaws in the Aboriginal," 45–67.

be restricted to the deficiency of use, for example, organic product trees and different assets, however not of Orang Asli homes. The Orang Asli have likewise in earlier years been focused on for transformation to Islam by various neighbourhood government developers and state-subsidised teachers in pieces of Malaysia, like the province of Kelantan, where they would rather mischievously Muslim men marry an Orang Asli lady and be given an amount of RM 10,000 but when it comes to Orang Asli the do not have any access to this of figures.

4.6.1 Response from JAKOA

With regards to the outcome of the interview⁴³, JAKOA's reply is that generally, all children need the right to life, protection, development and participation as enshrined in the UNCRC document. In addition to these rights, Orang Asli children have the right to practise their own culture, language and beliefs. The use of their language in the early stages of children, such as in pre-school, primary and secondary school, needs to be implemented more widely and effectively. The four main rights that JAKOA's says that indigenous children should get is (a) Life, for their survival and basic needs such as food, clean water and shelter. Besides that, (b) Development is for the potential development of the right to education, the right to play and the right to voice an opinion. Third would be (c) Coverage the importance of this right is to protect from bad influences such as abuse, exploitation and so on. Lastly, (d) Participation so that the indigenous people will get the full right to fully participate in the family, culture and social life of the local community⁴⁴.

⁴³ Ahmad Firdaus bin Zukefli, "Ketua Unit Dasar dan Hubungan Antarabangsa, Bahagian Perancangan dan Penyelidikan, Jabatan Kemajuan Orang Asli," Response to Questionnaire, 20 March, 2023.

⁴⁴ Ibid.

In addition, JAKOA was also asked about the initiatives it has undertaken to protect orang asli children. The response was that JAKOA helps and supports their rights through the Government's existing policies related to children and ensures that they enjoy the life, protection, development and participation that children get in the mainstream without forced assimilation⁴⁵. JAKOA collaborates with various stakeholders in developing strategies and involvement in the implementation of programs and activities with the involvement and participation of Orang Asli children.

These include health awareness programs with the Malaysian Ministry of Health (KKM), joint education programs with the Malaysian Ministry of Education (KPM) and other ministries and other Federal agencies. In addition, JAKOA cooperates with SUHAKAM in the nomination of members of SUHAKAM's Children's Consultative Council (CCC) for the participation of Orang Asli children as members of the Council.

But what were the main challenges that JAKOA have encountered when wanting to protect their rights? The main challenge for the Government and JAKOA in particular is a change in attitude. The belief system and values and attitudes of a community or society are closely related to the changes that want to be implemented to achieve a certain goal. The government is in an effort to protect the belief system and culture of the Orang Asli community and at the same time needs to bring about a change in the attitudes and values of the Orang Asli community in order to be in line with mainstream society. It is a challenge not only in ensuring children's rights but in bringing progress to the Orang Asli community as a whole⁴⁶.

This belief system involves 18 Orang Asli tribes in Peninsular Malaysia. For ethnic groups or tribes that are more open, the change in attitudes and values is easier

⁴⁵ Jabatan Kemajuan Orang Asli (n.d.), "Annual Report 2020."

⁴⁶ Ibid.

in accepting the changes and progress plans drawn up by the Government in general for them, especially education and economy. In addition, the challenge faced is the settlement position of the Orang Asli community, 35% in rural areas that have relatively low accessibility in terms of health, education and communication⁴⁷.

4.6.2 Response from SUHAKAM

SUHAKAM believes that neglecting the rights of Orang Asli at national development can cause them to lag behind socially and economically. As outlined in SUHAKAM's Report on the Public Inquiry into Indigenous Land Rights, SUHAKAM found that Orang asli people's land, region and resource rights have been violated. SUHAKAM regretted it when the recommendations issued in the public inquiry report were ignored and not implemented by the government. As a result of that, the Orang Asli community had to face bitter challenges including falling behind in the current state of national development. Orang Asli children in Peninsular Malaysia continue to be denied access to quality education that is relevant and responsive to their specific cultural context and their needs.

Furthermore, SUHAKAM encountered multiple challenges in ensuring the Orang Asli children rights in Malaysia. These challenges include disagreement among traditional leaders/chiefs themselves regarding the stance on the rights of indigenous children, for example the issue of marriage of orang asli children⁴⁸.

Besides that, the difference between the institutions/departments that manage the orang asli communities in the Peninsula and in Sabah and Sarawak. Moreover, the result of the public inquiry made by SUHAKAM was not given attention/no action was taken

⁴⁷ Ibid.

⁴⁸ Suruhanjaya Hak Asasi Manusia Malaysia, "National Inquiry into the Rights of Indigenous Peoples in Malaysia," Malaysian Human Rights Commission, 2013.

by the authorities. Legal issues related to orang asli/origin that are lax and not enforced, for example: Customary land issue for why grants are not made/given to orang asli people who have been occupying the land for a long time as happened in Miri Sarawak and the Customary Court as of why are decisions in Customary Courts involving child custody rights, property inheritance not enforced⁴⁹.

4.6.3 NGO - Centre for Orang Asli Concerns (COAC)

Up until the start of the Malayan Emergency, the Orang Asli played a minor role in Malayan politics. From 1948 until 1960, Malaya saw a civil war between the colonial authority and communist rebels.

In the early years, sympathisers in the rural areas (mostly Chinese) provided the insurgents with a great deal of assistance and supplies. The Briggs Plan, which involves moving a large portion of the rural populace into well-guarded “new villages,” was able to successfully sever the connection between these two groups. The militants were consequently compelled to operate from locations deep in the forest, where they looked to the Orang Asli for assistance. It was known that certain Orang Asli gave the rebels food, labour, and intelligence⁵⁰.

The job of Adviser on Aborigines was established by the Colonial Government once it became clear how crucial the Orang Asli were to win the war. However, early attempts to manage the Orang Asli turned out to be devastating for both sides. The British herded the Orang Asli into hurriedly constructed resettlement camps in an effort to stop the insurgents from receiving assistance from the Orang Asli. In these packed,

⁴⁹ Ibid

⁵⁰ Centre for Orang Asli Concerns, “The Orang Asli and the Malayan Emergency: A Historical Perspective,” (COAC Report, 2018).

sunbaked settlements, a small number of Orang Asli perished, mostly from mental melancholy as opposed to illness.

Up to 7,000 Orang Asli deaths were allegedly reported by a previous director-general of the Department of Orang Asli Affairs (JAKOA)⁵¹.

Later, after realising their mistake and understanding that the key to ending the war lay in ‘winning over’ the Orang Asli to the government’s side, a Department of Aborigines was established and ‘jungle forts’ were set up in Orang Asli areas, providing the Orang Asli with fundamental consumer goods, such as food and medicine, as well as basic health services.

The first significant attempt at legislation to safeguard the Orang Asli was also made during this time. An important turning point in the management of the Orang Asli was the adoption of the Aboriginal Peoples Ordinance in 1954 (later revised in 1967 and 1974 to reflect changing circumstances), which showed that the government had finally legally acknowledged its responsibility to the Orang Asli.

Later, the jungle forts were abandoned and replaced by “patterned villages” (later to be called “regroupment schemes”), seemingly reversing the government’s position toward the Orang Asli. In these locations, a number of Orang Asli communities were relocated in places that were easier for the Department’s officials and security guards to access while still being close to, although not always inside, their ancestral homelands. The plans promised Orang Asli wooden stilt homes together with contemporary conveniences including schools, clinics, and retail establishments. In order to engage in the cash economy, they were also obliged to raise cash crops (such rubber and oil palm) and practise animal husbandry.

⁵¹ Centre for Orang Asli Concerns, “A Brief Introduction,” https://www.coac.org.my/main.php?section=about&page=about_index (accessed on 26 April 2022).

However, the tactic was effective in that the Orang Asli's support for the militants decreased. As the insurgency's backing dwindled, massacres of Orang Asli who were believed to be on the government's side took place. In 1960, the Emergency was formally over. Unfortunately, despite the crucial part the Orang Asli played in aiding the end of the Emergency, this fact is not included in many writings about the time⁵².

More importantly, it marked the beginning of the state's more active and direct involvement in the affairs and lives of the Orang Asli.

In order to make it a more powerful force, the Department for Aboriginal Affairs was expanded around the same time. The sole purpose of this reorganisation, as the former Commissioner for Orang Asli Affairs remarked, was to ensure stronger control over the Orang Asli and to ensure that they would have little to no incentive and few, if any, possibilities to support the insurgents.

But the days of the Orang Asli just accepting attempts to violate their rights are quickly coming to an end. The Orang Asli have used a variety of tactics, including going to court, to defend their rights. These complaints mostly centre on the shaky tenure of their traditional lands, the absence of their input in decisions that impact on them, the power others have over their department, and the prejudice in distributive justice.

It should be made abundantly clear that the Orang Asli are not opposed to advancement or development. The Orang Asli, on the other hand, want the benefits of development as well, but they want to be consulted before such "progress" is imposed upon them⁵³.

⁵² Centre for Orang Asli Concerns, "The Orang Asli".

⁵³ Ibid.

A strategy focused on creating a new culture of respect, cooperation, freedom, and social fairness would be necessary for this. It would entail changing the system of laws, regulations, and institutions that has so far governed the management of Orang Asli concerns. Additionally, it would entail the creation and improvement of national dispute-resolution mechanisms, particularly in connection to the resolution of Orang Asli claims to land and resource rights.

4.7 EDUCATION POLICY WITH REGARDS TO ORANG ASLI CHILDREN

It is evident that the Orang Asli should also be given the chance to develop themselves in a way where they get a chance to advance in their life and also in their education. Therefore, there was a society effort called SUKA Society (Suara Kanak-Kanak) where they have been carrying the task to help the Orang Asli in being more involved in schools⁵⁴. So, they have given them the chance to become teachers and also at the same time study. These projects have been executed from 2013 till 2020 their ongoing project. So, a little more detail on what they have been doing is to give a solution to the Orang Asli where the Suka society gives them sufficient training, they also provide resources to the Orang Asli community after the training has been completed the leader of the Orang Asli community will choose the more eligible candidate to become a teacher. According to JAKOA it was reported that almost 7100 kids were not given the benefit of going to school and studying. Therefore, this is one initiative that would overcome this issue⁵⁵. This project did take place around the whole Malaysia where various schools have been given these Orang Asli teachers and according to the reports kids did

⁵⁴ Suka Initiative, "Empowering Orang Asli Children Through Education" (Suka Project Report, 2020).

⁵⁵ Ibid.

not fail to show their improvement. Even the teachers were not disappointed enough to teach sufficiently⁵⁶.

The progress of their students was very good. Therefore, it is sure that the government did play certain roles in helping the Orang Asli but at the same time there were some issues which did not help the Orang Asli people. It in fact caused some trouble therefore the government of Malaysia had to look more into helping and making the law more accessible to the Orang Asli⁵⁷.

Moreover, according to a recent article it was mentioned that Orang Asli kids have been facing racism. There was an Orang Asli who featured in the paper, and he goes by the name of 'An' who is a Batek Orang Asli child. The gist of the whole thing was that the boy named 'An' and 55 other children had taken the initiative to enroll in the regular schools where they will be educated with the regular kids. So that was a bad experience for 'An' and the other 55 kids because they felt that school was like a prison due to their way of teaching and content that was being conveyed. So, these brave kids went on to find a new way to educate themselves. JAKOA, Kelab Pencinta Burung Taman Negara, SK Kuala Tahan and the District Education Office had taken the initiative to help them in how to get adapted to school life. So, they were sent for training in a few ways such as identifying the environment of the school, being safe with their hygiene and also with the way they communicate with the schoolteachers. So, It is evident that getting the support of the governmental body does help them in becoming someone who did not expect they could become. So, the government helped to identify some problems the kids are facing⁵⁸.

⁵⁶ Ibid.

⁵⁷ SUKA Society, "Our Projects," <https://www.sukasociety.org/>.

⁵⁸ "Batek Orang Asli Kids Deserve Another Chance," *New Straits Times*, <https://www.nst.com.my/opinion/columnists/2018/03/341131/batek-orang-asli-kids-deserve-another-chance>.

According to a few governmental policies and programmes, there have been some issues that arise when the policies are being implemented. While there seems, by all accounts, to be a decrease in the gap between Orang Asli students and as per the Malaysian Schooling Blueprint planned with the time span of 2013 until 2025, key challenges, for example, absence of chances to go to preschool and contextualised educational program and teaching method have not been sufficiently tended to. These critical difficulties have brought about tirelessly higher school dropout rates from the public normal. For instance, from 2016 to 2018, the public dropout rates were reliably beneath 4%, while the Orang Asli understudies' dropout rates were above 17% and it expanded altogether to 26% in 2017. Facing financial, geographic, language and social boundaries, numerous Orang Asli youngsters perform ineffectively and exit school. Since around 1995, the Ministry of Education has introduced various policies and programs aimed at improving the educational outcomes of Orang Asli children. These projects and strategies have developed from incorporation into standard instruction to more native centred training. In any case, the paper reasons that further activity is expected to guarantee these arrangements match the nature and size of the test that Orang Asli faces⁵⁹.

The suggestions that were given to solve these issues in relation to the lack of education and downfall of the educational branch of the Orang Asli is that. Policies should be identified and tackled with the underlying problems rather than just identifying them as a symptom. Besides that, there should be an evaluation done from time to time to analyse the policies and programmes to ensure the effectiveness of the new challenges and lacunae that arise by the implementation of the new manifestos.

⁵⁹ IDEAS, "Ideas Calls for Enhancement of Education Policies for Orang Asli Children," 4 May, 2021, <https://www.ideas.org.my/ideas-calls-for-enhancement-of-education-policies-for-orang-asli-children/>.

Besides that, Orang Asli kids should also be assessed especially for those who have not attended schools they can be given a chance to address their challenge⁶⁰.

Concerning instruction, the Ministry of Education of Malaysia and the Department of Orang Asli Improvement have given a preschool and an elementary school in Pos Sinderut. The Branch of Orang Asli Development is the Malaysian government organisation that regulates the issues of the Orang Asli. This body is under the Malaysian Service of Provincial Turn of events and was first set up in 1954. As of 2019, the Orang Asli population in Peninsular Malaysia was estimated at approximately 210,611 individuals⁶¹. Despite various development initiatives, poverty remains a significant issue within this community. In 2019, the national poverty rate was 5.6%, whereas the poverty rate among the Orang Asli was alarmingly high at 89.4%.

This stark contrast underscores the persistent socio-economic disparities faced by the Orang Asli compared to the broader Malaysian population. This incorporated a sum of 150 understudies who lived in the school lodging. As a result of the restricted limit of the lodging, it could acknowledge understudies who lived a long way from the school. In the meantime, the people who stayed close by could walk or on the other hand utilise the transportation given by the JAKOA to drive from their home to school as well as the other way around the Malaysian government has continued to implement various initiatives to support the education of Orang Asli children. For instance, the Ministry of Education has introduced policies and programs aimed at improving educational outcomes for these communities.⁶².

⁶⁰ Ibid.

⁶¹ International Work Group for Indigenous Affairs, "The Indigenous World 2022: Malaysia," <<https://www.iwgia.org/en/malaysia/4653-iw-2022-malaysia.html>> (accessed January 2, 2025).

⁶² Norhasimah Ismail, Mohd Hasni Jaafar, and Tarmiji Masron, "Poverty and Primary Education of the Orang Asli Children," *ResearchGate*, <https://www.researchgate.net/publication/345586750_Poverty_and_primary_education_of_the_Orang_Asli_children> (accessed January 2, 2025).

Moreover, the Ministry of Education, did come up with a new program that will actually train Orang Asli's parents to help their children. So, this program is to help the Orang Asli kids. Minister Fadlina Sidek said that the Program Adult Class for Orang Asli and Penan Parents (also known as KEDAP) this program was long implemented, and their goal was to help Orang Asli Parents so that they further can help their children at home after schooling hours. She claimed that the programme enhanced community members' proficiency in the three mainly in reading, writing, and mathematics, especially among students. Parent participation through KEDAP is remarkable; the class gets 100 percent attendance. The implementation of the initiative will be further strengthened in terms of attracting more parents to participate in KEDAP classes, she told Bernama when she made an appearance as a guest on the Bernama TV Ruang Bicara programme, New Dimensions of Malaysian Education, which was broadcast on the television channel last night. The Ministry of Education launched the KEDAP initiative in 2008 with the intention of lowering the illiteracy rate in the Orang Asli and Penan communities in Malaysia. Bernama have in few instances have highlighted the issue of dropouts among Orang Asli children is ascribed to a number of issues, including the subpar living conditions in the interior, the dearth of educational infrastructure, and inadequate logistical facilities, it was claimed that the Ministry of Education has consistently prioritised education for the Orang Asli both before and after the pandemic. The ministry has taken a number of steps to ensure that the community is not neglected, including forging an effective partnership with the Orang Asli Development Department (JAKOA) to oversee the welfare of the Orang Asli community.⁶³

⁶³ "KEDAP Enhanced to Address Dropout Among Orang Asli Children," *Astro Awani*, <https://www.astroawani.com/berita-malaysia/kedap-enhanced-address-dropout-among-orang-asli-children-399611>.

Besides that, the government also took the step to set up hostel facilities in for with the permission for Orang Asli students' enrolment this was to help Orang Asli students to get the education, to raise the attendance rates and an intervention programme for Orang Asli Pribumi students. The Orang Asli Development Department, Ministry of Education parents, community leaders, non-governmental organisations, and the Northern Corridor Economic Region are just a few of the government entities working with the Education Ministry to implement this strategy through various engagement sessions (also known as NCER). This was mentioned by the Universiti Pendidikan Sultan Idris (also known as UPSI)⁶⁴. As we look at secondary school students, they are going to be allocated RM 4 a day as their pocket money. The Education Ministry and NCER have assisted in advancing education in the nation, according to UPSI Vice-Chancellor Prof Datuk Dr Md Amin Md Taff. Head of Human Capital for the Northern Corridor Implementation Authority (NCIA), Datin Shahdee Ahmad, stated that 900 Orang Asli from 15 schools in Muallim, Batang Padang, Kampar, Hulu Perak, Kinta, and Kuala Kangsar participated in the programme, which started on January 2, 2022. According to her, the initiative aimed to raise Orang Asli students' academic performance and attendance rate, particularly during the transitional period between Year Six and secondary school. So, It is evident that the Ministry of Education has taken many initiatives to protect the right to education to allow and give the Orang Asli a chance to advance in their education journey⁶⁵.

⁶⁴ Universiti Pendidikan Sultan Idris, *UPSI Initiatives to Support Orang Asli Education*, (UPSI Press Release, 2022).

⁶⁵ The Star Online, "Programme to Help Improve Education for Orang Asli," *The Star*, 9 January, 2022, <https://www.thestar.com.my/metro/metro-news/2022/01/10/programme-to-help-improve-education-for-orang-asli>.

4.7.1 Responses from JAKOA

In general, JAKOA supports collaboration programs led by the Ministry of Education and Culture with SUHAKAM, especially the Human Rights Best Practices Program (ATHAM) in schools related to human rights and children's rights. In addition, JAKOA indirectly helps Orang Asli children through a number of specific programs related to the right to education such as Pusat Intelek Pelajar Orang Asli (PIPOA), Bantuan Yuran Pelbagai Sekolah, Wang saku murid sekolah menengah Orang Asli, Pengangkutan ke sekolah untuk murid Orang Asli, Asrama Murid Sekolah rendah orang Asli, Bantuan catuan makanan, Pelbagai program outreach atau motivasi pendidikan dan kemahiran kepada kanak-kanak Orang Asli, Program Literasi Fungsian Orang Asli (PLFOA)⁶⁶.

4.7.2 Response from Ministry of Education

The Ministry of Education conducted the **Program Intervensi Khas Murid Orang Asli dan Peribumi (PIKAP)** conducts training programs from time to time for schoolteachers that are teaching the Orang Asli Students. The Ministry of Education Johor was named as one of the departments that conducts this ongoing training, which included studying new modules designed to engage Orang Asli pupils. Selected educators from Orang Asli schools received training in 2018–19. On delivering PIKAP modules, although many schools have not yet completed the program's implementation.

The Ministry of Education conducted the **Kelas Dewan Orang Asli dan Peribumi (KEDAP)**, this programme intended to offer classes to illiterate rural residents and Orang Asli's parents so they can learn to read and write. It is thought that

⁶⁶ Jabatan Kemajuan Orang Asli, "Annual Report 2020."

parents will be better equipped to direct and encourage their children to learn and attend school if they can read and write.⁶⁷

4.7.3 Response from SUHAKAM

Orang Asli rights are still one of the main focuses in SUHAKAM's framework in protecting and supporting human rights in Malaysia. In terms of assistance and support to the Orang Asli regarding their rights: SUHAKAM has visited five schools, eight Orang Asli settlements and attended three conferences involving Orang Asli children's education issues in 2018⁶⁸. SUHAKAM has identified the main reason for the non-attendance of Orang Asli students in schools, especially in rural areas. Lack of reading, writing and numeracy skills (3M) among Orang Asli children and dropping out of school occurs during the transition from primary to secondary school. SUHAKAM observed that parents and teachers working together to address issues at school successfully reduced absenteeism and improved students' 3M skills. Children in such schools also have high involvement in school activities. SUHAKAM found that Orang Asli schools have long faced issues of lack of facilities such as the lack of clean water and electricity for students and teachers⁶⁹. This kind of situation hinders the effective teaching process and dampens the learning process of Orang Asli children. SUHAKAM took note of the actions taken by the Ministry of Education to provide remedies for Orang Asli education issues such as developing a Special Training College to train

⁶⁷ Wan Ya Shin and Rusaslina Idrus, *Contextualising Education Policy to Empower Orang Asli Children* (2021).

⁶⁸ Suruhanjaya Hak Asasi Manusia Malaysia, "Annual Report 2018," (Malaysian Human Rights Commission).

⁶⁹ Ibid.

Orang Asli teachers and placing them in Orang Asli schools as well as improving the learning curriculum for Orang Asli children in a total of 96 school⁷⁰.

SUHAKAM (the Human Rights Commission of Malaysia) has made several efforts to advocate for the rights of Orang Asli children in Malaysia. These initiatives focus on raising awareness about their rights and addressing various issues affecting their well-being, particularly in education and social justice⁷¹.

One significant effort by SUHAKAM includes organizing programs aimed at educating Orang Asli children about their rights under Malaysian law and international conventions. These programs are designed to empower children by providing them with the knowledge necessary to understand and advocate for their rights. In 2021, SUHAKAM conducted a series of workshops and outreach activities to engage with Orang Asli communities, focusing on the importance of education and the rights of children. These initiatives included collaboration with local NGOs and educational institutions to create tailored educational materials that resonate with the cultural context of the Orang Asli⁷².

Additionally, SUHAKAM has actively participated in discussions regarding the legal frameworks that protect the rights of indigenous children. They have highlighted the need for better implementation of existing laws, such as the Child Act 2001 and the Aboriginal Peoples Act 1954, which aim to safeguard the rights of Orang Asli children but often fall short in practice. Moreover, SUHAKAM has identified key issues such as high dropout rates among Orang Asli students, often attributed to socio-economic challenges and lack of access to quality education. They have advocated for targeted interventions from the government to address these barriers, including improved

⁷⁰ Ibid.

⁷¹ Suruhanjaya Hak Asasi Manusia Malaysia, "Annual Report 2020".

⁷² Ibid.

infrastructure in schools located in Orang Asli settlements and enhanced training for teachers working with indigenous students. SUHAKAM also emphasizes the importance of community involvement in educational initiatives, encouraging parents and local leaders to participate actively in their children's education. By fostering a collaborative approach, they aim to create a supportive environment that promotes educational attainment and protects the rights of Orang Asli children.

4.8 EXISTING LAWS PROTECT THE ORANG ASLI CHILDREN

In 2019 there was an Orang Asli agenda brought about to discuss a few issues. Here the Orang Asli Development Department (hereinafter JAKOA) together with the Religion and Education and Rural Entrepreneur Development Committee must take into account regards to sensitivity of the Orang Asli culture, religion and the traditional norms in designing the national socio-economic development of the Orang Asli Community by the year of 2030. This isn't plainly accommodated under the present monetary arranging strategy. Business exercises like logging, mining and oil palm development by privately owned businesses that affect forested regions of the Orang Asli should be evaluated straightforwardly in meeting with the local area⁷³.

Under the **Federal Constitution**, Orang Asli's freedoms are revered in few article mainly **Article 8(5)(c)**, which accommodates their security, prosperity and progression or the booking to natives of a sensible extent of reasonable situations in the public help next would be **Article 45(2)**, which accommodates the arrangement of congresspersons "equipped for addressing the interests of the natives" and lastly **Article 160(2)**, which gives the meaning of "native", upheld by ninth Schedule, Rundown 1,

⁷³ Chhoa-Howard R, "Why Orang Asli Reforms Are so Urgent," *Malaysiakini*, <<https://www.malaysiakini.com/news/489097>> (accessed 2 January 2025).

allowing national government regulative expert for “government assistance of the natives”⁷⁴.

Tragically, the protected execution of these articles, particularly at the state level, remains basic and extraordinary issues, specifically land privileges, stay unsettled. At the state level, execution of Orang Asli freedoms and interests stays tricky considering business clashes.

There are numerous Gordian bunches found in court choices, raising the requirement for serious reexamination by Parliament. Point of reference cases like *Adong Kuwau v. Kerajaan Negeri Johor*⁷⁵ In this case, it was a landmark case where it laid down the principle that an Orang Asli has the right to live on their land because as their ancestors were the owners of the land therefore it is understandable to be a hereditary concept. Besides that, they also said that the right to move freely about their land is allowed and it has to be done without any disturbance or interference as they have the right to live there. There were other cases that were highlighted with the same argument. Adding on looking at other cases such as *Sagong Tasi and Ors v Kerajaan Negeri Selangor and Ors*⁷⁶, among others, highlight the requirement for clear and straightforward regulative assurance and correction to those regulations that adversely influence the drawn-out interests of the Orang Asli people group. In the case of *Sagong Tasi & Ors v Kerajaan Negeri Selangor*,⁷⁷ the court addressed several critical issues pertaining to the existing legal framework for protecting the rights of the Orang Asli in Malaysia. This case highlighted the inadequacies of the Aboriginal Peoples Act 1954 and other related laws in safeguarding the rights and interests of Orang Asli

⁷⁴ “New Straits Times” Retrieved from <https://www.nst.com.my/opinion/letters>

⁷⁵ *Adong Kuwau v Kerajaan Negeri Johor* [1997] 1 418.

⁷⁶ *Sagong Tasi and Ors v Kerajaan Negeri Selangor and Ors* [2002] 2 591.

⁷⁷ Ibid.

communities, particularly regarding land rights and access to resources. The objective is to guarantee established shields for Local Social and Standard Freedoms in Malaysia, an issue featured in 2007 by the Malaysian Bar

Looking into the case of *Eddy Bin Salim & Ors v Iskandar Regional Development Authority & Ors*⁷⁸ in this one part of the judgement it was mentioned that the Federal Constitution is the piece of legislation that has to protect the welfare and safety of the Orang Asli because it could only be limited to rendering assistance and giving infrastructure to ensure the progress of the Orang Asli in line with the other races⁷⁹. Moreover, according to a few landmark cases it lays down that an Orang Asli has their rights to the land which is owned by them and this right cannot be revoked⁸⁰.

If we were to compare with countries in very brief lines, it is evident in the country of Canada, it does protect the Aboriginal rights under the Constitution Act 1982 it also required the federal and provincial government to run a consultation with these people before any proceedings with the legislation to come into play with regards to their rights and any part involving aboriginal people.

There was an issue where the Orang Asli children contracted measles. So, the Orang Asli's Government body had given the support to the Orang Asli in trying to curb this issue. So, the initiative that was taken was that the Health Ministry did provide healthcare help and immunisation services to as many Orang Asli kids as they could. The victims of the measles were given vaccination to increase their immune system, and they also had provided nutrition help to kids who were having malnutrition problems. So, another initiative that was taken to reduce the chances of this was through knowledge and this was the exact thing they wanted to do where the authority had sent

⁷⁸ *Eddy Bin Salim & Ors v Iskandar Regional Development Authority & Ors* [2017] 1 1.

⁷⁹ Malayan Law Journal Unreported 2308.

⁸⁰ Ibid.

teachers and doctors to the community in order for them to increase the knowledge of the Orang Asli children and the balance of the community⁸¹.

There was an incident in the year 2022 where the Police force had found a 14-year-old Orang Asli girl dead in the bushes at the Rompin. The victim and the three accused, who were all in police custody and ranged in age from 22 to 38, were acquainted, according to Pahang police head Datuk Seri Ramli Mohamed Yoosuf. The murder was committed without the use of any weapons, and the suspects had no prior criminal history, according to investigations. The suspects were apprehended based on police investigations and were not under the influence of drugs or alcohol at the time of the occurrence. After the victim's body was discovered, the murder case was solved in less than 24 hours, he said, adding that the trio had been remanded until Aug 29 for further investigation.

Then the police officer had given his interview on how they had solved the issue. It can be seen that when the report was made it was solved in a very short period of time this way. It is evident that the police officers do take their cases towards Orang Asli kids very seriously although they are always looked down upon by them⁸².

4.8.1 Responses from JAKOA

According to JAKOA, they mentioned that the provision of legislation and national policy at this point in relation to children's rights is sufficient. What needs to be emphasised is the action plan and implementation as well as more effective collaboration from various main service stakeholders and stakeholders for children, especially Orang Asli children without neglecting aspects of their beliefs, culture and

⁸¹ Admin Malaysian Paediatric Association, "Strategies to Help Orang Asli," The Malaysian Paediatric Association, 24 June, 2019, <https://mpaeds.my/strategies-to-help-orang-asli/>.

⁸² "Cops Solve Orang Asli Girl's Murder Case with Arrest of 3," *New Straits Times*, 24 August 2022, <https://www.nst.com.my/news/crime-courts/2022/08/824890/cops-solve-orang-asli-girls-murder-case-arrest-3>.

language. JAKOA generally focuses on the implementation of action plans against the provisions of existing laws and policies by stakeholders of the main National services that are more effective with the involvement of Orang Asli children.

4.8.2 Response from SUHAKAM

As of the existing laws in Malaysia that involve the rights of Orang Asli children, SUHAKAM opines with reference to the Federal Constitution, The Aboriginal Peoples Act 1954 and The Child Act 2001, that the current laws as of the above provisions needs improvement especially in dealing with the issue of child marriage among native people, such as the Child Act 2001. SUHAKAM suggests and recommends for the Children's Act 2001, to introduce special provisions to monitor the issue of child marriage in domestic law (including customary law), that is, by setting the marriage age limit for all children to 18 years and up above.

4.9 SOLUTIONS AND EFFORTS DONE TO BE IN PAR WITH UNCRC AND UNDRIP

What Malaysia Government could do to enhance rights by bringing the standards to be on par with the convention? the various issues faced by the Orang Asli community in Malaysia should be addressed by the current government. For the advancement of a community and the improvement it will not be effective if the people do not have the know-hows in the face-paced community we live in. Hence it is said that the only way to uplift the orang asli community is by way of education.

Education, however, must be suited to their needs as they require special attention as noted by various parties. In the context of Malaysia, on the government's part, many issues have not been raised or addressed as to the rights of the education of

the orang asli people. It is clear to conclude that the most underprivileged people when it comes to education are the orang asli people as in Malaysia⁸³. Since Malaysia has not ratified ILO Convention 169 (formally known as the Indigenous and Tribal Peoples Convention, 1989), its legal system is not directly bound by the treaty's provisions. However, the country remains obligated to respect indigenous peoples' rights under other international and domestic laws.

4.9.1 Right to Decide

The related part as to the right of orang asli and tribal people to education is in Part 6 of the ILO Convention 169 (The Convention)⁸⁴. First and foremost, the convention has put emphasis on the right to decide for themselves through consultation, negotiations and participation in the workings of any legislative or administrative measures⁸⁵. It is also provided that the health and education of the orang asli and tribal community is to be prioritized⁸⁶. Hence, every implication that may affect the orang asli and tribal community must be with the participation of the representative of the affected community. The articles related to education call for aboriginal and tribal people to be able to acquire education equally. In Malaysian context, it is quite true that people have very little exposure to education⁸⁷.

⁸³ Minority Rights Group International, "Malaysia - Orang Asli," World Directory of Minorities and Indigenous People, <<http://minorityrights.org/minorities/orang-asli/>> (accessed on 24 February 2025).

⁸⁴ International Labour Organisation, "Indigenous and Tribal Peoples Convention, 1989 (No. 169)," Part VI: Education and Means of Communication, International Labour Organisation, <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312314:NO> (accessed on 24 February 2025).

⁸⁵ Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 6.

⁸⁶ Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 7.

⁸⁷ N.A. Wahab, R.B. Mustapha, and A.R. Ahamad, "The Roles of Administrators in Orang Asli Schools: A Case Study in a Malaysian State," *International Journal of Social Science and Humanity*, vol. 6, no.5 (2016): 370-374.

Many factors have contributed to it including distance, cost, and not recognising the importance of it. The aborigine people who include the children involved in SK Tohoi tragedy usually live far away from the school. The conditions of the road to the school are also in dire condition, which causes even more difficulty to attend schools.⁸⁸ We may also recognise that cost may be an issue to them as they live a ‘carefree lifestyle’ in our sense.

The majority of them in Malaysia have chosen not to pick up ‘our’ lifestyle and assimilate. The importance of education is also less appreciated to the Orang Asli community in some way. This is due to the reasons for education are less relatable to them as it is less in accordance with their way of life.

Hence, recommendations as to our government in getting in line with international standards of aborigine people having equal rights as to education should boost its effort in maintaining a moderate approach when appealing to the Orang Asli community to receive education and not scare them away. The SK Tohoi case has attracted comments by Lim Kit Siang⁸⁹ a veteran Malaysian politician and member of the Democratic Action Party (DAP), continues to be an active voice in Malaysian politics to revamp the education system to suit the needs of the students of aborigine origins. Research has been conducted on high dropout rates⁹⁰ The government has responded with numerous initiatives and programs such as the Pensiangan Salinatan program, an initiative on academic matters and the Model of Remote Schools Teacher Professional Development Program (PMPS) to train teachers to teach in remote schools.

⁸⁸ Sulaiman Jaafar, "Shining a Light on SK Tohoi Teachers' Predicament," *New Straits Times*, 26 October 2015, <http://www.nst.com.my/news/2015/10/shining-light-sk-pos-tohoi-teachers%E2%80%9999-predicament>.

⁸⁹ Lim Kit Siang, "Post-SK Tohoi tragedy: Revamping education for Orang Asli students," *LimKitSiang.com.*, <http://blog.limkitsiang.com/2015/10/12/post-sk-tohol-tragedy-the-need-for-revamp-of-the-education-prprogram-for-orang-asli-students/>> (accessed on 24 February 2025).

⁹⁰ S.M. Nor et al., "Dropout Prevention Initiatives for Malaysian Indigenous Orang Asli Children," *The International Journal on School Disaffection* (2011): 42-56.

4.9.2 Education Programs and Service

In another part of the ILO Convention 169, the guidelines call for education programs and service of the aborigine and tribal people to be tailored and utilize by or in cooperation with them. Such modules include their special needs, their values, their histories and relatable to the current affairs of the world.

This part must be implemented by our Malaysian government especially after the revelation as posted by the SK Tohoi tragedy⁹¹. The reports showed that the students were subject to inhuman punishments and treatment such as eating stale food, capital punishment and badly maintained amenities. The students also run away due to the fear they have of the administrators rather than the danger posed by the elements in the jungle. Here we reiterate the opinion of Lim Kit Siang⁹² a veteran Malaysian politician and member of the Democratic Action Party (DAP), continues to be an active voice in Malaysian politics in his blogs for teachers of Orang asli background, new establishment of a taskforce to lot into the matter and locally based schools. His points basically address the issue of Orang asli community in Malaysia which has trouble traveling to school and learning in school. An implementation as the article provides calls for the involvement of the Orang asli community members in the making of the programs which provides good insight and voice of the orang asli community and prevents a good initiative to go to waste due to the lack of knowledge.

⁹¹ Nandini Balakrishnan, "Who Is Responsible For The Orang Asli Children Tragedy Of Pos Tohoi?," *Says*, 26 January 2016, <http://says.com/my/news/no-comment-says-education-ministry-s-representative-over-the-orang-asli-children-tragedy>.

⁹² State Parties, "Definition of the Child (Art.1)," *Committee on the Rights of the Child Consideration of Reports*, vol. 128, no.1 (2006): 1–2.

4.9.3 Train to Take Responsibility

The article⁹³ also voices for the government to train members of the Orang asli community to take over the responsibility. This is in line with the earlier provision for the community to grow together. A teacher of the community origin will also definitely understand the community as he is of which will benefit the students and the whole community. Malaysia has provided some initiative that is in line with the objective of this part. As mentioned above, the Program Meningkatkan Pengetahuan dan Kemahiran Guru (PMPS) aims to increase knowledge of teachers and make them better suited to teach the community they are teaching. The teachers are also trained to the level of a graduate to ensure a certain quality in imparting knowledge in a suitable and relatable way. The teachers under the Reading and Writing Intervention Class (KIA 2M) program are to have good relationships with their students and have basic knowledge and language proficiency of the orang asli people which is best suited to be an Orang asli person himself⁹⁴.

Lastly, the article⁹⁵ also calls for the government to allow the community to establish their own institution and facilities. In Malaysia we have the Department of Orang Asli Affairs (JAKOA) to oversee the affairs and uplift the overall condition of our orang asli community. This allows for the government to set aside budgets for the purpose of improving the standard of living of the Malaysian Orang asli community. The orang asli community, although not in the constitution itself, have been given the Bumiputera status which gives them a special status and special privilege which is in line with the part in the article. However, more schools should be built closer to the

⁹³ Ministry of Education Malaysia, "Program Meningkatkan Pengetahuan dan Kemahiran Guru (PMPS)," (Report, Ministry of Education, 2021)

⁹⁴ Ibid.

⁹⁵ Ibid.

village which is in line with the standard that young children should remain with their family, especially their mother throughout their growing stage. An outsider such as the boarding school administrator will not have the affection, patience, and experience to teach a young child to grow. Another initiative which can be investigate is improving on the optimization when building of facilities and amenities to maximize the benefit to the orang asli community.

With all the above mentioned, the government of Malaysia can do a lot more for the Orang asli people and improve on the existing policy by funding, better training and better implementations. The Orang asli community on the note of the SK Tohoi tragedy should have revealed that although the many initiatives and programs by the government, bad elements and flaws are still present given the effect as desire is still dire.

4.10 FINDINGS

Based on the findings, interviews and discussions with the government departments, NGOs and social activists on the ground, it can be concluded that diversified actions by the respective bodies have been made in helping the society deal with the issues of Policies and Welfare for the Orang Asli Children. Nevertheless, the findings also confirm that the rights and responsibilities moreover essential facilities that the Orang Asli kids are said to be given there is still a lack in that. But the best initiative is being made by the government and other private organisations to curb these issues. The study found the need for both government departments and NGOs to sit down and work together in filling in the gaps in order to respond to the current needs of Orang Asli Kids effectively.

Where legal issues are concerned, it can be seen that the punitive approach is more common in Malaysia, although it is not suitable for young and vulnerable Orang Asli Kids. Sentencing per se will not solve the root of the problem without educating the Orang Asli Kids on the rights that they deserve and are supposed to know in order for them not to be exploited. If the rights are not given to the children, due to them not being so well versed regarding many things, it will affect them by taking away their rights and responsibilities.

There are a lot of initiatives that are being taken by the government and NGOs in Malaysia but there are still some factors where Orang Asli Children have to be taken care of. As mentioned above based on the research and interview that was carried out, these were the initiatives of Malaysia and actually it is a very good thing that has been done because we show that Orang Asli children are also as important as the non-Orang Asli children and there is humanity that will always protect everyone.

4.11 CONCLUSION

In a nutshell, education is an important key for everyone to achieve a greater achievement or to succeed in our life. Bergstorm was once defined the phrase “right to education” as a universal right which shall be granted to everyone regardless of their races, ages, and others⁹⁶. This clearly stipulates that education plays a crucial role in raising potential future leaders as it is directly linked to the economic growth of our country⁹⁷. Imagine that the literacy level among Malaysia citizens is slightly higher than our expectation and everyone is well-educated. How good could this be? The economic

⁹⁶ Ylva Bergström, "The Universal Right to Education: Freedom, Equality and Fraternity," *Studies in Philosophy and Education*, vol. 2,9 (2009)

⁹⁷ “EFA Global Monitoring Report” UNESCO, 2005,
http://www.unesco.org/education/gmr_download/chapter2.pdf.

growth in Malaysia will become more stable when every citizen is contributing something good to this country. Indirectly, the crime rate in Malaysia will get lower and lower. The significant importance of education should not be neglected. However, the rights to education are still limited to certain categories, especially the orang asli and tribal people. The best example that could be referred to is the SK Tohoi Tragedy 2015 which happens in Malaysia.

This tragedy happened when there was negligence on the orang asli people rights on education⁹⁸. After conducting a lot of research, the main reasons behind the limited rights of the tribal people on education are poverty, problems of child labour and unequal rights.

As aforementioned, poverty is a worldwide factor contributing to the limited rights of the tribal people in getting education. This identifiable problem happens not only in Malaysia, but also in other growing countries, such as America and China. The orang asli and tribal people have difficulties in acquiring knowledge especially when there is lack of infrastructure in their area⁹⁹. Children staying in rural areas (especially those orang asli people) prefer to work rather than spending time walking a few kilometers to the nearby school in order to study. Their parents always have the concept of saying that working is a more effective way of improving their current situation as money is everything they need in order to satisfy their basic needs. For instance, food, medicines, and others. This clearly stipulates that the measures taken by the government are not effective enough in helping them. The government should first understand the

⁹⁸ "SK Tohoi Tragedy: Education Ministry Takes Immediate Action," *Malay Mail Online*, 29 October 2015, <http://www.themalaymailonline.com/malaysia/article/sk-tohoi-tragedy-education-ministry-takes-immediate-action>.

⁹⁹ International Work Group for Indigenous Affairs, "Indigenous Peoples And Education," <<http://www.iwgia.org/culture-and-identity/indigenous-peoples-and-education>> (accessed on 24 February 2025).

situation of the orang asli and tribal people before taking any action. This helps in producing better results in an effective way.

Referring to the latest statistics made by the International Labour Organisation (ILO), there are 218 million under-aged children involved in child labour. The region which has the highest number of child labourers is the Asia region. Asia has approximately 122 million of working children¹⁰⁰. Apparently, the problems of child labour are another contributing factor to the limited rights of education at both national and international level. The dominated children are working as a farmer helper in agricultural aspects, sex workers and others although this is prohibited in Malaysia. According to Section 2 (1) of the Children and Young Persons (Employment) Act 1966¹⁰¹, no child or young person is allowed to engage in any employment unless it falls under the exception listed in Section 2(2) and (3) of the respective statute. According to Section 41 of the Child Act 2001¹⁰², no person shall be allowed to dominate children by any means. The person who committed either one of the offences shall be punished with severe punishments. Although there are several statutory provisions protecting a child or a young person, this means nothing when there is no strict implementation of the statutory provisions. The government should focus on the implementation of the rules.

Unequal rights among the citizens are another factor of the limited rights of education. According to Article 8 of Federal Constitution¹⁰³, all people including citizens and non-citizens shall be treated equally and everyone is entitled to equal protection of law. This clearly stipulates that it is important to have equality in a country.

¹⁰⁰ "Child Labour in Malaysia?," *SUKA Society*, <http://www.sukasociety.org/child-labour-in-malaysia/>.

¹⁰¹ Children and Young Persons (Employment) Act 1965, sec. 2(1).

¹⁰² Child Act 2001, sec. 41.

¹⁰³ Federal Constitution, art. 8.

Applying Article 8 of the Federal Constitution into the problem of child labour, everyone regardless of their race, age and others shall be punished equally when there is a breach of the enforced statutory provisions.

In overcoming the problems, the International Labour Organization (ILO), acting as a tripartite United Nation agency, have come out with several measures in protecting everyone's rights at work and also in protecting the tribal people's right of education¹⁰⁴. For example, Article 7 of the International Labour Organization Convention No. 169 aims at giving the high priority to the level of education of the orang asli and tribal people in growing countries. Article 26 to 31 of the same convention clearly states that everyone, including the orang asli and tribal people, has the equal rights and opportunity to get education at all levels¹⁰⁵. This indicates that the International Labour Organization is working with Malaysia statutory provisions in overcoming the problems. To conclude, everyone should work together to overcome the problem effectively.

¹⁰⁴ International Labour Organisation, "About the ILO," <https://www.ilo.org/global/about-the-ilo/lang--en/index.htm>.

¹⁰⁵ Right to Education Project, "ILO Instruments," (2013), <http://www.right-to-education.org/page/ilo-instruments>.

CHAPTER FIVE

THE EXPERIENCES OF OTHER JURISDICTIONS IN ADDRESSING THE PROTECTION FOR ORANG ASLI CHILDREN

5.1 INTRODUCTION

The issue of protecting aboriginal children's rights has been a subject of discussion around the world. This chapter discusses other jurisdictions in addressing their aboriginal children's rights, particularly Australia and New Zealand in addressing their aboriginal children's rights.

There are two parts of the discussion in this chapter. The first part will be discussing the jurisdiction of two selected Commonwealth countries, namely Australia and New Zealand, on their approach in addressing aboriginal children's rights. These two countries have been chosen as a reference because both of the countries' aboriginal are diverse, thus, identical to our country, Malaysia.

The second part of the chapter will examine the best programme incorporated in other countries in addressing the betterment of aboriginal children's rights. The countries are chosen randomly; however, Australia has the most programmes implemented in addressing this issue.

5.2 AUSTRALIA

The supreme law in Australia is contained in a constitutional document known as the Australian Constitution. It establishes Australia as a federation under a constitutional monarchy and lays out the organisational framework and legislative, executive, and judicial branches of the Australian government. The fundamental liberties and rights

that apply to everyone are outlined in the Universal Declaration of Human Rights, which was adopted by the UN in December 1948. It was created in the wake of World War Two and has since grown to be a cornerstone for numerous legally binding international human rights laws.

The Australian Government has agreed to uphold and respect many of these human rights treaties including the¹:

- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- Convention on the Elimination of All Forms of Racial Discrimination
- Convention on the Elimination of All Forms of Discrimination against Women
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention on the Rights of the Child
- Convention on the Rights of Persons with Disabilities.

An impartial third party that looks into complaints of discrimination and human rights violations is the Australian Human Rights Commission (AHRC)². It is the Commission's duty to keep an eye on Australia's compliance with its obligations under international human rights law. This research offers recommendations and advice to ensure that these standards are reflected in national laws, as well as in government policies and programmes. For many years, the law prohibiting racial discrimination in Australia was largely overlooked. Indigenous children were still subject to a different

¹ The Australian Human Rights Commission, "Human Rights Considerations for Vaccine Passports and Certificates," 2022 <<https://humanrights.gov.au/our-work/human-rights-considerations-vaccine-passports-and-certificates>> (accessed on 6 February 2025).

² Ibid.

and inferior system of law in Western Australia until 1954, Victoria until 1957, South Australia until 1962, the Northern Territory until 1964, and Queensland until 1965³. Direct discrimination persisted after specific Indigenous legislation was repealed because the same policies were still being followed by welfare departments. Indirect racial discrimination persists today in both the juvenile justice and child welfare systems. Anglo-Australian perspectives that show little respect for Indigenous values, culture, and child-rearing practices continue to be used to judge Indigenous children and their families. It offers little to no support or encouragement for Indigenous parenting. Indigenous children are still taken away from their families and communities, either permanently or briefly, and placed in the care of non-Indigenous Australians.

5.2.1 Law and Regulations

5.2.1.1 Age of Consent

In Australia, the legal age of majority of a child is governed under the Age of Majority Act 1974 where it provided under section 4 of the Act, that the age of majority of a child shall be of the age of 18 years old. Section 3(1) of the Children, Young Persons and Their Families Act 1997 (Tas.) also provides for the same age for every child which would include aboriginal children. This basically means that once a child has attained the age of 18 years old, they would be considered to be an adult which provides them with several certain capacities to do certain things.

Upon reaching the age of 18 years old, a person is able to buy and drink alcoholic beverages from licensed establishments. The general principles are that in Australia a child who is below the age of 18 is not allowed to drink in public or at least be seen drinking in public. This is since in certain states and territories, it's completely legal for

³ Ibid.

a child to drink alcohol in a private property such as their home or friend's home as long as they have priorly obtained their parent's approval⁴.

On the other hand, the age of consent in Australia is a little different. The age of consent is essentially the age at when a person is able to consent to having a sexual relationship. In Australia, the law is not specific in every state to when a child is able to fully consent to having a sexual relationship. According to Australian Law Reform Commission, the term consent is to mean agreeing to something with free will, voluntariness, without any form of coercion or duress or any intimidation of anything. Naturally, the age of consent for sexual intercourse in Australia is set to be of the age of 16 or 17 years old⁵. Thus, one ought to logically understand this to mean that in the situation that a person has sexual activities with another who is under the age to provide proper legal consent which is of the age of 16 or 17 years old, then said person would be committing an offence under the Australian law.

Several offenders would argue that the child had not shown any restraint against the sexual activities or that the child was willing to engage in the behaviour however, it must be remembered that the reason as to why the age of consent is set in the laws is since children below said age are easily susceptible towards manipulation and they also do not have the mental capacity to know what is best for them, hence their consent would be disregarded as long as they are below the age of majority. This can be inferred as a strict liability offence where a person who commits the offence could not use the excuse of consent of the child as a defence.

⁴ Raising Children Network, "Teens: Behaviour," <<https://raisingchildren.net.au/teens/behaviour>> (accessed on 4 February 2025).

⁵ Australian Institute of Family Services, "Age of Consent Laws in Australia," Child Family Community Australia, <<https://aifs.gov.au/>> (accessed on 4 February 2025).

Hence, this law acts as a form of protection not to aboriginal children only but to all children in Australia in order to ensure that they are not manipulated nor falsely coerced into thinking that they consented to the sexual intercourse. In a way these laws are placed in order to protect the children from agreeing to something without them being of full mental capacity to agree to.

5.2.1.2 Education

In the past, due to the aftereffect of the colonisation of the British Imperial, a policy of colonisers was introduced where the policy suggested for advancement and improving the educational system for the aboriginal children. Unfortunately, the norms of society could not remove the mentality of the colonisers being superior and the colonised being inferior. This resulted in the aboriginal community being treated with inferiority towards the other community. For instance, in the sense that aboriginal students at the time were not even provided with full education systems, instead they were only provided with such an education which would benefit the colonists in terms of their labour contribution. Due to these actions, it had cost the aboriginal children to even suffer discrimination making their community seem less intelligent since they were not provided with the opportunity to educate or advance themselves to a more advanced level of education.

Moving forward through the spectrum of time, the introduction of the Aborigines Act 1905 was supposedly enacted to improve the rights of the aborigines and their protections. However, the consequences of said actions were quite opposite. For instance, the Chief Protector was provided with the ability to not only be responsible for the education of all aboriginal children but also to act as the legal guardian of every aboriginal child who is below the age of 16 years old. This was a very detrimental

provision since it had allowed the Aboriginal children below the age of 16 years old (later extended to 21 in 1935) to be taken from their birth parents or any legal guardian they had since the Chief Protector had better rights towards them compared to the Aboriginal children's own parents. To add salt to the wound, this Act nowhere allowed the aboriginal children to be provided with better education nor did it improve their conditions, instead as before boys were sent for training for manual labour while the girls were trained for domestic duties.

Some may think that the survivors' aboriginal children probably had better lives. However, this cannot be more wrong. Those children who escaped being removed from their parents' guardianship had been no better. Aboriginal parents had fought as much as they could to beat the system, to allow their children to receive an education as a normal child would. Yet, their efforts were nothing but fuel for disappointments. This was since at the time even the Education Department had provided policies such where the Education Department would expel or remove any Aboriginal student if a non-Aboriginal parent is against them being admitted into the school.

To move further along the timeline, the 1950s marked a period when the educational system began to show improvement, though progress was primarily focused on the primary level. This means that the Aboriginal children were still not given the opportunity to further their study to secondary studies since it was provided to be unnecessary⁶. Later, in 1961, The Native Welfare Conference, provided us with a proper clear definition as to what is assimilation 'The policy of assimilation means that all Aborigines and part-Aborigines are expected eventually to attain the same manner of living as other Australians and to live as members of a single Australian community

⁶ S.R. Zubrick and et al., *The Western Australian Aboriginal Child Health Survey: Improving the Educational Experiences of Aboriginal Children and Young People*, (Perth: Curtin University of Technology and Telethon Institute for Child Health Research, 2006)

enjoying the same rights and privileges, accepting the same responsibilities, observing the same customs and influenced by the same beliefs as other Australians⁷.

In the advancement of the education system for aboriginal children, the New South Wales Department of Education provided for several policies and documents to provide aboriginal children a better chance to be treated as ordinary children. These policies and documents were put in place in order to provide the children with more opportunities in New South Wales public schools. The Aboriginal Education Policy put in place was in order to ensure that the Aboriginal and Torres Strait students, those who once had been discriminated against for their community, for being colonised, were provided with an opportunity to improve their education and well-being. In fact, in 2008, the Aboriginal Education and Communities had taken the policy and turned it into proper guidelines known as Turning Policy into Action. Under the guidelines, the Education Department provides for a set of principles for schools to follow in order to improve the protection of Aboriginal children. For instance, the school must ensure that the school community no longer only involves non-aboriginal parents and community, but they should also include aboriginal community members.

In fact, the New South Wales government is moving forward with plans such as the 'Footprints to the Future' plan in order to further improve the protection of aborigines to be given a proper and fair education as an ordinary student. This plan is essentially a 10-year plan where the schools throughout the state are encouraged to implement a form of system where the aboriginal students show some form of recorded improvement sheet which shows their progress in order to further help them improve their knowledge and education. This plan caught the attention of the Aboriginal

⁷ C.D. Rowley, *Outcasts in White Australia*, (Melbourne: Penguin, 1972), 55.

Outcomes and Partnerships Directorate, which was very interested in further assisting to improve this plan in all schools. They provided that said plan by the education department was one which could possibly be a chance for the aboriginal students to 'close the gap' in allowing the aboriginal students to be given the same opportunity to become smarter. Thus, it can be seen that although the Aboriginal community in Australia had gone through a rough patch in their lives, fighting for the right of their children's education, it was all worth the effort in the end. This is since, today, the Aboriginal education system is on par as an ordinary education system since it allows the Aboriginal students to be treated as ordinary students, unlike how brutally disgraceful their ancestors were treated.

5.2.1.3 Children and Community Services Act 2004

The high percentage of Indigenous children who are taken from their families and placed in foster care has long been a source of worry. Due to problems with social issues, housing shortages, and poverty, indigenous children are overrepresented in the child protection system. Child protection organisations have been accused of cultural sensitivity issues and a lack of knowledge of Indigenous traditional practices as a result.

The detailed discussion relating to this part is mostly referred to in the 'Bringing Them Home Report'. This report discusses the troubles suffered by the Aboriginal people in the past based on the laws which existed and opens up the eyes of the people as to how much the Aboriginal families have suffered. Thus, this report would be the primary reference for the further discussions under this part.

In order to fully understand how far the laws have come in terms of protecting the Aboriginal children, one would first have to start from the history of all Acts. In the past due to the different customs of the indigenous people, their community were

secluded and targeted with discrimination and hate in Australia. In fact, it was to the point that indigenous children were practically taken from their parents and forced to work for colonial settlers. The main motive of the Government and Missionaries responsible for such vile actions were to “inculcate European values and work habits in children, who would then be employed in service to the colonial settlers”⁸ In the beginning, the aboriginal community believed the actions of the Government to be novel and in their interest since Governor Macquarie in 1814 had set up schools for aboriginal children. However, the Governor’s true actions were soon discovered by the community where they figured out, he had done so to distance the aboriginal children from their parents.

The British Government soon later had taken actions in inquiring into the rumours of several massacres and atrocities relating to Aboriginal people occurring. The British Government had appointed a Select Committee to investigate into the conditions of the community in Australia. It soon came to their attention that the aboriginal community were suffering tremendously, their lands being taken away from them, their children removed from their families, they had no financial support from the government, they were suffering from poverty, etc. In fact, it was discovered that the Government of Australia viewed said aboriginal community as a ‘nuisance’⁹

Moving down the timeline, the enactment of the Aborigines Protection Act 1886 was supposed to act as a beacon of light for the aboriginal people since it was supposed to provide the community with protection. One of the key provisions in this Act was the formation of a protection board known as the Aborigines Protection Board whose main

⁸ John Ramsland, 1986, quoted in a work by Michael Mason, (1993): 31.

⁹ Michael Lavarch, *Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, (Report, Australian Human Rights Commission, 1997), https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf.

goal, as the name suggests, is to protect the aboriginal community. However, if taken a look at the powers provided under the Act it can be seen that these powers are too wide, which in turn allowed the Board to essentially have control over anything and everything involving the aboriginal children. For instance, section 6 of the Aborigines Protection Act provides that the Board has any form of duties relating to the 'welfare' of the aboriginal children. This basically allowed the Board to get involved in the lives of the Aboriginal children including their custody, care, education, etc.¹⁰ Furthermore, if one were to take a look at section 17 of the Act, it can be seen that the Board were allowed to appoint protectors who were given powers such to take legal actions on behalf of the aboriginal children which essentially made it as though the protectors were given the power to decide for the aboriginal children assuming that all of them would decide in favour of the children.

Moving up the timeline, the Aborigines Act 1905 was enacted, again with the same intention to 'protect the aboriginal community'. However, once again, there was a failure by the legislature to consider the negative impact this Act would have on the Aboriginal community. For instance, the Aborigines Act 1905 provided the ability for the Chief Protector to now become the legal guardian of any and all aboriginal children who are below the age of 14 years old. This basically meant that for the aboriginal children below 16 years old, their parents would not be able to have a say over the Chief Protector on how they are handled. This allowed for the further removal of these innocent aboriginal children from their parents, from their home.

Unfortunately for Australia, by 1911, almost every state including the Northern Territory had formulated subsidiary legislations based on this Act. Therefore, ripping

¹⁰ Ibid.

the parents of these aboriginal children, not only their child but their right to have a say in their children's matters. In fact, in Queensland and Western Australia, the Chief Protector had taken several actions in separating almost every child from their parents as young as 4 years old into government plans and missions to train them for the workforce. In New South Wales, the Aborigines Protection Board was further brutal in taking aboriginal children away from their parents. They had not even wasted the time nor effort to come up with a valid excuse, instead they were removing children based on their race alone. This detrimental Act provided the ability to the Board to move any aboriginal child anywhere, to control their actions, to act as guardians, etc.

After the period of removal of the children through the Aborigines Act 1905, the removal of the children later fell under the Child Welfare legislation. New South Wales was one of the first states in Australia to completely restructure the indigenous child welfare system according to the assimilationist welfare model¹¹. Supposedly, this would have benefitted the aboriginal community however, under said laws, the aboriginal children were now able to be removed from their families if they were found to be 'neglected' 'destitute' or 'uncontrollable'. Although this may seem reasonable, the interpretation of these terms is what would be regarded as detrimental. For instance, the term neglected may be defined as unattended or ignored by their care or health, however during this period of time, the courts took the fact that the family was poor to show as a form of neglect too.

Furthermore, these aboriginal families were not provided with similar advantages such as non-aboriginal families in terms of financial benefit. The government had not provided them with the appropriate financial assistance, not as how

¹¹ Ibid.

they would provide a non-aboriginal family. Hence, it was rather difficult for most aboriginal families to keep their children fed and taken care of. Yes, these Child Welfare legislations no longer allowed the government to forcefully take the children to the face of it, yet it still allowed them to do so if the families are not in a proper acceptable 'norm'. This norm is determined by how the non-aboriginal families lived at the time. In fact, social workers would go around from house to house to look in cupboards and things like that and decide that the children were being neglected¹².

The overrepresentation of Indigenous children in Australia's child protection system remains a significant concern. As of 2021–22, the rate of out-of-home care among First Nations children increased to 56.8 per 1,000 children, while the rate among non-Indigenous children remained statistically unchanged. This disparity highlights the ongoing challenges faced by Indigenous communities in accessing equitable child welfare services. The complex factors contributing to this overrepresentation include intergenerational trauma, systemic biases, and the legacy of past policies of forced removal¹³. Addressing these issues requires a multifaceted approach, including culturally safe and responsive services, community-led initiatives, and a commitment to upholding the rights of Aboriginal and Torres Strait Islander children to be raised in their own culture

This Act was later implemented to replace the terms 'neglected child' to 'child in need of care and protection'. This in a way provided for a more proper protection system since the laws have now given a proper definition as to who should receive this protection of being parted from their family. Furthermore, a clear definition of the term

¹² Molly Dyer, "Evidence to the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families", 219.

¹³ Australian Institute of Family Studies (AIFS), "Child Protection and Aboriginal and Torres Strait Islander Children," <<https://aifs.gov.au/resources/policy-and-practice-papers/child-protection-and-aboriginal-and-torres-strait-islander>> (accessed on 22 February 2025).

child in need of care and protection was provided under the Act to include parents who are unwilling to support their children or parents who are under the influence of alcohol or drugs which could endanger the child's life. This proves that the Act provides more towards the interest of the children than merely to just take away the children from their parents. This Act has been repealed by the Children and Community Services Act 2004 which provides for the protection and maintenance of the welfare of the children, including aboriginal children.

5.2.2 National Framework for Protecting Australia's Children 2021-2031

Safe and Supported; The National Framework for Protecting Australia's Children 2021-2031 (hereinafter referred to as Safe and Supported) was established by the Australian Government in cohorts with the states and the territorial governments together with several non-governmental organisations and also the Aboriginal and Torres Strait Islander representatives. Safe and Support outlines how governments and the nonprofit sector will collaborate to support children, young people, and families who require assistance, especially those who are struggling or are at risk of abuse or neglect. It lays out a 10-year plan to enhance the lives of children, teenagers, and families that are disadvantaged or at risk of abuse and neglect.

This Framework is essentially the continuation of the previous 2009-2020 National Framework which had been a success. However, there have still been several rising cases of child abuse and neglect which resulted in heavy impacts towards the welfare of the community. Therefore, the Royal Commission had recommended for the Australian Government to formulate a new National Framework in order to battle these rising cases in order to further protect Australia's Children. Hence the Australian Government formulated the National Framework for Protecting Australia's Children

2021-2031 where it was aimed in order to that all children in Australia are provided with the same ability and opportunity to be brought up to young adults in a safe and sound environment.

The National Framework is essentially a 10-year strategy provided by the government in order to change the approach taken by the government in guaranteeing that the Aboriginal and Torres Strait Islander people are leading the decisions that affect their lives. It was produced with the help of these people. This strategy was implemented together with the Closing the Gap principles. It had been established by the several governments under Australia that there must be necessary action taken in order to recognise that meaningful and sustainable change was to come from Aboriginal and Torres Strait Islander-led solutions. Thus, with this Framework together with Closing the Gap, the government is given an opportunity which they ought not to waste in implementing the appropriate policies to develop the Aboriginal and Torres Strait Islander children.

Closing the Gap principle is one where it has a similar aim as the Framework which is to protect and empower Aboriginal and Torres Strait Islander people to prosper in life, this is essentially what makes both concepts compatible with working with one another. One of the collaborative actions can be seen by the National Framework respecting and supporting Target 12 under Closing the Gap. Target 12 provides for the government to start taking actions aiming towards the reduction of the rate of over-representation of Aboriginal and Torres Strait Islander Children in out-of-home care.

This is since the current percentage of out-of-home care aboriginal children are off the charts; however it is targeted that through these concepts, the rate could be reduced by 45% in 2031.¹⁴

Two sets of Action Plans will support the concepts of Safe and Supported. Parallel to the Safe and Supported: First Action Plan, the Safe and Supported: Aboriginal and Torres Strait Islander First Action Plan (Action Plan) describes the scope of work from 2023 to 2026¹⁵. The first National Framework for Protecting Australia's Children 2009-2020 (first National Framework) is built upon in the Action Plan. The first National Framework taught us, among other things, that Safe and Supported alone cannot bring about change. Similarly to Closing the Gap, the Action Plan acknowledges that eliminating overrepresentation relies on governments giving authority to Aboriginal and Torres Strait Islander people.

The Action Plan acknowledges that in order to keep Aboriginal and Torres Strait Islander children safe and supported, Aboriginal and Torres Strait Islander people, governments, relevant sectors, and communities must collaborate¹⁶. This involves concentrating on initiatives and tasks for which a national strategy would be advantageous. In order to holistically address the social determinants of child safety and wellbeing, it also entails all governments and relevant sectors cooperating in fields like disability, early childhood education and care, health and mental health, alcohol and other drug treatment and prevention, domestic and family violence, adult and youth justice, housing, and employment¹⁷.

¹⁴ Australian Government, Department of Social Services, "The National Framework for Protecting Australia's Children 2021-2031," <<https://www.dss.gov.au/the-national-framework-for-protecting-australias-children-2021-2031>> (accessed on 8 March 2025).

¹⁵ Australian Government, Department of Social Services, "Aboriginal and Torres Strait Islander First Action Plan 2023-2026," 2023 <https://www.dss.gov.au/sites/default/files/documents/01_2023/final-first-action-plan.pdf> (accessed on 10 March 2025).

¹⁶ Ibid.

¹⁷ Ibid.

The Action Plan specifically focuses on Aboriginal and Torres Strait Islander children and families who are experiencing disadvantage and/or vulnerability, including where this Priority Group intersects with other Safe and Supported priority groups, such as and activity will be inclusive of people with disabilities and in line with pertinent initiatives. This comprises Australia's Disability Strategy 2021–2031, the Closing the Gap Disability Sector Strengthening Plan, and the Closing the Gap Commonwealth Implementation Plan¹⁸. Finally, an Outcomes Framework (page 18) outlines the outcomes against which success will be evaluated over the 10 years of Safe and Supported, ensuring government accountability and transparency to Aboriginal and Torres Strait Islander people. The goals of the outcomes are to improve the lives of Aboriginal and Torres Strait Islander children, families, and communities.

However, they also overlap with the goals of the Safe and Supported First Action Plan, which aims to lower the rates of child abuse and neglect for all priority groups under Safe and Supported. Some of the actions which are to be taken under this Action Plan include the following:-

1. Commit to progressive systems transformation that has First Nations self-determination at its centre.
2. Shift towards adequate and coordinated funding of early, targeted and culturally safe support for Aboriginal and Torres Strait Islander children and families.
3. Build Aboriginal and Torres Strait Islander infrastructure for sovereignty of data and improve the Aboriginal and Torres Strait Islander evidence base.

¹⁸ Ibid.

4. Develop a national approach to continue building a sustainable Aboriginal and Torres Strait Islander child and family sector workforce.
5. Implement the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) to the standard of active efforts.
6. Improve availability and quality of legal support for Aboriginal and Torres Strait Islander children and families engaged with child protection systems.
7. Establish and strengthen advocacy through Aboriginal and Torres Strait Islander Commissioners and similar roles.
8. Work across portfolios impacting Aboriginal and Torres Strait Islander children and families¹⁹.

Through the implementation of such plans, the Australian Government including the state and territorial governments, in hands with the Coalition of Peaks had provided several initiatives as to how the Closing the Gap principle would be implemented. These plans include commitments to transforming systems, including child protection systems and family support services²⁰. These so-called plans would be formulated together by the partnership of the governments, the Coalition of Peaks and other Aboriginal and Torres Strait Islander partners.

In conclusion, the National Framework is the step for ensuring that every child in Australia no matter their race or colour has the right to be protected, maintained and preserved with a safe and sound environment. This had even been in line with the United Nations Convention on the Rights of the Child (UNCRC) where it provides for 4 main

¹⁹ Ibid.

²⁰ Australian Government, Department of Social Services, "Safe and Supported: The National Framework for Protecting Australia's Children 2021-2031," <<https://www.dss.gov.au/families-and-children-programs-services-children-protecting-australias-children/safe-and-supported-the-national-framework-for-protecting-australias-children-2021-2031>> (accessed on 7 March 2025).

principles against discrimination which are the right to life; survival and development; respect for the views of the child and devotion to the best interest of the child.

5.2.3 Best Models

5.2.3.1 Health Services

The Department of Health in Australia focuses on maintaining and improving the health of the indigenous as one of their national priorities. They have teamed up with Aboriginal and Torres Strait Islander people in order to take proper measures and prepare proper services in order to assist with the health of the aboriginal community.

One of their actions can be seen by funding the Aboriginal Community Controlled Health Service (ACCHSs) which provides better health care and health treatment for aboriginal and Torres Strait Islander people. This is since this Health Service utilises the funding provided to them in order to provide high-end health care to aboriginal people in terms of, for instance, pregnancy and early childhood support since most parents are themselves unaware and unable to afford their child's living standards. Furthermore, they also provide assistance for encouraging and providing rehabilitation services in order to prevent smoking or tobacco use. In fact, there were several actions taken by the ACCHSs where they focused on ensuring that the people are provided with proper medical treatment in the case of any disease or if in the scenario that the aboriginal people were unwilling to make frequent hospital visits they could have their treatment at the ACCHSs.

5.2.3.2 Policy Work

The first form of policy which can be seen implemented in Australia of relevance to their actions taken would be the Closing the Gap. The Coalition of Peaks, all of the

Australian Governments had agreed on Closing the Gap to be one of the most comprehensive policies in order to enhance the lives of Aboriginal and Torres Strait Islander people. They have provided for 4 Priority Reforms that will direct this policy to move ahead which are included in the National Agreement. These are.

Priority Reform 1 – Formal partnerships and shared decision making

Priority Reform 2 – Building the community-controlled sector

Priority Reform 3 – Transforming government organisations

Priority Reform 4 – Shared access to data and information at a regional level.²¹

The second form of policy work done by the Australian Government which must be credited for is the National Aboriginal and Torres Strait Islander Health Plan. The Department of Health had constructed these health plans in order to establish that there is a significant relationship between the Commonwealth health initiatives and to identify key areas for improvement in the health of the Aboriginal and Torres Strait Islander people. This plan had been initiated in hopes that the actual physical actions could be finalised by mid-2021²². Unfortunately, the National Aboriginal and Torres Strait Islander Health Plan 2021–2031 had taken over the old Health Plan in order to begin where they left off in the old Health plan.

5.2.3.3 School Funding and National Reform

Another method which should be admired by the Australian Government is the fact that the Australian government is providing funding for schools in order to assist the Aboriginal and Torres Strait Islander students. It was provided that from 2018 all the

²¹ Ibid.

²² Michael Lavarch, *Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, (Report, Australian Human Rights Commission, 1997), https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf.

way up to 2029, the Australian Government will commit an unprecedented 318.9 billion usd in recurrent school financing. Included in this is a projected 5.7 billion for Aboriginal and Torres Strait Islander students under the Schooling Resource Standard (SRS) programme. By increasing its record level of recurrent financing for schools from 18.7 billion in 2018 to an unexpected 33.0 billion in 2029, the Australian Government is trying to increase the funding provided towards Aboriginal and Torres Strait Islander students. Thus, formulating a shocking 85.4% increase in the funding provided to the aboriginal students.

The government is committed to supporting every Aboriginal and Torres Strait Islander student to reach their full potential. From 2018, the government's growing investment in schools is tied to the implementation of its evidence-based quality reforms proven to lift student achievement. Through a review on Educational Excellence in Australian Schools by Mr. David Gonski AC, it was provided by him that there can be several areas in which funding towards schools could result in the improvement of the effectiveness and development of the schools together with the achievements of the students. Through Growth to Achievement: Report of the Review to Achieve Educational Excellence in Australian Schools, which was the original title of the review report submitted to the government in March 2018. The report offers 23 suggestions in 5 categories to support the 3 cited priorities:²³

- deliver at least one year's growth in learning for every student every year
- equip every student to be a creative, connected and engaged learner in a rapidly changing world

²³ Ibid.

- cultivate an adaptive, innovative and continuously improving education system.

The National School Reform Agreement supports changes that, according to the evidence, will have the biggest impact on educational outcomes, including for a priority cohort of students known as Aboriginal and Torres Strait Islander students. Therefore, the agreement provides for the states and territories to work as one in order to implement these plans towards improving the lives of the Aboriginal and Torres Strait Islander students.

5.2.3.4 Bringing Them Home Report

In the past due to the rising number of separations between an aboriginal child and their parents, the Human Rights and Equal Opportunity in 1995 to 1997 provided for an inquiry to be done into said separation of aboriginal children from their family. More than 500 people were interviewed where it was discovered that a high percentage of them were separated from their parents when they were young.

The Bringing Them Home report was then collected, compiled and submitted in April 1997 to be released open to the general public.²⁴ The report had talked about numerous case studies that refuted the claim made by non-indigenous Australians where they provided that it was a form of law or procedure for an aboriginal child to be removed from their family and their home. Thus, in order to right the wrongs done to Aboriginal and Torres Strait Islander people, the report made 54 recommendations. The need for an official acknowledgement and apology for the forcible removal of

²⁴ Ibid.

Aboriginal and Torres Strait Islander children was one of the main recommendations of the Bringing them home report.

5.2.3.5 The National Apology and the People's Apology

The Sorry Book campaign in 1998 attracted thousands of Australians, and on May 26, 1998, it culminated in the first National Sorry Day. The grassroots movement was referred to as “the apology of the people.” The Stolen Generations, their families, and communities received an official apology from every state and territory parliament between 1997 and 1999 for the laws, policies, and practices that had governed forcible removal. In fact, in 1999, the Australian Government had offered for a national apology saying that it was of their “deep and sincere regret” for what had happened to these disrupted families.

In order to determine the best format for a national apology, Prime Minister Kevin Rudd started consulting with Indigenous Australians in 2007. On behalf of the Australian parliament, he extended a formal apology to members of the Stolen Generations in February 2008. On large screens in their own cities and towns, crowds of Australians watched the Apology. As the Prime Minister spoke of the wrong's governments had done to Indigenous peoples throughout Australia, photographs and videos of those in attendance show somber and reflective faces. When he was done speaking, there was a tremendous outpouring of tears, relief, and cheers. The Stolen Generations Alliance and National Sorry Day contacted Tom Calma, the Aboriginal and Torres Strait Islander Social Justice Commissioner, on the same day.

5.3 NEW ZEALAND

The aborigines of Aotearoa (New Zealand) are the Māori. A treaty is signed between the British Crown and Maori which grants the right of governance to the British over their subjects, which is the *Te Tiriti o Waitangi* (The Treaty of Waitangi). In return, the Maori would retain tino rangatiratanga (full authority) over their lands, resources and treasures and they are accorded the rights of British citizens.²⁵

With the signing of the treaty, the traditional Māori ways of life steadily undermined by rapid colonisation. The effects of colonisation included the loss of an economic foundation and the repositioning of land as a privately held good within the framework of a capitalist economy in the West, as well as the parallel weakening of political authority, autonomy, and whānau solidarity.

New Zealand adopted the United Nations Declaration on the Rights of Indigenous Peoples which aims for a universal framework of minimum standards in taking account of the survival, dignity and well-being of indigenous people and advocate for the existing fundamental and human rights standards in applying in an indigenous setting. Intriguingly, New Zealand does not ratify ILO Convention 169, which acts as an international legal instrument in addressing the rights of Indigenous and tribal people.²⁶

5.3.1 Age of Majority

The age of majority in New Zealand is governed by the **Age of Majority Act 1970**. Under section 4(1) of the Act, a person shall be deemed to reach the age of majority

²⁵ International Work Group for Indigenous Affairs, "Indigenous peoples in Aotearoa," <<https://www.iwgia.org/en/aotearoa-new-zealand.html>> (accessed on 2 March 2025).

²⁶ United Nations, United Nations Declaration on the Rights of Indigenous Peoples, 2007 <<https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>> (accessed on 4 March 2025).

when attaining the age of 20 years old. In the event where there is an absence of definition or any indication of a contrary intention, the expressions adult, full age, infant, minor, full capacity, majority, and similar expressions in any enactment or instrument shall be construed in accordance with subsection (1).²⁷

5.3.2 Right to Education

In respect of education, the Māori have their own school called *Kura kaupapa Māori*. They are state schools where they teach in the Māori language (*te reo Māori*). It is based on their culture and values which find its way from *Te Aho Matua*. *Te Aho Matua*, a profound educational philosophy unique to New Zealand's Māori community, embodies a holistic and culturally rich approach to learning. Grounded in Māori cultural values, traditions, and perspectives, *Te Aho Matua* emphasizes the interconnectedness of knowledge, identity, and community. *Te Aho Matua* is an educational philosophy and approach that is specific to Māori education in New Zealand. It is often referred to as the "Māori-medium philosophy" and is grounded in Māori cultural values, knowledge, and ways of learning. It is a philosophical base for their education which is also incorporated under the Education Act 1989.

Te Aho Matua is a philosophical document that sets out the principles underpinning *kura kaupapa Māori*. These principles relate to six areas: *te ira tangata* (the human essence), *te reo* (language), *ngā iwi* (people), *te ao* (the world), *āhuatanga ako* (circumstances of learning) and *te tino uaratanga* (essential values).

At its core, *Te Aho Matua* celebrates and honors the Māori cultural identity through the seamless integration of traditional values, customs, and worldviews into the

²⁷ Age of Majority Act 1970.

educational experience. This emphasis ensures that Māori students embark on their learning journey within a context that resonates deeply with their heritage. This approach fosters a profound sense of cultural pride and belonging among Māori learners. By embedding Māori cultural perspectives throughout the curriculum, *Te Aho Matua* actively contributes to the preservation and revitalization of Māori identity. It serves as a formidable defense against the encroachment of cultural erosion, ensuring that Māori heritage continues to thrive and enrich the lives of future generations.

Central to the philosophy of *Te Aho Matua* is a resounding recognition of the pivotal role played by whānau (extended family) and community in the educational journey of Māori students. “*whānau*” is a Māori term that refers to extended family, including both blood relatives and close friends who are considered as family. The concept of whānau is integral to Māori culture and social structure, emphasizing the importance of strong family connections, mutual support, and collective well-being. *Whānau* plays a central role in Māori society and is considered the foundation of identity, belonging, and cultural values. It extends beyond the nuclear family to encompass a broader network of relationships that provide emotional, social, and spiritual support. *Whānau* members share responsibilities, celebrate achievements, and come together in times of need. This collaborative approach transcends the traditional boundaries of the classroom, acknowledging that the process of learning is far more encompassing. Education becomes a collective endeavor, drawing upon the collective wisdom, experiences, and resources of the community. *Whānau* engagement functions as a nurturing and dynamic support system, enveloping Māori students in an environment that fosters growth, learning, and overall well-being. By intertwining community involvement with education, *Te Aho Matua* propels Māori students toward success while weaving stronger community bonds.

In contrast to the confines of conventional education, *Te Aho Matua* embraces a holistic approach that encompasses a wide array of dimensions – academic, cultural, social, and emotional. This comprehensive philosophy ensures that Māori students receive a well-rounded education that prepares them for life’s multifaceted challenges. By nurturing all aspects of a student’s well-being, this philosophy contributes to the development of resilient and self-assured individuals. Mirroring Māori cosmology, which views life as a complex tapestry of interconnected threads, *Te Aho Matua* acknowledges the intricate interdependence of these elements. The holistic framework weaves a narrative of growth and interconnectedness, equipping students with the tools they need to thrive in a diverse and ever-changing world.

Te Aho Matua champions a pedagogical approach that reveres local knowledge, historical narratives, and cultural practices. This commitment nurtures an authentic connection between learners and their immediate environment. By immersing students in context-driven learning, the curriculum not only deepens their comprehension of their own culture but also equips them to critically engage with their surroundings. The curriculum’s foundation in the local context cultivates a profound sense of stewardship and responsibility toward the community and the natural world. This approach ensures that education goes beyond the theoretical and becomes a force for positive change, fostering a sense of ownership and commitment to the well-being of one’s surroundings.

Te Aho Matua serves as an embodiment of Māori educational philosophy, prioritizing cultural resonance, community involvement, holistic development, context-driven learning, and empowerment. By honoring Māori cultural heritage, engaging whānau, fostering holistic growth, integrating local knowledge, and empowering students, *Te Aho Matua* lays the groundwork for a brighter future for Māori learners.

This transformative approach not only enriches education but also ignites a sense of pride, agency, and cultural revival within Māori communities.

In schools, the Māori will also follow their own curriculum which is the *Te Marautanga o Aotearoa*. “*Te Marautanga o Aotearoa*” is the Māori-medium curriculum for New Zealand schools. It is a curriculum framework developed specifically for Māori-medium education settings and is designed to reflect Māori culture, values, and ways of learning. *Te Marautanga o Aotearoa* provides guidance for teachers, schools, and communities on what to teach and how to teach in Māori-medium settings, ensuring that Māori students receive an education that is culturally relevant and responsive. Central to the curriculum is the promotion of the Māori language (*te reo Māori*) as the medium of instruction. *Te Marautanga o Aotearoa* recognises the significance of language as a conduit for cultural expression and communication. By supporting the use of *te reo Māori*, the curriculum seeks to enhance students’ proficiency in the language, contributing to the revitalization and preservation of Māori linguistic heritage. *Marautanga o Aotearoa* stands as a beacon of educational excellence that celebrates Māori culture while preparing Māori students for a future rich in possibilities. This curriculum not only reflects New Zealand’s dedication to equitable education but also serves as a model for other nations seeking to honor indigenous cultures within their educational systems.

The schools will be catering students from year 1 to 8 or year 1 to 13. It is also worth noting that schooling is compulsory from age 6-16 in New Zealand. If a child that is under 17 years old does not go to school, the parents of the child may commit an offence under the Education and Training Act 2020. For instance, under section 243 of the Education and Training Act 2020, a parent of a person who fails or refuses to ensure the person is enrolled at

The school, the parent commits an offence and is liable on conviction to a fine not exceeding \$3,000. Therefore, since it is an offence for not enrolling your children to school, the children of Māori must still get enrolled into a school. It is also an offence for not attending school regularly under section 244 under the same Act.

5.3.3 Oranga Tamariki Act 1989

In 1989, New Zealand was praised in drafting the world-leading child welfare legislation with the passing of the Oranga Tamariki Act: Children Young Persons and Their Well-being Act 1989 (formerly Children, Young Persons, and Their Families Act 1989) (the 1989 Act). The 1989 Act acknowledged that the welfare and best interests of a child were paramount and made provision for Māori children to be viewed and cared for in the context of their whānau, hapū, and iwi. The legislation embodies the desire of Māori to be able to care for their own children and being provided a platform for the practicality of Māori culture as a solution.

There are a few amendments that had been made in 2017 that expanded the range of people and organisations that may be mandatorily required to provide information under s 66 of the Oranga Tamariki Act. The new Act contains a new principle (s65A) the welfare and best interests of a child or young person come first and foremost for agencies, and in most cases, this takes precedence over any duty of confidentiality owed to the child, young person, or person who is in a domestic relationship with the child or young person. This means that agencies, either the public or private health sector, have the duty to share information when requested by the Chief Executive of Oranga Tamariki, a care and protection coordinator, or a constable.

The purpose of the Act is to promote the well-being of children, young persons, their families, whānau, hapū, iwi and family groups by abiding lists of obligations as

seen in section 4 of the Act. This is, among others, to establish, promote, or co-ordinate services that are designed in affirming *mana tamaiti (tamariki)*, are centred on indigenous children's and young persons' rights, promote their best interests, advance their well-being, address their needs, and provide for their participation in decision making that affects them. This may include their long-term health, educational, social, economic or other outcomes for the children and young persons. The distinctive feature that can be seen in this Act is that it infuses indigenous term such as "*mana tamaiti (tamariki)*" which is defined in section 2 of the Act means the intrinsic value and inherent dignity derived from a child's or young person's *whakapapa* (genealogy) and their belonging to a *whānau, hapū, iwi*, or family group, in accordance with *tikanga Māori* or its equivalent in the culture of the child or young person.

The Act also concerns youth justice. In cases of youth justice, primary consideration is given to the well-being and best interests of children and young people in care and protection matters as seen in section 4A. This may also include considerations such as public interest, the interests of any victim and the accountability of the child or young person as seen in section 4A (2). In section 5 of the Act, it provides for the principles in exercising the powers under the Act, which includes the well-being of children or young people must be at the centre of decision-making and that their rights must be respected and upheld. The rights would include the United Nations Conventions on the Rights of the Child and the United Nations Convention on the Rights of Persons with Disabilities.

The Act specifies how the state will take action to protect kids from abuse and neglect as well as to stop and deal with child and youth offenders. It serves as a symbol of how well our society may support and care for children and young people. The Act introduced principles that altered how decisions were made regarding children and

young people, enabling family members to participate in decision-making to address family issues.

5.3.4 The Treaty of Waitangi

The Treaty of Waitangi, ratified in 1840 between the British Crown and Māori chiefs, stands as a pivotal pillar within New Zealand's identity and legal structure. This treaty delineated a partnership and an unwavering dedication to uphold the rights, welfare, and cultural heritage of the Māori populace. Amidst the diverse array of influences the Treaty has exerted on New Zealand society, its significance in relation to Māori children remains profound²⁸. This discourse delves into the intricate and diverse ramifications of the Treaty of Waitangi on Māori children, with particular emphasis on its contributions towards equity, preservation of cultural identity, and holistic well-being.

While the Treaty does not explicitly use the terms “equity” and “equality,” its principles underscore a commitment to fairness, justice, and protection of Māori rights. This commitment inherently extends to Māori children, who are beneficiaries of the principles of partnership and tino rangatiratanga (self-determination). The Treaty recognises the importance of Māori children having equitable access to education, healthcare, and opportunities that empower them to reach their full potential. Over the years, New Zealand has developed policies and initiatives aimed at addressing disparities and ensuring equal access for Māori children, striving to fulfill the Treaty's promise of equity²⁹.

²⁸ United Nations Human Rights, "Fighting for the right to protect Māori culture," 2012 <<https://www.ohchr.org/en/stories/2012/08/fighting-right-protect-maori-culture>> (accessed on 24 February 2025).

²⁹ The Lancet, "Reducing health inequity for Māori people in New Zealand," 2019 <[https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(19\)30044-3/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(19)30044-3/fulltext)> (accessed on 25 February 2025).

One of the Treaty's most profound impacts on Māori children is its role in preserving and nurturing their cultural identity. The Treaty's recognition of tino rangatiratanga acknowledges Māori authority over their own cultural practices, language, and customs³⁰. This recognition has translated into efforts to promote and integrate Māori culture and language into educational curricula, providing Māori children with opportunities to learn, embrace and celebrate their heritage. The Treaty's emphasis on partnership also reinforces the importance of involving whānau (extended family) and communities in decisions affecting Māori children's cultural well-being, ensuring their connection to their roots remains strong.

The Treaty's partnership principle underscores the significance of involving whānau and communities in the well-being of Māori children. By recognising that education, health, and overall development are collective endeavors, the Treaty encourages collaborative efforts to support Māori children's growth. This involvement ensures that Māori children are not only surrounded by a nurturing support system but are also grounded in their cultural context. Whānau and community engagement becomes a vital ingredient in Māori children's development, reflecting the Treaty's aspiration for strong partnerships between the Crown and Māori communities.

The Treaty's enduring legacy continues to guide efforts to ensure that Māori children grow up with a strong sense of self, cultural pride, and the opportunities they deserve. As New Zealand forges ahead, the Treaty's impact on Māori children serves as a testament to the nation's commitment to honoring its historic agreements and fostering a brighter future for all.

³⁰ "The Treaty of Waitangi granted us tino rangatiratanga – but what is it?," *The Spinoff*, 6 February 2018, <https://thespinoff.co.nz/atea/06-02-2018/the-treaty-of-waitangi-granted-us-tino-rangatiratanga-but-what-is-it>.

5.4 BEST PRACTICE PROGRAMS IN OTHER COUNTRIES

5.4.1 Protecting Aboriginal Children Together (PACT)

These guidelines are meant to inform service users and stakeholders alike about the Protecting Aboriginal Children Together (PACT) programme, about the services that will be funded by this programme to the community and service providers. Some of the most disadvantaged people, families, and communities in New South Wales (NSW) are served by the Department of Family and Community Services (FACS). FACS empowers or assists disadvantaged individuals to actively participate in social and economic life and create inclusive, thriving communities. The largest child protection organisation in Australia is FACS. It plays a crucial part in preventing harm to children and young people, supporting intact families, and setting up care for those who are unable to live at home. FACS helps children and young people by offering them, their families, and communities direct support and care. Its primary function is to protect children. The Children and Young Persons (Care and Protection) Act of 1998, the Community Welfare Act 1987 and the Adoptions Act 2000, all are enforced in a legal framework.

In order to help the child and family live safely at home, PACT advisors will offer guidance for risk assessment and work with FACS to determine whether a child protection intervention and additional assessment are required. PACT advisors will assist in determining the right members of the family or community to get involved during a risk assessment. Government authorities rarely support or comprehend the idea of an extended family, so it is crucial that FACS and PACT reflect this understanding in daily operations. Children's and young people's opinions must be collected by FACS in order to be considered in the evaluation. The PACT advisor can ask the family for the right information and take cultural factors into account when gathering and

analysing the data. The main aim of PACT is in order to ensure that the aboriginal children and young people are maintained with their family members and that they do not lose their customs and culture in moving into a modern world. It is also to ensure that the number of aboriginal children who are neglected and abused would reduce drastically.

5.4.2 Child Protection Education and Training for Aboriginal Communities

Safe4Kids specialises in providing child abuse prevention education in Aboriginal communities. All of Safe4Kids' training is given by managing director Holly-ann Martin. Holly has been a child abuse prevention educator for more than 30 years. Holly has been a Safe4Kids instructor for 11 years and has worked with 70 different Aboriginal communities in Australia. Many of these are remote communities in Western Australia's Kimberley region and the Northern Territory's Central Desert (WA). The remaining towns are spread throughout the 'Top End' of the Northern Territory (NT), Queensland, New South Wales, the APY Lands, and the MidWest and Gascoyne regions of Western Australia (WA). Holly-ann has built a solid rapport with these communities, which is evident by being invited back on multiple occasions to continue the delivery of the Safe4Kids Program.³¹

The Safe4Kids Child Abuse Prevention Education Program is essentially a programme initially designed to assist the aboriginal children. This program is a non-threatening, sustainable, innovative, culturally sensitive, relevant early intervention abuse prevention program. This program was established initially since it cannot be reasonable for one to think that it is right to leave a child to deal with their abuse and

³¹ Safe4kids, "Child Abuse Prevention Education Program for Aboriginal Communities," 27 May 2021, <https://safe4kids.com.au/training/aboriginal-communities>.

abuse by themselves. They are still too young to process such pain and cruelty hence they should not go through it alone. It is the job of parents and adults in our community to protect children; however, a trusted adult cannot be with a child all of the time, and that is why children need to understand the concepts of body safety to try and help keep them safe.³²

Both community education information sessions and school classrooms are used to deliver the Safe4Kids programme. According to cultural norms, separate information sessions are held for Aboriginal men and Aboriginal women. Holly has led more than 70 workshops for Aboriginal men and has never encountered any obstacles as a woman advising Aboriginal men on how to protect their children. The men are incredibly grateful to learn about what their kids are learning and that they're getting this important education. Community members requesting service providers to apply for funding to have the Safe4Kids programme delivered in their community are one sign of the program's success in Aboriginal communities.

Responding to Child Sexual Assault in Aboriginal Communities - December 2012, a report by the New South Wales Ombudsman, also mentions the Safe4Kids programme.

The Safe4Kids programme is praised in this report for its commitment to and success in educating kids as well as for its efforts to raise awareness among parents, other community members, and service providers.³²⁹ Understanding and addressing the needs of children and adolescents with Foetal Alcohol Spectrum Disorders (FASD): A resource for teachers, published in 2014, acknowledges the importance of providing for the needs of these young people. Understanding and meeting the needs of children and

³² Ibid.

adolescents with foetal alcohol spectrum disorders is the title of an educational resource (FASD) A 2014 teaching resource acknowledges the Safe4Kids program's successful approach to teaching kids with FASD.

5.4.3 Aboriginal and Torres Strait Islander Higher Education

This program is for the Aboriginal and Torres Strait Islander students in helping them get into higher education. The National Indigenous Australians Agency (NIAA) under the purview of the Minister for Indigenous Australians, with a number of organisations to make sure Indigenous services and programmes are being provided to Aboriginal and Torres Strait Islander peoples in the way that is intended. This would include the State and Territory governments, indigenous peak bodies, and stakeholders. The Australian government will allocate \$17.1 million over 4 years as part of the Job-Ready Graduates package to help Indigenous students from remote and regional areas enroll in universities that are supported by the Commonwealth based on demand. Students from remote and regional Australia who identify as Aboriginal or Torres Strait Islander are guaranteed a place at the university of their choice with financial support from the Commonwealth. However, the university must accept them into the programme of study of their choice. A non-designated, bachelor-level course at an Australian public university qualifies as an eligible university spot. More than 1,700 Aboriginal and Torres Strait Islander students from rural and remote areas will benefit starting in 2021 with an additional 160 students.³³

³³ Australian Government, Department of Education, "Aboriginal and Torres Strait Islander Higher Education," <<https://www.education.gov.au/aboriginal-and-torres-strait-islander-higher-education>> (accessed on 24 February 2025).

5.4.4 First Nations Child and Family Services

The Canadian Government was formed by Indigenous Services Canada (ISC) known as the First Nations Child and Family Services program where the program aimed to ensure that the safety and well-being of all First Nations children and their families to be protected and maintained. ISC contributes money to First Nations child and family services organisations, which are run, managed, and controlled by First Nations and given responsibility by the province to offer prevention and protection services. ISC does not provide child and family services; instead, it funds services delivered by the provinces and Yukon in areas where these agencies do not exist. The regulations and requirements of the province or territory of residence are followed in the provision of these services. Early intervention and alternatives to traditional institutional care and foster care, like placing children with family in a community setting, are supported by ISC using a prevention-based funding model. In this way, the program is able to assist children who are in need of foster care more efficiently since they are able to provide proper funding for said care.

This program provides for 3 streams of funding. Firstly, it is for operation where the funding is provided for the operational part of the protection services. For instance, the salaries or overheads for improving the services. Secondly, the prevention funding, where money is provided for the betterment of the prevention services. Finally, the maintenance funding was the expenses of taking First Nations children into foster care and providing them with their needs.

5.4.5 Indonesia's Participatory Conservation

In Indonesia, self-funded, volunteer-run indigenous schools (sekolah adat) are reintroducing participatory conservation concepts that have been contextualised to

address international interests in regional cultural and natural resources. Through these institutions, indigenous communities are given the tools they need to convert their ancestors' traditional knowledge into useful modern tools for safeguarding the environment and the cultural livelihoods that depend on it.

The Indigenous Peoples' Education Foundation (YPMAN), the educational arm of the Indigenous Peoples' Alliance of the Archipelago, currently has 31 independent indigenous school networks registered (AMAN).³⁴ YPMAN's dedication to the *sekolah adat* movement began in 2015, despite the fact that some networks of indigenous schools in Indonesia, like the Sokola Institute, were established as early as 1998. Even though no two indigenous schools are alike, the majority of curricula put an emphasis on teaching languages and spiritual culture as well as warning students about environmental dangers that could jeopardise their way of life. Indigenous educational institutions promote environmental awareness through farming, crafts, storytelling, music, dance, martial arts, and field trips to the forest.

Sekolah Adat (SA) Samabue in Menjalin, West Kalimantan, which was founded in 2016, and Rumah Belajar (RB) Sianjur Mulamula in Sianjur Mulamula, North Sumatra, which was founded in 2015, are two of YPMAN's notable indigenous school networks.³³² Although they are referred to as "school," they actually serve as after-school learning clubs for indigenous children who go to state-run primary schools in the morning. Native Americans who volunteer as teachers include elders from the area who are treasured for them.

³⁴ Susetyo G, "Indonesia's Indigenous Schools Initiate Participatory Conservation," *Landscape News*, 21 May 2018, <https://news.globallandscapesforum.org/27518/indonesias-indigenous-schools-initiate-participatory-conservation/>.

Cultural expertise and historical knowledge of the region's natural landscapes. These indigenous schools are not currently looking for funding from public or private institutions in order to maintain the independence of cultural education.

Before May 21 U.N. World Day for Cultural Diversity for Dialogue and Development, Modesta Wisa, founder of SA Samabue and a member of the Dayak Kanayatn tribe, said, "Academic schools lack indigenous perspective and tend to instill shame in the mother tongue." She continued, referring to the ongoing oil palm rush in the Dayak Kanayatn homeland since the mid-2000s—a result of Indonesia's post-Reformasi decentralisation policies: "History lessons (in state-run schools) cover pre-Indonesian kingdoms in distant islands, but not real-life developments that got our people to where we are today."³⁵

As part of SA Samabue's curriculum, Dayak Kanayatn children are once more introduced to regional rice varieties and customary cultivation methods. The effects of government rice, techniques for growing local rice organically to stop land degradation caused by chemical fertilisers and pesticides, and field trips that educate children about the importance of preserving forests are also discussed. Traditional occupations like wicker weaving and traditional medicine frequently require materials from nearby forests. SA Samabue employs elders as instructors in a kid-friendly setting, giving Dayak Kanayatn children a head start on learning about the forest and developing an awareness of conservation. After batik was named a part of Indonesia's Intangible Cultural Heritage of Humanity by UNESCO in 2009, the Indonesian government urged its citizens to wear batik to work every Friday. In light of the policy's success in reviving the usefulness of batik in modern Indonesian life, Nagoes Sinaga, the founder of RB

³⁵ Ibid.

Sianjur Mulamula, expressed his opinion that indigenous mother tongues could profit from similar policies.

5.5 COMPARATIVE OVERVIEW BETWEEN BEST PRACTICES IN OTHER COUNTRIES TO MALAYSIA

The practices around the world relating to the protection of Aboriginal children share notable similarities, particularly in their emphasis on both supportive and preventive approaches. These approaches aim to achieve the common goal of protecting Aboriginal children from harm and fostering their overall well-being. Programs in countries such as Australia and New Zealand have not only focused on Aboriginal children but also extended support to adults who were removed from their families in the past and to the families of Aboriginal children. This comprehensive approach acknowledges the intergenerational impacts of past policies and seeks to promote healing and inclusion³⁶.

In comparison, Malaysia has demonstrated a strong commitment to respecting and protecting the rights of its Orang Asli community, particularly children. Efforts to safeguard their rights are evident in policies emphasizing education, welfare, and economic development. Initiatives to integrate Orang Asli children into the mainstream have been in place since the Second Malaya Plan (1961-1965) and continue to be reflected in successive Malaysia Plans, including the Tenth Malaysia Plan (2011-2015)³⁷. These efforts focus on enhancing infrastructure and access to education to improve the socio-economic status of Orang Asli communities.

However, the analysis reveals that Malaysia's legal framework for the protection of Orang Asli children is less comprehensive than that of countries like Australia and

³⁶ Australian Government, *Closing the Gap Report 2022*, (Canberra: Department of the Prime Minister and Cabinet, 2022), <https://www.closingthegap.gov.au>.

³⁷ Economic Planning Unit, Malaysia, *Tenth Malaysia Plan 2011-2015: Towards Inclusive Socio-economic Development*, (Putrajaya: Prime Minister's Department, 2011).

New Zealand. For instance, the Australian government has implemented extensive laws and policies to address disparities in education, child welfare, and overall development between Indigenous and non-Indigenous populations. Australia has adopted programs that aim to close the gap in academic outcomes and provide targeted support for Indigenous communities³⁸.

Australia's *Children and Young People Act 2008 (ACT)* provides a comprehensive legal framework for protecting Aboriginal children, emphasizing culturally appropriate interventions and prioritizing family placements to preserve cultural identity³⁹. Similarly, New Zealand's *Oranga Tamariki Act 1989* integrates Māori cultural values into child protection decisions, ensuring that the unique needs of Indigenous children are respected⁴⁰. These frameworks highlight the importance of tailoring child welfare laws to address the specific cultural and social contexts of Indigenous communities.

For example, the *Oranga Tamariki Act* explicitly requires decision-makers to consider Māori values such as *whakapapa* (genealogy) and *mana tamaiti* (the inherent dignity of the child), ensuring that policies reflect the cultural identity and heritage of the child⁴¹. In Australia, the *Children and Young People Act* mandates the involvement of Aboriginal community representatives in child protection cases, demonstrating a collaborative approach to safeguarding Indigenous children's welfare⁴².

³⁸ Australian Government, *Closing the Gap Report 2022*, (Canberra: Department of the Prime Minister and Cabinet, 2022), <https://www.closingthegap.gov.au>.

³⁹ Children and Young People Act 2008, Australia, "Australian Capital Territory Government," <<https://www.legislation.act.gov.au>> (accessed on 4 April 2025).

⁴⁰ Oranga Tamariki Act 1989 (Children's and Young People's Well-being Act), New Zealand, <https://www.legislation.govt.nz>.

⁴¹ Ibid.

⁴² Australian Human Rights Commission, *National Principles for Child Safe Organisations*, (Sydney: AHRC, 2019), <https://humanrights.gov.au>.

By contrast, Malaysia's *Child Act 2001* lacks provisions that explicitly address the cultural and social needs of Orang Asli children, which limits its effectiveness in ensuring holistic protections⁴³. While Malaysia provides general child protection mechanisms, incorporating culturally sensitive provisions similar to those in Australia and New Zealand can enhance its framework, safeguarding the welfare of Orang Asli children while respecting their cultural identity.

It can be seen from the above discussion that generally the practices around the world relating to the protection of Aboriginal children are similar. The countries, including Malaysia, focus on both a supportive and preventive approach. This is mainly since, overall, both approaches inevitably reach the same goal which is to protect the aboriginal children. Since the programs were aimed towards protecting aboriginal children, it was of no surprise that most of the programs had children as their targeted participants or audience. However, they did not only focus on aboriginal children only. Yes, it was beneficial for them to prevent a situation such as the late 1800s and the early 1900s occurring where aboriginal children were taken from their families. However, the programs had also targeted those who were taken in the past and are now adults and the families of the aboriginal children.

Similarly, Malaysia is also a country which respects and protects the rights of the aboriginal community especially children. Malaysia understands the importance of protecting the rights of Orang Asli or Indigenous people. For instance, Malaysia's actions to protect the rights of education towards aboriginal children is not something new. This had been long established together with the growth of the infrastructure and

⁴³ Child Act 2001 (Act 611).

modern agriculture.⁴⁴ It can be seen that actions have been taken by the government of Malaysia in order to bring minority groups into the mainstream. It was from the Second Malaya Plan (1961-1965) until the Tenth Malaysia Plan (2011-2015) that the initiative had been imported into the plans.

In the context of protecting the rights of Orang Asli children in Malaysia, it is crucial to examine the existing legal frameworks and compare them with best practices from other countries. While Malaysia has made some efforts to safeguard the rights of its indigenous populations, particularly through the Aboriginal Peoples Act 1954, significant gaps remain in effectively addressing the unique needs of Orang Asli children. The Act recognises certain rights but fails to provide comprehensive protection, especially in areas such as education, health, and child welfare. In contrast, Australia has established a more robust legal framework that includes multiple laws aimed at protecting Aboriginal children's rights. For instance, Australia's Aboriginal Child Placement Principle ensures that Aboriginal children are placed with family or community members whenever possible, thereby maintaining cultural connections. Furthermore, initiatives such as targeted funding for schools in Aboriginal communities and culturally relevant curricula have been implemented to bridge educational disparities between Indigenous and non-Indigenous students. The Malaysian government has ratified international treaties like the United Nations Convention on the Rights of the Child (UNCRC) and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which provide a framework for improving the rights of indigenous children. However, the implementation of these international standards remains inconsistent, highlighting a need for a more integrated approach that prioritizes

⁴⁴ Asnarulkhadi and et al., "Integrated curriculum for Orang Asli/Penan (KAP): A new approach in community education development among the Orang Asli/Penan," (Paper presentation, National Seminar of Social Science: Sains Social Teras Pembangunan Modal Insan, Kuala Lumpur, 2007).

community involvement and culturally sensitive policies. To enhance protections for Orang Asli children, Malaysia should consider adopting best practices from Australia and other countries with successful indigenous rights frameworks. This could involve developing a comprehensive legal strategy that incorporates community-based support systems and culturally appropriate educational initiatives. By doing so, Malaysia can work towards ensuring that the rights of Orang Asli children are not only recognised but actively upheld, fostering an environment where they can thrive both academically and socially.

The lack of access to data from the Ministry of Education (MOE) and Ministry of Health (MOH) presents a noted limitation in the research. However, this gap is partially mitigated by the use of publicly available data and reports from these ministries, which provide valuable context for the analysis. For instance, the MOE's Annual Report on Educational Access and Equity highlights disparities in school enrollment and completion rates among Orang Asli children compared to the national average⁴⁵. Similarly, the MOH's Health Indicators Report 2022 outlines the healthcare challenges faced by rural and indigenous populations, such as limited access to immunization programs and maternal health services⁴⁶. These secondary sources offer critical insights that complement the primary data collected in the study.

The discussion incorporates these findings to emphasize systemic issues, such as the lack of culturally tailored education programs and healthcare infrastructure for Orang Asli communities. While the inability to directly interview representatives from MOE and MOH may affect the depth of certain analyses, the inclusion of official reports

⁴⁵ Ministry of Education Malaysia (MOE), "Annual Report on Educational Access and Equity 2022," <https://www.moe.gov.my>.

⁴⁶ Ministry of Health Malaysia (MOH), "Health Indicators Report 2022," <https://www.moh.gov.my>.

and statistical data ensures that the research remains valid and relevant⁴⁷. By triangulating these secondary sources with interview data from NGOs and social activists, the study provides a comprehensive understanding of the challenges faced by the Orang Asli, thus maintaining the integrity of its conclusions.

5.6 CONCLUSION

This chapter provides a clear explanation of how other jurisdictions address the protection towards Aboriginal children. Compared to most countries, it can be seen that the country which has come a far way towards protecting aboriginal children, is Australia. It can be seen that in the past, their country used to have departments in order to remove aboriginal children from their parents with unreasonable reasons such as their skin colour etc. However, nowadays the Australian Government has established the National Framework of Protection Australia's children 2021-2031 where the government has established that Aboriginal children are to be regarded as normal children and should not be discriminated against with regards to their race or culture. This shows how far, not only Australia but other countries have come in embracing and acknowledging the rights to protect aboriginal children. Several countries have taken severe actions such as Indonesia, Canada and New Zealand in order to protect these aboriginal children rights. However, there are still a vast majority of cases of over-representation and neglect and abuse occurring in the aboriginal community. Thus, more drastic measures must still be taken.

⁴⁷ Suhaila Abdullah, "Challenges in Indigenous Education and Healthcare in Malaysia", *Journal of Indigenous Development Studies*, vol. 8, no.2 (2023): 45–56.

CHAPTER SIX

CONCLUSION AND RECOMMENDATIONS

6.1 INTRODUCTION

In accordance with the subject matters discussed, there are four key research questions mainly as the objective of determining the legal framework of law and policy making upon welfare and protection of Orang Asli's children rights on various aspects in Malaysia. Hence, in order to fulfill the research, aim and specific objectives as stated above, four research questions have been formulated as follows: -

1. What are the existing laws, policies, and regulations in Malaysia that protect the rights of Orang Asli children, and how effectively do they incorporate international standards such as the UNCRC and UNDRIP?
2. Are the current legal and policy frameworks adequate and compatible in providing comprehensive protection for Orang Asli children? What roles do government agencies, NGOs, and social activists play in strengthening their implementation?
3. What lessons can be drawn from the approaches and best practices of other jurisdictions in safeguarding the rights of Orang Asli children?
4. How can a reformed or new legal framework be developed to address the gaps and improve the welfare of Orang Asli children in Malaysia?

The input from these research questions will be used to propose solutions for the implementation of law in protecting the Orang Asli children in Malaysia that are adequate and compatible with the governing laws.

In regards to the enforcement of legal ruling and policy, it is essential to ensure that the objectives were to be explored further into Malaysia and International

jurisdiction, as well as any Islamic perspective that applies to the protection of Orang Asli children's rights. The rights of Orang Asli children must be protected in various aspects in life, regardless of their rights to liberty, education, property, and more. In ensuring that the implementation of legal ruling and policy is further understood, the role of institutional framework should be investigated as an imperative step in protecting the aboriginal children's rights in Malaysia. An analysis done towards the protection of aboriginal children's rights in Malaysia is examined further into the local jurisdiction of Malaysian laws as well as International treaties and policy formulated into the legal framework.

Subsequently, this study has involved the conduct of interviewing government and non-governmental institutions in order to further clarify on matters pertaining to the protection of Orang Asli children's rights in each aspect. The institutions are the ones that regulate law and policy making with the need of applying it into specific issues in respect to the Orang Asli children's right for it to be protected and secured. This compilation of data received shall be known as secondary data.

In understanding the best implementation of law and legal policy towards the protection of rights of Orang Asli children, review is made upon it in furthering the knowledge of other jurisdictions applied to similar affairs as aboriginal children's rights.

6.2 SUMMARY OF FINDINGS

In summarising the findings of this discussion, four objectives are designed in order to maintain the purpose of the subject matter raised in the issues.

First and foremost, the study examines the international standard on the specific application for rights of aboriginal children. It was found that some international

standards have made a concern onto Orang Asli children's rights such as United Nations Convention on the Rights of Children (hereinafter referred to as "UNCRC") as well as United Nations

Declaration on the Rights of Indigenous People (hereinafter referred to as "UNDRIP"). UNCRC is a convention that has been ratified by the United Nations in protecting the rights and needs of all children including the children of aborigines. Meanwhile, UNDRIP is obviously shown that they regulate the subject matter pertaining to the rights of aboriginals themselves. Subsequently the Orang Asli children in Malaysia as well is to be seen in the exercise of both conventions in which Malaysia has begun to adopt the implication of these international standards in Malaysia by signing in the treaties into local jurisdiction. However, Malaysia still looks into applications that contrast from Constitutional law and Principles of Islamic practice, and not directly apply such Convention without having a clear and detailed look.

The legal framework on protection of aboriginal children's right is further studies onto the application under Islamic principles under Malaysian jurisdiction. It also best to note that both implementation under local and international standard under the law and convention has shown that they are in line with the need of being parallel with best interests of the people in which the children of Orang Asli shall receive various protection of rights, including life, maintenance, education, health and safety. This protection has shown that it derives from all needs including physical, mental and emotional needs for such interest to be protected for the Orang Asli children's rights.

Secondly, it is best to note that Malaysia law itself has begun to implement the rights of aboriginal for a long time. However, it also seems to be unclear whether there is sufficient application upon the rights of aboriginals, especially when it comes to their children's rights. Hence, this study has found in identifying the existing laws and

regulations applicable for the rights of Orang Asli children to be protected raised in Malaysian law. Thus, it was found that both adoption of law made by Malaysia upon the UNCRC and UNDRIP has particularly imposed progress in enforcing and strengthening the protection of rights of Orang Asli children. This can be proven upon the enforcement of various laws and policy as well as the development of legal ruling in order to be applied to the Orang Asli children either directly or indirectly. The study has found that the most direct application of legal rights towards the Orang Asli children can be seen on the enforcement of Aboriginal Peoples Act 1954 that has clearly defined aborigine includes a child whom male or female that is habitually speaks aboriginal language and custom under Section 3(1)(c) of Aboriginal Peoples Act 1954. Additionally, the legal implications also focus on social policy as to be seen under the National Policy on Children as well as National Child Protection Policy formulated in 2009 as examples of mediums that consistently regulate matters pertaining to children's rights and interest. Furthermore, the study also found there is establishment of institutions in regard to maintain the specification regulated towards the Orang Asli children, such as Jabatan Kemajuan Orang Asli (hereinafter referred to "JAKOA") which clearly show the support on enforcement of any law in regard to the Orang Asli children to be in parallel and consistent with the application made in International standard such as UNCRC and UNDRIP.

Then, the protection of Orang Asli children has clearly been recognised to be applied onto the legislation made specifically addressing the subject matters to "child" and "aborigine", i.e., the definition of an Orang Asli child shall fall within Section 3(1)(c) of Aboriginal Peoples Act 1954 as mentioned above. With that, it is also best to note that 'child' shall be constituted similar to the definition under Child Act 2001 to

be below 18 years of age. Due to the stability of a child in the legislation, the rights of Orang Asli children also shall not be set aside as it requires the law to apprehend it.

The study then has gone further on specific issues regarding the right of Orang Asli children which has been inserted into since the ratification of UNCRC as well as UNDRIP. For instance, the study found that the rights of Education for the children of Orang Asli are deemed to be protected together with the others under the enforcement of Education Act 1996. Then, the rights of Orang Asli children also were discussed to be enforced on their health and safety. It was also found that the children of Orang Asli are protected from being adopted by another person as in accordance with Aboriginal Peoples Act 1954.

If looking onto rights that are to be implemented according to Islamic principles, the study would have found that the implication of it onto an Orang Asli child would be similar with the other child because Islamic principles do not apply by specifying someone's religion and race. Thus, in any regard that the Orang Asli children would derive from any race is reasonable enough to be applied in line with Islamic principles unless it shows their own customs and religious practices.

Thirdly, the study has found that there is a movement made by institutions either its government or non-governmental. Hence, an interview has been conducted with the institutions in order to ensure that the protection of Orang Asli children's rights is well protected and determine whether there is a loophole in enforcing such rights to the Orang Asli children. This study then would show whether there is any exercise of duty from the institutions in upholding the laws and policies through any initiative such as programmes in protecting the rights of Orang Asli children. Among the numbers of institutions residing in Malaysia jurisdiction, this study has focused on the initiative

conducted by Human Rights Commission of Malaysia (hereinafter referred to “SUHAKAM”).

It was found that SUHAKAM has exercised their function as in accordance with Section 4(1) of Human Rights of Commission Act 1999 by promoting awareness and utilising any educational essential in regard to human rights, advising and assisting the government in formulating any legislation as well as any procedure. Moreover, SUHAKAM also shall act on promoting any ways that can be imposed in order to prevent harms on human rights in Malaysia. In narrowing the function towards Orang Asli children, SUHAKAM acts on receiving any reports in regard to abuse suffered by any of Orang Asli children when they were at school and such teacher has failed to protect the Orang Asli children who are under their duty of care. Additionally, SUHAKAM acts in raising awareness on protection of human rights for the Orang Asli children by posting out media statements such as the incidents in 2015 suffered by Orang Asli children at Pos Tohoi, Gua Musang. The statement given is in regard to the cause and effect suffered by the Orang Asli children which seem to be left out from social and economic development. In accordance with the incident, SUHAKAM has further exercised their function in advising and assisting the government in improving the protection needed by Orang Asli children and recommended that the quality of education received in Orang Asli school is improving and maintained well. SUHAKAM also reminds each school to have more sensitivity towards the targeted community because discipline is important in developing the self-portrait of each child and reminds the school upon their duty of care towards every child under their responsibility.

The study has found that certain UNCRC was not recommended by SUHAKAM which was seen to be inconsistent and incompatible with our local jurisdiction. The culture and custom of Orang Asli was not promoted tremendously, and it is still

alienated in Malaysia due to the government's less initiative in upholding the matters in Malaysia educational system. The budget of governmental movement was seen not to be focusing on Orang Asli children as it was seen that the plan of implementing "Bahasa Ibunda Murid" for Orang Asli children did not go well due to budget issues. Furthermore, although there was initiative in bringing up the presence of Orang Asli in the eyes of the nation by inviting them into Radio podcast, but the purpose of inviting them was not seem to be promoting their rights or culture, but instead the Orang asli were the ones who have been brighten up with current development with the aim to change them in following current developments, is plainly inappropriate and inconsistent with the main aim of promoting their rights.

In addition, the study has found that SUHAKAM's thoughts on the application of UNDRIP was good enough, but the Malaysian government has seen not to realise and recognise such implementation. In fact, certain government institutions thought that the application of UNDRIP was just a memorandum that was made by a Non-governmental Organisation (NGO). Although UNDRIP was seen not to be fully binding into Malaysian legislation, it is still best to note that the government shall look into the need of maintaining moral need in order to strengthen the rights of Orang Asli children as mentioned in such declaration.

Lastly, the study has found that there are initiatives conducted by the institutions needed in upholding the rights of Orang Asli children. SUHAKAM has begun to make some alternative in continuously protecting the rights of Orang Asli children by visiting five school and eight habitual residence of the aborigine and attending three conferences which particularly talks upon the educational issues for the needs of Orang Asli children in 2018. Then, it was found that SUHAKAM has recognised issues pertaining the absence of Orang Asli children to school were mostly from children that live in rural

areas. These Orang Asli children have less capability in reading, writing, and numbering and it affects them especially when they will be transferring from primary school standard to secondary school syllabus. SUHAKAM then took into concern upon matters arising from Orang Asli children's rights and has informed the Ministry of Education in order to provide remedy for the sake of educational issues suffered by the Orang Asli children as they should have the rights to receive a well-structured educational system and accommodation.

In regards of any suggestions and recommendations upon issues of Orang Asli children's rights, we shall look forward on improving the existing laws pertaining the issues of child marriage among the Orang Asli tribe. Thus, it is best to be mentioned under the Child Act 2001 by implementing provisions specifically mentioned to be applied onto the Orang Asli children upon the issue of child marriage by narrowing the requirement of marriage shall be allowed only to a person who has attained the age of 18 years old and above.

6.3 IMPLICATIONS OF FINDINGS

This study has later on realised the implementation of Malaysia's developmental policies and legislation did apply for the Orang Asli children, but it was a general one and less specification mentioned onto the Orang Asli tribes. It was found that it has not yet reached the sufficient number or number of rights mentioned in our legislation for the need of protecting Orang Asli children's rights. The study also found that there is insufficient amount of initiative taken by the government in upholding the rights of Orang Asli children and seems to fail in considering the best interests of the Orang Asli children perspective.

Furthermore, the political institution shall play an important role in upholding the best interest of Orang Asli children's rights by formulating the legislation needed and concerned upon the needs of Orang Asli children. Thus, this shall be the time in developing a ripe measure towards the protection of Orang Asli children's right upon their educational needs to be parallel with their language, culture and custom because their presence is important in our society as well. The escalation of the education system shall together include the presence of Orang Asli children's practices.

In essence, the rights of Orang Asli children are yet not well protected and understood by the policy makers due to the absence of a legal framework specifically pertaining to the rights of Orang Asli children. Although there are numbers of legislation imposed in Malaysia jurisdictions, it appears to be insufficient in serving the basic and best interests of the Orang Asli children because there was less efficiency of implementation, and the government seems to exercise less on the matters pertaining to Orang Asli children's welfare especially on education. Hence, a wise approach should be taken into consideration by the government in order to prevent worse scenarios in regard to the Orang Asli children's rights.

6.4 SUGGESTIONS AND RECOMMENDATIONS

This study is mainly to examine and determine the stability of legal frameworks on the stand of Orang Asli children's right to be protected sufficiently and well-reformed. Indeed, it was found that there are certain improvisations and amendments that should be taken into consideration by the government in order to raise a fair and equal quality of life for the Orang Asli children as well, by continuously practising their own culture and custom.

The suggestions and recommendations applied to the Orang Asli children shall be anticipated by everyone including parents, teachers, governmental and non-governmental institutions, and society in order to breakthrough the issues raised pertaining to the rights of Orang Asli children that we should have protected better.

6.4.1 Legal Measures and Reforms

6.4.1.1 Amendment on Child Act 2001 pertaining to the Best Interests of Orang Asli Children towards Issuance of Child Marriage and Education

Malaysia has been concerned with child's matters and affairs by specifically upheld a legislation that regulates child's rights which is clearly to be known as the Child Act 2001. Child Act 2001 is the act that regulates matters of child generally, and it is indeed also applicable to all children defined as a 'child' under the Child Act 2001. With that, it also generally shows that the Orang Asli children shall be entitled to the prescription made into the Child Act 2001. However, it is best to implement a provision that specifically handles the rights of Orang Asli children because the habitual residence of their culture is different from the people who live in developed areas and might not apply the similar practices. In regard to education, the government shall enforce provisions that specifically apply for the Orang Asli children. For instance, under Part IX of the Child Act 2001, it regulates the institutions that shall be established in regulating the place of education especially in regard to specific groups of children. However, in that sense, there is yet no implementation referring to the places of education that shall be placed on for the Orang Asli children. If a group of children that is specifically a refuge may receive a rehabilitation or centre on specific venues only for a children, why does the need of Orang Asli that keeps themselves to be in practices of their culture not yet be receiving a specific venues imposed onto a provision, with

special facilities and education that learn by using their language as well as additional language that require Bahasa Melayu as the main language. This would not give any bad effect to the educational system at all, instead it would raise the educational system because the communication transferred between the teachers and Orang Asli children is blended well.

The current legal framework does not adequately protect the educational rights of the Orang Asli, particularly in terms of access to education and culturally appropriate curricula. Data collected from the questionnaire responses revealed that many respondents, particularly representatives from NGOs and social activists, highlighted the barriers in existing laws that prevent equal access to education for the Orang Asli. One NGO representative noted that “there is no specific law that ensures Orang Asli children receive education that reflects their cultural identity, leading to a disconnect in the education system”¹

It is essential to advocate for legal reforms that protect the educational rights of the Orang Asli. This could include revising national education policies to ensure that Orang Asli students have access to free, quality education, irrespective of their socio-economic status. Additionally, laws should be enacted to incorporate culturally relevant curricula that respect the traditions, languages, and customs of the Orang Asli. As indicated by the data, respondents emphasized the need for policies that acknowledge and address the unique educational challenges faced by the Orang Asli².

Furthermore, legislative bodies should work closely with Orang Asli representatives and educational experts to ensure that new laws reflect the specific needs of this community. The revision of the Education Act to include provisions

¹ Mohd Tan'im Bin Tajuddin, “interview by Siti Marshita binti Mahyut,” Location, [questionnaire response from SUHAKAM](#), 19 December 2022.

² Ibid.

specifically aimed at enhancing Orang Asli education could serve as a critical step forward.

In regard to the issue of child marriage, it is best to implement a provision that requires an Orang Asli children may only be into a marriage if he or she has attained the age of 18 years old and above. This issue is pertaining to preventing children from having other physical or mental issues that could affect them before they could have known the basis of protection for themselves. Furthermore, in the Child Act 2001 itself it has stated that the child shall be protected from any sexual exploitation by any person or other sexual gratification mentioned under Section 17(2)(c) of Child Act 2001. Hence, the aim itself is to be applied for all children in which shall be including Orang Asli children as well. This has shown that the need of implementing a provision pertaining to limitation of age for a marriage shall be enforced under Child Act 2001 specifically mentioned that it will apply onto Orang Asli children as well.

6.4.1.2 Implementation of Educational rights for the Orang Asli Children under Aboriginal Peoples Act 1954.

In regard to educational view, Section 17 of the Aboriginal Peoples Act 1954 enforced has mentioned that none of the Orang Asli children shall be excluded from any school resided in Malaysia. However, does every child of Orang Asli have sufficient budget to survive in a school that is in a developed area. Most of the Orang Asli children would be leaving from a rural area that has less development that the income received in such an area would not be sufficient to survive. Hence, it is more effective if the government provides a special educational institution for the Orang Asli children that would not be far from their living residence, and it would not cost much for the children to survive on. Besides that, the special school established for the Orang Asli children would be

more efficient because the medium of communication suits their practices, and the Orang Asli children will be more comfortable during their learning session. Although, this institution is established which has been recognised but it is best if it would be seen enforced in a legislation specifically concerning the matters of Orang Asli children and it will protect their rights more if there were any circumstances a person would want to abolish their rights of education in their own specialised schools.

6.4.2 Social Measures

6.4.2.1 Development of Policy to Promote Parental Responsibilities

As one of the goals of Islamic law, parents have a responsibility to act in their children's best interests. By virtue of Orang Asli children's rights, parents are endowed with rights and obligations toward their children in order to ensure that their children receive sufficient protection for their life. Parents play an essential role in the life of their children by educating them and acknowledging them that their rights should be protected as in line with legislation enforced by them. Hence, it is safe to say that stricter policies should be implemented to encourage the parents to be responsible for their kids which can be seen to exist under Child Act 2001 upon parents' responsibility under Section 31(1)(a) of Child Act 2001.

Legislation should require the State to assist families in fulfilling their parental duties, and in particular, to establish child welfare authorities. The Child Act's preamble emphasises that families have a major duty for raising and protecting children. It also states that families should be provided with support so they can completely fulfill their role as a child's main source of care, support, rehabilitation, and development³.

³ Guy Thompson, "Child Protection System in Malaysia," UNICEF, <<http://www.iccwtnispcanarc.org/upload/pdf/7583983452Child%20protection%20system%20in%20Malaysia.pdf>> (accessed on 20 December 2022).

6.4.2.2 Development of an Adolescent Pregnancy Focused Policy

For the sake of the Orang Asli children, it is crucial to develop a policy on Orang Asli children as it requires a lot of time and effort to formulate a sufficient policy in upholding Orang Asli children's rights. It will also require coordinated efforts from the esteemed Malaysian academics, including legal and social science professionals from several fields in order to fulfill each aspect of the Orang Asli children's life.

The protection of Orang Asli children's rights has not been enforced sufficiently in today's enforcement of law and policy. Overall, the number of Orang Asli children are increasing each year, and they will continuously grow to be at the age of primary school student then growing as a secondary school student and later a teenager, then adult. Orang Asli children's understanding of sexuality-related issues is greatly influenced by their parents' guidance and the cohesiveness of their families. Strong family ties and parental guidance were found to lead to reduced rates of sexual initiation among aboriginal Orang Asli children, which in turn led to lower the pregnancy rate and may subsequently reduce the amount of child marriage held in a year.

Several types of programs need to be implemented to delay pregnancy among adolescents. For instance, initiatives that aim to educate native children about alternatives to parenting as a career and way of life. It makes an effort to boost the self-confidence and sense of control of the indigenous children so that such alternatives can become realistic ones.

A similar project like the project underway in Atlanta, Georgia called "Postponing Sexual Involvement" should be considered to be implemented⁴. This project aims to educate the minority concerning self-discipline and responsibility in

⁴ Sandra L. Hofferth, "The Effects of Programs and Policies on Adolescent Pregnancy and Childbearing," NIH, <<https://www.ncbi.nlm.nih.gov/books/NBK219222/>> (accessed on 20 December 2022).

human sexuality. Thus, policies are more attentive to the specific needs of Orang Asli children, take a more all-encompassing approach, and create their own national plans with their own commissions and investments.

6.4.2.3 Establishing Sharing Information System at the National, State and District Level

Despite the wide variety of research projects carried out at the governmental or non-governmental institutions, the majority of the findings and information gathered about Orang Asli is dispersed among various organisations, is seen to have less number that promoting the need of protection upon the Orang Asli children's rights to be upheld by each person. As a result, it's essential to set up a structured management information system to create links between agencies and offer a clear understanding and perspective towards the need to protect such rights and reduce all discrimination that could occur in between the subject matter with the presence of Orang Asli children.

Using information and communication technology (ICT), especially the internet, to improve government is known as electronic government (e-Government). E-government services promise to increase productivity, cut costs, and enhance public services. With the creation of the Malaysia Super Corridor, e-Government implementation in Malaysia got underway (MSC). Because a government is attempting to deliver better services with constrained resources and ensure that orang asli children receive the knowledge they need, the sharing and exchange of information is crucial. Information sharing and integration are required among government institutions serving various objectives as well as within the various tiers of government agencies⁵.

⁵ Huda Ibrahim and Nik Ruslawati Nik Mustapa, "Information Sharing Model among State Agencies in Malaysia: A Case Study on Waqf System", *Medwell Journals*, (2017): 4228–4233, <http://docsdrive.com/pdfs/medwelljournals/jeasci/2017/4228-4233.pdf>

At the national, state, and district levels, it is crucial to identify and set up a framework to enhance and increase coordination and collaboration between linked government and non-government related entities through clever partnership and shared responsibility. Although there are already numerous E-platform that provide the medium in promoting rights of Orang Asli children, it is better to increase the area and size of sharing towards the world, nationally and globally.

6.4.2.4 Preventive Measures through Sexual Reproductive Health Education

Preventive steps can be used in order to stop Orang Asli children from child pregnancy and subsequently from child marriage among aboriginal children. According to studies, education is the most efficient and successful approach to stop pregnancy. All facets of sexuality should be covered in sex education, including the anatomy and physiology of the human reproductive system, body image, sexual orientation, sexual pleasures, values, decision-making, communication, dating relationships, sexually transmitted diseases, methods of birth control, and sexually transmitted diseases.

A girl's future typically changes when she gets pregnant, and not for the better. Options that were once open to her would either become impossible or more difficult to do. In order to give girls, the chance for a better future, it is important to prevent pregnancy—both intentional and unintended. In addition to being a time of vulnerability, at the age of minority is also a time of opportunity, especially for girls. Comprehensive Sexuality Education (CSE) can decrease the number of unwanted births and the rate at which STIs are transmitted, which can enhance health outcomes and keep girls in school.

CSE is described as “Education about all matters relating to sexuality and its expression” by the International Planned Parenthood Federation (IPPF). The same

topics covered by SE are also covered, along with additional topics including relationships, attitudes toward sexuality, sexual roles, gender relations, and social pressures to engage in sexual activity. One of the most crucial and successful ways to assist young people in managing their reproductive health is through school-based SRH education⁶.

Despite the debate surrounding sex education, past research has shown that it really supports abstinence and gives the minority, especially Orang Asli children, the knowledge and skills they need to make healthy sexual choices. It is recommended that sex education should be included in educational institutions because they have direct access to more minorities, especially Orang Asli children who mostly lack educational information than other institutions do.

6.4.3 Political Measures

Political measures are important because the political choices we make shape our government, which is in charge of enacting laws and policies. Before developing any pertinent policy on Orang asli children that is compatible with and may be applied to Malaysian society, it is crucial for the policy maker or policy planner in Malaysia to truly comprehend the problem from the ground up.

6.4.3.1 Development of National Strategic Vision for the Adolescent Pregnancy Welfare System

The Ministry of Women, Family and Community Development (MWFCDD) should create a new action plan that includes a number of significant measures to prioritise

⁶ El Sheila Kanavathi, "Comprehensive Sexuality Education for Malaysian Adolescents: How Far Have We Come?", *Arrow*, (2017), <https://arrow.org.my/wp-content/uploads/2019/04/FRHAM-ICPD-25-Final-Report-proofread-and-formatted-Jeremy-Final.pdf>.

Orang Asli children's welfare and create a system that is more family-based, restorative, and prevention-oriented. It is very important to make sure that services are accessible both in bigger urban regions and in rural and isolated areas in order for the aboriginal adolescents to get easy access to them.

Children of Orang Asli make up a distinctive demographic, so services and supportive organisations should be tailored to meet their needs in terms of welfare and development. Teen services should be age- and gender-appropriate, private, judgement-free, affordable, and available.

6.4.3.2 Monitoring Actions from Parents and Independent Body

Parents can monitor behaviour on a micro level, while an independent body can monitor behaviour on a macro level. The primary factors shaping teenage actions are parents or families. This is due to the fact that a child's behaviour development and formation are reliant on the environment's pattern as it relates to its surroundings. A minority nowadays, especially the Orang Asli children might lack knowledge upon acts or conducts that amounted to inappropriate sexual behaviour, and aggression. For teenagers to acquire more positive behaviours as they get older, parental observation and awareness of children's behavioural development are crucial parts⁷. Parents need to have two-way communication with their kids and be friendly. This will allow the parents to easily educate their children about the rights of Orang Asli children in current legislation and teach them what protection can be received by the Orang Asli children. In order to ensure that their children listen to what they say, parents should first understand what their children are feeling and, based on that, give them advice.

⁷ Syazwana Aziz and et al., "Integration of Parental Monitoring and Parental Communication Factors on Deviant Behaviours of Adolescents in Peninsular Malaysia", *Hrmars*, vol. 11, no.7 (2021): 984–1002.

Moving on to macro level, for the country's ongoing monitoring and review of the state of children's rights, a transparent system is required. To make sure the interventions adhere to the minimal standards of care, an independent authority should be established to conduct routine monitoring and assessment of government and commercial alternative care institutions.

6.4.3.3 The Professionalism of Social Work

The academic field of social work is supported by humanities, social sciences, orang asli knowledge, and a framework of values centred on social justice and human rights. Social work is a practice-based profession that focuses on interacting with people in order to improve social functioning, deal with problems in daily life, and promote wellbeing. For individuals, as well as for groups and civilizations at large, modern living's growing complexity presents a variety of obstacles. In order to respond to these issues in a way that leads to positive results or change for the individual, family, group, community, organisation, and society, suitable professional knowledge, values and ethics, skills, and intervention approaches are strongly required⁸.

The best social work practices require that social workers have a solid education and credentials. They must have the knowledge and abilities necessary to fill a variety of jobs as an enabler. Social workers should request proper advice and regular professional monitoring as needed. They should also create understanding and sensitivity to sociocultural diversity because it is crucial that they understand the

⁸ Elsie Lee, "What is Social Work All About?," MCKL <<https://mckl.edu.my/2020/04/06/what-is-social-work-all-about/>> (accessed on 20 January 2023).

position of the aboriginal children and they need special skills to handle them. Moreover, they should practise within the scope of their abilities⁹.

6.4.4 Spiritual Measures

As much as it is about public health, preventing a child marriage among the Orang Asli children is also about moral and religious principles. Like adults, Orang Asli children in making choices regarding their sexual conduct in part on their moral standards for what is appropriate and what is not¹⁰. Malaysia is a country with different religions, including Islam, Christianity, Buddhism, Hinduism, and faiths practised by minorities. Islam, in particular, views sex as one of the fundamental humans wants that must be met, and as such, illegal sex is forbidden regardless of how necessary the act may generally be. Raising a decent man is education's primary goal in Islam. There are two categories in which to classify a good man. Man's relationship with his creator is the subject of the first dimension, and his relationship with others is the subject of the second. Ideal religion Instilling moral values in adolescents through appreciation might help them consider carefully before acting immorally. Rapid social changes brought on by urbanisation and westernisation in Malaysia's local context have weakened the religious values among the country's adolescent population. Teenagers now perceive themselves as being less religious, more receptive to western ideas, and beginning relationships earlier, which may be related to premarital sex. Religious engagement may help protect Orang Asli children by urging them to abstain from harmful sexual practices.

⁹ Malaysian Association of Social Workers (MASW), "Core Values and Principles of Social Work," <<https://www.masw.org.my/blank-page-3>> (accessed on 20 January 2023).

¹⁰ Barbara Dafoe Whitehead, and et al., "The Role of Religion and Faith Communities in Preventing Teen Pregnancy," (The National Campaign to Prevent Teen Pregnancy).

6.4.5 Practical Measures

6.4.5.1 Revisiting the Law and Enforcement of Orang Asli's School in Malaysia

In order to suit the demands of society, several laws may be enforced upon the practices conducted in every Orang Asli's school that held all Orang Asli children.

Governmental, semi-governmental, and non-governmental groups are the three most prevalent types of administering and regulating the main focus to be implied towards the Orang Asli children. Governmental and semi-governmental shelters are free, but depending on the services offered, non-governmental shelter homes typically charge between RM300 and RM2500. The Malaysian Care Center Act (2006) governs all of the shelter homes. According to the Malaysian Child Act (2006), unmarried teenage mothers are regarded as being vulnerable to sexual abuse and in urgent need of protection. As a result, the shelter homes should serve as residential correctional facilities to prevent recurrence of pregnancy at the age of minority by providing protection, supervision, rehabilitation, and training.

The majority of the shelter homes had rules and guidelines. For instance, only immediate family and close relatives were permitted to visit once every month for an hour at a time. Some girls claimed that they relied on their relatives for news from the outside world and that their visits, letters, and phone calls to them gave them support. Some of the girls yearned for family support because of the constraints placed on them by the shelter homes.

Nearly all of the girls of Orang Asli children expressed uncertainty regarding the guidelines and procedures in the shelter homes. These respondents frequently claimed that the other Orang Asli children who are girls, who were older in the shelter houses explained the majority of knowledge regarding the rules and regulations. When the Orang Asli's children were first placed in the shelter homes, the rules and regulations

were occasionally not adequately explained or when they were not mentally prepared to listen.

In order to provide a better environment for the aboriginal adolescents, the shelter homes should establish specific guidelines for the activities/programs provided, as well as the rules and regulations in the shelter homes, in order to achieve the goals of the Malaysian Care Centre Act (2006) and the Convention on the Rights of the Child (UN General Assembly, (1989). It is recommended that the courses and programmes given be more captivating and consider factors such as the physical, mental, and spiritual components.

6.4.5.2 Integrated Special Visit Care Services

The present Ministry of Health, JAKOA, and other governmental and non-governmental agencies that particularly focus on the protection of Orang Asli children's right in Malaysia shall built a framework for special and specific care services that take place at Orang Asli children's residence or nearby the residence in order to ensure that there is a continuous care on the needs and essentials of Orang Asli children in every aspect of life. Not just on matters of health but also the development of their studies.

For the benefit of Orang Asli children, a well-planned policy makes the best use of available resources, mobilises labour, and, most importantly, monitors the policy's effective execution. By influencing the Orang Asli children with the development of studies in regard to their communication especially conducted at the special visit care services, the Orang Asli children will feel more comfortable and subsequently will improve their spirit in pursuing study on each aspect of life, from theoretical towards practical measure.

6.4.5.3 School Based Clinics

In other countries, most programmes are carried out in schools, where they are most accessible to children, parents, and teachers. If the adolescents are found to be at detrimental risk as defined by the Child Act 2001, care channels to other services outside of school, such as hospitals and police departments, are required.

It is critical to establish child-friendly health services. Establishing points of delivery that are equitable, accessible, and acceptable and outfitted with appropriate and effective health services in accordance with the WHO-defined dimensions of quality health services to Orang Asli children are high order principles for creating child-friendly health services. Health institutions are urged to implement the WHO-defined features of “adolescent-friendly” health care to ensure that Orang Asli children including the adolescents to receive health services satisfy their health needs. Healthcare professionals must address a variety of Sexual and Reproductive Health related issues, including menstrual disorders, Sexually Transmitted Diseases, teenage pregnancies, and safe sex practices. Training is crucial to equip healthcare professionals with clinical information in addition to improving communication skills with Orang Asli children. The client consultation rooms should provide spatial secrecy, including being well-isolated, having a designated entrance, being soundproof, keeping doors closed, and refraining from knocking on doors during consultation sessions¹¹.

6.5 CONCLUSION

As a result, this study explores Malaysia’s laws and policies regarding the rights of Orang Asli children in relation to education, family law, criminal law, and safeguarding

¹¹ Hafizuddin Awang and Amal Shamsudin, "Compliance of Primary Healthcare Facilities in Malaysia to Best Practices of Adolescent-Friendly Health Services", *IJPHS*, vol. 9, no.1 (2022), <http://publichealthmy.org/ejournal/ojs2/index.php/ijphcs/article/viewFile/1484/809>

them against sexual offences. This study also emphasises how crucial it is to uphold the best interests of Orang Asli children by concentrating on their rights as seen from their viewpoints. The aforementioned guidelines and suggestions should help the relevant organisations improve the way they handle the protection of the Orang Asli children's rights.



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APPENDIX A

PHOTOGRAPH OF THE RIVER ROUTE TO DAYOK VILLAGE



(Source, fieldwork, Pos Lenjang, Pahang, 2019)

APPENDIX B

PHOTOGRAPH OF ORANG ASLI CHILDREN RIDE RAFTS



(Source, fieldwork, Pos Lenjang, Pahang, 2019)

APPENDIX C

PHOTOGRAPH OF WRITER IN INTERVIEW SESSION WITH ORANG ASLI COMMUNITY



(Source, fieldwork, Pos Lenjang, Pahang, 2019)

APPENDIX D

PHOTOGRAPH OF PREMIX ROAD TO DAYOK VILLAGE.



(Source, fieldwork, Pos Lenjang, Pahang, 2019)

APPENDIX E

PHOTOGRAPH OF ORANG ASLI HOUSE – SEMAI TRIBE.



(Source, fieldwork, Pos Lenjang, Pahang, 2019)

APPENDIX F

PHOTOGRAPH OF ORANG ASLI CHILDREN BOARDED A JAKOA TRUCK TO GO BACK TO HOSTEL.



(Source, fieldwork, Pos Lenjang, Pahang, 2019)

APPENDIX G

**PHOTOGRAPH OF WRITER WITH ORANG ASLI CHILDREN
ON THE TRUCK**



(Source, fieldwork, Pos Lenjang, Pahang, 2019)

APPENDIX H

**PHOTOGRAPH OF WRITER WITH KINDERGARTEN
CHILDREN**



(Source, fieldwork, Pos Lenjang, Pahang, 2019)

APPENDIX I

PHOTOGRAPH OF ORANG ASLI STUDENTS BACK TO SCHOOL. WAITING FOR TRUCK FROM JAKOA.



(Source, fieldwork, Pos Lenjang, Pahang, 2019)

APPENDIX J

PHOTOGRAPH OF PRIMARY SCHOOL STUDENT OF ORANG ASLI ON THE BOAT RETURN FROM SCHOOL



(Source, fieldwork, KOA Dedari, Taman Negara Pahang, 2019)

APPENDIX K
PHOTOGRAPH OF WRITER WITH FAMILY OF ORANG ASLI
BATEK



(Source, fieldwork, KOA Dedari, Taman Negara Pahang, 2019)

APPENDIX L

PHOTOGRAPH OF THE DEATH OF ORANG ASLI DURING PANDEMIC OF COVID 19



(Source, fieldwork, KOA Bukit Sedanan, Tebong, Melaka, 2021)

APPENDIX M
PHOTOGRAPH OF ORANG ASLI TEMUAN TRIBE.



(Source, fieldwork, KOA Dusun Kubor, Jelevu, Negeri Sembilan, 2021)

APPENDIX N

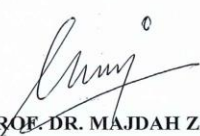
PHOTOGRAPH OF ORANG ASLI HOUSE TEMIAR TRIBE



(Source, fieldwork, Kampung Dusun, Pos Kuala Mu, Perak, 2023)

APPENDIX O

Letter Confirming Student Status

 الجامعة الإسلامية العالمية ماليزيا INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ Garden of Knowledge and Virtue	LEADING THE WAY KHALIFAH • AMANAH • Iqra' • RAHMATAN UL-ALAMIN SUSTAINABILITY INSTITUTION OF THE YEAR
Our Ref : IIUM/303/13/13/1 Date : 9 August 2022	
TO WHOM IT MAY CONCERN	
Dear Sir/Madam	
CERTIFICATION LETTER	
This is to certify that the name below is a post-graduate student of the Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia. Further details are as follows:	
Name	: Siti Marshita Binti Mahyut
Matric No.	: G1417516
Programme	: Doctor of Philosophy (Ph.D) in Law
Study Mode	: Research/Part-time
Study Duration	: 3 Years (Min) – 8 Years (Max)
Current Study Status	: 15 th Semester
Expected Graduation Date:	February 2023
As a requirement for the degree, she is in the process of writing her thesis entitled "<i>Protection of Orang Asli Children in Malaysia: Prospects and Challenges</i>" under the supervision of Prof. Dr. Nik Ahmad Kamal Nik Mahmod from Civil Law Department.	
The Kulliyah will be pleased if your good office could render any assistance that she may require. Should you need further clarification, please do not hesitate to contact us at +603-6421 4345; 4355 or email at pguaikol@iium.edu.my	
Thank you.	
 ASSOC. PROF. DR. MAJDAH ZAWAWI Deputy Dean (Postgraduate & Responsible Research) Ahmad Ibrahim Kulliyah of Laws International Islamic University Malaysia	
AHMAD IBRAHIM KULLIYAH OF LAWS (AIKOL) International Islamic University Malaysia, Jalan Gombak, 53100 Kuala Lumpur (Company No.: 101067-P) Tel: +603 6421 4252 Fax: +603 6421 4378 Email: aikol@iium.edu.my www.iium.edu.my/aikol	
	

Green, Gown Awards
Laureate
WINNER
2020 SUSTAINABILITY
INSTITUTION OF THE YEAR

GREATER GOMBAK
UNIVERSITY
UNIVERSITY OF SUSTAINABLE
DEVELOPMENT
UNIVERSITY OF SUSTAINABLE
DEVELOPMENT

UNITED NATIONS
UNIVERSITY

RECIPIENT
AL-KHAWARIZMI
EDUCATION AWARD 2020

Premier
Digital Tech
University

MOA
MALAYSIA
ORGANIZATION
OF
MUSLIM
ACADEMIC
ASSOCIATION

APPENDIX P

LETTER TO DR. MUHAMMAD SAYUTI BIN HASSAN (EXPERT IN ORANG ASLI ISSUES)



الجامعة الإسلامية العالمية ماليزيا
INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA
يُؤْتِي الْعِلْمَ حُجْرَاتٍ فِي الْجَنَّةِ
Garden of Knowledge and Virtue

LEADING THE WAY
KHALIFAH • AMANAH • IGHRA' • RAHMATAN IL ALAMIN

SUSTAINABILITY INSTITUTE OF THE YEAR

IIUM/303/13/13/1
13 October 2022

Dr. Muhamad Sayuti Bin Hassan
Senior Lecturer
Faculty of Law
Universiti Kebangsaan Malaysia

Dear Dr.,

CERTIFICATION LETTER

This is to certify that the name below is a post-graduate student of the Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia. Further details are as follows:

Name	:	Siti Marshita Binti Mahyut
Matric No.	:	G1417516
Programme	:	Doctor of Philosophy (Ph.D) in Law
Mode of Programme	:	Research Only

For your information, she is in the process of writing her thesis entitled "*Protection of Orang Asli Children in Malaysia: Prospects and Challenges*" under the supervision of Prof. Dr. Nik Ahmad Kamal Nik Mahmood from Civil Law Department.

To assist in her research, she needs to search for information from you/your esteemed organisation. It is with great hope that you/your esteemed organisation would allow her to conduct interview session and obtain any relevant documents related to the research area.

Should you need further clarification, please call us at +603-6421 4345/4355 or email us at pguaikol@iium.edu.my

Thank you.


SHAHNAZ ZURIATI BINTI SABRI
Covering Deputy Dean (Postgraduate & Responsible Research)
Ahmad Ibrahim Kulliyah of Laws
International Islamic University Malaysia

AHMAD IBRAHIM KULLIYAH OF LAWS (AIKOL)
International Islamic University Malaysia, Jalan Gombak, 53100 Kuala Lumpur
(Company No: 101067-P)

Tel: +603 6421 4252 Fax: +603 6421 4378 Email: aikol@iium.edu.my
www.iium.edu.my/aikol

Green Gown Awards
Lafar-Fazel
WINNER
2020 SUSTAINABILITY
INSTITUTION OF THE YEAR

GREATER GOMBAK
KUALA GOMBAK
SUSTAINABILITY
INSTITUTION OF THE YEAR
AWARDED BY
UNITED NATIONS
UNIVERSITY

RECIPIENT
AL-KHAWARIZMI
EDUCATION AWARD 2020

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Digital Tech
University™

MOA
SUKSES
BERKUALITI
BERKUALITI
BERKUALITI



APPENDIX Q

LETTER TO JKM REQUESTING INTERVIEW ACCESS



JABATAN KEBAJIKAN MASYARAKAT

Department of Social Welfare

Aras 6, 9-18, No. 55 Persiaran Perdana,
Persint 4,
62100 PUTRAJAYA.

Tel : 603 - 8323 1000
Faks (Fax) : 603 - 8323 2045
Laman Web (Website) : www.jkm.gov.my

JKMM 100/12/5/2 : 2022 / 608
01 Disember 2022

Siti Marshita binti Mahyut
Jalan Gombak
53100 SELANGOR

Tuan/Puan,

PERMOHONAN MENJALANKAN KAJIAN/PENYELIDIKAN DI JABATAN KEBAJIKAN MASYARAKAT

Dengan hormatnya saya merujuk kepada perkara di atas.

2. Untuk makluman tuan/puan, pihak Jabatan telah meneliti permohonan tuan/puan untuk menjalankan kajian/penyelidikan di Jabatan ini. Pihak Jabatan **BERSETUJU** menerima cadangan kajian/penyelidikan bertajuk **PROTECTING THE RIGHTS OF ORANG ASLI CHILDREN IN MALAYSIA: THE LEGAL FRAMEWORKS** dan tempat kajian **seperti di Lampiran** dengan syarat perlu menandatangani Surat Perakuan yang disertakan. Tempoh kajian adalah selama **TIGA (3) bulan** berdasarkan tarikh yang akan diluluskan

3. Surat Perakuan yang telah ditandatangani hendaklah dimuat naik ke dalam sistem *MyResearch* dan salinan surat hendaklah dikembalikan kepada Jabatan dalam tempoh **14 hari** selepas tarikh surat ini dikeluarkan. Sebarang maklumat lanjut, tuan/puan boleh menghubungi Bahagian Perancangan dan Pembangunan, Jabatan Kebajikan Masyarakat di talian 03-8323 1935 atau emel m_kamil@jkm.gov.my.

Sekian, terima kasih.

"BERKHIDMAT UNTUK NEGARA"

"BERKAT BERJASA"

Saya yang menjalankan amanah,

MOHAMAD KAMIL BIN MOHAMED UMAR

Bahagian Perancangan dan Pembangunan
b.p. Ketua Pengarah Kebajikan Masyarakat
Malaysia

s.k Ketua Pengarah Kebajikan Masyarakat

Timbalan Ketua Pengarah (Strategik)

Surat ini adalah janaan komputer, tandatangan tidak diperlukan.

APPENDIX R

LETTER TO DIRECTOR OF HOSPITAL ORANG ASLI

 الجامعة الإسلامية العالمية ماليزيا INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA بونتريسني اسلاميا بنتا ارجينا فليسيا Garden of Knowledge and Virtue	LEADING THE WAY KHALIFAH • AMANAH • IQRA' • RAHMATAN UL-ALAMIN SUSTAINABILITY INSTITUTION OF THE YEAR												
IIUM/303/13/13/1 13 October 2022													
Dr. Izandis Bin Mohamad Sayed Pengarah Hospital Orang Asli Gombak KM24, Jalan Gombak 53100 Kuala Lumpur Wilayah Persekutuan													
Dear Dr., CERTIFICATION LETTER This is to certify that the name below is a post-graduate student of the Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia. Further details are as follows: <table><tr><td>Name</td><td>:</td><td>Siti Marshita Binti Mahyut</td></tr><tr><td>Matric No.</td><td>:</td><td>G1417516</td></tr><tr><td>Programme</td><td>:</td><td>Doctor of Philosophy (Ph.D) in Law</td></tr><tr><td>Mode of Programme</td><td>:</td><td>Research Only</td></tr></table> For your information, she is in the process of writing her thesis entitled "<i>Protection of Orang Asli Children in Malaysia: Prospects and Challenges</i>" under the supervision of Prof. Dr. Nik Ahmad Kamal Nik Mahmood from Civil Law Department. To assist in her research, she needs to search for information from you/your esteemed organisation. It is with great hope that you/your esteemed organisation would allow her to conduct interview session and obtain any relevant documents related to the research area. Should you need further clarification, please call us at +603-6421 4345/4355 or email us at pguaikol@iium.edu.my Thank you.  SHAHNAZ ZURIATI BINTI SABRI Covering Deputy Dean (Postgraduate & Responsible Research) Ahmad Ibrahim Kulliyah of Laws International Islamic University Malaysia		Name	:	Siti Marshita Binti Mahyut	Matric No.	:	G1417516	Programme	:	Doctor of Philosophy (Ph.D) in Law	Mode of Programme	:	Research Only
Name	:	Siti Marshita Binti Mahyut											
Matric No.	:	G1417516											
Programme	:	Doctor of Philosophy (Ph.D) in Law											
Mode of Programme	:	Research Only											
AHMAD IBRAHIM KULLIYAH OF LAWS (AIKOL) International Islamic University Malaysia, Jalan Gombak, 53100 Kuala Lumpur (Company No.: 101067-P) Tel: +603 6421 4252 Fax: +603 6421 4378 Email: aikol@iium.edu.my www.iium.edu.my/aikol													
													

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APPENDIX S

LETTER TO KETUA PENGARAH JKM

 الجامعة الإسلامية العالمية ماليزيا INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA Garden of Knowledge and Virtue	LEADING THE WAY KHALIFAH • AMANAH • IQRA' • RAHMATAN UL-ALAMIN SUSTAINABILITY INSTITUTE OF THE YEAR
--	---

Our Ref : IIUM/303/13/13/1 Date: 24 November 2022

Ketua Pengarah Kebajikan Masyarakat
Jabatan Kebajikan Masyarakat
Aras 6,9-18, No.55, Persiaran Perdana,
Presint 4, 62100, W.P Putrajaya

Dear Sir/Madam,

CERTIFICATION LETTER

This is to certify that the name below is a postgraduate student of the Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia. Further details are as follows:

Name	: Siti Marshita Binti Mahyut
Matric No.	: G1417516
Programme	: Doctor of Philosophy in Law

As a requirement for the degree, she is in the process of writing her thesis entitled "*Protection of Orang Asli Children in Malaysia: Prospects and Challenges*" under the supervision of Prof. Dr. Nik Ahmad Kamal Nik Mahmod. In relation to this, she needs to search for information from your esteemed organization to assist in her research. The research will be in the form of interviews and the collection of available data.

The Kulliyah will be pleased if your good office could render any assistance that she may require. Should you need further clarification, please do not hesitate to contact us at +603-6421 4345 or email pguakol@iium.edu.my

Thank you.


ASSOC. PROF. DR. MAJDAH ZAWAWI
Deputy Dean (Postgraduate & Responsible Research)
Ahmad Ibrahim Kulliyah of Laws
International Islamic University Malaysia

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International Islamic University Malaysia, Jalan Gombak, 53100 Kuala Lumpur
(Company No: 101067-P)

Tel: +603 6421 4252 Fax: +603 6421 4378 Email: aikol@iium.edu.my
www.iium.edu.my/aikol



APPENDIX T

LETTER TO DIRECTOR OF JAKOA



الجامعة الإسلامية العالمية ماليزيا
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KHALIFAH • AMĀNAH • IQRA' • RAHMATAN UL-ĀLAMĪN

SUSTAINABILITY INSTITUTION OF THE YEAR

IIUM/303/13/13/1
13 October 2022

Encik Muhamad Nazrul Bin Subakir
Bahagian Perancangan & Penyelidikan
b.p. Ketua Pengarah
Jabatan Kemajuan Orang Asli (JAKOA)
Tingkat 3, West Block, Wisma Golden Eagle Realty (GER)
142-C, Jalan Ampang
50548 Wilayah Persekutuan Kuala Lumpur

Dear Sir

CERTIFICATION LETTER

This is to certify that the name below is a post-graduate student of the Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia. Further details are as follows:

Name	:	Siti Marshita Binti Mahyut
Matric No.	:	G1417516
Programme	:	Doctor of Philosophy (Ph.D) in Law
Mode of Programme	:	Research Only

For your information, she is in the process of writing her thesis entitled "*Protection of Orang Asli Children in Malaysia: Prospects and Challenges*" under the supervision of Prof. Dr. Nik Ahmad Kamal Nik Mahmood from Civil Law Department.

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Should you need further clarification, please call us at +603-6421 4345/4355 or email us at pguaikol@iium.edu.my

Thank you.


SHAHNAZ ZURIATI BINTI SABRI
Covering Deputy Dean (Postgraduate & Responsible Research)
Ahmad Ibrahim Kulliyah of Laws
International Islamic University Malaysia

AHMAD IBRAHIM KULLIYAH OF LAWS (AIKOL)
International Islamic University Malaysia, Jalan Gombak, 53100 Kuala Lumpur
(Company No.: 101067-P)

Tel: +603 6421 4252 Fax: +603 6421 4378 Email: aiKol@iium.edu.my
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INSTITUTION OF THE YEAR

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AWARD FOR THE
SUSTAINABLE INNOVATION
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APPENDIX U

LETTER TO JKM (BAHAGIAN KANAK-KANAK)



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Garden of Knowledge and Virtue

LEADING THE WAY
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SUSTAINABILITY INSTITUTION OF THE YEAR

IIUM/303/13/13/1
13 October 2022

Encik Mohd Ali bin Taib
Ketua Penolong Pengarah Kanan
Jabatan Kebajikan Masyarakat
Bahagian Kanak-kanak
Aras 12
No. 55, Persiaran Perdana
Presint 4, 62100 Putrajaya

Dear Sir

CERTIFICATION LETTER

This is to certify that the name below is a post-graduate student of the Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia. Further details are as follows:

Name	:	Siti Marshita Binti Mahyut
Matric No.	:	G1417516
Programme	:	Doctor of Philosophy (Ph.D) in Law
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Should you need further clarification, please call us at +603-6421 4345/4355 or email us at pguaikol@iium.edu.my

Thank you.


SHAHNAZ ZURIATI BINTI SABRI
Covering Deputy Dean (Postgraduate & Responsible Research)
Ahmad Ibrahim Kulliyah of Laws
International Islamic University Malaysia

AHMAD IBRAHIM KULLIYAH OF LAWS (AIKOL)
International Islamic University Malaysia, Jalan Gombak, 53100 Kuala Lumpur
(Company No.: 101067-P)

Tel: +603 6421 4252 Fax: +603 6421 4378 Email: aikol@iium.edu.my
www.iium.edu.my/aikol

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WINNER
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INSTITUTION OF THE YEAR

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INSTITUTION OF THE YEAR
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MALAYSIA
ORGANISATION
AWARD 2020



APPENDIX V

LETTER TO MOE (BAHAGIAN PENGURUSAN SEKOLAH HARIAN)



الجامعة الإسلامية العالمية ماليزيا
INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA
بونتريسني اسلاميا انتارا بيسا مللينا
Garden of Knowledge and Virtue

LEADING THE WAY
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SUSTAINABILITY INSTITUTION OF THE YEAR

IIUM/303/13/13/1
13 October 2022

Encik Zainal bin Abas
Ketua Jabatan
Bahagian Pengurusan Sekolah Harian
Kementerian Pendidikan Malaysia
Aras 3 & 4, Blok E2, Kompleks E
Pusat Pentadbiran Kerajaan Persekutuan
62604 Putrajaya

Dear Sir

CERTIFICATION LETTER

This is to certify that the name below is a post-graduate student of the Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia. Further details are as follows:

Name	: Siti Marshita Binti Mahyut
Matric No.	: G1417516
Programme	: Doctor of Philosophy (Ph.D) in Law
Mode of Programme	: Research Only

For your information, she is in the process of writing her thesis entitled "*Protection of Orang Asli Children in Malaysia: Prospects and Challenges*" under the supervision of Prof. Dr. Nik Ahmad Kamal Nik Mahmood from Civil Law Department.

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Should you need further clarification, please call us at +603-6421 4345/4355 or email us at pguaikol@iium.edu.my

Thank you.


SHAHNAZ ZURIATI BINTI SABRI
Covering Deputy Dean (Postgraduate & Responsible Research)
Ahmad Ibrahim Kulliyah of Laws
International Islamic University Malaysia

AHMAD IBRAHIM KULLIYAH OF LAWS (AIKOL)
International Islamic University Malaysia, Jalan Gombak, 53100 Kuala Lumpur
(Company No.: 101067-P)

Tel: +603 6421 4252 Fax: +603 6421 4378 Email: aikol@iium.edu.my
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MALAYSIAN
COUNCIL OF
MUSLIMS
2019



APPENDIX W

LETTER TO MS. SITI KASIM (EXPERT IN ORANG ASLI ISSUES)



الجامعة الإسلامية العالمية ماليزيا
INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA
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SUSTAINABILITY INSTITUTE OF THE YEAR

IIUM/303/13/13/1
13 October 2022

Ms Siti Zabedah Binti Kasim
Malaysia Divorce Lawyer
Jazzmine Khoo & Associates
Villa Orkid, C-5-3A Bukit Prima Pelangi
Segambut Dalam
51200 Wilayah Persekutuan Kuala Lumpur

Dear Ms

CERTIFICATION LETTER

This is to certify that the name below is a post-graduate student of the Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia. Further details are as follows:

Name	:	Siti Marshita Binti Mahyut
Matric No.	:	G1417516
Programme	:	Doctor of Philosophy (Ph.D) in Law
Mode of Programme	:	Research Only

For your information, she is in the process of writing her thesis entitled "*Protection of Orang Asli Children in Malaysia: Prospects and Challenges*" under the supervision of Prof. Dr. Nik Ahmad Kamal Nik Mahmood from Civil Law Department.

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Should you need further clarification, please call us at +603-6421 4345/4355 or email us at pguaikol@iium.edu.my

Thank you.


SHAHNAZ ZURIATI BINTI SABRI
Covering Deputy Dean (Postgraduate & Responsible Research)
Ahmad Ibrahim Kulliyah of Laws
International Islamic University Malaysia

AHMAD IBRAHIM KULLIYAH OF LAWS (AIKOL)
International Islamic University Malaysia, Jalan Gombak, 53100 Kuala Lumpur
(Company No.: 101067-P)

Tel: +603 6421 4252 Fax: +603 6421 4378 Email: aiKol@iium.edu.my
www.iium.edu.my/aiKol

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TECHNOLOGICAL EDUCATION
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MALAYSIA ORGANISATION
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APPENDIX X

MOE ERAS FORM



KEMENTERIAN PENDIDIKAN MALAYSIA
BAHAGIAN PERANCANGAN DAN PENYELIDIKAN DASAR PENDIDIKAN
ARAS 1-4, BLOK E8, KOMPLEKS KERAJAAN PARCEL E
PUSAT Pentadbiran Kerajaan Persekutuan
62604 PUTRAJAYA

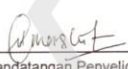
BORANG BPPDP 2(A)

TEL : 03-8884 6591
FAXS : 03-8884 6579

Pengarah
Bahagian Perancangan dan Penyelidikan Dasar Pendidikan
Kementerian Pendidikan Malaysia
Aras 1-4, Blok E8
Kompleks Kerajaan Parcel E
Pusat Pentadbiran Kerajaan Persekutuan
62604 Putrajaya

BAHAGIAN A : Maklumat Diri Penyelidik

1. Nama Penyelidik (seperti dalam KP) : SITI MARSHITA BINTI MAHYUT
2. No. Kad Pengenalan : 771113087700
3. Nama Institusi : INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA
4. Tajuk Kajian : PROTECTING THE RIGHTS OF ORANG ASLI CHILDREN IN MALAYSIA: THE LEGAL FRAMEWORKS
5. Dengan ini saya **SITI MARSHITA BINTI MAHYUT** (NO.KP : 771113087700) mengaku bahawa saya akan mematuhi segala syarat yang ditetapkan oleh Kementerian Pendidikan Malaysia. Saya memberi jaminan bahawa satu naskhah laporan / disertasi / tesis yang berkenaan akan dihantar kepada Bahagian Perancangan dan Penyelidikan Dasar Pendidikan melalui Ketua Jabatan / Fakulti saya selepas kajian ini selesai dijalankan.


Tandatangan Penyelidik

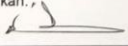
Tarikh : 7/8/2023

BAHAGIAN B : Untuk diisi oleh Penyelia (bagi pelajar kolej dan universiti) atau Ketua Jabatan (Kajian Am dan Lain-lain)

Saya NAJIBAH MOHD ZAIN telah (menyemak / tidak menyemak)
kertas cadangan dan instrumen kajian pemohon ini.

Permohonan ini : ☒ Disokong ☐ Tidak Disokong Ulasan (jika ada) :

Penyelidik telah membuat pengakuan bahawa satu naskhah laporan/disertasi / tesis yang berkenaan akan dihantar kepada Bahagian Perancangan dan Penyelidikan Dasar Pendidikan melalui Ketua Jabatan / Fakulti selepas kajian ini selesai dijalankan.


Tandatangan Penyelia/Ketua Jabatan

Tarikh : 7/8/2023

Nama :

Cap Rasmi :

PROF. DR. NAJIBAH MOHD ZIN
Legal Practice Department
Ahmad Ibrahim Kuliyah of Laws
International Islamic University Malaysia

APPENDICE I

INTERVIEW WITH THE JABATAN KEMAJUAN ORANG ASLI (JAKOA)

DATE	TASK	REMARKS	DETAILS OF DOCUMENTS	CONTACT PERSON
14.02.2019	Submit application form to conduct research of Orang Asli in Peninsular Malaysia		Attached as (JAKOA-1)	rozalizam@JAKOA.gov.my
27.02.2019	Received permission from JAKOA	Duration of permission from 27.02.2019 until 31.05.2019	Attached as (JAKOA-2)	
17.09.2019	Renewal of application to conduct research of Orang Asli in Peninsular Malaysia		Attached as (JAKOA-3)	norihan@JAKOA.gov.my
29.10.2019	Received permission from JAKOA	Duration of permission from 01.11.2019 until 31.12.2019	Attached as (JAKOA-3)	
14.07.2020	Renewal of application to conduct research of Orang Asli in Peninsular Malaysia			norihan@JAKOA.gov.my
25.08.2020	Received permission from JAKOA	Duration of permission from 01.08.2020 until 01.08.2021	Attached as (JAKOA-3)	norihan@JAKOA.gov.my
08.08.2022	Received extended permission from JAKOA	Duration of permission from 15.08.2022 until 14.08.2023	Attached as (JAKOA-4)	

13.10.2022	Sent a letter via email to the Jabatan Kemajuan Orang Asli (JAKOA) requesting for an interview/data collection	No respond	Attached as (JAKOA-5)	Dr Izandis bin Mohamad Sayed Pengarah Hospital Orang Asli Gombak
13.10.2022	Sent a letter via email to the Jabatan Kemajuan Orang Asli (JAKOA) requesting for an interview/data collection	No respond	Attached as (JAKOA-6)	En. Muhammad Nazrul bin Subakir Bahagian Perancangan dan Penyelidikan (JAKOA)
24.02.2023	Sent a letter via email to the Jabatan Kemajuan Orang Asli (JAKOA) requesting for an interview/data collection	No respond	Attached as (JAKOA-7)	Pejabat Ketua Pengarah Jabatan Kemajuan Orang Asli (JAKOA)
10.03.2023	Report on Public Complaints Management System (SISPAA) SISPAA due to no staff being available at the counter for customer services.		Attached as (JAKOA-8)	
22.03.2023	Finally, received responses/answers for the interview in writing format.		Attached as (JAKOA-9)	a.firdaus@JAKOA.gov.my

APPENDICE II

INTERVIEW WITH THE MINISTRY OF EDUCATION (MOE)

A. CHRONOLOGICAL INQUIRY

DATE	TASK	REMARKS	DETAILS OF DOCUMENTS	CONTACT PERSON
13.10.2022	Sent a letter via email to the Ministry of Education (MOE) requesting for an interview/data collection	Received – Surat akuan terima by MOE	Attached as (MOE-1)	faizah.ayob@moe.gov.my
16.11.2022	Follow up for interview since no response from MOE.			juliana.iskan@moe.gov.my
17.11.2022	Received instruction to apply at web https://eras.moe.gov.my/ .			norihan@JAKOA.gov.my
01.12.2022	Application unsuccessful		Attached as (MOE-2)	

APPENDICE III

INTERVIEW WITH THE JABATAN KEBAJIKAN MASYARAKAT (JKM)

A. CHRONOLOGICAL INQUIRY

DATE	TASK	REMARKS	DETAILS OF DOCUMENTS	CONTACT PERSON
13.10.2022	Sent a letter via email to the Jabatan Kebajikan Masyarakat (JKM) requesting an interview/data collection	Received – Surat akuan terima by JKM	Attached as (JKM-1)	azmaliza@jkm.gov.my
17.11.2022	Received instructions to apply at web. https://myresearch@jkm.gov.my .			m_kamil@jkm.gov.my
30.11.2022	Received instruction to apply at web https://eras.moe.gov.my/ .			
01.12.2022	Application successful		Attached as (JKM-2)	m_kamil@jkm.gov.my

APPENDICE IV

INTERVIEW WITH THE MINISTRY OF HEALTH (MOH)

A. CHRONOLOGICAL INQUIRY

DATE	TASK	REMARKS	DETAILS OF DOCUMENTS	CONTACT PERSON
13.10.2022	Sent a letter via email to the Dr Izandis, Pengarah, Hospital Orang Asli, Gombak requesting for an interview/data. collection	Received – Surat akuan terima by MOH	Attached as (MOH-1)	nadielawafa@moh.gov.my
02.02.2023	Sent a letter via email to the Dr Nik Jasmin binti Nik Mahir Pengarah, Bahagian Perkembangan Kesihatan Awam requesting for an interview/data. collection	Received – Surat akuan terima by MOH	Attached as (MOH-2)	n.jasmin@moh.gov.my
17.11.2022	Received an instruction to apply in NMRR system		Attached as (MOH-3)	drwafaak@moh.gov.my
01.12.2022	Application unsuccessful			

APPENDICE V

INTERVIEW WITH THE HUMAN RIGHTS COMMISSION OF MALAYSIA (SUHAKAM)

A. CHRONOLOGICAL INQUIRY

DATE	TASK	REMARKS	DETAILS OF DOCUMENTS	CONTACT PERSON
15.11.2022	Sent a letter via email to the Human Rights Commission of Malaysia (SUHAKAM) requesting for an interview/data collection	Received – Surat akuan terima by SUHAKAM	Attached as (SUHAKAM-1)	norhafizah@SUHAKAM.org.my
16.11.2022	Forwarding request to Dr Cheah Swee Neo, Office of Children’s Commissioner (OCC), The Human Rights Commission of Malaysia			cheah@SUHAKAM.org.my
19.12.2022	Received feedback & answer from SUHAKAM			tanim@SUHAKAM.org.my

APPENDICE VI

INTERVIEW WITH THE NGO (CENTRE FOR ORANG ASLI CONCERN-COAC)

A. CHRONOLOGICAL INQUIRY

DATE	TASK	REMARKS	DETAILS OF DOCUMENTS	CONTACT PERSON
23.11.2022	Sent a letter via email to the Chairman of COAC requesting for an interview/data collection		Attached as (COAC-1)	Lily (Person in Charge) – Through WhatsApp application
08.02.2023	Visit COAC & interview session	Face to face	Venue: COAC Office, USJ1	Colin Nicholas – Through phone call

APPENDICE VII

INTERVIEW WITH THE ACADEMIC EXPERTISE

A. Dr. Sayuti Bin Hassan CHRONOLOGICAL INQUIRY

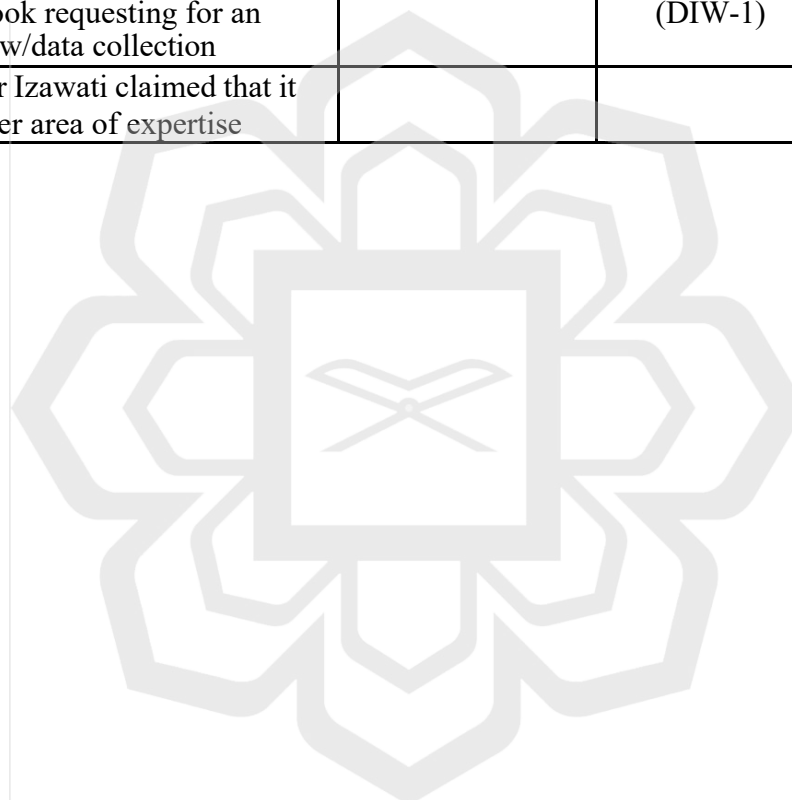
DATE	TASK	REMARKS	DETAILS OF DOCUMENTS	CONTACT PERSON
23.11.2022	Send a letter via email to Dr. Sayuti Hassan requesting an interview/data. collection		Attached as (DSH-1)	sayutihassan@ukm.edu.my
10.08.2023	Interview session	Google Meet		

B. Ass. Prof. Dr. Ramy Bulan CHRONOLOGICAL INQUIRY

DATE	TASK	REMARKS	DETAILS OF DOCUMENTS	CONTACT PERSON
23.11.2018	Sent a letter via email to Dr Ramy Bulan requesting an interview/data. collection		Attached as (DRB-1)	Ass. Prof. Dr Ramy Bulan
	No respond			

C. Prof. Madya. Dr. Izawati Wook CHRONOLOGICAL INQUIRY

DATE	TASK	REMARKS	DETAILS OF DOCUMENTS	CONTACT PERSON
13.05.2019	Sent a letter via email to Prof Madya Dr Izawati Wook requesting for an interview/data collection		Attached as (DIW-1)	Prof Madya Dr Izawati Wook
18.05.2019	Prof Madya Dr Izawati claimed that it was not her area of expertise			



APPENDICE VIII

INTERVIEW WITH THE SOCIAL ACTIVIST – (SITI ZABEDAH KASIM)

A. CHRONOLOGICAL INQUIRY

DATE	TASK	REMARKS	DETAILS OF DOCUMENTS	CONTACT PERSON
23.11.2022	Sent a letter via WhatsApp application to Ms. Siti Zabedah Kasim requesting an interview/data collection		Attached as (MOE-1)	Ms. Siti Kasim
25.07.2023	Interview Session	Face to face		