

## AMNESTY INTERNATIONAL PUBLIC STATEMENT

23 JANUARY 2019 ASA 28/9723/2019

# MALAYSIA: FULLY RECOGNISE AND PROTECT INDIGENOUS RIGHTS

Amnesty International welcomes the Government of Malaysia's pledges to recognise and protect the rights of Indigenous peoples, and the announcement that it will "seriously" consider the recommendations made by the Human Rights Commission of Malaysia (SUHAKAM) on Indigenous land rights. The organisation urges the Malaysian authorities to take this opportunity to undertake widespread reforms to ensure the full respect of the rights of Indigenous peoples across the country.

On 18 January 2019, the Attorney General of Malaysia, Tommy Thomas, announced in a statement that the Federal government was suing the state of Kelantan for its failure to protect Orang Asli (Indigenous Peoples of Peninsular Malaysia). In the same statement, the Attorney General recognised it was time for Malaysia to "join the ranks of nations recognising and protecting the rights of our Orang Asli." In addition, he emphasised the principle of free, prior and informed consent relating to measures that may affect them, as set out in the UN Declaration on the Rights of Indigenous Peoples.

Following the announcement, Minister of National Unity P. Waytha Moorthy released a statement that the government will review recommendations made by the Human Rights Commission of Malaysia (SUHAKAM) in its 2013 National Inquiry Report to improve Indigenous peoples' rights. On 20 January 2018, the Minister further stated that the Indigenous peoples of Peninsular Malaysia, have a customary right to ancestral lands which the Federal government is legally obligated to fulfil.

Amnesty International commends the government for these long overdue steps and for referencing the standards set out in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). UNDRIP is the most substantive international document that sets out the rights of Indigenous peoples. The Declaration enumerates obligations on all states, including to respect the rights of Indigenous peoples to self-determination, to their ancestral lands, to free, prior and informed consent before the adoption or implementation of measures that may affect them, to recognition and preservation of cultural identity, and to reparation and redress for wrongs suffered, as well as the right for treaties and agreements that they have negotiated with a State to be honoured and fully implemented.

While Malaysia voted for the UN General Assembly's adoption of UNDRIP in 2007, there has been a huge gap between the principles that Malaysia supported in the Declaration and the protection provided to Indigenous peoples in Malaysian laws, policy, and practice. Research by Amnesty International published in November 2018 found that Indigenous peoples across the country experience an array of human rights violations, including a lack of recognition of their ancestral lands, and harassment, intimidation, arrest, violence and even death as they peacefully seek to defend their land. Amnesty International's report, "The Forest is our Heartbeat: the Struggle to Defend Indigenous Land in Malaysia", showed that despite the fact that the government had pledged back in 2013 to implement the detailed recommendations of the national inquiry into Indigenous land published that year, there had been little progress in improving the protection of Indigenous peoples in the country.

In its 2018 election manifesto, the government pledged to implement numerous human rights reforms, including to "recognise, uphold and protect the dignity and rights" of the Indigenous peoples of Malaysia, and also stated that it will "work to implement the proposals of the National Inquiry into the Land Rights of Indigenous Peoples report by SUHAKAM." It is positive that the government has reiterated it will honour these promises.

In addition, the manifesto further promised to recognize the lands of the Indigenous peoples of Peninsular Malaysia, Sabah and Sarawak, and in cases where land has been unfairly appropriated, to "establish a redress mechanism to ensure the affected party is adequately compensated." This should involve returning the original land to its owners, or if this is impossible, providing alternative land of equal quality.

Amnesty International calls for reforms to ensure these additional promises are met and urges the authorities to take steps to ensure concrete progress. In order to protect the work of Indigenous land defenders, the Malaysian government must ensure they are free from harassment and the threat of criminalization through the use of repressive laws, and that they are able to conduct their important and legitimate work in a safe environment. In addition, the authorities must initiate

prompt, thorough and impartial investigations into attacks, threats and assaults against defenders working to protect rights related to Indigenous land, and where there is sufficient evidence of criminal responsibility, bring the perpetrators of such crimes to justice in fair trials, without recourse to the death penalty.

More broadly, the government should also consult with Indigenous peoples to put in place legislation – such as on the free, prior and informed consent of Indigenous peoples – to ensure their rights to land, the protection of their cultural heritage, and a healthy environment. Mechanisms, including an oversight body, should be established to address the long-term, systemic changes necessary to end the cycle of abuses against Indigenous peoples. Finally, the government should confirm the modalities for the visit of the Special Rapporteur on the rights of Indigenous Peoples in 2019.

Amnesty International views the government's recent pledges to address the systematic violations against Indigenous peoples as a significant step forward towards improvements on-the-ground, and considers it vital that the opportunity to enact more widespread and long-lasting reform not be missed.

## **BACKGROUND**

On 29 November 2018, Amnesty International published a report, “The Forest is our Heartbeat: The Struggle to Defend Indigenous Land in Malaysia.” The report is based primarily on field research undertaken on visits to Malaysia by Amnesty International in July and August 2017 and January 2018, and further remote research undertaken in August and September 2018.

During this time, Amnesty International interviewed 86 Indigenous community members, village heads, local activists, members of civil society organisations, lawyers, academics and journalists. Amnesty International met with representatives of the National Human Rights Commission (SUHAKAM) and NGOs advocating Indigenous peoples' rights. The report also draws on a review of academic and other publications on this issue, as well as media reports related to Indigenous land in Malaysia. Research extended across the country, encompassing Peninsular Malaysia, Sabah and Sarawak.

The report documents the challenges faced by Indigenous peoples in Malaysia who claim their rights to land and those that support them, in the context of development and the failures of the state to protect Indigenous peoples and their land.