

Mandates of the Special Rapporteur on the rights of indigenous peoples and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights of indigenous peoples and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, pursuant to Human Rights Council resolutions 42/20 and 42/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged health epidemic that affected the Batek indigenous peoples of Kuala Koh, Gua Musang in May and June 2019. The majority of the indigenous community, over 100 people became severely ill and 16 persons died. The cause of the epidemic remains disputed and unconfirmed. While the Government claims measles, it is reported that logging, mining and environmental pollution on their lands impacted on the health of the Batek, who suffer high malnutrition and low immune systems, rendering them particularly vulnerable.**

According to the information received:

The Batek are indigenous (Orang Asli) peoples living in Kuala Koh, Gua Musang, a remote area, which although accessible by road, has no basic services like clean water, electricity, and health facilities. The nearest hospital is 75 kilometers away. There are around 186 Batek people in Kuala Koh, which is the settlement area provided by the Government in 2010 in its effort to get the community to transition to a sedentary lifestyle.

Before the Batek people settled in Kuala Koh, they were living a semi-nomadic life in forests that constituted the northern region of Taman Negara (Peninsular Malaysia's oldest and largest national park) and the once forested areas to the north of this. Much of the forest was converted to oil palm plantations by FELDA¹ in the 1980s and 1990s, severely restricting the size of the subsistence base of the Kuala Koh Bateks.²

¹ The Federal Land Development Authority that was entrusted to embark on a land reform programme that involved clearing forest lands for (mainly Malay) landless peasants since the 1960s in order to bring them out of poverty through agricultural development.

² Kirk M. Endicott & Karen L. Endicott (2008), *The Headman was a Woman*. Waveland Press, Inc., p. 18.

By 2010, the Batek's traditional territories had been reduced to 453.3 hectares.³ Logging, mining and plantation activities, permitted by the State, literally reached their doorstep. JAKOA, the Department of Orang Asli Development, applied for 243 hectares (600 acres) from the State Government to be turned into an Orang Asli Reservation for the Bateks, however only 5.7 hectares (14 acres) was approved.⁴

In 2010, the Federal Government built half a dozen concrete houses to form a settlement. Although the houses were equipped with sinks, and common water tanks were supplied, for the most part the community had no running water, and no electricity, and nothing else. The nearest school is over 60 miles away, meaning most in the tribe are barely literate, and without the jungle nearby they have to rely on sporadic handouts for food.⁵

It was reported that there is poor sanitation among the Batek tribe. There were children found to be severely malnourished and others were suffering from scabies, upper respiratory tract infections, diarrhea, and worm infestation. While the Malaysian Government installed a water purifying system near Kuala Koh, the purifiers were broken and there was no proper electricity system to run it. The Batek had no choice but to rely on natural water resources for their water supply even if there is the threat of water contamination due to mining activities in their territories.

The Batek people are described as the most neglected among the most vulnerable groups in Malaysia.

Between May to June 2019, there were reportedly 16 members of the Batek tribe who died after having fever, swelling of throat, coughing and difficulty breathing. The Batek people reported that when the victims died, their bodies turned black.

Help from medical services allegedly did not arrive on time despite calls made by concerned members of the public. The deaths started in May 2019 and it was only after a social media post about the situation of the Batek went viral, that the Government sent a vehicle on 4 June 2019 to bring the sick to the hospital. After the first van, it took five days before the Government sent another van despite the alarming number of Batek people in need of medical attention. In between, two Batek people died including a 2-year old child, bringing the total number to 16 persons.

³ Based on community mapping conducted by the Batek with assistance from the Center for Orang Asli Concerns for input into the case study commissioned by the Human Rights Commission of Malaysia (Suhakam) in its National Inquiry into the Land Rights of the Orang Asal/Orang Asli, published in 2013.

⁴ Based on information from JAKOA and cited by the Center for Orang Asli Concerns in its presentation to the National Economic Action Council (MTEN) entitled 'Targeting Holistic Results in Orang Asli Development', 11 February 2020.

⁵ Hannah Ellis-Petersen, *Out of the jungle and into a death trap: the fate of Malaysia's last nomadic people*, The Guardian, September 7, 2019, <https://www.theguardian.com/world/2019/sep/07/from-jungle-to-death-trap-fate-of-malaysia-last-nomads>.

In June 2019, it was reported that there were 100 members of the Batek tribe who were being treated; many villagers were hospitalized and the whole village had been quarantined behind police checkpoints. There were 72 Batek from 22 families who were quarantined at a temporary relief center in Taman Etnobotani after receiving treatment from the Gua Musang Hospital and were prevented from returning to the community. The number of people in the relief center was increasing by the day.

The Jabatan Kemajuan Orang Asli (Department of Orang Asli Development, JAKOA) did not undertake an investigation into the matter, but committed to work with the Ministry of Health in its investigation into the deaths of the Batek people.

Believing that “black magic” caused the deaths and illness of their folks, around 100 Batek people relocated further into the forest. The Association for the Protection of Natural Heritage of Malaysia, PEKA, called on government agencies to relocate all Batek people of Kuala Koh to a safer location. Of the 186 Batek people of Kuala Koh, only 20 were not affected by the unknown illness.

There have been unclear and contradicting reports and positions in relation to the deaths of the Batek people, even in the actual numbers of deaths, and regarding their overall health situation.

Initially on 8 June 2019, the Gua Musang District Police Chief Superintendent announced that the cause of 13 deaths in Kuala Koh was tuberculosis and pneumonia.⁶ Around this time, 83 village members were purportedly receiving treatment. The Health Minister warned the public to avoid the Kuala Koh and surrounding areas to avoid infection.

On 9 June 2019, the Orang Asli Minister announced that there were 14 deaths in Kuala Koh, Gua Musang from 2 May to 7 June, two of which were reportedly pneumonia.⁷

On 17 June 2019, the Minister of Health announced that it was determined that there was measles outbreak that affected 112 people;⁸ three of them died

⁶ Kronologi kematian 14 Orang Asli suku Batek, Metro TV, <https://www.hmetro.com.my/mutakhir/2019/06/463873/kronologi-kematian-14-orang-asli-suku-batek-metrotv>, last accessed April 6, 2020.

⁷ Kronologi kematian, supra.

⁸ Abas A, 'Health Ministry confirms measles outbreak among Batek tribe,' *New Straits Times*, 2019, <https://www.nst.com.my/news/nation/2019/06/496954/health-ministry-confirms-measles-outbreak-among-batek-tribe>, accessed 10 April 2020.

including a severely malnourished 2-year-old;⁹ immunization rate among them for MMR (measles, mumps, and rubella) is only at 61.5% for the first dose and 30% for the second dose,¹⁰ where 95% is required to protect a community.

The Deputy Minister for Water, Land and Natural Resources said that the Lebir hills and tributaries near Kuala Koh were found to be contaminated from the iron and manganese mining activities in the area, which resulted in the 14 deaths of the Batek people.¹¹

The Deputy Prime Minister of Malaysia announced that the deaths of 14 Batek people were due to contamination of the community's water resource. Kelantan State Deputy Minister announced that the deaths were due to pneumonia and not a waterborne disease.¹²

Orang Asli advocates point to environmental factors, neglect and malnutrition as the primary causes of the health crisis among the Batek people. They cite the high quantities of pesticides used in oil palm plantations and the chemicals from the manganese mines to have polluted the water and food sources of the Batek tribe, which, when consumed at high levels, result in chronic health diseases, brain damage, heart and other organ failures. The Batek people, with its reported high malnutrition and therefore low immune system, would be most vulnerable to the health hazards resulting from the pesticides and chemicals contaminating their lands and water resources.

In June 2019, the Federation of Private Medical Practitioners' Associations Malaysia (FPMPAM) conducted tests on the Batek's only water source and found high level of metals, including manganese and faecal material. One test showed that the water contained manganese that was 25 times more than what is deemed safe for human consumption. The FPMPAM submitted their report to the Ministry of Health.¹³

It is reported by various sources that certain Batek community members showed signs of neurological disorder, which may be a symptom of manganese poisoning.

The President of the Federation of Private Medical Practitioners' Associations Malaysia (FPMPAM) stated that his team conducted a medical visit on April 28

⁹ Humphrey C, 'A death trap: Measles blamed in Malaysia indigenous deaths,' *Aljazeera* (2019), <https://www.aljazeera.com/news/2019/06/death-trap-measles-blamed-malaysia-indigenous-deaths-190618021821010.html>, accessed 10 April 2020.

¹⁰ Thiagarajan, 'Deaths Among Orang Asli Were due to measles, Ministry of Health explains importance of vaccines', *World of Buzz*, (2019), <https://www.worldofbuzz.com/deaths-among-orang-asli-were-due-to-measles-ministry-of-health-explains-importance-of-vaccines/> accessed 10 April 2020.

¹¹ Kronologi kematian, Supra.

¹² Bernama, 'Kelantan Govt denies pneumonia in Kuala Koh linked to mining', *New Straits Times*, 2019, <https://www.nst.com.my/news/nation/2019/06/495230/kelantan-govt-denies-pneumonia-kuala-koh-linked-mining>, accessed 10 April 2020.

¹³ Ellis-Petersen, Supra.

2019 or prior to the reported illness and deaths among the Batek tribe. FPMPAM President related that what they found among the Batek people were cases of worm infection, skin infection, fungal infection, and children suffering malnutrition. They also observed the pollution of the water source of the community, which according to the Batek people, was once clean and clear, but when the mines started, it became murky. FPMPAM President precluded the existence of measles epidemic because his team did not detect the existence of any measles during the medical visit. Instead, he pointed to environmental pollution, and neglect of the Batek people as the main causes of the health crisis.¹⁴

A full investigation into the deaths and illness of the Batek people, including the conduct of autopsies, was promised by the Government back in June 2019,¹⁵ however this has not been carried out. On 5 July 2019, the Kelantan State Government reportedly ruled out the possibility of conducting an inquest into the deaths of the Batek in Kuala Koh.¹⁶

On 25 September 2019, the Ministry of Health declared that the cause of deaths was due to measles and not due to heavy metal poisoning. The Ministry accordingly stated that “four (4) deaths were confirmed by measles, eight (8) were epidemiologically related to measles outbreaks, while another four (4) deaths could not be determined due to severe decay.”¹⁷

The claim of a measles outbreak was rejected by the Batek people who state that measles is a known disease to them that their traditional healers would have known how to treat and cure. They claim that since they lost their home to oil palm plantations and mining, their people started to get sick and die at younger ages.

It is feared that if the Batek people continue to be neglected, it will result to the total destruction of their community and the end of their existence.

While we do not wish to prejudge the accuracy of these allegations, we express our utmost concern over the marginalisation of the Batek people, impacting on their traditional land, territories and resources, their environment and their right to health and to basic services.

¹⁴ Bin Abdullah K, 'Orang Asli victims of racism and neglect,' (*Malaysians must know the truth*, 2019, <https://malaysiansmustknowthetruth.blogspot.com/2019/06/orang-asli-victims-of-racism-and-neglect.html>)

¹⁵ Review of the Batek Tragedy, Department of Anthropology, UAB College of Arts and Sciences, September 19, 2019, <https://cas.uab.edu/peacefulsocieties/2019/09/19/review-of-the-batek-tragedy/>.

¹⁶ Bernaman, 'No need for inquest on deaths of Kuala Koh Orang Asli: Kelantan govt', *The Sun Daily*, 2019, <https://www.thesundaily.my/local/no-need-for-inquest-on-deaths-of-kuala-koh-orang-asli-kelantan-govt-LX1066926>

¹⁷ Kenneth Dickerman and James Whitlow Delano, *The eroding life for the Batek of Kuala Koh, Malaysia's last hunter-gatherers*, Washington Post, November 29, 2019, <https://www.washingtonpost.com/photography/2019/11/29/eroding-life-batek-kuala-koh-malaysias-last-hunter-gatherers/>.

We are deeply concerned that the Batek people were forcibly removed from their traditional territories. The entry of oil palm plantation and mining into their territories were done without consultation, their participation in decision-making and without their free, prior and informed consent. The Batek were resettled in Kuala Koh, where they lived in sub-standard living conditions and without access to health, clean water and education. We believe that all these issues have compounded the vulnerability of the Batek people with the health epidemic, the causes of which remain unconfirmed.

We note the efforts of the Government to provide information about the health crisis and its efforts to provide medical assistance. However the concerns raised by the Batek, medical professionals and civil society, who refute reports indicating measles, underline the importance of a fully independent investigation.

In connection with the above alleged facts and concerns, please refer to the **Annex on international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under our mandates provided by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for the observations of your Excellency's Government on the following matters:

1. Please provide any additional or any comments you may have on the above-mentioned allegations. Please also provide an update on the current health and socio-economic situation of the Batek people in Kuala Koh.
2. Considering the contradictions in the declarations made by authorities about the cause of the epidemic, what measures have the Government taken to ensure that a fully independent investigation is conducted into the matter?
3. What measures have been carried out by the Government to prevent further the health epidemics among the Batek people?
4. Please explain the current status regarding land titles that the Bateks hold for their traditional territories, lands and resources.
5. What measures were taken to consult and obtain the free, prior informed consent of the Batek tribe before the entry of oil palm plantations and mining operations in their territories?
6. What mechanisms for just and fair redress and appropriate measures have been taken to mitigate adverse environmental, economic, social, cultural or spiritual impacts on the Batek.

7. What future programs or plans does the Government have for the Batek tribe, to address the lack of access to basic rights and social services, including health, clean water, education, and decent housing.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

Victoria Lucia Tauli-Corpuz
Special Rapporteur on the rights of indigenous peoples

Dainius Puras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
standard of physical and mental health

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the United Nations General Assembly on 13 September 2007 and with an affirmative vote by Malaysia. In particular, we refer to Article 24 (2), which affirms that indigenous peoples have an equal right to the enjoyment of the highest attainable standard of physical and mental health. In addition, Article 21 stipulates that indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including in the area of health. States are required to take effective and, where necessary, special measures in this regard, paying particular attention to the rights and special needs of indigenous children. UNDRIP affirms the right of indigenous peoples to be actively involved in developing and determining health programmes affecting them and, as far as possible, to administer such programmes through their own institutions (article 23).

The rights the health and to adequate food are also recognised in the Convention on the Rights of the Child (CRC), acceded to by Malaysia 17 February 1995. Article 24.2(a, b and c) sets out that States shall take appropriate measures to (a) diminish infant and child mortality, (b) ensure the necessary medical assistance and health care to all children, and (c) combat disease and malnutrition, including within the framework of primary health care. The later through, *inter alia*, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution. Article 27 of the CRC on the right to an adequate living standard and programmes for nutrition should be read in conjunction with the right to life, survival and development stipulated in Article 6.

With respect to their rights to property in the form of land and natural resource rights, Article 26 of UNDRIP asserts the right of indigenous peoples to 'the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired' and for legal recognition of those rights 'with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.'

In addition, UNDRIP furthermore sets out in Article 29 that indigenous peoples have the right to the conservation and protection of the environment and in Article 24 that indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals.

UNDRIP furthermore affirms in Article 32 that indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources and that 'States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any

project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources'. Article 32 also underlines that States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact. Article 10 affirms that indigenous peoples shall not be forcibly removed from their lands or territories and that no relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

We would like to finally refer to the report of the Special Rapporteur on the right to health on his visit to Malaysia (A/HRC/29/33/Add.1) where he stressed the serious remaining challenges among Malaysia's indigenous communities with regard to their enjoyment of the right to health. The Special Rapporteur highlights the threats imposed to indigenous peoples' right to health by changes in the use of land caused by development projects linked to logging operations, palm oil plantations and energy-intensive industries. He further underlines that this has led to a substantial loss of access to traditional land and sources of livelihood, resettlement processes and instances of violence, which have had a direct impact on the physical and mental health of indigenous communities. Inter alia, he recommends involving indigenous communities in the health decisions that affect them by consulting them in advance on relevant policies and providing health-related information in a culturally sensitive manner.
