

## Towards a More Sustainable and Inclusive Compensation Plan for Orang Asli: Telom HEP, Pahang, Malaysia

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### Abstract

A hydroelectric project proposed by Tenaga Nasional Berhad in Telom, Pahang, Malaysia will inundate six Orang Asli villagers whose residents have relocated to a new resettlement. However, TNB still needs their agreements and provide fair and agreeable compensation. This paper analyzes the process associated with the exercise. It is a descriptive analysis of activities conducted in preparing the plans as well as principles and values considered in calculating the proposed compensation and resettlement. It is hoped that the more sensitive and inclusive approach can be emulated in future projects affecting Orang Asli and others affected by developments

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Keywords: Orang Asli; compensation plan; resettlement plan; Telom Hydroelectric Project

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### 1. Introduction

Tenaga Nasional Bhd (TNB), a government link public utility company, has proposed to build a hydro-electric dam on Telom River, which is expected to generate 132 MW of power for peak demand in Peninsular Malaysia. The project will inundate SIX old Orang Asli (aboriginal people) villages upstream of the proposed dam. Although most of the Orang Asli have been resettled at Integrated Remote District Program (Program Bersepadu Daerah Terpencil – PROSDET), Pantos, Pahang, Malaysia, downstream of the river, a few Orang Asli still live in their old villages. Further, many of the resettled Orang Asli still maintain their orchards in the old villages.

The Orang Asli, considered as the aborigines of the Malay Peninsular, is a very small minority, accounting for only 149,723 of the Malaysian population of 28 million people (JHEOA, 2006 cited by Jamalunlaili 2015b). The Orang Asli of Pantos belongs to the Semai tribe, one of the 18 Orang Asli tribes found in the Peninsular. Being almost exclusively involved in hunting and gathering or agriculture cultivations, they tend to live in remote parts of the country, shying away from the mainstream population.

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The Orang Asli of PROSDET Pantos have been resettled from six villages upstream of their current settlement, specifically from Kampung Kuala Suar, Lanai Baru, Perangkap, Tisut, Nyentil and Harong. Telom River is the lifeline of these villages since they are not accessible through roads. The current living conditions of Orang Asli at PROSDET Pantos has been extensively documented by Jamalunlaili et.al (2015).

This paper, on the hand, analyzes the plan proposed by team of researchers at University Teknologi MARA (UiTM) Shah Alam and agreed in principle by TNB in providing a more sustainable and more inclusive compensation plan for the Orang Asli in PROSDET Pantos and a few who still live in villages upstream. Specifically, the aim of the paper is to analyze the whole process of negotiation and compensation determination that perhaps would be more sensitive to the needs of the Orang Asli. Its main focus is not on how much each Orang Asli is likely to receive from TNB, but rather the philosophy of providing a more sustainable compensation that is sensitive to the needs of the Orang Asli.

## 2. Literature Review

Orang Asli are considered the earliest inhabitants of Peninsular Malaysia; however, they are considered as the poorest and most marginalized group. Despite roaming and opening forest land for agriculture for decades, they do not have ownership of the land due to the lack of title to the land. Since many are unaware of the need for the land title under the Torrens land system practiced in Malaysia, they end up not getting any compensation for their land. The most the Orang Asli could receive are the market valuation of trees and vegetation found on the land, but not the land itself since without land title they are not considered as the rightful owners of the land.

Any state authority is allowed to gazette any areas on the state land as Aboriginal Areas or Aboriginal Reserves for the occupancy of aboriginal people. However, Ismail (2010) cited by Jamalunlaili et.al (2015) stated that settlement areas for aboriginal people covers only about 50,563 hectares of land throughout Malaysia. Of these, about 40 percent are gazetted under the Aboriginal Peoples Act 1954 (Act 134) while another 60 percent are approved but yet to be gazetted by the state. Only 0.03% of the lands were owned individually by the Orang Asli. Thus, without proper registration, the land occupied by Orang Asli may be taken back for acquisition without adequate compensations due to the absence of legal instruments to protect them.

The Orang Asli are very attached to their land and cultures. With traditions dating back thousands of years, they consider the land and the forests as the soul of their existence. Although some Orang Asli live a nomadic lifestyle, some have settled down for generations in particular areas and have cultivated the land around them. Many of these settlements have been gazetted by the Aboriginal Peoples Act 1954 (Act 134) to become proper and permanent Orang Asli villages.

Various developments projects on their lands have led to the resettlement of Orang Asli throughout the country. However, most of them were not happy or satisfied with the acquisition and resettlement by the government or its agencies. Reasons mostly cited include inadequate compensation, unfulfilled promises to protect their interests, unsuitable resettlement location, loss of traditional jobs and skills, encroachment on rights and heritage, difficulties in adjusting to new environment and short evacuation notice (Anuar 2010).

Many researchers have documented about the unhappiness of these Orang Asli towards compensation given to them as well as the facilities provided in the new settlements (Othman et al 2012, Karim and Hashim et al, 2012; Jamalunlaili and Mohammad Al-Aiman 2015; Jamalunlaili et al 2015). Many feel that the cash and houses provided cannot sustain their livelihood until the next generation. Even the compensation provided by a private housing developer in the Bukit Lanjan Resettlement in Metropolitan Kuala Lumpur, which is considered as the most generous, has failed to lift the socioeconomic conditions of the Orang Asli involved. Despite receiving bungalow houses for each household, apartments for the children, cash, scholarships and trust funds for the community, the Orang Asli in Bukit Lanjan had difficulties sustaining their socio-economic conditions resulting some to leave the area for nearby forests after a few years.

Other compensation packages throughout the country seem inadequate to sustain the livelihood of the Orang Asli. This is due to the fact that under Malaysian land law, the Orang Asli are not entitled to compensation of the land that they lived and worked on unless they hold individual titles to the land, which they do not. This has led government agencies and private developers to provide compensations on trees and improvements on the land, but not the land itself. The compensation is calculated by the government assessment department. Since these trees and structures tend to be lower in value due to their locations and conditions, the cash received do not amount much. Soon the Orang Asli had used up all the cash and struggled to continue their livelihood since the forests and agriculture lands have been developed for other economic uses by other parties.

After their lands are taken for other developments, resettlements of Orang Asli under auspicious of the Department of Orang Asli Development (JAKOA) seem to be the preferred and often used model. It is argued that resettlement would bring them into

the mainstream society and improve their livelihood. Government services including health, education and the others can be effectively provided since the resettlement areas tend to be easily accessible through purposely built road compared to their traditional villages that tend to be along rivers (Othman et al., 2012; Idrus, 2011).

The truth is resettlements of Orang Asli have brought mixed results based on various studies done in Malaysia. Regrouping exercises of Jakun families in Bukit Serok and Keratung 3 in Pahang has led to mostly positive impacts to their socio-economy. This is attributed to various factors including income from permanent agriculture and wage earning activities as well as better housing and basic facilities. The fact that Orang Asli involved voluntarily participated in the program has also improved their confidence and independence (Lim 1997).

On the other hand, some resettlement programs have brought greater misery to the aboriginal community. In addition to socio-economic issues, they have adverse impacts on the environment, negating the aim of conservation that the program is supposed to achieve (Ab Hadi et al. 2013). Almost half of Orang Asli resettled in Bukit Lanjan moved out of the supposedly modern and comfortable new settlement after a decade of being resettled (Jamalunlaili and Mohammad Al-Aiman, 2015). Studies by Forum Asia found that resettlement programs of Orang Asli have led to increased poverty, malnutrition, a higher mortality rate and a general deterioration of the health of villagers.

Regardless of whether resettlements of Orang Asli are carried out, the fact remains that under the Malaysian land law Orang Asli would receive only cash compensation for the trees and structures should the lands that they have lived and worked on, which they do not have title for, are taken for any public projects. Thus, in many cases these are the only benefits received by the Orang Asli, which do not amount much and not sustainable for their livelihood. Thus, this paper tries to document and analyze a better compensation approach proposed for the Telom hydroelectric project.

### **3. Methodology**

Various methodologies are employed in this research since it is a rather long process of almost two years. The methodologies are briefly described below:

#### *3.1 Socio-economic census of all households*

A comprehensive socio-economic census of all 183 households in PROSDET Pantos was conducted in three occasions. However, only 135 households (74 %) agreed to be surveyed. The others either refused to participate or have moved away to a new area. The questionnaire focuses mostly on Orang Asli socio-economic conditions and their aspirations. The census provides data on socio-economic characteristics of the Orang Asli especially number of new households in each house, household size, employment and income level. Also, it asked about their agreement to the proposed Telom hydroelectric project.

#### *3.2 Observations*

Observations of the living conditions in PROSDET Pantos as well as in the six villages upstream were carried out to understand better their lifestyle and daily activities. Also, the inventory of housing units and other physical structures in PROSDET Pantos and old villages upstream were also conducted.

#### *3.3 Survey and calculations of orchards in traditional villages*

The UiTM research team commissioned by TNB research had surveyed orchard land and improvements located in the six villages upstream of Telom River in three occasions. It was a rather tedious process whereby the size of land had to surveyed in difficult, and forested terrain using handheld GPS since none of the Orang Asli possesses title to the land. Also, the number, size and type of trees had to be counted individually by the team.

After the size and number of trees are counted, their values are calculated using market price provided by the Agriculture Department. Wherever necessary, some assumptions in terms of the value of trees had to undertaken by the team. These calculations provide some rough estimations on the losses to be suffered by the villagers when their traditional villages are inundated by the hydroelectric dam in 2021.

### 3.4 Focus Group Discussions

Focus Group Discussion (FGD) were conducted in many occasions with the whole community. It started before the onset of the study, during the data collection phase and towards the end when the compensation plan was presented to the community. Because a small group of Orang Asli is against the hydroelectric project, the FGD sessions were rather heated arguments from both sides. However, these FGDs are the best opportunities to understand the concerns and aspirations of the Orang Asli as well as the opportunities to explain the proposals put forth by the UiTM team and TNB.

## 4. Findings

Findings from observations, socioeconomic census, survey and calculation of possible orchard losses and FGD are analyzed and presented in three main reports submitted to TNB Research. These include the Social Impact Assessment (SIA), Public Acceptance Plan (PAP) and Resettlement Action Plan (RAP) reports. Major findings are summarized in this paper as follow:

### 4.1 Acceptance of the community

During the initial census in August 2014, a slight majority of Orang Asli (61%) who participated in the census was in favor of the Telom hydroelectric project, either outright or with conditions. However, a sizeable and vocal minority of the community (37 %) was against the project and at first refused to participate in the census. It took the UiTM team three survey trips to achieve a participation rate of 74 percent of all households in the census.

After various consultations and FGD with the community, and especially after the compensation plan was presented to the community, the number who agreed to the project and the compensation plan has increased from 87 to 115 head of households, an increase of 29 %. On the other hand, 27 % of head of households who initially opposed to the project had switched to supporting it. This is perhaps due to the compensation plan that they considered to be more sensitive to community needs.

The community tends to be divided by the location of their traditional villages about PROSDET Pantos where almost all were resettled by Ministry of Rural and Regional Development (KKLW) in 2010. Those who hailed from nearby villages especially around Pos Lanai tend to be against the dam since while they could stay in PROSDET Pantos they can return to their orchards and traditional village due to its proximity to PROSDET Pantos. Their orchards also tend to be on flat land and easily maintained. On the other hand, those who relocated from villages farther upstream including Kampung Harong and Nyentil found it very costly to move back and forth to their orchards and traditional villages and thus are more likely to support the hydroelectric project.

### 4.2 Calculations of Losses

A very tedious part of the research is in terms of calculating losses suffered by the Orang Asli should their old villages inundated by the proposed hydroelectric dam. It is made more complicated by the facts that there is no title of the land resulting in an own calculation of land size and manual counting of each tree in forested and difficult terrain. Four alternatives are considered in calculating the losses as follow:

Number of standing trees counted times estimated market price of each tree

Number of trees estimated using Department of Agriculture standards of planting times estimated market price of each tree

Clearing fee of RM5,000 per acre

Estimated market value of agriculture land based on transaction price in the vicinity.

The above alternatives are calculated to determine the amount of compensation to be offered to each household since the law requires that the Orang Asli be compensated on the losses of their trees and structures, including houses and graves. It was found that method (a) and (b) yielded a very heavy total compensations running into the hundreds of millions since the number of standing trees tend to be heavily inflated by some Orang Asli and the market price used by researchers also are on the high side due to the lack of a list standardized tree price available.

After deliberations and after considering the compensation package to be offered, the UiTM team proposed that method (c) be used in conjunction with the total compensation package to be offered.

#### 4.3 A Sustainable and Inclusive Compensation Package

A compensation package was proposed to the community at the end of the research period. Rather than providing cash compensations to the community based on the legal provision of paying for only trees and structures lost to inundation, the researchers have proposed a more equitable and sustainable compensation package to the Orang Asli. The package is based on the following philosophies:

Community inclusiveness – the compensation should consider the well-being of the whole Orang Asli community since certain individuals have extensively cultivated land while some do not have any. Cash payments only to those who have cultivated the extensive land, based on formula (a) earlier may lead to a few people to be rich overnight while others may not receive anything.

Economic sustainability – a one-off cash payment to those with trees and structures may not last since past experiences in compensated Orang Asli communities elsewhere have shown that they are likely to spend most of the cash compensation in a short time. Thus, by providing a steady stream of income through cultivated palm oil, the economic sustainability of the whole community will be better assured. A calculation with FELCRA shows that a six acre cultivated palm oil plantation should provide income above the poverty level after the second year.

Needs of new households – when the Orang Asli from the six villagers were relocated to PROSDET Pantos in 2010, each head of households (183 households) was given a three bedroom brick house and six acre of palm oil plantation. However, over the years, many of their children have married and still living with their parents due to lack of housing. On average each house now contains two households. A few houses now have up to four married couple living in the same house.

Fairness – while the plan tries to accommodate every household in the community (inclusiveness), credits should be given to those who have worked hard in cultivating their orchards upstream. Thus, in addition to provision of new houses and cultivated palm oil plantation to each new household, those who will lose their land to the dam would receive cash compensation in the form of RM5,000 per acre (formula c).

Breaking of the poverty cycle – The six-acre cultivated palm oil would provide income above the rural poverty level. However, before the new palm oil cultivation provides steady income a few years down the road, some kind of monthly stipend need to be allocated to each Orang Asli households to help them to live above the poverty level.

Minimizing relocation hardship – each new household to be moved to a new house will be provided some relocation cash money while existing households who remain in houses provided by KKLW in 2010 will be given some money to repair their houses.

Needs of future generations – to ensure better future of the community, TNB has agreed to provide other forms of assistances such as fertile top soil for vegetable cultivation in existing compound, education scholarship for excellent schoolchildren and job trainings for the youths and adults who are interested to work once the project started.

With the above philosophies, the following compensation plan was drafted and presented to the Orang Asli. For New Households (estimated 250 households)

- A new three bedroom house on a piece of land
- A 6 acre cultivated palm oil
- A fixed monthly stipend for the first few years
- A moving allowance
- Cash compensation at RM5,000 per acre (based on actual acreage).
- Infrastructure development in the new community (roads, surau, community hall, etc.)

For existing 183 Households

- A fixed monthly stipend for first few years until Pantos 2 palm oil estate given by KKLW in 2010 bear fruits
- Allowance for house repairs
- Topsoil for housing compound.

Also, it is proposed that TNB to provide skills training to residents and education scholarship to deserving youths.

The compensation proposal was presented to both TNB and JAKOA, who seem to be receptive. The majority of Orang Asli who were briefed about the proposal also have agreed to it and have asked for it to be implemented as soon as possible. However, it cannot be finalized and signed by the Orang Asli yet since it requires alienation of land by the state government for the building of new houses and clearing of land for cultivation of palm oil. This alienation process is still on-going.

It should be noted that the small group of disgruntled Orang Asli who are against the hydroelectric project has filed an injunction in court to prevent TNB from getting the agreement from the Orang Asli community and proceeding with the project. Until the court case is settled, the implementation of the PAP, RAP, and the hydroelectric project has to be shelved temporarily.

## 5. Conclusion

The paper has analyzed the whole process of engagement with Orang Asli community who will be affected by the Telom hydroelectric project. It provides a rather comprehensive summary of the process towards achieving a more sustainable and inclusive compensation package for Orang Asli affected by public projects. The analysis has shown that a newer, innovative and caring approach towards formulating a more inclusive and sustainable compensation plan will go a long way in winning their hearts and minds. Most importantly, it ensures a better future and socio-economic sustainability of this marginalized community.

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