

Pakatan must fight for the Orang Asli in Parliament

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By Josie Fernandez

COMMENT If an amendment to the Aboriginal People's Act 1954 is passed in this session of Parliament, the Orang Asli stand to lose 645,000 hectares of their native land, warns the Centre for Orang Asli Concerns. In Sarawak, there are 200 Native Customary Rights cases waiting to be heard in the courts. - Taib weakened by authoritative court ruling

Historical and legislative challenges, as well as policy capture, continue to confront the most disadvantaged and marginalised communities - the Orang Asli of Peninsular Malaysia and the indigenous communities of Sabah and Sarawak - on their rights to their land and access to resources.

The Orang Asli are the indigenous minority Malaysians of Peninsular Malaysia. A 2006 Malaysian Human Rights Commission (Suhakam) Report states:

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

The federal constitution;

National laws, enactments and relevant judicial decisions;

Government policy statements; and

International documents and declarations specific to indigenous peoples.

Native Customary Rights to land are recognised in Sabah and Sarawak. Native Customary Rights have been recognised in Sabah and Sarawak, through the federal constitution and state land laws, backed by unambiguous judgments by the Federal Court (Malaysia's apex court) and Court of Appeal.

Despite this, the respective state governments simply pretend the court judgments do not apply to their land policies.

NONE However, the recognition of Orang Asli rights to land and NCR land rights have not stopped the relentless logging and opening of forests for plantations by private companies and government-linked companies. Timber continues to be

extensively harvested by state governments as it is a major source of revenue.

A Suhakam investigation in September 2006 into a complaint by the Penan, an indigenous community of Sarawak, revealed the total disruption of their lives as a result of the invasion by plantation development.

"We found the forests where the Penan used to hunt for meat and collect jungle produce have been cleared by private companies. We saw with our own eyes the devastation of the forests," a Suhakam commissioner said. "They have absolutely no means to earn a livelihood or even to find food," according to a New Straits Times report on Oct 14, 2006.

Policy capture by corporate and elite interests

There is a combination of policy capture by corporate interests that is both historical and path-dependent, as well as and rent-seeking behaviour by the powerful elites, including indigenous and Orang Asli elite that both work against the interests of the local communities.

In addition, a network of government agencies - land, forest, mines and other departments facilitate policy capture and corporate interests in land grabbing, forest destruction and changing land use patterns.

Policy capture and the undue influence of powerful lobby groups, such as the private sector, continue to pose serious risks for communities dependent on land, rivers and forests.

Rapid loss of the Malaysian rainforest in the 20th century, and now into the 21st century, is closely linked to national and state policies related to economic development. Malaysia is a large exporter of tropical timber and its heavy reliance on natural resources has been a salient feature of the country's development from colonial days.

palm oil plantation 111005The British colonial government (1824-1957) provided incentives to Europeans for the development of plantations through liberal land policies, financial assistance and infrastructure facilities. The genesis of plantation agriculture in colonial Malaya came from the liberal land policies of the British.

Since land was state-controlled, the colonial government gave away large tracts of natural, self-sustaining forests and choice land for plantations and mining. The states continue to exercise absolute power over land.

Liberal land policies resulted in the marginalisation of communities like the Orang Asli of Peninsular Malaysia and the indigenous communities of Sabah and Sarawak, leading as well to the loss of traditional values and knowledge and the undermining of the local economy.

With modernity, the informal economy (dominated by community-based economic relations) was gradually replaced by the formal economy with its emphasis on 'society'. Everywhere there is a tension between society and community. This is, in a way, strange.

The image of a community inspires sustainability, ethics and green thinking. A green community is characterised by respect for non-human nature and equality among human beings.

However, the mainstream focus in public policy has always been on society. Consequently, 'community' remains a romantic idea, only desperately revisited when there is a looming crisis.

Conflicting interests

The fight of the forest communities for survival in modern Malaysia is real due to conflicting interests. The state operates under the current laws, which define ownership in a way that does not give adequate respect to customary ownership. The state tends to lease out the forest to private sector companies to generate revenue for the state.

However, the Orang Asli and indigenous people point out that the state has no right to take their land as they have occupied it for generations. Often, these communities that are still forest-based do not have the political power or the economic base to fight the dominant force of the state and private sector in making legal claims for their traditional lands.

Past policies remain

Past colonial laws and policies as well as current development and economic policies continue to have a devastating effect on indigenous communities, particularly in relation to land and land use.

The indigenous and Orang Asli communities, like many indigenous communities elsewhere, continue to lose land, mobility and access to natural resources due to colonisation and capitalist development.

Like the Anishinabeg in Minnesota, the Mayans in Guatemala, the aborigines in Australia, the Penan in Sarawak and the Jakun community in Tasik Chini, they have an intimate understanding of the relationship between humans and the ecosystem and of the need to maintain the balance.

Their cultural practices not only spring from humanitarian values but from a complex web of cosmological values connecting people with their ancestors, the land and value of creation with their ancestors.

It is a real emotional struggle for the local communities and in hearing many of the stories, it is clearly a case of how the poor, especially forest-dependent communities, are losing their lands to commercial sectors that have very strong political connections and can capture the policies.

orang asli protest in putrajaya 170310 "We are feeling increasingly that we do not have any rights to the said land. Are we the Orang Asli community or migrants from outside? If so, please show us where our country is and please send us back to our country of origin. Otherwise, just gather all of us from the 18 tribes and kill us to end the story." So said a local leader of the Orang Asli during a 2012 Suhakam inquiry.

The way forward is clearly for the states to recognise the rights of the Orang Asli and indigenous communities to their ancestral land, which is a pre-existing right that cannot be extinguished and give them back control over the resources.

This agenda must be moved from the fringes of development policy and back into the mainstream of society if Malaysia is serious in protecting the rights of these communities to their land and sustaining the human-ecological balance.

Losing trust in politicians

The local communities are losing trust in their politicians who are holding public office. They feel their elected representatives are protecting the state and business interests through policy capture.

Will the members of parliament oppose the amendments to the Aboriginal People's Act 1954, which is to be tabled in the current session of Parliament?

We must stand alongside our indigenous and Orang Asli communities and demand our elected representatives protect the rights to land of the poorest communities in this resource rich land of Malaysia.

We must continue to voice out that our elected legislators should vote for laws and policies based on human rights, sustainability and equity. We must stop our support for politicians trapped in the web of policy capture to enrich themselves and their business cronies.

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