

LAND RIGHTS ISSUES AFFECTING THE INDIGENOUS OF SARAWAK.

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Introduction

Respect for land rights is essential to sustainable development. Land is central to people's identity, livelihood and food security. International standards and frameworks are abundantly available. Yet time and again the human rights of the people who own or use land are violated due to policies and practices relating to its improper use and acquisition. As in most parts of the world, Sarawak is no exceptional.

Demographic Background

Sarawak has a population of over 2.5 million. The highest populations can be found in the state's capital Kuching (681,901), followed by Miri (358,020), Mukah (293,514) and Samarahan (246,782). The annual population growth rate is 1.8 per cent.¹ Sarawak is truly a multicultural state with 27 ethnic groups. This multiculturalism is reflected in the people's lifestyles, cultural practices, food and experiences. Indigenous Sarawakians play a defining role in the state's cultural landscape with their dances, music, crafts and traditional practices. The non-Muslim indigenous groups are collectively called Dayaks – most of whom are Christians or practice animist beliefs – and they account for about 40 per cent of Sarawak's inhabitants. The two biggest ethnic groups within the Dayak community are the Iban (also known as the Sea Dayaks), who constitute just over 31 per cent of the population, and the Bidayuh; others include the Kenyah, Kayan, Kedayan, Murut, Punan, Bisayah, Kelabit, Berawan and Penan. Dayaks who live in the interior of Sarawak are sometimes referred to as Orang Ulu, or people from the interior. Members of this group typically live in longhouses and practiced shifting cultivation; they engage in fishing to supplement their diet if they live near a river. Only a few hundred of the Penan continue to live as a nomadic people of the rainforest.

Government's Land Policy

Back to history, the integration of Sarawak into Malaysia in 1963 only occurred after a high level of autonomy for the state and a number of special laws secured the protection of the very large indigenous populations. Since the 1970s, many of these legal protections have been increasingly eroded – despite occasional victories in court – as the exploitation of the region's natural resources expanded, particularly logging, plantations, oil and gas. The last decades have also seen the incremental transfer of Dayak customary land by the government for logging and plantation activities through various means.

In the mid-1980s, the Sarawak State Government launched the so-called 'politics of development'. The rationale behind the policy was to eradicate poverty among the natives by allowing their 'idle' land to be developed by outsiders or investors into large oil-palm plantations or other enterprises on the basis of shared equity. This inevitably led to tension between the Government and the natives who felt that it was an act of intrusion that deprived them of their rights. The Government's action may have had some justification but it was undermined by two important factors: conflicting definitions of what constitute Native Customary Rights (NCR) or Native Customary Land (NCL) and blatant disregard for local sentiments and customs in the implementation of the policy. According to the Government, only farm land (temuda) cultivated

¹ Source: Department of Statistics, Malaysia – Population & Housing Census 2010

before 1 January 1958 are recognized as NCL; the natives, however, take the view that NCL includes communal territories (pemakai menua), village forest reserves (pulau) and farm lands (temuda) created before 1 January 1958 under the provisions of the Land Code of Sarawak. The Government regards any uncultivated land or virgin forests as state land, and therefore village forest reserves are not NCL. Herein lies the dispute: many logging and quarry licenses, oil palm plantation and tree planting leases issued to investors encroach on to village forest reserves, water catchment areas, and even farm lands.

The continued use by the government and private companies of large tracts of indigenous customary land for oil palm plantations and other development projects such as construction of hydro projects, roads, etc. continues to be a highly charged area of controversy. As much as 20 percent of state land in Sarawak is classified as Native Customary Rights Land, but only two percent of this land is surveyed and titled. The Sarawak State Government estimated that there exist some 1.5 million hectares of native customary rights (NCR) land in the state. Many of the indigenous tribes of Sarawak, including the Iban, Kayan, Kenyah, Kelabit, Punan and Murut, have been working on their land for generations and had automatically established Customary Rights Land but possessed no document or title that officially acknowledged them as lawful landowners. Thus, the Ministry of Forestry then possesses few official records distinguishing Native Customary Rights Land from timberland. Nevertheless, it consistently fails to conduct thorough investigations to determine boundaries, and approves logging concessions even though Native Customary Rights Land exists in a certain area.

To strip the Sarawak's forests bare is to deprive the indigenous peoples of their needs. For example, timber is the basic construction material for their longhouses and boats; wild fruits and crops supplement their rice; cane and rattan are used to make baskets and mats for their own use and for sale; the bark of the Seluka tree is used as a form of mosquito repellent; and other herbs and plants are used for medicinal purposes. Yet competition to obtain timber concessions is keen. It is not unusual for state authorities to lease or license native farmland with established Customary Rights to timber companies without the natives' knowledge. Only when timber companies move into their land to start logging activities do the natives find out that their land has been leased or licensed.

The unscrupulous loggers also exploit the tribal communities by taking advantage of their illiteracy and naivete as well as by intimidating them. When timber concessions are found to overlap Native Customary Rights Land, the companies draw up an agreement for the illiterate natives to sign, saying the choice was not theirs as the companies were already licensed to log in the area. Exploitation of timber workers by their management is also widespread. Even though basic necessities like living quarters with electricity and water supplies are met, exploitation of the workers is not difficult, as most of them have little or no education and know nothing of their rights and the law. It is not always easy to identify the real owner of these timber concessions. Normally, licenses are issued to individuals who then commission the licenses to major timber companies which in turn can lease (the licenses) to subcontractors. This makes the original licensee virtually "invisible" - the individual may never visit the logging camp but, without a doubt, profits enormously from it. Whoever they may be, it is common knowledge that politicians or those related by blood or money to them usually own timber licenses.

Over the years since the Brooke's rule in Sarawak (1841 – 1946), numerous amendments and enactments to the land code had been made in respect of the Native Customary Land (NCL). The most glaring of them all is the Land Code (Amendment) Bill 2000 introduced by the present Sarawak State government. The Bill indicates the government's firm intention to recognize native rights lawfully created over land. This means that the government can only recognize those rights of natives which have been lawfully created in accordance with the native customary law i.e., the law that gives force to native customs.

In this respect, the Sarawak government has started to survey the land - settle or confirm their rights to the land and have their interests or rights registered and grant them titles to land, albeit, a very slow, expensive and tedious process. However at the same time, the government also wants the Native Customary Rights (NCR) land to be developed into plantation estates. In this regard, the government has started the NCR land bank concept. Under this concept the natives can pool their land together into a large estate and enter into joint ventures with established plantation companies for the development of large scale cultivation such as oil palm cultivation. Under this scheme, the natives will have a share in the joint venture companies which would be granted leases over the NCR land for a term of 60 years. Upon expiry of the lease, the land will be reverted back to the natives or their heirs. According to a daily report, 6 plantation companies were expected to invest over RM300 million to open up some 33,200ha of native customary rights (NCR) land in Sarawak for oil palm development.²

However such objectives would be difficult to achieve if the native communities make claims which are not consistent with the laws governing the creation of native customary rights over land or where there are disputes between the natives themselves as to the size or boundaries of the respective holdings. Such disputes had been brought to court. NCR land either titled or alienated land may be required for public purpose. Under the Land Code, if NCR land is needed for public purposes, the lawful holder of such land will be paid compensation. However, compensation remains an issue of contention for many of the indigenous or native communities in the State, in particular, inadequate compensation. This is one of the main reasons why they refuse to leave their current location. Other reasons are lack of basic amenities in their new resettlement area and limited size of land for farming.

Recommendations

In view of the constant struggles to identify and settle disputes on rightful claims by the native communities in the state, it is vital that the communities need to be educated and made aware of their rights pertaining to their lands, the source of their livelihood. This is where NGOs can come in to provide trainings and awareness programmes. The one challenge is the communities themselves in which they must be open and ready to get out of their illiteracy and naivete to their own rights. Simply, to mobilize and empower the communities themselves.

² As reported in *The Star* of 22 September 2011 issue.

While it is true to say the communities must be challenged, it is even more challenging to move and encourage people of good will to help bringing these trainings and programmes to those communities. It is here that various supports including the financial supports from groups within or outside the State are most needed and very much welcome.