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Resisting and Transforming Space

The State, Environment and Indigenous People in Malaysia

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Abstract: Since the 1980s, the environment has become a key critical concern for many. The Brundtland Report, the United Nations and various agencies have in their own indelible way diligently work to promote greater environmental awareness and remind us that green is good for the environment. Political parties and business all tout their green credentials and green consumer guides, sustainable development and corporate environmental and/or social responsibility seek to press and mobilise us into their fold. Despite this seemingly greater awareness, the environment remains marginalized in developmental calculations, especially in 'developing economies'. Seduced by the promise of growth and the desire to be 'developed', many developing societies have thus pursued policies which have transformed their economies and societies; in the process, health, human and cultural rights have been compromised. This paper is concerned with the impact of development on the environment, particularly its effects on the indigenous peoples of Sarawak. Using the example of deforestation and logging, this paper seeks to focus on the local actions of indigenous peoples in Sarawak as they oppose and resist state developmental projects. The paper argues that the problem of deforestation and its relationship with indigenous peoples cannot be simply read off as an environment-development or a government-indigenous people issue. Rather the dynamics of the issue are far more complex, requiring greater detailed analysis, including the need to examine the nature and role of the state in Malaysia. The paper points out that the Malaysian state has sought to mobilize its indigeneity claims to effect development. This is however contested by indigenous peoples in Sarawak. The paper therefore points out that a deeper and more nuanced appreciation of the evolution of power and indigenous politics in Malaysia is necessary and critical. Until these issues – the struggle through which the contours of democracy and rights are negotiated and shaped by the people vis-a-vis the state – are resolved, just transformative practices are unlikely to be effected.

Keywords: Indigenous peoples, Penan, Power, Malaysia, Southeast Asia, Logging, Timber Industry, Social change, Political economy

Introduction

DURING THE LAST three decades, there has been an increasing chorus of voices articulating the demands and rights of indigenous peoples. Calls have come from indigenous organisations, international support organisations and human rights and solidarity groups. Once considered primitive and marginal to the political process, indigenous groups and peoples are assuming greater importance in political considerations. The demand and search for new resources for economic development has brought governments, transnational interests (banks, corporations), speculators, developers and landless peasants onto indigenous lands, prompting what one writer has characterised as the 'new resources war' (Geddicks, 1982). Predicated upon national governments' drive for growth and articulated in terms of export earnings, higher GNP and diversification of the economy, national governments have arrogated onto themselves sovereign control of national resources over indigenous peoples' land. As these 'strategic lands' assume greater economic and political value, conflicts with governments and advocates of development become

more frequent as indigenous peoples' assert and sought to reclaim their rights to the land. Once 'victims of progress' (Bodley, 1975), indigenous peoples' critique and challenge is gaining efficacy. The construction, conceptualisation, understanding and articulation of these rights have made significant inroads on current discourses surrounding modernity, ecology, security, sovereignty and human rights. This paper seeks to extend this analysis using the example of local indigenous peoples' resistance to the timber industry in Sarawak, East Malaysia. It examines the concept of indigenous peoples and its saliency in current socio-political thinking before providing a sketch of deforestation in Sarawak, arguing that any analysis of the problem of deforestation needs to incorporate a more critical appreciation of the nature and role of the state in Malaysia and its relationship with indigenous politics in Malaysia. The paper further argues that indigeneity is itself a problematic and contested notion and has to be critically interrogated.



Indigenous Peoples

The problems facing indigenous peoples have arisen in response to persistent complaints about the treatment and fate of indigenous peoples. Governments have sought to incorporate and integrate indigenous peoples into their national and development projects which often override and disrupt the lives of many indigenous peoples (Burger, 1987: 118). Indigenous peoples have been variously defined by national governments as 'primitive', 'tribal', nomadic or semi-nomadic peoples. In academic discussions where indigenous rights are an issue, they are seen to be 'captive nations' and/or internal colonies of states, lacking independence and autonomy (Snipp, 1986). More recently, indigenous peoples have sought to challenge this view affirming their resilience, positive cultural values and social structures, and, more importantly, their links with the land. Thus, the World Council of Indigenous Peoples, for example, regards indigenous peoples as:

such population groups as we are, who from old-age times have inhabited the lands where we live, who are aware of having a character of our own, with social traditions and means of expression that are linked to the country inherited from our ancestors, with a language of our own and having certain essential and unique characteristics which confer upon us the strong conviction of belonging to a people, who have an identity in ourselves and should thus be regarded by others (cited in Burger, 1987: 4).

For indigenous peoples, land has a sacred quality, is revered, respected and is inalienable. It is central to social identity and history and it 'ensures their economic viability as an independent people' (Burger, 1987:14). While technically dispossessed by colonial authorities, many remote peoples were never effectively dispossessed of their lands. For such groups, current development thrusts by post-colonial governments and economic interest groups offered opportunities for the production of wealth and yet mark a powerful challenge to their continued viability threatening the destruction of their lands and resources.

In the main, indigenous peoples have little say and control; national governments have taken it upon themselves to exercise such decision rights as trustees of these peoples through pre-emptive alienation of indigenous lands, leading to the excision of promising lands from tribal reserves, the abrogation of national and international treaty obligations and legislation. This is most marked in forest areas or desert lands. In Malaysia, the state, striving to maintain its national developmental project has impacted significantly on indigenous peoples. It has

also failed to recognise and secure customary rights, over-ridden indigenous peoples' protests and consider such claims to be harmful to the well-being of the nation. This has resulted in conflicts between the state and indigenous peoples. This paper deals with the manifestation of such a conflict, drawing on the conflicts between the Penans and the state. In 'narrating' their struggles, the paper seeks to show that a much rigorous interrogation of indigenous representations is necessary if we are not to ignore the possibility of producing alternative discursive practices.

Deforestation in Sarawak

The largest state in Malaysia, Sarawak has been 'underdeveloped'. In the colonial period, development was designed not to induce too much change amongst the indigenes. There were few transport links, health and education facilities and services were rudimentary (Roff, 1974: chapter 2). Mining was small-scale, plantation crops were introduced for cultivation and timber harvested. Since independence, the national government has sought to integrate Sarawak with national development objectives and improve the status of the *bumiputras* and *pribumis*.

With a population of about 1.6 million people; most of Sarawak's population (80%) live in rural areas (Government of Malaysia, 1986: 103) with the indigenous Dayaks (Ibans, Bidayus, and *Orang Ulu*) constituting the largest proportion of the rural population (about 95% of the Dayak population live in rural areas (Masing, 1988: 58)). The mainstays of Sarawak's economy have been oil and timber, with timber accounting for at least 20% to 30% of total export value each year. Since independence, about 30% of Sarawak's total forest land has been logged and by 1985, another 60% had been given out as timber concessions (Jomo, 1989: ix).

Extensive logging has caused local faunal population to decline and the downstream effects of logging (sawdust, mud, petrochemical pollution) have all contaminated local food stock and inadvertently, local supplies, diets and health (Colchester, 1990; Bruenig, 1993; Douglas, Greer et al. 1993). Economically, indigenous peoples' local earning capacities have similarly been affected. Deforestation has made certain forest products - illipe nuts, resins, rattan, and bamboo, amongst others - unavailable or in short supply, as the habitat of these products have been destroyed (Worldwide Fund for Nature (Malaysia), 1985), causing disruption to the local economies.

Royalties from logging is the single largest source of revenue for the state which accounted for at least 20 per cent to 30 per cent of total export annually (Wong 1998: 4) while another suggested it accounted for about 50 per cent of the state's revenue (World Conservation Union, 1991: 203). The timber industry

has been widely criticised for its reckless management of the forests (Hurst, 1990) - most trees are treated as weeds and destroyed during logging. Moreover, as the timber industry is predicated upon on short-term gains, both concessionaires and sub-contractors seek to realise and maximise their returns quickly and will take all the timber they can get (*Borneo Bulletin*, 11 June 1985). Political machinations and corruption compound the problem as the logging industry is deeply imbricated within local politics. For example, in the early nineties the Chief Minister's brother was a director of Rimbunan Hijau Group and her sister was a business partner of Tiong Hiew King, head of the Rimbunan Hijau Group (Greenpeace, 2004). The Chief Minister's senior ministers also have direct links with the logging industry. For example, the state's ex-tourism minister, James Wong Kim Min owned 55 per cent of the logging company Limbang Trading with a 310,000 ha concession in the mid-nineties (Dauvergne 2001: 43). The federal government has tolerated this 'timber politicking' in Sarawak because it perceived the ruling coalition in Sarawak as an electoral asset. Of late, the state has sought to further alienate and re-classify land, especially native customary lands for timber concessions and plantations

The State and Indigenous Peoples

Indigenous peoples have found themselves increasingly incorporated within the world economy and subjected to national development goals and programmes. Observers have noted that the results of development for these peoples have entailed their displacement from resource-rich lands to marginal lands; the destruction of traditional means of livelihood and the disruption of traditional interactions with nature; introduction to and maladjustment to alien work patterns; trade debts leading to indentured status; a decline in communal cooperation and economic redistribution as a means of collective survival; the value of goods being determined by outsiders; a decline in self-governance through domination by a totally alien political, legal and education system; the deterioration of highly evolved traditional religious and cultural values; and psychological and social dislocation. Not surprisingly, many indigenous groups experience extreme poverty, dependency on welfare, social dislocation and disintegration. In extreme cases, this pattern has included genocide; in nearly every case, ethnocide.

In Malaysia, state policies on indigenous people have been described as based on 'benign neglect', leaving them 'alone in the jungles' (Means, 1985/6: 639, 640-1). However, the drive for national development has meant an increasing encroachment on the lands of indigenous minorities. Focused as in-

tently as it is on development, the state has tended to override indigenous peoples' interests, thus abrogating its responsibility to act as the protector and steward of these peoples (as enshrined in the Malaysian constitution). This is most apparent in the case of the Penans in Sarawak. Concerned with their rights and entitlements, a delegation of Penans went to Kuala Lumpur in June 1987 to plead their case for protecting their traditional land rights against timber concessions (*Star*, 18 June 1987). While the delegation was sympathetically received at public meetings in Kuala Lumpur and Penang, they were criticised by a number of prominent Sarawak politicians who were known to be timber concessionaires. Eventually, the Prime Minister, Dr. Mahathir, stated that the Penans, through their agricultural practices, were themselves responsible for destroying the rainforests (*NST*, 14 June, 6, 9, 27 and 29 July, 17 November 1987; *Star*, 21 June 1987). It is apparent that the state in Malaysia, in this instance, has not defended its 'wards' but has sought to discredit them and sought to align itself with development interests.

Indigenous peoples' claims to land is complicated by the fact that their rights have been alienated to the Malay rulers on the basis that they 'were the dependent subjects of the Malay rulers' and in legal terms, their 'wards' (Means, 1985/6: 639). When the land code was amended in 1891, customary land rights and titles only applied to those who were defined as 'Muslim and Malay' and hence only Malays could own or lease land since (Means, 1985/6: 639). Indigenous peoples, by contrast, were 'deemed to be without land title and were not provided with any alternative rights' and only permitted to live on 'occupied lands' (that is, the lands which they have lived on but deemed to be unoccupied crown land) as dependents of the crown (Means, 1985/6: 640). Since then, the state has increased its control over indigenous peoples' lands and their rights via the Aboriginal Peoples' Act (APA) of 1954 and 1974 (Dentan, 1976). The APA defines them, does not allow them to hold individual land titles, controls movement to and from these lands, prescribes their education and employment choice, and while couched as seeking to protect and integrate them as citizens, effectively negates any rights granted to them.

In Sarawak, because of its historical evolution, native customary rights are upheld and enshrined in the state constitution, the state's Land Code (1958) and the state's Forest Policy (Article 1). Administrative mechanisms for securing and enforcing these rights are however, extremely weak and by 'administrative omissions', some of these rights have been abrogated. The state may also extinguish these rights via administrative and legislative mechanisms. A common mechanism of land acquisition is via notices

of extinguishment which are published in government circulars. When not objected to within a specified period, the land in question reverts back to state control and customary native title is correspondingly extinguished. In this way, the state has managed to alienate tracks of customary land for development purposes. Indigenous peoples' concerns and claims have thus been marginalised and the PBB seems more intent on consolidating Malay hegemony than on upholding indigenous rights (Means, 1991: 167). This has engendered frustration amongst local indigenous peoples' and brought them into conflict with the state (Majid Cooke, 2003; Ngidang, 2002; Apin, 1987).

Indigenous Peoples' Resistances to the State

Dennis Goulet (1979) has written that to protect and secure the future of vulnerable minority groups, alternatives need to be found within the 'interstices of deviance' in the dominant social structure. This 'deviance' has generated a few spirited responses: adaptive strategies such as 'urban transhumance' (Garna, 1990; Gomes, 1990) and political militancy (de Silva, 1979; INSAN, 1989) have become more common. In Sarawak, logging has been disastrous for the *orang ulu* peoples, in particular the Penans, who have experienced hunger from the destruction of their fishing and hunting grounds. Others have lost their cultivated lands (Boniface, 1990: 9).

Indigenous peoples' first response to land alienation and encroachment has been to rely on existing administrative and legislative mechanisms provided - the Forest Ordinance and other acts. There are no less than 50 similar cases brought against the government by native customary rights claimants (*Malaysiakini Internet News*, March, 25, 2004). They were two significant cases where indigenous peoples won their cases - Rumah Nor and Jok Jau Evong. In the first case, the judge found that NCLs also consisted of fallow tracks of forests or *pulau* which indigenous peoples may use as hunting and gathering grounds. In that case, the plaintiff used counter-mapping techniques to press their claims in the court. However, this success did not last long. An appeal was upheld against the plaintiff on 8th. July 2005 but since then, the indigenous group involved have filed an appeal to the Federal Court, of Malaysia, its highest court (<http://www.rengah.c2o.org/news/article.php?identifer=de0442t>). In the second case, although the Kayan community dropped their case on technical grounds as their claims of NCLs as the disputed area was gazetted in 1951 as State Protected Forest, and thus unable to proceed with their claims. More importantly, the court ruled that the arrest of 42 Kayans in blockages in the disputed areas by the

police as illegal as the Kayans have the right to erect such blockages. The Kayans were also compensated for illegal arrests. For the Kayans and other indigenous peoples, the court decision was interpreted as a moral victory of their struggle. Success in these two judgments shows that the court has become a means used by indigenous peoples to effect their rights (Cooke, 2003: 278).

Frustrated at the way the state government and businesses dealt with their problems, indigenous peoples also sought federal government intervention. Despite promises to attend to these concerns, the Federal government has not acted. Indigenous peoples have continued to mount activist campaigns and in June, 2002, 40 Penan communities issues the Long Sayan Declaration (Sarawak Penan Association, 2002, retrieved January 10, 2006 from http://www.bmf.ch/en/en_declaration.html). The Declaration documented their many problems; it highlighted the food shortages, frequent illnesses and income loss brought about by logging operations. The Declaration also calls for immediate government action to halt logging operations on their ancestral lands, recognise their native customary rights and establish a communal forest for each Penan community and importantly, compensate and institutionalise a consultation process that is fair, open and meaningful in the management of their forest and land.

Frustrated with the legal means of protecting and securing their lives and livelihoods, and faced with government indifference to their plight, these *orang ulu* peoples resorted to blockading logging roads and camps, and media campaigns which have put their struggles on the world arena and pressuring the government to act to protect indigenous rights. These protests, blockades and arrests have had the strategic effect of slowing down logging and palm oil plantation activities in NCLs (state rezoned land). Companies affected incur financial losses as they are unable to log and or conduct land clearing activities and they have responded with complaints to local authorities who then arrested, detained, charged, assaulted and imprisoned these indigenous peoples for erecting blockades. This resistance has attracted much international concern and support from human rights and green activists in many developed countries. Through these avenues, their views are widely disseminated, especially via the internet; today, the larger Malaysian and world community now know that tropical timber bought is not sustainably harvested and that indigenous peoples have been harassed, exploited and unfairly treated. These global campaigns have forced the state in Sarawak and Malaysia to respond.

The Malaysian and Sarawak governments' response have been multi-pronged. At the domestic level, they have sought to persuade, co-opt and co-

erce local groups. The government has sought to bring the Penans and similar disgruntled groups into what it regards as the mainstream of development. Projects and funds have been tagged to promote education, medical facilities, agricultural services and settlement schemes. Government officials selectively interacted with indigenous peoples, excluding some community leaders whom they considered to be hostile towards them. Jobs, financial arrangements and even timber concessions have been given to compliant local indigenous headman. Local development initiatives e.g. a Penan Volunteer Corp was established in 1989 to foster community development.

The state has also sought to take more punitive measures. In November 1987, an amendment to the Sarawak Forests Ordinance was introduced, allowing for stiffer penalties against blockades and for arrests without warrant (Cleary and Eaton, 1992: 188ff). Notwithstanding these measures, protests continue. Between November 1988 and January 1989, 128 people were arrested under the new law (Tyler, 1990) and today, intermittent blockades persist (*Hak Hak Malaysia*, March 1991). For instance, on 13 March 1997, 75 Penans went to a logging camp to deliver a protest letter to the head of the logging company but were arrested by local police. In the arrest, 30 Penans were injured, four arrested and many severely wounded (World Rainforest Movement and Forest Monitor, 1998). Others have been detained under the Internal Security Act (ISA), a few lost their passports and could not travel overseas for conferences and/or seminars to present their views. For example, Jok Jau Evong of SAM (Friends of the Earth) did not have the freedom to travel outside the boundaries of Malaysia for almost nine years after his passport was confiscated in 1993 due to his anti-logging activities. Even Malaysian activists from West Malaysia and Sabah were denied entry into Sarawak (World Rainforest Movement (WRM) and Forest Monitor, 1998).

Internationally, the Malaysian government went on the offensive. Championing a South position, the government castigated its international critics as new 'missionaries', arrogant and insensitive to the needs of developing countries. These critics were labeled as seeking to undermine national self-determination and national development.

The Malaysian governments' responses are clearly problematic. Charged with defending 'indigenous' interests, the state via its development agenda has marginalised many local indigenous peoples and groups. In subordinating *pribumi* rights to *bumiputra* rights, the Malaysian state in effect, strips the *pribumis* of their land rights. The *orang ulu*, on the other hand, are challenging the government's hold on the construction of the meaning of land rights and

indigenous rights. In doing so, their claims problematise the discourse of indigeneity, exposing contesting claims and unwittingly, posing a serious problem for the state, as such claims subvert and contest the state's hegemonic claims and discourse of the protector of indigeneity. This marks a break in the continuity and association of *pribumi* (term used to define non-Muslim and non-Malay indigenous peoples) rights with *bumiputra* rights and is a significant challenge to the state's hegemony. Unwittingly, indigenous peoples in Sarawak have thrust onto themselves an identity congruent to their political saliency.

Conclusion

This paper has highlighted the primacy of the political process in development and points to the contradictory situation in which the post-colonial Malaysian state finds itself in. The post-colonial government has been able to define and defend its record on indigenous rights but this has increasingly been challenged by indigenous peoples in Sarawak. It is also vulnerable to criticisms that whilst the government is critical of international trade, nonetheless supports the development of extractive industries against the land claims of the *orang ulu*. To control these discordant and disparate voices, the state has sought to legitimise its programmes in terms of the 'national interest', invoking national development, national integration and 'nation-building', as its motif. Critics, both internal and external, have thus been labeled as subversive, anti-national elements harming the viability and integrity of the nation.

The paper has argued that access to and the use of state power not only determines the state-environment relationship but also affects the nature of democracy, political identities and postcolonial political practices in Malaysia. The struggle for control over the environment should therefore not be seen as merely an environment vs. development debate, but part of the struggle through which the contours of democracy, rights and postcoloniality are negotiated and shaped by the people vis-a-vis the state. This struggle has opened up apertures of claims, rights and responsibilities in an otherwise, seemingly closed 'political' society. These power-related implications as, the paper has shown, give rise to the contestation of rights, various resistances, co-optations and manipulations as various groups strive to present and fulfill their interests.

Similarly, concerns for indigenous rights need to address questions of economic exploitation and unequal access to social power. This becomes more apparent in the analysis of the continuing unfolding of cognitive aspects of 'indigeneness'. The present discussion has demonstrated that there is a subtle but

crucial cognitive alteration of indigenous rights in Malaysia and that these different interpretations carry with them different logics. In the case of the Penans and the *orang ulus* (and *orang aslis*), the relationship between people and the land is more akin to stewardship while in the contemporary *bumiputra* formulation, land is owned and to be exploited for current and possibly future gains. Clearly, in the present analysis, the study of indigenous peoples' resistance is instructive. It reveals that 'development' continues to be 'a top down, ethnocentric and technocratic approach, which treated people and cultures as abstract concepts, statistical figures' (Escobar, 1995: 44), and as such, hardly transformative, just

or democratic. Secondly, it reveals that a critical interrogation of the discourses of 'development' and 'indigeneity' can help unravel and unveil 'the mechanisms by which a social order of discourse produces permissible modes of being and thinking while disqualifying and even making others impossible' (Escobar, 1995: 5). It challenges the communally charged and national 'imaginary' which the postcolonial state has sought to efface - its indigeneity and problematises its representations. In invoking their claims, the Penans and others have sought to critically challenge the dominant discourse and reassert their resistances within the dominant discourse of postcolonial historiography,

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