

### Further marginalisation under pandemic restrictions

The second year of the COVID-19 pandemic resulted in a greater toll on the Orang Asal communities of Malaysia. In the span of just one month, for example, the number of Covid cases among the Orang Asli of Peninsular Malaysia climbed more than 10-fold, from 287 on 20 July 2021 to 3,293 on 20 August 2021.<sup>1</sup> In Sabah, the number of Covid cases had reached 238,357 by the end of 2021, with most of them being Native peoples.<sup>2</sup> The coronavirus also began to sweep across Sarawak, especially through the northern countryside that is mainly populated by Native groups.<sup>3</sup>

The economic disruption caused by the pandemic also resulted in dire food security situations for many Orang Asal communities. This placed additional responsibility on the women as they sought to meet the nutrition and health needs of their families. It was particularly challenging for those dependent on the cash economy as they had to resort to traditional sources of subsistence and livelihood – a realm that was generally seen as the domain of Orang Asal women.

As in the previous year, many restrictions were put in place to manage the pandemic, including the closure of industries, businesses and other activities considered “non-essential”. This brought much hardship to the people and severely affected Indigenous livelihoods, with many communities having to seek food aid from outside. These restrictions did not, however, affect certain “essential” activities – logging in particular – that are destructive of the environment and ignore the rights of the Orang Asal, especially with regard to their customary lands. In fact, the revenue from timber exports in 2021 (RM 23 billion or USD 5.6 billion) was more than that of 2020 (RM 22.01 billion or USD 5.4 billion).<sup>4</sup>

The pandemic was also used politically. At the federal level, the fragile *Perikatan Nasional* (National Alliance) government was able to thwart a change of government by imposing a State of Emergency early in the year, thereby suspending parliament and giving itself extraordinary powers to govern without parliamentary oversight.<sup>5</sup>

In Sarawak, state elections were held on 18 December 2021. The incumbent *Gabungan Parti Sarawak* (GPS, Sarawak Parties Alliance) used the Covid restrictions and lockdowns to secure an overwhelming victory.<sup>6</sup> It did this by maximising state resources, including its control of the media, to the full while the (disunited) opposition candidates, a significant number of whom were Indigenous activist-types, were put at a great disadvantage in terms of their movement and access to the electorate.

The fact that the Chief Minister has now given himself the (additional) portfolios of Finance and New Economy Minister, and Natural Resources and Urban Development Minister, as well as Energy and Environmental Sustainability Minister, does not bode well for the Natives of Sarawak as to the direction the state government plans to take with regard to exploitation of the environment and recognition of Native Customary Rights.<sup>7</sup>

### Pitting Natives against big companies

As it is, it is already playing out in the courts that the Natives of Sarawak do not have rights to their *pemakai menoa* (territorial domain) and *pulau galau* (communal forest reserves). This was the precedent set by the apex court in the TR Sandah case (as discussed in *The Indigenous World 2020*). This position was recently reinforced in the case of *TR Ramba Bungkong v Asco Green Sdn Bhd*, where it was ruled that the Iban community’s right to their 3,500 hectares did not have the “force of law”.<sup>8</sup> Rather, the land now belonged to the company as it had been given a lease by the state government – a lease that is indefeasible and where the land could not be returned to the Native appellants even if it was found to be Native Customary Rights (NCR) land.<sup>9</sup>

It is this kind of unilateral administrative action that is pitting several Native communities in Sarawak against companies asserting the right to log or develop lands which Indigenous Peoples are claiming as their customary lands. A case in point is that of the Penan in the Upper Baram region who are protesting against a logging company – Samling – which says it has received consent from the 56 heads of households and that it has been awarded a “Permit to Enter Coupe” by the Sarawak Forestry Department to extract timber from the area. However, local Penan leaders say that the company never negotiated with them before commencing activities in the area. They therefore put up blockades to stop encroachment onto their claimed lands and submitted police reports.

The Penan have the support of the local environmental group Save Rivers, which published online articles regarding the certification of timber logged by Samling in the Baram region.<sup>10</sup> Samling was not happy with the articles and is suing Save Rivers for RM 5 million (USD 1.25m) for defamation. This is big money for a local NGO but loose change for a company like Samling – which, in just one of its subsidiaries, holds more than RM 500 million (USD 125 million) in assets in offshore holdings in the British Virgin Islands.<sup>11</sup>

### Selling carbon credits on the quiet

Clearly, the customary lands of the Orang Asal – lands which they play a key part in keeping forested – are being targeted because of the potential abnormal profits they can yield. In Sabah, on 30 October 2021, the state government secretly signed a 100-year Nature Conservation Agreement with a Singapore-registered company, Hoch Standard Pte Ltd, to set up a carbon trading deal over an area of more than 2 million hectares for at least 100 years. The Singapore-registered company, with just USD 1,000 in paid-up capital, stood to rake in some RM 960 million (USD

240 million) annually just by trading in carbon credits from the state's protected forests. Indigenous communities in Sabah knew nothing about the deal until it was exposed in an article in *Mongabay*.<sup>12</sup>

The deal is supposed to be worth around RM 3.2 billion (USD 800 million) a year, of which the company is to receive 30% in gross revenues and the state 70%. It had the active involvement of two individuals who, in a 1994 study by Price Waterhouse at the request of the then Prime Minister, found that USD 1.6 billion in Timber Rent (Stumpage Value) had disappeared from the Sabah Foundation.<sup>13</sup> One of the two individuals involved in this deal was the then director of Sabah Foundation and the other was the Group General Manager of a holding company for the foundation's commercial assets.<sup>14</sup>

Adrian Lasimbang, an Indigenous leader in Sabah, led a lawsuit in December 2021 to gain more transparency and to assert the Native communities' right to free, prior and informed consent over forests for which they claim sovereign control.<sup>15</sup>

## Still no land rights, no FPIC

This appropriation of the forested customary lands of the Orang Asli was not restricted to the Bornean states of Sabah and Sarawak in 2021. In Peninsular Malaysia, the Orang Asli realised that, when it comes to recognising Orang Asli rights to their customary lands, it makes little difference what (coalition of) political parties is in power at the state or federal level.

For example, in the case of the Kuala Langat North Forest Reserve, in 2020 the Selangor State Government – a *Pakatan Harapan* (Coalition of Hope) government that forms the opposition at the federal level – had intended to degazette<sup>16</sup> 932 hectares (or 94%) of the 992 hectares of peat swamp forest for a mixed development project. The forest was close to three Temuan-Orang Asli villages which considered it part of their traditional territory, as recognised by the British Colonial Government in 1927.<sup>17</sup>

The forest was more than just a resource base for the community's subsistence, medicinal and building material needs. As 70-year-old Bonet Baba revealed, the forest was also the source of her Indigenous identity and helped give her emotional peace and stability. She valued the time she spent in the forest with her grandchildren and feared that she would no longer be able to pass on her knowledge.<sup>18</sup>

Opposition to the planned degazetting was widespread and across the board. Not only were there 45,423 written petitions from the public and unanimous objection from numerous stakeholders at a public hearing, there were also objections from the Federal Forestry Department, the Department of Orang Asli Development, and other government agencies. The majority of the elected representatives of the State Legislative Assembly, both from the government and opposition benches, also voted to keep the forests. And yet, in August 2021, the Chief Minister announced that the state government had already gone ahead with the degazetting – albeit for a smaller 537 hectares – three months earlier in May 2021!<sup>19</sup> A massive, widely-represented and very public remonstrance ensued which eventually forced the Chief Minister to withdraw the degazetting. This he promised to do but he has yet to act on it.<sup>20</sup>

In the case of the Nenggiri Dam, however, the Kelantan State Government – a member of the *Perikatan Nasional* (National Alliance) that was in government at the federal level – made it clear that it did not recognise Orang Asli claims to their customary lands. In March 2021, more than 3,000 Temiars from the Network of Orang Asli Villages in Kelantan (JKOAK) had signed a petition against the construction of the Nenggiri Dam in Gua Musang. Apart from losing much of their traditional territories, they were also concerned that the dam would flood sites of cultural and religious significance to them.

Commenting on the petition, the state's Deputy Chief Minister alleged that the protest was "invalid" because the state was planning to relocate the affected Orang Asli communities.<sup>21</sup> Besides, he added, "We've told them that we can't engage with them because they are not an official group representing the Orang Asli. To us, the JAKOA<sup>22</sup> is the official representative of the Orang Asli."<sup>23</sup> Thus, not only are the land rights of the Orang Asli not being recognised, their right to free, prior and informed consent is also being denied.

## Progressing forward?

It is evident that the pandemic and its associated lockdowns, restrictions and legislation has allowed the federal and state governments and opportunists to further control and exploit the Orang Asli and their lands, territories and resources. Recognition of Indigenous Peoples' rights has also taken a step backward, aided by court rulings and the rise of politicians unsympathetic to Indigenous Peoples' rights and needs.

And yet Malaysia is said to be performing well in achieving the SDG goals.<sup>24</sup> This may be so for the country as a whole but, when the data is disaggregated, the difference is glaring. For example, in 2019 the national poverty rate stood at 5.6%.<sup>25</sup> The poverty rate among the Orang Asli, however, was 89.4%.<sup>26</sup> This speaks volumes about the marginalisation of the Indigenous Orang Asli of Malaysia.

Nevertheless, one notable progress, at least for the Orang Asli community, has been the appointment of a Semai-Orang Asli woman to head the Department of Orang Asli Development as its Director-General.<sup>27</sup> Young Orang Asli women have also taken to social media, including through their own YouTube channels, to inform and advocate about their situation, their aspirations and their rights.<sup>28</sup> And, with more Orang Asli women now in leadership roles, the endeavours of the Orang Asli for recognition and self-determination can only be expected to progress.

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