

FACTSHEET ON INDIGENOUS LAND RIGHTS

The Exploitation of Sarawak's Penan Communities



Sarawak Facts



Area - 124,449.51 sq. km
 Population - 2.7 million (2015)
 Official Languages - English & Malay
 Religion - Majority Christian
 Capital - Kuching

Sarawak joined Malaysia in 1963 after decades of colonial rule under Britain's Brooke family and the Crown. It is the country's largest and most sparsely populated federal state. With over 40 different ethnic groups in Sarawak, roughly half of the population belongs to various indigenous communities. Its great diversity and rich cultural heritage have been recognised and appreciated for centuries.

Environmental Protection

More than 80% of Sarawak's total land area is covered with forests. The Bornean rainforest is one of the richest biodiversity hotspots in the world and home to thousands of species of flora and fauna. However, the environment is being severely threatened by climate change and human forces. Over the past few decades, Sarawak has become one of the world's largest exporters of tropical timber. Logging companies are exploiting the state's natural resource wealth, consequently destroying ecosystems and native customary lands in the process. In the case of Sarawak, development projects are only benefitting the affluent elite while infringing upon the rights of the state's large indigenous population. Protection extends beyond the environment; it also comes with a human toll.

The Penan People



Photo Credit: Survival International

Estimates range from 10,000 to 12,000 remaining Penan living in Sarawak and neighbouring Brunei. The nomadic indigenous group has been described as one of the world's last remaining hunter-gatherer societies. Today, the majority of Penan live in settled communities, but still remain heavily dependent upon the forest for survival. Traditionally occupied native lands are being overtaken by private enterprises and government-sponsored development initiatives. As a result, deforestation has reached unprecedented levels, forcing thousands of Penan out of their territories. Large-scale logging, oil palm plantations and the construction of dams have contributed to things like the total depletion of resources, contaminated water supply, limited food availability, and the destruction of indigenous culture and heritage. External threats have caused the Penan to be classified among the world's most vulnerable, at-risk populations.

Indigenous Land Rights

UN Declaration on the Rights of Indigenous Peoples

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.



Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Human Security

Advancing human security can be achieved through a people-centred framework that focuses on top-down protection and bottom-up empowerment.



Economic



Personal



Environmental



Food



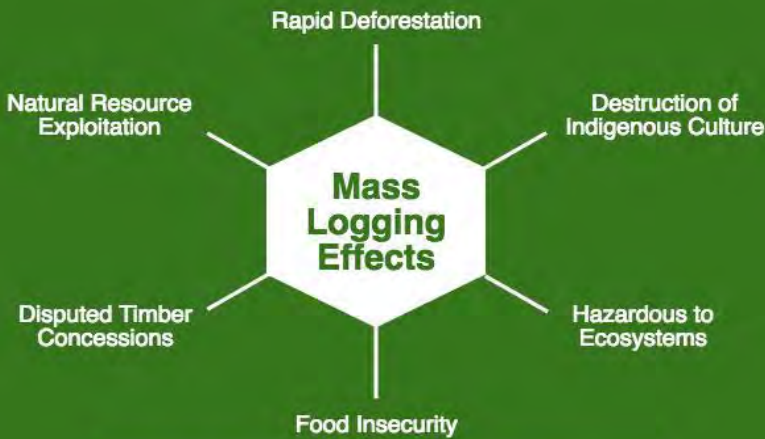
Community



Health



Political



LOGGING

Logging companies in Sarawak are causing widespread environmental destruction and human rights abuses. The state quickly became one of the leading exporters of tropical timber, causing Sarawak to have one of the fastest deforestation rates in the world. Government-sponsored logging licences issued to investors and contractors encroach upon forest reserves, farm lands and rivers, consequently destroying indigenous culture in the process. The boundaries of native customary rights (NCR) lands are heavily disputed between indigenous communities and the Forest Department. The Penan have protested the decimation of their spiritual lands, but have been arrested, suppressed and silenced in an effort to uphold their basic, fundamental rights.



Photo Credit: Getty Images

DAMS

The government of Sarawak has proposed building 12 new mega-dams under its SCORE fast-tracked development strategy. An increase in hydroelectric power comes at the expense of Penan communities living along the rivers as a means for survival. The construction of dams will leave thousands of indigenous people forcibly displaced within their communities as their native customary land rights are violated. In the past, indigenous communities have not been properly consulted prior to construction, and this loss of traditional land threatens their autonomy. More than 2,000 sq. km of pristine rainforest is expected to be submerged by 2020 from the multiple dam projects. Dams could produce a significant amount of greenhouse gas emissions, severely impact river ecosystems and Sarawak's rich biodiversity, as well as destroy Penan culture and livelihood.

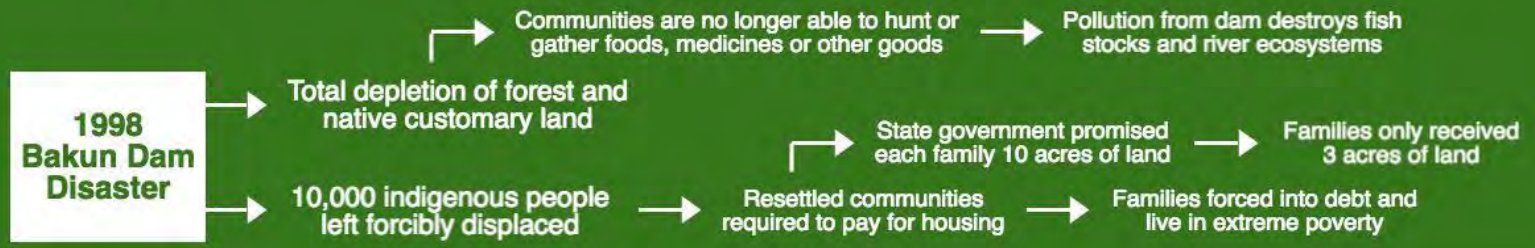


Photo Credit: The Borneo Post



PALM OIL

Sarawak's booming palm oil industry began in the 1980s under the state government's "politics of development" strategy to eradicate poverty among the indigenous population by allowing investors to develop native lands. There have been conflicting definitions of what constitutes native customary land, but the government regards any uncultivated land or virgin forest as land of the state. However, up to 20% of state land in Sarawak is considered to be native customary rights land, despite only 2% of this being surveyed. It is estimated by the government that some 1.5 million hectares of native customary rights land exists in Sarawak. Another million hectares of oil palm plantation can be planted by 2020, which shows worrying signs for the future of the state's indigenous communities.



1980s	1st oil palm plantation
1990	55,000 hectares
2000	330,000 hectares
2012	1 million hectares

World's 2nd largest exporter of palm oil



Malaysia's percentage of global palm oil production

Sarawak can plant another million hectares of oil palm plantation by 2020



Offshore Banking

State government-linked companies in Sarawak selling plots of NCR land to investors or development contractors are using illegal methods to conduct business. This includes the usage of shell companies to launder money through offshore financial centres, such as Singapore, using undisclosed agreements. In doing so, the shareholders are able to evade Malaysian taxes while further endangering the Penan's traditionally occupied lands.



Financial Transparency

High profile government officials in Sarawak and their affiliates have been connected to endemic corruption. There is a conflict of interest due to the officials' ownership or large shares in investment companies financing the SCORE development programme. When conducting business, owners conceal their names with a placeholder in an attempt to hide their identities, leaving transactions relatively untraceable. By exploiting the indigenous communities and the resources on their NCR lands, these companies are able to continue to conduct business as usual while receiving immense profit. Financial transparency regulations are starting to gain momentum across the world, showing hopeful signs for cracking down on global corruption.

Corruption Terminology

Kleptocracy: government by those who seek chiefly status and personal gain at the expense of the governed

Illicit Financial Flows: the movement of money that is illegally acquired, transferred or spent across borders

Beneficial Owner: the real person who ultimately owns, controls or benefits from a company or trust fund and the income it generates

Money Laundering: the process of concealing the origin, ownership or destination of illegally or dishonestly obtained money by hiding it within legitimate economic activities to make them appear legal

Shell Company: a limited liability entity having no physical presence in their jurisdiction, no employees and no commercial activity; it is usually formed in a tax haven or secrecy jurisdiction and its main or sole purpose is to insulate the real beneficial owner from taxes, disclosure or both

Kleptocracy & Indigenous Land Rights

Kleptocracy poses a great threat to indigenous land rights as long as there are no regulations put in place to limit illegal activities. The rich will continue to become richer, and the poor will become poorer at the expense of weak governance. The Penan and other native groups are extremely vulnerable, being held at the will of the state government. Local activists and international NGOs are advocating for the protection of these communities in an attempt to uphold their undeniable rights. However, it is up to the state to make sustainable change.

Misleading Socio-Economic Development



Investing money into large-scale infrastructure projects is primarily intended to enhance socio-economic development and increase living standards.

The government of Sarawak and investors are continually violating the Penan's traditional land rights for business ventures. In the wake of a competitive global economy, indigenous rights in Sarawak are being undermined in an effort to narrow the country's development gap. Socio-economic development is misleading here in that 48% of Sarawak's population is not a beneficiary of the initiatives.

Destruction of Spiritual Lands

The Penan people have an inherent right to preserve their cultural heritage free from discrimination. Rampant destruction of the rainforest simultaneously diminishes the Penan's spiritual connection to the land, a major component to the tribe's identity. Oral storytelling keeps the group's history and culture alive, as written traditions are virtually nonexistent. According to Malaysian law, indigenous communities claiming land rights are required to show evidence that they have been using the disputed territory since 1958. The legal process of winning claims to NCR lands, in turn, remains extremely difficult.

Right to Self-Determination

According to Article 3 of the UN Declaration on the Rights of Indigenous Peoples, "Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development". Along with the human security framework, indigenous groups should be able to pursue their own interests and needs from the bottom up instead of being controlled from the top down.