

SUHAKAM

(Malaysia's Human Rights Commission)

and

the Indigenous Peoples' Question

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I have been asked to evaluate Suhakam's performance during its first year, insofar as the rights and aspirations of the indigenous peoples are concerned.

The Commission's activities thus far have clearly been mainly in the area of civil and political rights, and certainly rightly so.

However, given that Malaysia is in the forefront of asserting that there is such a thing as an Asian concept of human rights, one that emphasises social, economic and cultural rights, it seems odd to me that these other rights are not given equal emphasis.

The deprivation of a right is always cause for great concern. – whether it is the right to free expression, the right to due legal process or any of the many civil and political rights we are all familiar with.

When you are suddenly deprived of such an inalienable human right, you immediately feel it. When you are arrested under the ISA, for example, you are able to immediately appreciate the deprivation of your right to freedom of movement when you consider the liberty you enjoyed before.

But for some communities, the deprivation of basic human rights is an everyday affair. So commonplace is this that many have come to regard such a state of affairs as being part of 'their way of life' or a case of, "Well, that's the way things have been and always will be.'

Well, things have not always been like this for the indigenous peoples. Continuing and increasing gross violations of their social, economic and cultural rights have caused many indigenous communities to experience greater economic hardship, increased challenges to their cultural identity, and the loss of their traditional territories and subsistence bases.

Suhakam, in its annual report, stated that, "for increasingly larger segments of Malaysian

society, a full stomach is no longer enough.” On the contrary, it added, its citizens are now craving the fundamental rights.

But not all Malaysians are so fortunate as to have full stomachs. The 3rd Outline Perspective Plan boasts that poverty in Malaysia has been reduced to 7.5%, a truly remarkable feat for any nation.

What it fails to mention, however, is that the poverty rate among the Orang Asli has actually been increasing over the years, to 81.4 per cent currently.

So, 81% of Orang Asli and equally many native peoples in Sabah and Sarawak still worry daily about filling their stomachs.

In terms of deprivation of rights, how more basic can you get? The violence of poverty occurs daily and deprives peoples of a healthy and happy life, and even kills.

For instance, in 1997, out of every 5 women who died in childbirth, 3 were Orang Asli, and remember that Orang Asli represent only 0.5 percent of the national population.

Malnutrition is also prevalent among the Orang Asli, even in supposedly better-deal resettlement schemes. Such malnutrition leads to disproportionately higher incidences of TB and other easily preventable diseases.

But the fate of indigenous peoples was not always like this. They were once autonomous and led full and varied lives. As one Semai friend told me in 1992:

Orang Asli are not concerned about the wider problem. At night when it is time to sleep, they are only concerned about finding where to tie the string for the mosquito net.

However, his opinion was to quickly change six years later. In 1998, he told me:

“Dulu Gagah menyerang kami. Sekarang pembangunan yang menyerang kami.”
(In the past, it was elephants that attacked us; today it is thing called ‘development’.)

For a long time, however, development – that is, development for others – came in the form of logging activities in their traditional territories. Whether it was in Orang Asli areas in the peninsula, in Dayak and Orang Ulu areas in Sarawak or in Anak Negeri areas in Sabah, the consequence was the same: the total disregard for native customary rights to their traditional lands, the plunder and destruction of their resource base, and in at least one case, as reported to Suhakam, the rape and killing of Penan people in Ulu Baram, Sarawak.

There seems no let up in logging activities – in January this year Penans in Long Sayan and Long Belok had to set up blockades again to try to stop the loggers. 2 years ago, 21 Orang Asli were detained overnight in the police lockup for trying to stop logging trucks from leaving their traditional lands.

Without doubt, logging activities do not benefit the indigenous peoples as a community.

No wonder indigenous peoples have a common saying among about logging that goes something like this:

“While the loggers rake heaps of money with their bulldozers, we get to scrape the dust from our eyes with our fingers.”

Ironically, logging is no longer the biggest of problems for indigenous peoples today. For after the loggers leave, at least the land remains in the hands of the indigenous communities, albeit in a much degraded condition.

Because the customary lands of indigenous peoples are no longer frontier areas in the ulu, the trend of late has been to appropriate indigenous lands for all sorts of development projects. As a consequence, the new threat has been to completely dispossess indigenous peoples from their customary lands.

We saw this happen in the case of dam projects like the Batang Ai and Bakun dams in Sarawak, the Temenggor and Sungei Selangor dams in Semenanjung, and the Babagon dam in Sabah.

We saw it happen in the construction of KLIA and UKM, in the construction of highways and golf courses, and in the establishment of industrial projects and luxury homesteads. Currently, large land development schemes for agriculture and agro-forestry are particularly of concern to indigenous peoples, especially in Sabah and Sarawak.

Sometimes these encroachments lead to fatal consequences for the parties involved, an indication of the seriousness of the problem but, alas, not viewed as such by the powers-that-be.

One recent case was that of Ulu Niah in Sarawak. Here, Sarawak Oil Palm Berhad wanted to occupy the customary lands of two Iban communities, with the tacit backing of state authorities. The corporation employed armed thugs to instil fear in the native peoples in the hope that they would vacate their customary lands.

These thugs, seeing that the authorities were not acting on the numerous police reports made against by the communities, became more aggressive until the inevitable clash between them and the villagers resulted in 4 of them being killed.

Nineteen of the villagers were however charged with murder and were detained for 18 months before their case was first heard in November 2000. Eight were eventually discharged in March 2001 but the remaining 11 are still imprisoned while awaiting the conclusion of their court hearing. Representatives of the community reported this case to Suhakam last November.

Other development projects may not have such dramatic outcomes, but they do bring misery and a deprivation of basic social and economic rights. The mega Bakun Hydroelectric Dam project, discontinued twice in the past due to lack of funds, but revived again recently, is a case in point.

For the 1,700 indigenous families who were resettled in 1997, the predicted hardship and consequences of resettlement are already being experienced. For example, not only is

the soil in the resettlement area not fertile, it is also too sandy for subsistence agriculture.

Further, the original resettled population (of about 10,000 persons) has now increased by about 40 per cent, thereby requiring additional housing units. The housing units themselves are a subject of complains. Despite being poorly built and designed, they also come with an unjustified and exorbitant price-tag of RM51,000.00. The houses are also too far from their subsistence fields.

The result of all this: frequent communal conflicts especially over depleting resources, increased alcoholism especially among the men-folk, high dropout rate among students, women losing their independence as a result of the changing social relations, and food shortages.

Food shortages in the resettlement area are now a reality. One Penan mother, Terai Longop, revealed to Utusan Konsumer how she longed to go back to the old area. This is because in the resettlement scheme she and her family have been reduced to eating just one meal a day. Hardly do they get to eat meat these days to the extent, they say, that it is as if they are becoming Muslims, a veiled reference to the lack of wild boar meat in their diet.

A Kenyah elder from the Lahanan Longhouse, aptly captured the situation in the Sungei Asap resettlement area when he said:

“There is no freedom here. No freedom to wander looking for vegetables, hunting for meat, fishing. Everyone feels trapped like in a cage. You can’t go searching for food, you can only plant vegetables in your own compound. We dare not move around because some areas are considered as state land. People dare not trespass into other peoples’ compounds, or into the compounds of other longhouses. There is no freedom – back there in the ulu (upriver), you could go anywhere you wanted to. There you could hunt until nightfall; go fishing alone even. Here there are limits.

As such, not only are the people’s social and economic rights being compromised as a result of the external development project, their right to freedom of movement has also been somewhat curtailed.

Majid Suhut, the President of the Orang Asli Association of Peninsular Malaysia (POASM), has also alluded to this constraint on his people’s freedom. In one Annual General Meeting of his association, he lamented that:

“People tell us that we are a special people with special rights. I don’t see how special we are with the exception that we are the only ethnic group in Malaysia that has a special department to take care of us, the JOA or the Department of Orang Asli Affairs. But the Orang Asli and the Department can be likened to a bird in a cage. The bird wants to – and can – fly. Just like the other birds. But we are being caged in.”

His lament is not about freedom of movement. Over the years, the Department of Orang Asli Affairs has developed into an institution that the Orang Asli now realise has come to effect control over themselves and over their traditional territories.

While there is no denying that there has been some good provided through the agency of the JHEOA, one must also weigh this in relative terms.

Otherwise, how can one explain the increasing rate of poverty among the Orang Asli despite the increasing allocations for Orang Asli development? How can one explain the policy of integration and assimilation that effectively discriminates against the Orang Asli and in effect ignores their right to cultural and spiritual difference?

It is no surprise therefore that at the POASM AGM last Sunday, there was a resolution calling for the dissolution of the JHEOA, or at least to have it run and controlled by the Orang Asli themselves.

This is just a glimpse into the varied problems and issues faced by the indigenous communities in Malaysia. I hoped I have not given you the impression that indigenous peoples generally reject development. On the contrary, the indigenous peoples have persistently complained that they have long been deprived of enjoying the benefits of development, although they have not been spared the effects of it.

Those who have been involved in indigenous issues know that their specific historical and cultural circumstances call for their recognition on different terms, terms that are being outlined in the Draft Declaration on the Rights of Indigenous Peoples, currently being debated at the United Nations.

Many of these rights are being curtailed in the laws that we have; including the Aboriginal Peoples Act, the Sarawak Native Land Code, and the Land Ordinance of Sabah. These laws need to be amended to protect indigenous rights rather than those of the state and the influential.

So, what has Suhakam done insofar as indigenous rights are concerned?

In its annual report, Suhakam has listed 'native customary rights' as one of its areas of focus. It also expanded on the meaning and implications of native customary rights.

It has also received complaints and reports from indigenous communities including the Penans of Ulu Baram, the Ibans of Ulu Niah, and the Semai of Pos Dipang. In April 2000, after the visit by the Penans regarding their victimisation by loggers in their areas, Suhakam said it would meet with the Chief Minister of Sarawak at the end of that month to discuss the matter. Suhakam also said that it would also inquire into the alleged misuse of police force by the loggers. There was also mention of some commissioners going on a fact-finding mission to Penan areas to see the situation for themselves. (The Star, 11.4.2000, 11.7.2000)

It would be good to know the outcome of these meetings and visits.

Apart from these statements, I regret to say that the indigenous component of Suhakam's first year has been rather wanting. The commission members are not to be wholly blamed for this. I am aware of the shortage of staff and funds Suhakam is faced with.

The absence of a commission member who is knowledgeable in indigenous issues has no doubt contributed to this state of affairs. On our part, we have not offered our services

to Suhakam, nor have we aggressively lobbied our cause in the manner the advocates of civil and political rights have done so.

Hopefully, however, things will be different from now.

It would help also if the Sabah and Sarawak commission members establish offices in their respective states so that they would be more accessible to the local indigenous communities.

And certainly it would help if Suhakam appreciates that it has a role to play in ensuring that only just laws are enacted and repressive ones repealed. It is no use telling indigenous peoples (as was generally done a few days ago) that they have to go about this the legal way, through our MPs and through Parliament.

Given the minority status of indigenous peoples in Malaysia, and given that existing laws already make it difficult to have free and informed elections, it is imperative that every avenue, every agency be used to effect the desired change, with or without our MPs.

For their part, the indigenous communities have taken various forms of action – from dialogue to blockades to court cases – to seek redress of their current plight, which I am sad to say has not improved in the past year. What is needed is a more concerted effort from others, including Suhakam, in the name of solidarity and holistic human rights.

In conclusion, I wish to say that we recognise that the position of Suhakam commissioners comes with a very heavy responsibility. But it is a responsibility that I know indigenous peoples are banking on to be faithfully and fearlessly borne. Indigenous peoples certainly could do with another ally in their difficult struggle.

I hope the commission will go beyond its political mandate and do what is right and necessary, and so be a vehicle and a motivator for change towards a more human Malaysia.

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