

## **ORANG ASLI RESOURCE POLITICS** Manipulating Property Regimes Through Representivity

[Or: How it came to be that the state is able to control the Orang Asli  
and their traditional territories]

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The Orang Asli are the indigenous minority peoples of Peninsular Malaysia. They numbered 132,873 in 1999 – representing a mere 0.5 per cent of the national population. The term, which transliterates as ‘original peoples’ or ‘first peoples’, is a collective term for the 19 ethnic subgroups officially classified for administrative purposes under Negrito, Senoi and Aboriginal Malay. Today, the Orang Asli are among the most marginalized of Malaysian citizens, both economically and politically. Their decline can be traced to their diminishing ability to exercise control over their traditional territories and the resources found therein – a result, as I argue below, of determined efforts by the state to manipulate or redefine Orang Asli property regimes. The sad part is that, frequently, this is achieved in collaboration with self-serving indigenous ‘representatives’ who are accorded that status not by the community but by the state.

### **History and Political-Economy**

The Orang Asli have not developed in isolation but rather in contact with the feudal, agriculturalist and modernizing stages of Malaysian history. Far from being stable or static societies, they have continually changed and adapted themselves – and their social organization – to those they came in contact with, either on their own accord or as a result of circumstances foisted on them. Increasingly, the lives of the Orang Asli are becoming inseparable from their relations with external systems of expansion and domination.

Fundamentally, the history of Orang Asli development and their involvement in the nation state, is invariably a history of justifications of the different state systems in each epoch. For example, they could be sought for their labour in one epoch; in another period, for their skills in sourcing various forest resources; and at other times, as compatriots in the political arena.

For today, as it was in the past, the Orang Asli are locked in a dynamic struggle with the wider society – and with themselves – over the control of

resources they declare as their own, over attempts at denying and redefining their cultural identity, and over concerns of political access and economic distribution.

They, therefore, find themselves poised against the machinations of the nation state that they now are a part of. It also follows that it is the state – which, by its very nature, is politically organised to assert and maintain control over its citizens – that, in current times, is largely responsible for the ever-changing conditions of Orang Asli society. This has steadily created a need for the Orang Asli to adjust their conceptual schemes to continuously new situations.

### **Development and the Contest for Resources**

Developmental policies pursued by the state consciously or unconsciously ignore the economic and social interest of the Orang Asli in part because the Orang Asli are dumped the informal sector (cf. Nagaraj 1990). The state has also come to regard the Orang Asli as being no different from the other citizen groups, and thereby not warranting of government on different terms, including in respect of Orang Asli claims to their territories by custom and history.

This situation stems primarily from the refusal of governments to recognise that relations between the Orang Asli and the state revolve largely around the fundamental asymmetry of the parties involved: a people and a state (cf. Dyck 1989: 7). The former simply refers to a community of people, while the latter to a legal and political organization in which the Orang Asli are not simply aggregates of separate individuals belonging to a category, but rather a distinct group that is associated with particular territorial bases. Indeed, the attachment of the Orang Asli to particular localities (or ecological niches) is one of their most notable and politically significant features whereas, as Cohen notes (1982: 7), identification of self with locality is anathema to the logic of modern political-economy.

Governments, generally, in addition to ideological and economic interests, are motivated by a range of specifically short-term political, social, and bureaucratic interests. Furthermore, given specific political and bureaucratic interests, the impact of government interventions – sometimes contradictory and inconsistent in themselves,<sup>1</sup> often is to initiate significant changes in the lives of Orang Asli. The changes habitually conform to state interests and frequently produce a pattern of policy failure and local crises accompanied by a growing pattern of local dependency and reduced local autonomy.

A reduction in local autonomy, nevertheless, is the key instrument for the state to effect control over Orang Asli society and resources. It can be said

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<sup>1</sup> For example, an early government policy towards the Orang Asli was that they should be protected by the federal government from external encroachments and influence. They were thus herded into forts or reserves and isolated from the rest of the national society. Later, because of changed political and social conditions, governmental policy sought to assimilate the Orang Asli into the wider Malaysian society and economy.

that Orang Asli have begun to be a target of internal colonialism. This is a state in which indigenous peoples are subjected to administrative control, dispossession of lands and resources, and forced or induced assimilation (Berman 1993: 314). The reasons for the propagation of internal colonialism are varied, but are usually related to areas of control. Ironically – and yet demonstrative of its effectiveness – such domination eventually becomes so successful that it is culturally accepted and becomes a fact of life for the Orang Asli.

The reluctance of the state to accord such autonomy to the Orang Asli has to do, in large part, with the fact that the Orang Asli occupy the last remaining resource frontiers in a nation-state dominated by a profiteering system searching for natural resources.

It is now widely recognised that their traditional lands have provided the Orang Asli with both content and form of their culture. Its environmental destruction – an integral part of modern development – destroys the fabric of Orang Asli societies in an unprecedented manner such that the logical conclusion of such a path of development is deculturation. Precisely for this reason, the unrestrained state sees this as an effective process to assert control over a people, and remove any remnant of autonomy-aspiring pockets of peoples.

It soon becomes clear to the Orang Asli therefore that the agenda of the state are quite distinct from that of their own.

### **The Creation of Identity and the Role of Ethnicity**

Ironically, as Gray (1995: 42) contends, it is a struggle for resources that is usually the basis on which indigenous peoples such as the Orang Asli become aware of the threat to their future. For as the nation state expands economically and politically, it must by necessity incorporate and dominate the Orang Asli in order to appropriate the resources they lay claim to. In the process, the Orang Asli become marginalised and suffer increasingly greater economic disparity in relation to the ‘others’.

The appropriation of Orang Asli resources, particularly their traditional territories becomes an important project of the state for both economic and political reasons. Economically, because Orang Asli lands are no longer considered a ‘frontier’ resource, such territories are now a much sought-after factor-of-production, especially if they can be obtained at a premium. Politically, having Orang Asli groups exercise autonomy, however limited, over their traditional homelands is tantamount to the state being perceived as conceding some political control and hegemony to the Orang Asli.

Towards this end, the state carefully nurtures the notion of mainstream to serve as a frame of reference to the Orang Asli. Not only is this in keeping with the logic of the nation-state to grow on the social base of a single nationality but advocating an ideology of integrating with the national

mainstream allows the state to achieve its dual economic and political objectives of appropriation of Orang Asli traditional territories and control of the Orang Asli. This poses a constant threat to the integrity of the Orang Asli as unique cultural entities as well as to their continued control of their traditional resources. So the Orang Asli usually, and justifiably too, fail to respond to the ideals of the dominant nationality, whereupon they are generally treated with contempt and suspicion.

Invariably, the sustained and often aggressive efforts of the state to assimilate or integrate the Orang Asli with the mainstream generates within the community a deep sense of grievance and injustice. Such commonly felt grievance vis-à-vis the attitudes and actions of non-Orang Asli citizens and the government can, and does, provide a powerful means of mobilizing the Orang Asli beyond the local level (cf. Dyck 1992: 18).

Prior to the intervention of the state, for example, their cultural distinctiveness was relative only to other Orang Asli groups. At the time, they perceived these differences as great. Thus, even as the term 'Orang Asli' was introduced by the state in the early 1960s, it did not automatically forge a common identity among the various groups then. However, having the non-Orang Asli and the state as 'adversaries and contraries' helped to forge an Orang Asli identity (cf. Axtell 1981). It became clear, therefore, that in more recent times, the Orang Asli had more in common with each other than they did with others. That is to say, the various Orang Asli groups, in discovering that they faced very much the same problems and from apparently the same sources, began to forge a common identity between themselves. An element of political consciousness soon developed where Orang Asli indigeness became a unifying factor.

Indigeness, it needs to be said, is an attribute of personal and collective identity that emerges only when it is experienced. It is also a self-reflexive notion, which means that people have looked at themselves from the outside, identified the problems that face them, and understand why an assertion of their identity is a prerequisite for their survival (Gray 1995: 40-41). Invariably, therefore, indigeness is an assertion by people directed against the power of outsiders, focusing primarily on the nation-state.

The state, nevertheless, is aware that indigeness is a concept of political action as much as it is of semantic reflection. It is also aware that an Orang Asli indigenous movement is immediately a challenge to the state because it argues that the notion of a mainstream society is not sufficient reason to take control out of the hands of a people (Gray 1995: 42). Consequently, in order to protect its interests, the state actively seeks to deny or inhibit the development of Orang Asli indigeness. The ensuing state actions inadvertently further enhance social stress among the Orang Asli, and in so doing, galvanizes them to use their newly-resurrected ethnic difference as a currency of power in asserting their position. A 'politics of difference' thus emerges in which the Orang Asli declare their entitlement and vie for power based on the qualities that make them different from the others.

### **Identity, Representation and Orang Asli Development**

The first response from Orang Asli individuals, communities or organisations, is likely to be to initiate various forms of indirect and symbolic opposition that speak loudly to the members, and appeal to them to remain committed to their community. Notable among these forms of indirect opposition are various manifestations of cultural conservatism, reinforced by passive resistance and strategies of indirect competition that assert their dignity and value of an indigenous community and culture (Dyck 1992: 10)<sup>2</sup>. Eventually, as the stakes against them increases, the response is to claim a communal identity that combines cultural particularity (which never before had to be affirmed) with modern political and developmental aspirations.

Nevertheless, it is inconceivable that the Orang Asli would have a unified understanding and interpretation of their political and economic aspirations. Even those aspirations that are vocalised may not truthfully represent the majority Orang Asli aspiration. In this regard, the question of Orang Asli identity, in particular, takes a new twist for, besides being discussed from the perspective of ‘the other’, it now needs to be approached from another angle – the viewpoint of the community itself regarding its own identity (Hakim 1996: 1494).

But what constitutes the essential elements of Orang Asli identity may vary from one individual to the next, from one community to the next. Nevertheless, what remains universal is the reality that, as Roosens (1989: 13, 151) notes, ethnic self-affirmation is always related in one or another way to the defence of social or economic interests. That is, many people are willing to assert an ethnic identity only if they can gain by doing so.

This creates a paradox, for Orang Asli ethnic claims and slogans are not being formulated and promulgated by those who are confronted with the crucial issues of survival and dispossession, but rather by those who seem to have markedly moved away from their own culture of origin, which they now want to keep. This, however, as Sowell (1994: 28) submits, is a common social phenomenon – for frequently those who have lost their culture, often become its most strident apostles. They now identify with their group, and may even do so in a highly vocal and exaggerated form.

Thus, in pursuit of the desired fruits of ‘development’, both political and economic, several representative Orang Asli organisations and institutions emerge, each claiming to have the mandate of its client base. This may pose a threat to the state for it knows that claiming Orang Asli identity and representation can be a powerful weapon for the Orang Asli to seek political redress and attain distributive justice. On the other hand, with various Orang Asli individuals and groupings claiming Orang Asli representation, the state is also able to capitalise on this as a political resource by assigning, or

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<sup>2</sup> This is best manifested, for example, in having religious ceremonies that traditionally were only performed in the dim privacy of their homes, now being performed at the opening of gatherings or meetings.

withdrawing, its political backing to such representation, to serve its own interests. That is, while the Orang Asli may have a say on who is to represent them, the state in reality wields the power of ‘representivity’ over the Orang Asli – and so can decide who among such claimants for representation should be accorded such authority and privilege.

### **Representivity and Representation**

Kornberg *et al.* (1980, cited in Weaver 1989: 114) attribute three meanings to (political) representivity. In the first meaning, an indigenous organisation is considered to be representative if it is seen to represent the views, needs and aspirations of its constituency to the government and the public. That is, it is both *authorised* to be a reliable vehicle of communication and is held *accountable* to its constituents for its conveyance. In the second meaning, an indigenous organisation is seen to be politically representative if it is *representative of* its constituency. In other words, the members of the organisation are expected to be a social microcosm of its constituency. The third meaning stresses representativeness by *responsiveness*: whether the organisation actually responds to the needs and demands of its constituency by providing services needed or expected by the constituency.

Clearly, in this sense, political representivity is an *assigned* political status rather than an empirically demonstrable condition. For example, when the state is pressured by Orang Asli demands that it dislikes or disagrees with, it can use representivity, or the lack of it, as a weapon to discredit the demands, or even the organisation making those demands. Alternatively, when the state decides to pursue a particular policy regardless of Orang Asli opinion, it may choose to overlook representation altogether or, alternatively, assign representivity to an organisation, or even to an individual, irrespective of their representational status.

#### *An illustrative case:*

The notion of, and difference between, ‘representation’ and ‘representivity’ are perhaps best illustrated with the case of the bid by one aspiring individual, Long Jidin, for the post of the Orang Asli senator. This is a nominated position, and thus far, all the seat-holders have been appointees nominated by the Department of Orang Asli Affairs (JHEOA) and invariably confirmed by the Minister responsible for Orang Asli Affairs. This is also the highest political position an Orang Asli can realistically hope for, and as such it has become a coveted prize, not for the prestige and responsibility the position bear but more so for the economic and business mileage it affords to the holder.

Without doubt, insofar as numerical representation is concerned, the body that can be said to represent the Orang Asli is the Peninsular Malaysia Orang Asli Association (POASM). Over the years it has seen its membership grow from a hovering 250 to 300 in the decade following its founding in 1977, to almost 19,000 today. Given that the total Orang Asli population today is 132,873 this

membership figure represents a commendable percentage of Orang Asli who are of eligible age to be members of POASM.

The president's position then became a coveted trophy, as in the eyes of the Orang Asli, it should be afforded political representivity. The rationale was that there was no one more eligible for the senator's post than one who had a sizeable following of Orang Asli. Even other (non-Orang Asli) senators, they argued, could not claim such representation. It then became commonplace that resolutions passed at POASM annual general meetings often called on the government to automatically appoint the President of POASM as the Orang Asli senator.

One of those who strongly supported such a resolution was Long Jidin, a Jakun-Orang Asli from Pahang, who many believed was instrumental in forcing fresh elections of the association on grounds that the previous annual general meeting had been unconstitutional, so that he could jumpstart his bid for positions of POASM president and, consequently, that of Orang Asli Senator as well. Long Jidin was in fact able to become President of POASM in 1991, partly because the outgoing office-bearers had no intention of being a part of the dirty politics that had permeated the association, and partly because Long had conducted his campaign with the suave and cunning of a mainstream politician.<sup>3</sup>

In the ensuing two years, Long was able to make himself the most disliked president of POASM. Among other moves, he had encouraged non-Orang Asli (especially Malays) to become members of the association and even appointed influential Malays to be its advisors, much to the chagrin of the ordinary Orang Asli members who saw POASM as *their* own political platform. Also, in a seemingly unrelated and unsolicited act as far as the association was concerned, Long declared, in September 1993, that he

... represents the voice of the Orang Asli in this country and wish to clearly assert our stand that we support the leadership of Prime Minister Datuk Seri Dr. Mahathir Mohamed, and the Islamic religion (*Berita Harian* 11.9.1993).

Many Orang Asli saw this as a clearly personal political statement, especially in light of his weakened position in the local UMNO chapter as a result of him supporting the losing camp in the internal party feud. Several Orang Asli leaders spoken to then also remarked that such a statement did not reflect Orang Asli sentiments or aspirations.

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<sup>3</sup> The political moves taken by Long Jidin to win the president's post, his subsequent involvement in businesses such as logging in Orang Asli areas, the way he outmanoeuvred his Orang Asli business associates in business deals and in the Orang Asli entrepreneur's association, and how he became the first Orang Asli to be awarded a *datukship* (a state honorary title often given to wealthy businessmen and close associates of the sultans), are detailed in Nicholas (2000: 211-218).

However, at the Annual General Meeting on 13 November 1994, Long dropped a bombshell announcing that he would not be standing for re-election. He said,

When I became president, I had my own vision (*wawasan*) – to make POASM legal constitutionally, and to make POASM a glamorous organisation. I did not expect POASM to achieve so much glamour that there is now competition for the top posts. Everyone wants to become a leader – from the President of POASM, to a Member of Parliament, to a Minister. Many hope to achieve these positions quickly. As such, behaviours displaying hatred and low morals abound. They are not patient. We must be responsible for our future generations.... But it doesn't mean that I am afraid of the contest.

The reality was that Long stood no chance of winning even a small minority of the votes, having received an insignificant number of nominations from the divisions. Furthermore, he faced a challenge from three candidates for the post, including a former business partner whom he had reportedly outmanoeuvred in a logging deal in an Orang Asli area. Even the reigning Senator, Itam Wali, became a contender for the president's post just so Long was ousted.

In the ensuing election, Majid Suhut became the fourth President of POASM. An on-the-ground leader, he soon became the respected leader of the Orang Asli and the sore in the thumb for the JHEOA. Because of his pro-Orang Asli stand on many matters, he failed to warm himself to the Minister in charge of Orang Asli Affairs or to the Department of Orang Asli Affairs (JHEOA) itself.

In the meantime, Long, still bent on acquiring the most coveted position for an Orang Asli, continued to make the rounds to the JHEOA and the Ministry – in his whispering campaign to belittle Majid and POASM. Then, in a move that took many by surprise – and not just because the announcement was sudden – Long Jidin was sworn in as the new Orang Asli Senator on 26 May 1997. There had been no consultation with the Orang Asli prior to the appointment, as was done in the previous appointments, nor had the authorities paid heed to the resolution that Long himself had tabled at an annual general meeting of POASM that:

... the position of Orang Asli Senator be appointed from the post of 'POASM President' whereby he has been acknowledged as the democratically-elected leader of a majority of the Orang Asli [POASM AGM 1991, *Political Resolutions, Pahang* 3.2]

Clearly, therefore, contrary to even Long's earlier perception, having Orang Asli representation, that is having the backing and support of a significant majority of the Orang Asli is not a necessary condition for the state to assign political representivity to an individual or an organisation. The state, in fact, at least thus far, determines for itself, which Orang Asli 'representative' is to



be assigned political representivity or, on the contrary, which Orang Asli representative entity is to be denied that representivity.

### **Impact of Representivity on Traditional Territories**

The assignment or withdrawal of political representivity can be a powerful tool for the state to assert its authority over the Orang Asli. Similarly, being accorded such political representivity by the state can enable an Orang Asli individual or entity to partake of that goodwill and so assert some degree of authority and influence over other Orang Asli or to curry special favours. Invariably, whenever representivity is accorded by the state, it is always in its ultimate favour or benefit.

Assigning, or denying, Orang Asli political representivity can also impact on Orang Asli traditional territories and resources. For example, if the aim is to satiate narrow, self-serving needs – such as exploiting the timber resources in an Orang Asli area – it becomes more pertinent for an Orang Asli individual or entity to seek political representivity from the decision-making authority rather than seek recourse to having mere Orang Asli representation. In such situations, the state can, and often does, accord political representivity to self-styled ‘representative’ Orang Asli organisations or individuals, irrespective of their actual representation. Invariably, as discussed below, the ability of the state to use political representivity as a resource is always linked to its control over the Orang Asli and their traditional territories.

### **Property Regimes and the Orang Asli**

The Orang Asli claim *adat* or traditional rights to specific ecological niches that they regard as being owned communally by them, as has been the case in the time of their ancestors and, if they have their way, will be the same for their children’s children as well. To a large extent their claim to these areas were not contested by others primarily because these areas were regarded as uninhabitable or backward areas then. In fact, it was not the lands that were coveted by others but the resources found therein. And with the Orang Asli being the best persons with the knowledge, skills and labour to exploit these resources (such as *gaharu*, resins, rattan, *gutta percha*), the outsiders turned the Orang Asli into collectors and traders of forest produce as far back as the 1400s.

This was soon to change, however, with the coming of the Malay Rulers and their presumed ownership of all lands in their domain,<sup>4</sup> and especially with the introduction of the Torrens System during British colonial rule. To a large extent, however, the Orang Asli were not displaced from their traditional lands during these periods. On the contrary, during the later part of the British colonial rule

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<sup>4</sup> This contention has been challenged in court during the *Sagong Tasi* case in Selangor wherein the court agreed with the Orang Asli’s argument that at no time did the Orang Asli give up their claim to their traditional territories to the sultans. On the contrary, while the sultans were regarded as having full dominion over the *economy* in the state, they did have any sovereign claim over the land. In keeping with Islamic principles, land was seen as being owned by Allah, with the sultan merely acting as trustee.

(especially in the 1930s and 1950s) some of the traditional territories of the Orang Asli were gazetted as Orang Asli reserves while others were recognised as Orang Asli areas or Orang Asli inhabited places. None of these classifications afforded the Orang Asli clear ownership of their territories, they being regarded under the Aboriginal Peoples Act (Act 134, 1954 revised 1974) as being mere ‘tenants-at-will’ in these areas.

The events following the Emergency of 1948-1960 – Malaya’s civil war with the communist insurgents – were to change all this. Because they were known to be providing food, intelligence and labour to the insurgents, the British uprooted whole Orang Asli communities and resettled them, supposedly temporarily, into squalid camps that caused the deaths of hundreds of Orang Asli due to disease, malnutrition and mental anguish. Although the Emergency officially ended in 1960, the security threat from the communists remained until 1989, thereby prompting the government to step up the resettling of Orang Asli in deep forest areas into permanent regroupment schemes where they could be watched over by the security forces. These regroupment schemes continue to this day, not for security reasons but as politically palatable reasons to appropriate Orang Asli lands.<sup>5</sup>

The Emergency was also an important marker in Orang Asli history because it prompted the establishment of the Department of Aborigines (later renamed Department of Orang Asli Affairs, JHEOA) and introduced the afore-mentioned Aboriginal Peoples Act. Both these institutions were to have a major impact on Orang Asli lives and on the control over their traditional territories. More specifically, the JHEOA, with the perceived legislative backing of the Aboriginal Peoples Act, was given the sole responsibility for all matters concerning the Orang Asli. Often, also, in disputes between the state and the Orang Asli over land matters, the JHEOA invariably sided with the state authority (despite its legal mandate to “provide for the protection, wellbeing and advancement of the Orang Asli.”)<sup>6</sup>

From proclamations by various state authorities and from the policies developed for the Orang Asli, it is clear that the state has no intention to recognise the Orang Asli’s claim to their traditional territories. On the contrary, moves were taken to resettle Orang Asli to smaller areas, often away from their traditional territories, and with equally insecure tenure. Now that the security motive is no longer valid, the state has resorted to an assortment of reasons to justify relocating the Orang Asli. In Perak, these included:

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<sup>5</sup> The government frequently contends that it is unable to bring development to the Orang Asli because their nomadic lifestyle and their dispersed settlements make it financially prohibitive to provide the basic infrastructure and social services to the Orang Asli. Hence the need to regroup them into large settlements. Ironically, in some instances, after the Orang Asli have been resettled, the original territories are given to someone else and developed.

<sup>6</sup> An indication of how successful the JHEOA has been in achieving these goals is perhaps best gleaned from the poverty trend among the Orang Asli. While the national poverty rate has gone down to a commendable sub-9 per cent in 2002, that for the Orang Asli, despite much development funds being pumped into this sector over the years, has been increasing to its current level of 81 per cent!

“We cannot afford to convert thousands of acres of land as Orang Asli reserve, as often requested, due to land shortage.” [Perak Chief Minister, Ramli Ngah Talib, 1991].

“... the state would not grant land titles “in order to protect the interests of the Orang Asli ... (there are) fears that, on granting the titles, Orang Asli families would have to pay various land taxes, which would be a burden to most of them.... there is also the possibility of them selling the land to others. [State Land and Rural Development Committee Chairman, Azman Mahalan 1992]

“... the lack of planning had resulted in many Orang Asli having to live in hilly areas where they found difficulty in setting up their settlements or carrying out farming and hunting. The new policy would therefore seek to exchange barren reserve land belonging to the Orang Asli with fertile land.” [State Land and Rural Development Committee Chairman, Azman Mahalan 1993]

Orang Asli in ‘high risk areas’ (i.e. prone to floods and natural disasters) would be relocated to ‘safer’ sites. [Various Federal and state authorities, 1996].

However, in the meantime, several established and ‘safe’ Orang Asli settlements were nevertheless resettled to less suitable areas in order to make way for projects such as the Kuala Lumpur International Airport, for highways, for private universities, for the Sungei Selangor Dam, for at least one golf course and for private housing and development projects. It was clear to the Orang Asli that it was their traditional territories that were coveted whenever they had to be resettled, not for any altruistic reason on the part of the state.

However, the Orang Asli did not take all this lying down. Various measures were adopted to highlight their plight and to seek redress. In particular, Orang Asli have successfully used the courts to require the state to recognise their traditional or *adat* rights to their traditional territories and resources.

This included the case of *Koperasi Kijang Mas v Kerajaan Negeri Perak & Ors* (1991) wherein it was ruled by the High Court that irrespective of whether an area had been gazetted as an Orang Asli reserve, as long it was an Orang Asli area or an Orang Asli inhabited area, all resources in it, including that of timber, rightfully belonged to the Orang Asli concerned.

In the case of *Adong Kuwau & Ors v Kerajaan Negeri Johor & Ors* (1997), where a dam built in the traditional territories of the Jakun in Johor (to supply Singapore with drinking water) caused the Orang Asli there to be deprived of their subsistence base, the court ruled that because the Orang Asli were no longer able to subsist on the bounty of their traditional resource base, the state authority is to compensate the Orang Asli for the loss of income so effected, for a period of 25 years – or a total of RM26.5 million in all.

In the more recent case of *Sagong Tasi & Ors v the Selangor State Government & Ors* (2002), the court ruled that, despite the lands not being gazetted as an Orang Asli reserve or not being titled land, those traditional territories that the community have lived and worked upon in accordance with their *adat* or custom are to be considered as having been accorded the same rights as that of a titled land and as such the law that applies to everyone in its acquisition should also be applied to the holder of the traditional lands.

Perhaps, also, in response to the poor delivery of development goods to the Orang Asli by the JHEOA in the past, and in tandem with the growing number of private developers keen to ‘develop’ Orang Asli areas in exchange for the rights to the resources found therein (especially timber)<sup>7</sup>, the JHEOA introduced a new element in its 10-point development strategy: “introducing privatisation as a tool in the development of Orang Asli areas.” More specifically, its *Ringkasan Program* (Programme Summary, JHEOA 1993: 5) lists the methods to achieve this, as:

1. To co-operate with the private sector to develop potential Orang Asli areas, especially in forest-fringe areas with developed surroundings; and
2. To establish suitable organisations to represent the local Orang Asli community in joint-ventures with the private sector.

Basically, such joint-ventures work by having the Orang Asli sign away their rights to their traditional territories – usually through the JHEOA, an ostensibly Orang Asli cooperative, or a representative committee of the community (such as a *Majlis Adat* or Customary Council) – to a private corporation, which may or may not be an Orang Asli entity. In exchange for the right to mine, log, and own the land in perpetuity or on lease, the corporation enters into an agreement to provide basic infrastructure facilities and housing for the Orang Asli. In some instances, the promise of titled individual plots is thrown in. The irony was that these titles are not freehold or for permanent tenure; rather they are to be leases of 99 years (thus effectively turning a landed people into tenure-lessor).

In depending on the private sector to develop Orang Asli traditional territories, and given that the private investor is driven by the profit motivation, one can expect the Orang Asli to be on the losing side of any deal, especially if that deal is brokered by the JHEOA and the ‘suitable organisations’ it chooses to accord representivity to. This is not a mere allegation on my part. On the contrary, the first privatisation project ended with the private developer absconding after having clear-cut the area for the timber, and after planting only 15 per cent of the promised oil palm plantation and building only 12 per cent of the promised houses for the Orang Asli (Nicholas 2000: 123-124).

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<sup>7</sup> As of June 1997, the JHEOA has received a total of 25 applications from corporations interested in developing Orang Asli areas under the privatisation programme (JHEOA 1997: 15). These applications, of which three had already been approved then, involved 1,176 families and 5,996 hectares of Orang Asli traditional territories.

### Using Representivity to the Hilt

I asserted earlier that the state, through its functionary the JHEOA, uses political representivity as a resource in order to control the Orang Asli and their traditional territories. That this is so can be demonstrated in several cases where it was evident that the JHEOA was using its powers of assigning or denying representivity to the hilt, in order to achieve its own objectives rather than the betterment of the Orang Asli concerned.

For example, in 1995 when a private developer wanted the 256.4 hectares of prime commercial land just outside Kuala Lumpur that was then a gazetted Orang Asli reserve, it engaged a former Director-General of the JHEOA to advise them on dealing with the Orang Asli concerned. Not wanting to deal with the elderly *batin* (village-head) on a one-to-one basis, the company took the advice of the consultant and got the community to revive the *Lembaga Adat*,<sup>8</sup> the traditional leadership council of elders (which had long ceased to exist in the said community). Nevertheless, the *Lembaga Adat* was constituted, mainly consisting of close relatives of the pro-project individuals and it was accorded full representivity to negotiate and decide on behalf of the whole community. It was treated as a legal entity and was able to sign formal agreements with the developer.<sup>9</sup>

At about the same time, however, the government wanted to acquire 38 acres of Temuan traditional land in Kampung Bukit Tampoi, Dengkil in order to build the highway to the new international airport. In this community, the institution of the *Lembaga Adat* was still in place, the practice having continued since the time of their ancestors. However, because the elders were opposed to the idea of their lands being taken, the JHEOA chose not to accept this body as the representative of the Orang Asli there and instead took measures to establish a Village Security and Development Committee (JKKK). The members of this committee, although elected and usually the younger ones with some formal education, had to be endorsed by the JHEOA, according to its departmental guidelines. Also when the old *batin* died and his nephew, in accordance with the *adat*, replaced him, the JHEOA did not endorse this appointment and again insisted that the position of *batin* be subject to vote by the community members, something never done in their traditional society.

Yet, when the traditional territories of the Temuan community in Kelau, Pahang were to be submerged for a dam project, the JHEOA did not accord

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<sup>8</sup> The *Lembaga Adat* is a traditional leadership hierarchy consisting of the *batin* (headman), the *Penghulu Balai* (keeper of the culture), the *Jenang* (the one who is responsible for marriages and funerals), the *Pelima* (the one who is responsible for village security) and the *Jekerah* (the foreman responsible for organising community work activities).

<sup>9</sup> Ironically, a year after the whole compensation and acquisition project was completed (in 2000), and the individual Orang Asli were paid their compensation amounts, the *Lembaga Adat* was not able to get the balance (approximately RM1.2 million) due to the community as a whole. The developers were withholding the amount as they were uncertain whether the *Lembaga Adat* could receive it on behalf of the community as the body was not a registered legal entity!

representivity to the JKKK that was already in existence there. Instead, the JHEOA chose to regard the *batin* as the sole representative and so was able to easily '*paksa*' him (i.e. 'force' him, in the *batin*'s own words) to accept the dam project. In all deliberations and meeting with planners, government officials, funders and politicians, only the *batin* was called, thereby effectively depriving him of the support and consultation that he said he would have preferred to have had.

Clearly, therefore, the state has recognised that it is not only politically correct but may even be expeditious if 'suitable' organisations or individuals were to be recognised as representatives of the community in order to extract cooperation, consent and compliance from the community.

### **In lieu of a conclusion**

In the wake of the appropriation of the Orang Asli's landed property, whether by the state or private corporations and individuals, the Orang Asli faced forced resettlement, persuaded regroupment, and on occasion, outright expulsion from their traditional lands. However, in recent years, they now a new threat from within: Orang Asli individuals or organisations who, having been accorded political representivity, now do the bidding of the state or the private developer, much to the detriment of the Orang Asli identity.

This complicates matters as the core of Orang Asli identity – once linked very closely to their specific traditional lands and customs – is now being compromised. The 'indigenoussness' that is claimed by those who have left their culture to assert their eligibility for indigenous rights and priority, is the very attribute to be discarded first as the New Orang Asli (in local parlance, 'Orang Asli Baru') aspire to be a part of the mainstream. Ironically, those most vocal in staking claims to traditional lands are the very ones who do not intend to apply traditional regimes of property and ownership (the very basis on which their original claims were being based on). The state, for its own objectives, is quick to capitalise on their usefulness and so achieve its goal of controlling a people and their resources.

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