



## RESEARCH BRIEF

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### Left Behind: The Impact of China's Mega-projects on Malaysia's Marginalised

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#### Key Points:

- Malaysia has seen a proliferation of infrastructure construction and other development projects involving Chinese state-owned enterprises and the private sector in collaboration with local partners.
- Chinese investments have accelerated the pace at which domestic policies are implemented – development often takes precedence over indigenous communities' interest in customary land.
- Some of the most marginalised communities are disproportionately affected by the adverse environmental and social impact of mega-projects.

Since its inception, the Belt and Road Initiative (BRI) has enjoyed considerable support from the Malaysian government particularly during the Najib administration. There has been a proliferation of infrastructure construction and other development projects involving Chinese state-owned enterprises (SOEs) and the private sector in collaboration with local partners. Multiple projects extend to relatively remote parts

of the country, and include a digital free trade zone – the first electronic world trade platform outside China, as a step towards the creation of a Digital Silk Road. Xiamen University's establishment of its first overseas campus in Malaysia suggests an increasing receptivity towards Chinese institutions of higher learning in a country that has traditionally looked to the educational institutions of Western industrialised countries.

The many BRI construction projects across the country bring prospects of economic development to remote regions which have, until recently, remained relatively under-developed. The East Coast Rail Link, Kuantan Port and Malaysia-China Kuantan Industrial Park, for instance, potentially create jobs and stimulate the economy in Peninsula Malaysia's east coast, which has lagged behind despite the fast-paced growth seen on the west coast. BRI projects extend to rural areas in Sabah and Sarawak, ostensibly allowing the benefits of development to be shared more equitably across a broader cross section of the Malaysian population. Nonetheless, construction projects appear to have had a limited effect on job

creation for locals, as firms and workers from China are commonly engaged for various reasons such as specialised skills, experience, and differences in working practices.<sup>1</sup> More significantly, development projects have had a detrimental environmental and social impact on some of the most marginalised communities.

### Social and environmental impact

The increase in infrastructure construction and the demand for resources, such as sand and bauxite, have had significant environmental and social consequences. Development projects in forested areas have increased threats of biodiversity loss, including endangered species, while construction along the coast commonly involves land reclamation. These have had an impact not only on the environment – they have also threatened important sources of sustenance for some of the country's most disadvantaged communities.

Among the affected are fishermen whose livelihoods are in jeopardy as a result of land reclamation from BRI projects in coastal areas along the Straits of Malacca. Projects such as the Penang South Reclamation, Melaka Gateway and Forest City in Johor have decimated fish stocks, causing hardship to communities that depend on fishing. Fishermen are having to risk dangers

venturing further out to sea.<sup>2</sup> Environmental anthropologist, Serina Rahman, observes that fishermen are among the “poorest populations in the country, with income levels and livelihood instability that would render them under the category of ‘chronic poverty.’”<sup>3</sup> Although some developers have taken steps to mitigate the impact of development by providing monetary compensation and contributing to educational facilities, reports indicate that at times the benefits have not reached some disadvantaged fishing communities.<sup>4</sup>

Further north, representatives of approximately 10,000 fishermen have held protests against the land reclamation project off the coast of Penang and sand mining in Perak, asserting that the “overwhelming majority of full-time fishermen categorically object to their fishing livelihoods being curtailed by a property development project’ which ‘will wipe out valuable existing fishing areas.’”<sup>5</sup> The affected communities have raised concerns over the adequacy of compensation and the lack of viable alternative employment or sources of income. Likewise, Malacca's Kristang community of Portuguese and Asian descent have argued that they risk destruction of their livelihoods and their unique cultural heritage, which have been intrinsically bound to the sea for generations.<sup>6</sup> Staging a mock

<sup>1</sup> Laurence Todd & Meghan Slattery, *Impacts from Investments from China in Malaysia on the Local Economy* INSTITUTE FOR DEMOCRACY AND ECONOMIC AFFAIRS, POLICY IDEAS NO. 54 (Oct. 2018), 20, [http://www.ideas.org.my/wp-content/uploads/2018/10/P154-China\\_FDI\\_V2.pdf](http://www.ideas.org.my/wp-content/uploads/2018/10/P154-China_FDI_V2.pdf).

<sup>2</sup> Eileen Ng, *Mega Projects off Johor Hit Fishermen Livelihood*, TODAYONLINE (Aug. 5, 2017) <https://www.todayonline.com/world/asia/mega-projects-johor-hit-fishermen-livelihood>.

<sup>3</sup> Serina Rahman, *Environmental Citizenship for Inclusive Sustainable Development: The Case of Kelab Alami in Mukim Tanjung Kupang, Johor, Malaysia*, 16 J. INDIAN OCEAN REGION 100 (2020), 105.

<sup>4</sup> See for example Serina Rahman, *The Socio-cultural Impacts of Forest City*, ISEAS PERSPECTIVE ISSUE 2017 NO. 42, (June 22, 2017)

[https://www.iseas.edu.sg/images/pdf/ISEAS\\_Perspective\\_2017\\_42.pdf](https://www.iseas.edu.sg/images/pdf/ISEAS_Perspective_2017_42.pdf).

<sup>5</sup> *Fishermen: Why We Reject Massive Penang Reclamation, Perak Sand Mining*, ALIRAN (July 30, 2019)

<https://aliran.com/civil-society-voices/fishermen-why-we-reject-massive-penang-reclamation-perak-sand-mining/>.

<sup>6</sup> Monika Arnez, *Reclaiming the Sea from the Melaka Gateway*, NEW MANDALA (Apr. 8, 2020)

<https://www.newmandala.org/reclaiming-the-sea-from-the-melaka-gateway/>.

funeral in protest against the Melaka Gateway development, leaders claimed that the community was desperate to be heard by the state government as previous pleas had not been heeded.<sup>7</sup>

### Indigenous communities

The loss of traditional ways of life and sources of sustenance has been difficult and at times devastating for indigenous communities who were hunters and gatherers until development deprived them of their livelihoods. The sea-faring indigenous Orang Seletar who have lived off the coast of the southern end of Peninsula Malaysia for generations are one such example. The incursion of development on their fishing grounds has depleted its natural resources. While the Orang Seletar have attempted to adapt to urban life, integration to the economic and social life of the city that has emerged around them remains challenging.<sup>8</sup>

The indigenous people of Sarawak and Sabah in East Malaysia have likewise suffered disproportionately as the result of development projects, particularly the construction of hydroelectric dams. Many indigenous people live in rural areas on the island of Borneo, one the world's most biodiverse regions. The construction of multiple hydroelectric dams has been strongly opposed by indigenous communities who have been adversely affected by the loss of their ancestral land. For generations, many indigenous communities have had a close connection with

the rainforest and rivers which have provided them sustenance. The Penan were nomadic hunters and gatherers until deforestation depleted the resources they had relied on. The construction of hydroelectric dams has been endorsed by the government and carried out by consortiums comprising local and Mainland Chinese companies. Environmental and social impact assessments are conducted by local parties and, hence, Chinese companies have remained detached from the controversies surrounding these projects.

The construction of the Bakun and Murum dams brought devastating consequences for the affected indigenous communities. The construction compelled the relocation of indigenous communities from ancestral lands without adequate compensation. Among the significant complaints was that the land provided for farming was often insufficient, inaccessible, and could not be cultivated. This resulted in unemployment, food insecurity, poverty, and alcoholism. In a report following a visit to the resettlement areas, the Malaysian Bar Council remarked that “the rivers were polluted”, “fish had gone”, “the forests which were their sole means of livelihood and sustenance have been taken away from them” and “there was a general sense of utter deprivation, displacement, dislocation and frustration.”<sup>9</sup>

Although the Bakun and Murum dams were constructed in the earlier years of engagement with Chinese SOEs in mega-projects, they provide an illustration of the impact on vulnerable

<sup>7</sup> RSN Murali, *Coffin Protest by Melaka Portuguese Community was a Desperate Survival Call*, THE STAR (July 18, 2018) <https://www.thestar.com.my/news/nation/2018/07/18/coffin-protest-by-melaka-portuguese-community-was-a-desperate-survival-call/>.

<sup>8</sup> Arlina Arshad, *Sea-faring Orang Laut Strive to Stay Afloat*, CHANNEL NEWS ASIA (Jan. 28, 2018),

<https://www.straitstimes.com/asia/se-asia/seafaring-orang-laut-strive-to-stay-afloat>.

<sup>9</sup> Malaysian Bar, *Report of the Bar Council's Study Trip to Metalun and Telugang Resettlement Areas in Murum, Sarawak* (Aug. 7, 2014) [https://www.malaysianbar.org.my/document/com\\_docman/gid?rid=21659](https://www.malaysianbar.org.my/document/com_docman/gid?rid=21659).

communities of dams and of the implications of China's foreign policy on these issues. Evidence that has emerged from more recent mega-projects carried out in collaboration with Chinese companies appears to resonate with trends revealed by the Bakun and Murum dams – that human rights issues arising from development are regarded largely as domestic matters. The trend of mega-dams in East Malaysia through joint ventures with Mainland Chinese companies has continued with the hydroelectric dam in Belaga,<sup>10</sup> while plans to construct dams in Trusan and Papar have proceeded in recent years despite protests by the affected communities. Ironically, existing dams produce more energy than is needed in East Malaysia and there appears to be little rationale for the construction of more mega-dams.<sup>11</sup>

The marginalisation of indigenous communities flowing from development projects reflects past trends which have at times seen the political elite utilise their control over resources to extract private benefits. Concerns have been raised over the policies of some state authorities that have permitted development projects and extractive industries to displace indigenous groups.<sup>12</sup> The claims have been particularly rife in the resource-rich state of Sarawak which has a substantial

proportion of indigenous communities whose lives are intrinsically linked to the land.<sup>13</sup>

### Non-interference

The Malaysian experience of the BRI suggests that China's investors have remained considerably detached from controversies over human rights issues. Domestic policies which privilege economic development and the rights of the majority over the rights of minorities ostensibly allow foreign investors to detach themselves from human rights issues with relative impunity. Former Prime Minister Dr Mahathir, for example, rejected a universal interpretation of human rights as a form of western hegemony, asserting that 'Asian values' require that the interests of the community should take precedence over individual rights.<sup>14</sup> While in some instances, developers have taken steps to compensate or otherwise contribute to affected communities, these measures have not addressed pertinent long-term problems such as the loss of livelihoods. Human rights issues raised by communities adversely affected by development are left primarily to the local authorities to resolve in accordance with domestic policies. This appears to resonate with Chinese foreign policy of non-interference with local affairs.<sup>15</sup> Guidelines for Chinese SOEs on social responsibility emphasise the importance of abiding by domestic laws,<sup>16</sup> and

<sup>10</sup> *China-Malaysia JV gets Baleh Hydroelectric Project Contract*, THE STAR (June 30, 2017) <https://www.thestar.com.my/news/nation/2017/06/30/china-malaysia-jv-gets-baleh-hydroelectric-project-contract>.

<sup>11</sup> "Energy Glut"? – Sarawak GPS Bigwig Admits Truth At Last!, SARAWAK REPORT (Aug. 20, 2019) <https://www.sarawakreport.org/2019/08/energy-glut-sarawak-gps-bigwig-admits-truth-at-last/>.

<sup>12</sup> A Ananthalakshmi, *In a First, Malaysia Sues State over Indigenous People's Rights*, REUTERS (Jan. 1, 2019) <https://www.reuters.com/article/us-malaysia-politics>

[landrights/in-a-first-malaysia-sues-state-over-indigenous-peoples-rights-idUSKCN1PC1EX](https://www.reuters.com/article/us-malaysia-politics).

<sup>13</sup> CLARE REWCASTLE-BROWN, *THE SARAWAK REPORT: THE INSIDE STORY OF THE 1MDB EXPOSE* (2018); LUKAS STRAUMANN, *MONEY LOGGING: ON THE TRAIL OF THE ASIAN TIMBER MAFIA* (2015).

<sup>14</sup> MAHATHIR MOHAMAD, *A NEW DEAL FOR ASIA* (1999), 69.

<sup>15</sup> *Id.* 140.

<sup>16</sup> Tang Xiaoyang & Irene Yuan Sun, *Social Responsibility or Developmental Responsibility – What is the Environmental Impact of Chinese Investments in Africa: What are its Drivers, and What are the Possibilities for Action*, 49 CORNELL INT'L L. J. 69 (2016), 82-3.

the Green Investment Principles for the BRI promote environmental responsibility but fall short of addressing issues relating to human rights.

Accounts from BRI investments in other parts of the world suggest that forced resettlement due to the construction of dams is not unique to Malaysia. In seeking to abide by local policies and practices, Chinese investors have at times been perceived as complicit in human rights abuses in countries that have weak institutional safeguards against such harm.<sup>17</sup>

The approach of Chinese investors appears to differ from that of their western counterparts in several respects. Previous Australian involvement in the dam construction process in Sarawak suggests that they adopted a more pro-active role in mitigating the adverse impact of development, establishing support for indigenous groups in rebuilding their livelihoods.<sup>18</sup> Australian parties subsequently withdrew from the dam construction following lobbying by indigenous groups against the human rights violations. Similarly, appeals to Norwegian authorities mobilised intervention on issues of indigenous rights and corruption involving Sarawak Energy, the company responsible for multiple mega-dams, and its Norwegian CEO.<sup>19</sup> Nevertheless, Fam argues that the departure of Australian interests from the dam project led to the unintended consequence of the indigenous communities becoming worse off, having lost the support they

once had from corporate social responsibility initiatives by Australian companies.<sup>20</sup>

The Malaysian experience likewise suggests that access to Chinese resources coupled with the policy of non-interference in domestic affairs could potentially be misused by the politically powerful to enrich themselves. An example of this is seen in the Trans-Sabah Gas Pipeline and Multi-Product Pipeline projects which were later revealed to have been linked to the 1MDB scandal. Payments are thought to have been channelled towards settlement of debts owed by embattled 1MDB Berhad, the Malaysian state-owned company which was the vehicle through which former Prime Minister Najib Razak is alleged to have embezzled billions. Despite payment of close to 88% of the contract price, minimal work was completed, leaving the country saddled with large debts.<sup>21</sup>

The controversies over corruption and expropriation of land resonate with CLD Research Associate Adele Carrai's observations of railway mega-projects in East Africa. She notes that, "Due to China's non-interference approach, performance, impacts and consequences are often determined by the host country's regulations, due diligence and risk management processes. Chinese economic actors working abroad are increasingly aware of host-country laws and regulations; they also adapt to host-country unwritten laws, including social norms and local institutional practices, including corruption and

<sup>17</sup> *Id.*

<sup>18</sup> This included establishment and funding of the indigenous-led Asap Koyan Development Committee, to assist in resettlement; Shun Deng Fam, *China Came, China Built, China Left?: The Sarawakian Experience with Chinese Dam Building* 46 J. CURRENT CHINESE AFFAIRS 119 (2017).

<sup>19</sup> *Norwegian Chief Prosecutor Reports Sarawak Energy CEO*, SCOOP (May 23, 2014)

<https://www.scoop.co.nz/stories/WO1405/S00207/norwegian-chief-prosecutor-reports-sarawak-energy-ceo.htm>

<sup>20</sup> Fam, *supra* note 18.

<sup>21</sup> *Govt Still Negotiating with China to Resolve Issues Pertaining to Two Pipeline Projects*, NEW STRAITS TIMES, (Sept. 24, 2019) <https://www.nst.com.my/news/nation/2019/09/524185/govt-still-negotiating-china-resolve-issues-pertaining-two-pipeline>.

clientelism.”<sup>22</sup> In Malaysia, Chinese investments have accelerated the pace at which domestic policies are implemented, with the result that development often takes precedence over indigenous communities’ interest in customary land. Likewise, prospects of investment without interference appear to provide a means by which private benefits may be extracted by those in influential positions.

### Disputes

In line with the trend of leaving domestic affairs to the local authorities, disputes arising from BRI projects have primarily been decided by the domestic courts based on Malaysian law.

Indigenous groups displaced by development have brought claims for recognition of native title. In 2017, the Johor Baru High Court ruled that the Orang Seletar have customary rights to their traditional lands and water.<sup>23</sup> Nonetheless, native title claims are at times fraught with challenges. The right to customary land may be eroded in various ways including the acquisition of land for public purposes, gazetting of forest reserves, and the issuing of logging and mining licences.<sup>24</sup>

The difficulties faced by indigenous communities are exemplified in the Bakun dam controversy. The affected area was occupied by approximately 10,000 natives who had customary rights over

their ancestral land. They argued that their forced relocation amounted to deprivation of their lives under art. 5(1) of the *Federal Constitution*. The Court of Appeal denied them redress on grounds that “such deprivation was in accordance with the law, i.e. the *Land Code (Sarawak Cap 81)*” and “there was no special injury suffered by the respondents over and above the injury common to others.”<sup>25</sup>

According to SUHAKAM (Human Rights Commission of Malaysia), indigenous peoples are among the most marginalised groups in the country.<sup>26</sup> Encroachment on their customary land, not least due to development projects, often further exacerbates their hardship and disadvantage. In the words of a spokesman for the community at Bakun, “We should not be made the sacrificial lambs of development ... we have enough hardship already in the past when our river was affected. Furthermore, we do not benefit from this mega-dam project in any way. Even Sarawak Energy’s corporate social responsibility does not reach us at all.”<sup>27</sup>

Closer to the nation’s capital, recent reports have emerged of planned deforestation, leaving indigenous communities, who were previously displaced by development, facing prospects of losing the forests on which they depend and

<sup>22</sup> Maria Adele Carrai, *Corporate Social Responsibility along the Chinese Financed Railway Mega-project in East Africa*, CHINA, LAW AND DEVELOPMENT RESEARCH BRIEF 3 (2020), 6 <https://cld.web.ox.ac.uk/file/586256>.

<sup>23</sup> *High Court Grants the Orang Seletar Rights to Their Customary Lands and Waters*, CENTER FOR ORANG ASLI CONCERNS (Mar. 1, 2017).

<sup>24</sup> Sahabat Alam Malaysia & Jaringan Kampung Orang Asli Semenanjung Malaysia, *Encroachment on Orang Asli Customary Land in Peninsula Malaysia* (2016) <http://loggingoff.info/wp-content/uploads/2017/02/2016-SAM-JKOASM-Encroachment-on-Orang-Asli-customary-land.pdf>.

<sup>25</sup> *Ketua Pengarah Jabatan Alam Sekitar & Anor v Kajing Tubek & Ors & Other Appeals* [1997] 4 CLJ 253.

<sup>26</sup> Suruhanjaya Hak Asasi Manusia [Human Rights Commission of Malaysia], *Report of the National Inquiry into the Land Rights of Indigenous Peoples* (2013), 164 <https://nhri.ohchr.org/EN/Themes/BusinessHR/Business%20Womens%20and%20Childrens%20Rights/SUHAKAM%20BI%20FINAL.CD.pdf>.

<sup>27</sup> Peter Sibon, *Community Leaders Oppose Plan to Boost Bakun Dam’s Power Capacity*, DAYAK DAILY (Mar. 20, 2019) <https://dayakdaily.com/community-leaders-oppose-plan-to-boost-bakun-dams-power-capacity/>.

forced relocation again.<sup>28</sup> These instances exemplify the relative powerlessness of indigenous communities in resisting the rising tide of development that has progressively eroded their means of survival and way of life. Similar concerns appear to be echoed by fishing communities affected by the various land reclamation projects along Peninsula Malaysia's west coast who have resorted to protests, appealing to state and federal governments to intervene.

### Conclusion

Improved infrastructure and development projects from Malaysia's participation in the BRI have the potential to bring economic benefits to a broader spectrum of the Malaysian population including those in less established parts of the country. However, some of the most marginalised communities are disproportionately affected by the adverse impact of large BRI projects, including deforestation and environmental damage resulting from construction projects and extractive industries. The need for measures to ensure that the economic benefits of BRI investments are equitably distributed are in line with the findings of Khazanah Research Institute that the gap between the wealthy and the poor increased between 2008 and 2018.<sup>29</sup>

The socio-economic impact of the BRI on Malaysia's marginalised should be given due consideration if the rhetoric on poverty eradication is to be realised.<sup>30</sup> SUHAKAM emphasises the need for inclusive development which upholds the human rights of people whose livelihoods are at stake. In addition to fair compensation, they highlight the need for reform of existing laws to ensure that indigenous people are protected from encroachment on their customary land, and for affordable and effective dispute resolution which will allow them to seek a remedy.<sup>31</sup>

Continued protests by marginalised communities affected by development underscore the importance of ensuring that they have a stronger voice in projects that affect them.<sup>32</sup> While some steps have been taken to mitigate the harm from development, fundamental gaps remain. More can be done to channel the benefits of development brought by the BRI towards building a sustainable future and to ensure that the disadvantaged are not left more impoverished in the race towards modernity.

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<sup>28</sup> Shalini Ravindran & Edward Rajendra, *Green Lung Under Threat*, THE STAR (Feb. 18, 2020)

<https://www.thestar.com.my/metro/metro-news/2020/02/18/green-lung-under-threat>.

<sup>29</sup> *Malaysia's Widening Income Gap Between Rich and Poor*, THE STAR (Oct. 16, 2018)

<https://www.thestar.com.my/business/business-news/2018/10/16/malysias-widening-income-gap/>; Khazanah Research Institute, *The State of Households* (2018).

<sup>30</sup> Government of Malaysia, TWELFTH MALAYSIA PLAN (2021-2025).

<sup>31</sup> Suruhanjaya Hak Asasi Manusia, *supra* note 26.

<sup>32</sup> Audrey Dermawan, *Fishermen to March to Parliament to Protest Against PSR Project*, NEW STRAITS TIMES (July 8, 2019) <https://www.nst.com.my/news/nation/2019/07/502592/fishermen-march-parliament-protest-against-psr-project>; Durie Rainer Fong, *Protesters Seek Divine Intervention to Halt Papar Dam Project*, FMTNEWS (Aug. 1, 2019) <https://www.freemalaysiatoday.com/category/nation/2019/08/01/protesters-seek-divine-intervention-to-halt-papar-dam-project/>.