Southeast Asian Studies, Vol. 43, No. 1, June 2005

Deconstruction and Reconstruction of Native Customary Land Tenure in Sarawak

Dimbab NGIDANG*

Abstract

Contrary to commonly accepted principles of civil society and the ideology of self-determination and governance, the socio-cultural and psychological spaces, territory, boundaries, sovereignty, and customary rights to land resources of the indigenous peoples in Sarawak were not self-determined, but were defined during the course of the last century and a half by the Brooke and colonial administrations and by subsequent postcolonial governments. The first two regimes established their dominion and control over the indigenous peoples in Sarawak through autocratic rule and paternalism. In the pretext of protecting native rights to land resources, expatriate administrators deconstructed these rights, which do not owe their existence to statute, and reframed them on the basis of the land laws of their motherland. When customary rights were subjected to formal land codification under the Torrens land registration system, this codification impinged upon the natives' land inheritance system, their livelihood, their cultural identity, human dignity, and right to exist as discrete groups. Compounding effects of this land codification, the coming into existence of legal pluralism, as well as the exercise of administrative convenience in addressing sensitive land issues have become major sources of land conflict between the Dayak community and private developers and loggers in present-day, post-independence Sarawak.

Keywords: customary rights, territorial domain, lease, grant, crown land, state land and licensees, legal pluralism, codification and commoditization and joint venture

I Introduction

Land rights are a contentious issue in many former British colonies. Scholarly debates on land tenure arrangements in former British colonies range from those relating to property [Cramb and Wills 1990; Appell 1991; 1995] and human rights [Hooker 1997; Daes 2000; Peang-Meth 2002], social relations and ethnic identity [Martin 1997; Bulan 1998], legal pluralism [Marasinghe 1998; Hooker 1997], and state roles [Adam 1998; Edmund and Wollenberg 2001; McCarthy 2000], to issues pertaining to the stakeholders' perspective in resource conflict management [Elias *et al.* 2004]. All these former colonies inherited both formal and informal land tenure systems based on customary law.[1] The presence of colonial legal systems in these

* Institute of South East Asian Studies, University Malaysia Sarawak, Jalan Dato Musa, 934000 Kota Samarahan, Sarawak, Malaysia. e-mail: dimbab@ieas.unimas.my

1) See Adam [1998], Appell [1971; 1991; 1995; 1997], Langub [1998], Lang [1998], Bian [2000], Porter[1967], Richards [1961], Cleary and Eaton[1996], Eaton[1997], and Bulan[2000] in Malaysia, Chandrasena [1993] in Sri Lanka, Kingi and Maughan [1998] and Heremaia [2000] in New Zealand, ↗

former British colonies made customary laws subservient to the Crown (British law). In contrast to formal land title, native rights to land resources are recognized and administered through the customary law of indigenous peoples. In the post-colonial era in Southeast Asia, according to Cleary and Eaton [1996], the evolution of these land tenure systems has affected the process and progress of development in these countries. This is because, according to Marasinghe [1998], departing colonial masters left the newly independent nation-states to implement the colonial polices in place at the time, a situation, which favoured the ruling elite and often ignored the plight of indigenous peoples. While some former colonies recognized the land rights of indigenous peoples after independence, in most cases, these customary rights had already been extinguished during the colonial era. Even those countries like Zimbabwe, New Zealand, and Canada, which attempted to restore these rights through land reform and/or legislative process, are still confronted with insurmountable legal problems both from within and without.

Sarawak, with two-thirds of its population being indigenous peoples (including Muslim Malays), had a long history of Brunei rule, prior to Brooke and colonial rule. Traditional land tenure, based on customary law or the *adat* system in Sarawak, was in existence long before Sarawak came under the suzerainty of the sultanate of Brunei. When James Brooke was installed the first Rajah of Sarawak in 1841, he deliberately created a dualistic economy: with commercial agriculture and mining for the Chinese immigrants on the one hand, and a subsistence economy for the natives on the other. Nevertheless, the Brookes did not encourage large-scale plantations in Sarawak. This was primarily because, from 1841 to 1941, "Sarawak was run as a virtual personal kingdom by in turn, James, Charles and Vyner Brooke," in which government was an amalgam of autocracy and paternalism [Walker 2002]. Economic dualism reflected the Brookes' blueprint for promoting the regime's policy of non-interference in the native way of life. By following such a policy, the Brooke administration also created legal pluralism [Hooker 1975], which defined and categorized two types of land tenure systems. One was based on native customary law or *adat* and perpetuated traditional land use and farming systems among the natives. The other was a codified land system, which legalized private land ownership and supported the commercialization of agriculture.

Between the 1960s and 1980s, government efforts were mostly focused on improving the productivity of smallholder agriculture. As a result of these efforts there was a gradual shift from a traditional land use to semi-intensive land utilization, where cash cultivation become a prominent feature of a farming system in rural Sarawak. Initially, promoting a large-scale commercial plantation on native customary land was seen as problematic because of the complex landownership based on the *adat* system. However, changes in land policies and practices in the 1990s were designed in favor of a large-scale utilization of ancestral lands for commercial plantation due to the need to eradicate rural poverty and to integrate the periphery to the center. Compounding effects of this structural change and market forces have made the

↘ Davies and Harrison [1993] in Australia, Tough [1993] and McIntyre [2000] in Canada, and Marasinghe [1998] in British Colonial Africa.

traditional land tenure increasingly irrelevant in a market economy. The argument here is that traditional land use is a competitor to commercial plantation and thus viewed as a stumbling block to development. Therefore, to remove this stumbling block, the state authorities use legislative changes in order to reconstruct land ownership, land values and how best huge tracks of ancestral land should be used. This allows market forces and power brokers of the nation-state to dictate its economic potential for the future in the name of development.

In this article, I shall examine the modern history of agrarian law in Sarawak. The discussion focuses on: (a) the justification of land rights based on customary law or *adat* practices, (b) the deliberate efforts of the Brooke regime to deconstruct the traditional property rights system, (c) subjugation of native customary land tenure to foreign laws during the colonial administration, (d) ethnic relations and land rights, and (e) the modification, reconstruction, and nullification of these rights through numerous legislative amendments in the Sarawak Land Code over the years to suit the political, economic and ideological bases of the nation-state in the post-independence era.

II Justification of Customary Rights

II–1 *Territorial Domain in Customary Land Tenure*

Central to the Iban land tenure system is the concept of a territorial domain. The land tenure system defines cultural, social and political spaces of a longhouse community within a specified boundary. A territorial domain is a politico-legal concept, which encompasses a predetermined area where a political sovereignty has been established by a government in power. Population ecology theory calls this a niche, where pools of resources are found to support interdependent and competing individuals [Hannan and Freeman 1989]. If we are to interpret the concept in a broader context, "territorial domain" encompasses a complex arena of socio-cultural, economic and political systems of a nation-state. However, in this article, I restrict my discussion of a territorial domain to the context of the customary law or *adat* system of the indigenous peoples. In this context, territorial domain refers to a specific land area, where indigenous peoples carry out their subsistence activities such as hunting and gathering, farming and earning their livelihoods from generation to generation.

In Iban, the concept of territorial domain is called *pemakai menoa,* where customary rights were created by pioneering ancestors [Ngidang 2000a]. This is embodied in Iban customary law that has long been in existence. Richards [1961], in his report on Land Law and *adat* systems in Sarawak, wrote that "the family groups (*bilik*) join together to make a longhouse which, with the surrounding contiguous territory, make up the *menoa.* It includes besides farms and gardens, the water that runs through it and the forest round about it to the extent of half a day's journey." Lembat [1994] explained that *pemakai menoa,* according to the Iban *adat* system, is an area of land held by a distinct longhouse or village community, that includes farms, gardens, fruit groves, possibly a cemetery, water and forest within a defined boundary (*garis menoa*) normally following streams, watersheds, ridges and permanent landmarks. A

pemakai menoa also includes cultivated farmland (*tanah umai*), old longhouse sites (*tembawai*), cemeteries (*pendam*) and forest areas (*pulau galau*). The claim by natives over a territory is best stated in Mundy [1848: 210], where Brooke acknowledged that the livelihood, culture and survival of natives surely centered on:

> The fruit trees about the kampong, and as far as the jungle round, are private property, and all other trees which are in any way useful, such as bamboo, various kinds for making bark-cloth, the bitter kony . . . and many others. Land, likewise, is individual property, and descends from father to son, so likewise, is the fishing of particular rivers, and indeed most other things. . . . (as quoted in Hong [1987: 39])

Relations between people and land are fundamentally cultural in nature. People are territorial by nature, and they relate to land in both formal and informal ways [Dale 1997]. It is commonplace for indigenous people to use ridges, rivers, streams and creeks, stones, clumps of bamboo, etc., as traditional boundary markers between farms and between different communities. Because most of these cultures are based on oral history, significant amounts of information have been lost over time due to the absence of written records.

Interlinked with a territorial domain is the concept of boundary. What is important to note here is that "social life in many societies is channelled by boundaries that partition populations into ethnic groups" [Hannan and Freeman 1989: 53]. Boundaries not only partition the territorial domains of interlocking communities, but they also define social interaction within and between longhouse communities. From the pre-Brooke era to the present, the indigenous peoples of Sarawak have defined their personal and cultural space, community boundaries, decision-making processes, and human relations in terms of their customary *adat* passed down from their pioneering ancestors. Today the problem of verifying landmarks of these ancestral lands that denote territorial boundaries tends to be compounded by the increase density of settlement, lack of official documents of ownership, and the realization of the monetary value of land resources. As a result, conflicts are commonplace when competing stakeholders make claims and counter-claims to the same territory.

II–2　*Roles of the Adat System*

Be it for economic, political or social reasons, indigenous peoples' control over a territory operates through informal rules embedded in their customs and traditions. Most of these rules have never been codified into formal laws. A major problem here is that *adat* systems are used for managing human relations, but human relations are tied to culture and it is extremely difficult to codify culture into laws.

To avoid antagonizing the natives, the Brooke land administration gave due recognition to an intimate relationship between *adat* and traditional land tenure. As Porter [1967: 10] states in his thesis:

> At the time of James Brooke's arrival in Sarawak there had been for centuries in existence in Borneo and throughout the eastern archipelago a system of land tenure originating in and supported by

> customary law. This body is known by the generic term "Indonesian *adat*." Within Sarawak the term "*adat*," without qualification, is used to describe this body of customary rules or laws; the English equivalent is usually "native customary law" or "native customary rights."

Customary law or *adat* is instrumental for maintaining law and order and provides a state of balance between individuals, between individuals and community, and between community and the environment, both physical and spiritual [Langub 1998]. *Adat* was the common means for administering justice among the Dayaks by the Brookes, when intra- or inter-community disputes arose long before more formal laws were introduced. Today, *adat* is still widely practiced among the Dayak communities. It is under the custodianship of the village headman in every community. The *adat* system constitutes an informal constraint, which regulates and structures social relations. The validity of the *adat* system is generally accepted by community members — it is accessible to all — and it costs very little to administer.

Another crucial aspect of the *adat* system [Richards 1961; Porter 1967] is the definition of the rules of access and right of ownership to land and other natural resources within a longhouse domain. It dictates the law of land inheritance and/or transferability of land from the pioneering ancestors to the present generation. This informal governance is used by every longhouse community to regulate social relations and its farming and economic activities [Langub 1998]. It is also a collective community framework for regulating resource utilization and management in a sustainable manner for the common good.

In 1842 James Brooke cautiously introduced the Code of Laws, which was principally characterized by respect and honor for people's customs and traditions. James said that:

> I am going on slowly and surely, basing everything on their own laws, consulting all their headmen at every step, reducing their laws to writing what I think right, merely in the course of conversation — separating the abuses from the customs. . . . I follow, in preference, the plan of doing justice to the best of my ability in each particular case, adhering as nearly as possible, to the native law or customs. (as quoted by Porter [1967: 27])

Recognition of native customary law led James Brooke to provide an important provision in the Land Regulation of 1863, in which he declared that no scheme of alienation or land development would ever be introduced except in respect to land over which no rights had been established. The Code of Laws of 1842 permitted Chinese immigrants to settle only on lands not occupied by Malays or Dayaks. A paternalistic relationship between the White Rajah and the natives encouraged subservience to Brooke rule, which allowed the Brooke government to impose hegemonic power and maintain good ethnic relations in Sarawak.

III Subjugating Native Customary Rights to Foreign Law

In this section, we shall examine several salient strategies used by the Brooke and colonial regimes to define ownership and rights of access to land resources, and concerning how the indigenous peoples should manage their land in ways acceptable to the nation-state.

As mentioned earlier, by instituting legal pluralism in land administration, the two regimes perpetuated traditional customary land tenure for both political and economic reasons. In theory, due recognition was accorded to customary land tenure, but in practice, legislative constraints were imposed that undermined native rights to land over time. For instance, the colonial regime considered native customary law inferior, both in principle and substance, to English law [Marasinghe 1998]. Implicit in the Brooke and colonial land policies was the intention that land should be free from any customary rights, to enable them to establish a land tenure system based on English law. Yet for political reasons, the Brooke regime refrained from extinguishing the customary rights of the natives in Sarawak during its rule because the regime needed native support for its territorial expansion. Later, the colonial government lacked the political will to pursue land adjudication throughout Sarawak in view of the imminent formation of Malaysia in 1963. This left native customary rights to land resources a contentious issue and an unresolved one right up to the present.[2)]

III－1　*Private versus Family-bestowed Property System*

The first principle by which James Brooke categorized land for commercial purposes was by instituting a private property system as a means for controlling land use and to divide-and-segregate lands claimed under customary rights in Sarawak. Under the Land Regulation of 1863, James Brooke instituted private land ownership in Sarawak in two ways [Porter 1967]. The first method of instituting private land ownership was by leasing “State” land to individuals or companies for a duration of 999 years at the rate of 50 cents per acre with an annual quit rent of 10 cents per acre exclusive of a survey fee of 25 cents per acre. The second mode of instituting private land ownership was done by giving land grants in perpetuity. In the subsequent administrations and during the post-colonial period, land grants in perpetuity were only given to natives under the Land Settlement Order 1933 in which customary rights had been established on state land.

In James Brooke’s definition, private ownership strictly referred to registered land ownership with a document of title. This codification system was in conflict with the inheritance system of the Dayak community [Appell 1971] where both land and non-landed properties are held under a customary rights system. Under the *adat* system, the freedom to exercise property rights has been traditionally bestowed upon individual (*bilik*) families and/or communities under an informal governance structure of the *adat*. These rights were seen as a threat to the Brooke administration because they interfered with the regime’s political and economic goals to control natural resources in Sarawak. So in order to limit such freedom, the Brooke administration proclaimed that all lands, which were not codified and/or privately owned belonged to the state. As this principle implies, land should be free from rights to enable

2) Native Customary Land (NCL), as the Sarawak Land Code defines it, comprises some 22%, or 27,379 square kilometres, of the total land in Sarawak [Foo 1986]. For unknown reasons, these ancestral lands have decreased to 13% over time [Zainie 1994]. Why and how they have significantly decreased are both an important empirical question and a policy issue.

the government to freely lease State lands to individuals or companies, which engaged in mining or commercial cultivation of cash crops such pepper, rubber, coffee, etc., that have export potential. The colonial government of Sarawak also imposed the same ruling that all lands belonged to the Crown when Sarawak was ceded to the British colony in 1946.

III–2 *Forest-fallow Farmlands are Equated with Abandonment*

The second principle involved declaring farmland under a forest-fallow system of shifting cultivation to be abandoned land. A cyclic process of forest-fallow is a common traditional agro-forestry practice, but has been construed as abandoned or undeveloped in the Land Code, and therefore as belonging to the Crown or State.

There are four main stages of forest-fallow that are commonly recognized [Freeman 1955] in the traditional Iban land tenure. The first stage of fallow is called *jeremi* or *redas* and refers to land that has laid fallow for one year after a rice crop has been harvested. The second stage is called *temuda* and refers to a fallow period of 2–10 years. The third stage is known as *damun,* in which the fallow period may range between 10–20 years, depending on the nature of the soil and population pressure. The fourth stage of fallow is called *pengerang,* during which the vegetation resembles that of a virgin forest, having been left uncultivated for 25 years or more [Sawing 1993]. The land is then re-cultivated for another year or two for food and cash crops. Studies have shown that if the fallow period is long enough, shifting cultivation does not cause soil and forest degradation [Hatch 1982] and therefore, from a conservation viewpoint, this system is in harmony with the environment. Therefore, based on the logic of the above-mentioned argument, land under forest-fallow is never unoccupied or left abandoned, as far as native customary land tenure is concerned. More often than not, such land is planted between rice crops with fruit trees or other tree crops. Moreover, forest-fallow areas also provide a source of food such as edible ferns, wild shoots and timber for building materials by the natives, while at the same time, such practice is the most common means of rejuvenating soil fertility and discouraging pests and plant diseases when cultivation resumes. This view is in contrast with that of outside authorities that tend to perceive forest-fallow only as a source of commercial timber.

It should be pointed out that pioneer-shifting cultivation on virgin forestlands has not been practiced for a long time now due to legislative restrictions imposed by the Forest Ordinance 1953, the Land Code 1958, the Wildlife Protection Ordinance 1990, and the National Park and Natural Reserve Bill 1998. Therefore, it is important to make a distinction between pioneer-shifting cultivation during the Brooke era and/or prior to 1 January 1958 and the current farming system being practiced by the natives today. This article argues that a forest-fallow system that is currently being practiced by most farmers refers to a field rotation; it involves a clearing of *temuda* land or secondary forest as opposed to a clearing of primary forest as being practices in pioneer-shifting cultivation per se because it does not involve clearing of virgin jungle. Farmers are usually cultivating their ancestral lands inherited from their pioneering ancestors. So the term shifting cultivation in the present context is a derogatory colonial

concept, coined purposely to dehumanize the natives, whose livelihoods and survival depend on a forest-fallow farming system. It was psychological propaganda to demoralize the natives so that they would abandon such practice, which the regimes believed as threatening to forestlands suitable for commercial agriculture. If we use the same colonial definition of shifting cultivation today, vegetable farming and pepper and cocoa cultivation can also be labelled as shifting cultivation, because farmers planting these crops have to shift to different plots when crops are infested with diseases and pests, and leave these lands fallow for years before cultivating them again.

The main reason why shifting cultivation was seen as "evil" was that utilization and management of natural resources were intertwined with such practice [Freeman 1955; Richards 1961; Porter 1967; Cramb 1986; 1988; Cramb and Wills 1990; Lembat 1994; Sather 1990; Ngidang 2000a]. In the olden days, pioneer-shifting cultivation was associated with migration patterns of Iban hill rice cultivators and their territorial expansion [Pringle 1970]. This posed a threat to the land registration system introduced by the Brooke and colonial administrations because it obstructed their efforts to regulate land use in Sarawak. To the natives, when an individual fells virgin forest and farms it based on what Cramb and Wills [1990] call a cyclic-shift, commonly known as a forest-fallow system of land use, it is not only a livelihood, but a means through which rights to land are established. For this reason, authorities fear that if such a practice continues, most lands in Sarawak would be claimed under native customary rights.

III–3　*Usufruct Rights as Bundle of Rights*

The third strategy for controlling land use during the Brooke and colonial rule was to label customary rights as usufruct, rather than acknowledge the possessor rights of natives. By invoking the policy that all lands belong to the state, and that state lands are free from claims of ownership, natives are seen only as licensees of state or Crown lands. Crown land means "all lands for which no document of title has been issued" [Porter 1967: 84]. A major source of ambiguity in the Land Code is that a title without a document is not defined, but there is reference to customary law as being a body of customs of the natives [Richards 1961: 9]. As Richards points out, not much attention was given to the relevance and significance of customary law as far as the Land Code was concerned.

From the beginning, natives did not readily accept the idea that all land belonged to the Rajah, nor did they agree that all unregistered or untitled land was Crown property when Sarawak became a Crown colony in 1946. To the natives, their *adat* existed long before Brooke rule and their occupation and cultivation of land in Borneo for centuries was more than adequate to justify their ownership of it. They do not owe their customary rights to statute [Ian Chin 2001]. As we have seen, natives in the past were unwilling to sacrifice that customary protection to obtain a title to land that they already owned. They refused to pay for premium and survey fees in return for a lease subject to rent and conditions of occupation. They even believed that their customary rights to the land were extinguished upon payment for a lease

[Porter 1967].

In the context of customary law or the *adat* system, rights to land are interpreted as possessor rights, which to the natives, are legally binding. Thus, the *adat* defines native customary rights to land as rights of ownership [Richards 1961; Ngidang 2001]. On the contrary, English law, which the White Rajahs used in land administration in Sarawak, defined customary rights as usufruct rights [Richards 1961], which means only rights to use, but not to own land [Zainie 1994; 1997; Bulan 2000]. The official interpretation goes on to say that natives do not have absolute rights to land, rather they merely have a bundle of rights; the occupier of state land is mere licensee. Therefore, ownership of land in Sarawak is regarded as ownership of parts of the bundle of rights to land. "The bundle of rights is made up of rights belonging to the ruler, the tribe, the family, the village, the household and the individual" [Richards 1961: 19]. "A chief may have a right of control or even allocation but this too is limited by the rights of other members of the community to which he belongs" [*ibid.*: 20]. However, Richards [*ibid.*: 16] also seems to assert that *adat* means law, and it is binding upon people without sovereign enforcement. Because of contradicting interpretations of customary law related to land rights, efforts to integrate land rights into the Land Code have been problematic, making the issue of sovereignty and proprietary rights over lands a key point of contention between the government and the natives until today.

IV Reframing Property Rights through Formal Laws

In this section, I shall examine several specific legislative ordinances, which were introduced by the Brookes between 1841 and 1941 to define the boundaries between customary and formal land tenure in Sarawak. As we shall see in the following discussion, these deliberate efforts were made to deconstruct the traditional property system that was already in existence prior to Brooke rule and to reconstruct a new property rights regime based on formal laws.

IV–1 *Land Regulations of 1863*

The purpose of introducing Land Regulations in 1863 was due to the urgent need to deal with a squatter problem that resulted from the influx of Chinese and Javanese immigrants to Kuching during the first two decades of the Brooke rule [*ibid.*: 7]. When Charles Brooke was proclaimed the second Rajah of Sarawak in August 1868, shortly after the death of James Brooke, he gave some recognition to the plight of these squatters. In 1871, Charles ordered Regulation 5 of 1863 concerning the status of squatters revised and clarified, which authorized the regime to alienate land, which had been cleared under customary law and left fallow, and granted land titles to these squatters.

IV–2 *Sago Land Regulation*

Another variant of land tenure called the Sago Land Regulation, also known as the Land Grant Regulation of 1876, was introduced through General Order in September 1871 with respect to

sago land, which applied only to districts in which sago was grown [Porter 1967: 37]. By designed, the rationale for instituting this regulation was in line with the regime's emphasis on the commercialization of export crops such as sago.

So sago planters were given the option of "remaining as squatters or taking out a grant to obtain absolute rights over their property" [*ibid*.: 39]. Also, as Porter [*ibid*.: 40] points out, in addition to alienating land for sago, Charles Brooke also used the same land regulation for the purpose of surveying land under rice and coconut cultivation or other "native culture," provided the land was within one half to one mile radius from a town. With the introduction of this law, all land under these crops was issued an occupation ticket by the Land Office, only at the request of the landowners, but transfer of certificates from the original owners to other individuals was discouraged by the Land Office.

With an increasing need to intensify land use and to promote commercial agriculture, Charles Brooke also published a proclamation in 1876 to encourage and assist the cultivation of pepper or *gambier* by Chinese immigrants at government expense [*ibid*.: 38]. This land law did not make any difference to the natives' livelihood because they were essentially shifting cultivators, hunters and gatherers of forest products. However, such land proclamation drove a very important message to the natives that Brooke was determined to use immigrant Chinese to produce agricultural commodities for export if natives continued stubbornly to pursue their traditional way of life and refused to abandon shifting cultivation, and he would extinguish their customary rights to fallowed lands for distribution to the immigrants.

IV–3　*Fruit Tree Order*

The Fruit Tree Order of 1899 was specifically designed to stem the movement of Dayaks from one district to another, because they were well known for their migratory pattern associated with their "destructive" [Freeman 1955] forest-fallow pioneer shifting cultivation long before the Brooke era. Section 2 of the provision of the Land Order stated that:

> Any Dayak removing from a river or district may not claim, sell, or transfer any farming ground in such river or district, nor may he prevent others farming thereon, unless he holds such land under grant. [Porter 1967: 13]

The Iban community was pressured by the Brooke regime, in the case of migration from one river or district to another, to institute *adat pindah* [see Majlis Adat Istiadat 1993], in which individuals or families lost their rights to land when they moved to other districts. *Adat pindah* was engineered by Charles Brooke and later endorsed and adopted by the Colonial government. Nevertheless, Brooke guaranteed that communal rights were also protected and retained by the remaining individuals in the community. Section 1 of the Fruit Tree Order of 1899 stated that:

> Such fruit trees which have chiefly sprung from seeds thrown out of and about houses, and have become common property of the inhabitants of a longhouse or village, are in no cases to be sold or in any way transferred or claimed by individuals leaving such houses or villages. [Porter 1967: 12]

IV–4 *Native Reserves*

It should be noted, according to Richards [1961: 7], that "most Orders before 1920 do not, in fact, refer to land outside Kuching, which had a radius of 1 mile from the Court House, until 1889 when it was extended to 7 miles from the Court House." What Richards posits here is of great importance for the purpose of analysing the extent to which the regime was able to enforce the existing land laws through the territory of Sarawak. If what Richards says is right, then it certainly implied that the Rajah's land laws could only be applied to a limited area, which gave rise to a problem with squatters as the population of Kuching grew over time. For the rest of Sarawak, it meant that land, which was in abundance during that time, was free for all. Again, whatever land laws had been instituted by the Rajah, they did not make any difference to the natives' way of life, primarily because it was impossible to implement these foreign laws in the interior of Sarawak.

However, after Charles Vyner Brooke succeeded Charles Brooke in 1917, land administration in Sarawak was further improved, but at the same time the *adat* system of land tenure was also being eroded as a result. All the previous land orders were consolidated in Land Order VIII in 1920, to deal with all aspects of land administration. This enactment was designed to systemize land classification into "Town and Suburban Lands," "Country Lands" and "Native Holdings" and for controlling land use to encourage commercial farming of *gambier,* pepper and rubber. It should be noted that:

> The provisions concerning the Native holding allowed the free occupation of land for the cultivation of fruit trees, padi, vegetables, pineapples, sugar cane, bananas, yams and similar culture in accordance with the customary law. [Porter 1967: 48]

In addition, the supplementary Order No. IX was instituted into the Land Order VIII in 1920 in order to provide for creating "Native Land Reserves," to be divided into three acres for occupation by any native free of charge. This supplementary order also empowered the land office to carryout a subdivision of land in certain localities into five-acre lots to be held under squatters licence. Again, additional regulations were issued for the creation of reserves in jungle land adjoining, for the benefits of peppers gardeners and for the survey of "extensive holdings" before the issue of title.

IV–5 *Land Orders of 1931 (L–2)*

In 1931, a new Land Order was introduced to consolidate and fine-tune the law relating to land in Sarawak, replacing the Land Order of 1920 and the Regulations under the law up to 1925. The Land Order 1931 made a clear distinction between grants and leases, and specified the meaning of state land. As quoted by Porter [*ibid*.: 50], these terms were defined as follows:

> The term "Grant" means the grant of State land in perpetuity or for a period of less than 999 years issued by or on behalf of His Highness the Rajah, whereas the term "Lease" means the lease of alienated land irrespective of whether such land was originally comprised in a grant or lease of State land.

> Lease of “State land” means the lease of State land under the hand of the Superintendent for and on behalf of His Highness the Rajah for a term of less than 999 years.
>
> “State land” means all lands for which no document of title has been issued but includes all lands, which may become forfeited or may be surrendered to the State by the lawful owner thereof.

Nevertheless, the Land Rules of 1933 extended the term of both leases and Occupation Tickets (under the 1920 Order) to 99 years. Under this new Land Order, State Land was divided into “Town or suburban lands, Kampong or village lands, and Country lands.”

Central to the Land Order was the emphasis on land registration and/or codification of land tenure, which required customary rights to land to be registered under title in the Land Office. The Land Order 1933 empowered the land office to create native land reserves, which were not to be subdivided and for which individual title would not be issued. Also, there was a provision for unlimited areas for the cultivation of sago, of which these lands could be owned and occupied by natives free of premium and rent provided they were demarcated and registered. Although no document of title was given to natives with respect to village lands, the provision of this land order has an important implication for determining the boundary between state and customary lands.

IV−6　*Land Settlement Ordinance 1933 (L−7)*

The Land Settlement Order of 1933 empowered the land office to carry out land adjudication based on a formal system of land codification through a settlement process. As required by Part 11 of the Order, when specific localities were declared as settlement areas, the affected landowners were to be informed through the publication of Settlement Notification.

The purpose of the Land Settlement Ordinance was to provide for settlement of land and registration of titles, provided that customary rights were recognized over the following: (1) land planted with fruit trees, when the number of fruit trees amounted to 20 or more per acre; (2) land in continuous occupation or which has been cultivated or built on within three years; (3) burial grounds or shrines, and (4) usual rights of way for men and animals from rivers, roads, or houses to any or all of the above [Adam 1998: 25]. The status of land held under customary right is changed to Native Area Land upon given a document of title.

IV−7　*Secretariat Circular 12/1939*

Upon realizing the complexity of customary land tenure and the problems associated with it, Rajah Charles Vyner Brooke was led to issue the Secretariat Circular 12/1939 on Forestry and Land Use in 1939. The purpose of this circular was to codify the *adat* land tenure via settlement process. Due to the outbreak of WWII, the plan was not fully implemented. It explicitly recognised the need for a more rational forest policy to eliminate the “evils” of shifting cultivation [Porter 1967: 21]. The significant impact of this memorandum was that it formalized the status of customary law, where village councils were officially appointed as custodians of *adat* to deal with land tenure and inheritance in each community [Richards 1961; Hong

1987]. The responsibility of these councils was to demarcate village boundaries in order to determine the limit and extent of customary land. These lands, which were acquired via native customary law, would become Native Communal Reserves under the Land Orders. Natives were only permitted to claim additional farmland if approval was given by the District Officer. This was deliberately done to curtail the widespread practice of pioneer shifting cultivation in order to safeguard commercial forests.

V The Torrens System under Colonial Rule

V–1 *Land Classification*

A radical change in land policy took place when Sarawak was ceded to Britain in 1946, immediately after the Japanese surrender in 1945. In 1948, the colonial government strengthened its control over land policy and administration in Sarawak by introducing the Torrens system of land registration.[3] Various land classifications under the Torrens system are discussed as follows.

Within a span of 17 years of colonial rule (i.e., from 1946 to 1963), four major Land Classification Ordinances were legislated in Sarawak. The first Colonial Land Code was the 1948 Land Classification Ordinance, which classified all land in Sarawak into the following categories:[4] (a) Mixed Zone Land; (b) Native Area Land; (c) Native Customary Land; (d) Reserve Land, and (e) Interior Area Land.

On the pretext of protecting the rights of the natives, the Land Classification Ordinance of 1948, in fact, was intended to create both psychological and physical boundaries to restrict land ownership among non-natives to Mixed Zone Land.

Land classified as Native Area could only be alienated to natives. The ordinance also allowed natives access to land resources held under customary rights and prohibited land transactions in Native Area Land, Native Customary Land and Interior Area Land involving non-natives. In 1952, an amendment was made to the Land Classification Ordinance of 1948, concerning a lawful occupation of various categories of land. Natives in lawful occupation of Native Customary Land were declared to be "licensees of Crown land" [Porter 1967: 610]. This

3) See Cleary and Eaton [1996]. The Torrens system of registering land titles was first introduced in Australia in the 1800 by recording all rights, dealings, and surveying of holdings and their boundaries, which are indicted in the plans that constitutes the register. A certificate of title provides proof of ownership and security of tenure. This system of land codification was widely used in British colonies, and later adopted for use by most former colonies after independence. The crucial aspect of this system is that once a title is issued over a piece of land that right becomes indefeasible. It can only be defeated on ground of fraud.

4) See Foo [1986]. Mixed Zone Land refers to land, which can be owned by both natives and non-natives. Native Area Land means land held by natives under document of title. Native Customary Land refers to land in which native customary rights, whether communal or otherwise, have lawfully been created prior to 1st January 1958, and still *exist* as such. Reserve Land means land reserved to the government that comprises National Parks, Forest Reserve, Protected Forest or Communal Forest. Interior Land refers to land not falling within any of the above categories.

was followed by an introduction of the 1953 Forest Ordinance, which reflected the commitment of the colonial government to safeguard forestland for commercial exploitation.

The second land law introduced during the colonial period was Land Ordinance No. 3/1954, which came into effect on 21 May 1954. It amended sections 5 and 6 of the Land Classification Ordinance of 1948, and states that "No native customary rights shall whether by felling of virgin jungle or otherwise, hereby be created" (as quoted by Zainie [1997: 16]), which according to Zainie, recorded for the first time the Rajah ever exercised his power to rebuke further creation of customary rights on state land.

The third Land Ordinance was instituted in 1955. Sections 5(3) and 4 of the Land Classification Ordinance of 1948 were amended in the Land Ordinance 1955, which prohibited a creation of native customary rights over the Mixed Zone Land after 21 May 1954, and also disallowed the creation of native customary rights by felling of jungle over Interior Land with effect from 16 April 1955, without the approval in writing by the District Officer.

Finally, the fourth land law introduced by the colonial government was the 1958 Land Code.[5] Various amendments to the 1948 Land Classification Ordinance were consolidated into a single legislation that deals with land registration, settlement of customary rights, alienation and land acquisition in Sarawak. What is so important in the 1958 Land Code is that the colonial government for the first time firmly established a cut-off point for recognizing the legality of natives claim to land in Sarawak. As stated in the Sarawak Land Code (SLC) 1958, customary rights to land could only be recognized if such rights were created prior to 1 January 1958. In Section 5(2) of the SLC, these rights were created by: (a) the felling of virgin jungle and the occupation of the land; (b) the planting of land with fruit trees; (c) the occupation or cultivation of land; (d) the use of land for burial ground or shrine; (e) the use of land of any class for rights of way; and (f) any other lawful methods. Eaton [1997: 7] views Section 5(2)(f) as a "catch-all clause that allowed for different customary rules or *adat*."

It should be noted that the Brooke and colonial regimes essentially used their understanding of Iban customs and generalised these to all indigenous groups in Sarawak except the nomadic Penan, who did not fell virgin forest to create customary rights under the definition of the state agrarian laws.

V–2　*Codification and Commoditization of Land*

As Cleary [1997] clearly points out, colonial land laws were designed to govern the definition, acquisition, ownership and use of land. They enabled the regime to frame commercial and scientific attitudes, instituted the mechanism for regulating agricultural practices deemed destructive to the environment, redrew population or settlement distribution, and dismantled

5) See Malaysia, Sarawak Government [1999]. The Land Code (Cap. 81) was formulated by taking into account the following ordinances: Land Ordinance (Cap. 27), Land Settlement Ordinance (Cap. 28), Land (Classification) Ordinance of Sarawak, The Land Act of 1948 of New Zealand, the Land Code (Cap. 138) of the Federated Malay States, The Land Transfer Act of 1952 of New Zealand, The Land Acquisition Ordinance of Brunei, and the Transfer of Land Act of the State of Victoria, Australia [Zainie 1997].

communal organization of agricultural life and created a society of peasant farmers based on the image of the motherland — Great Britain. It was therefore by design that codification ignored the socio-cultural aspects of the customary land tenure [Hooker 1999; 2002]. This gave rise to a conflict between *adat* law and colonial land policies.

The impact of colonial land policies is far reaching. Drawing from Cleary and Eaton [1996], such impact can be examined from two perspectives. The first involves commoditization of land, which values land as an economic good for use as an input for producing exports. Land should be free from traditional rights to enable the colonial government to grant land titles or lease land to private individuals. Helgason and Palsson [1997] consider the process of commoditization as "an intriguing example of dynamism and transformation in the moral economy." When land is accorded certain value it breaks the traditional institution of inheritance associated with property rights in the *adat* system. Land, which the natives regard as their source of material wealth and livelihood now becomes a contested commodity.

Second, with the introduction of the Torrens system of land codification in Sarawak, the position of the natives became problematic because their claims to land lack formal or written records, and the burden of proof lies with the claimants. This codification system negates the validity of inherited rights based on customary law and oral history. As I shall point out later on in the subsequent discussion, a justification of such claims has to be proven by physical occupation.

VI Ethnic Relations and Land Rights

The relationship between economic development and ethnic relations during the Brooke and colonial era, can be traced to and explained by the ideology of legal pluralism, which supports both formal and informal systems of land tenure. This was intended to support a dualistic economic development, with Chinese-monopolized commercial agriculture, on the one hand, and native-dominated traditional sector, on the other hand.

As in all former British colonies, the Torrens land codification created in Sarawak a legacy of land classification associated with ethnic identities. Mixed Zone Land, which occupies 13% of the total land in Sarawak, is alienated to the Chinese, whereas Native Area Land (NAL) and Native Customary Land (NCL) are specifically designated for the natives [Zainie 1997: 11]. According to Foo [1986], some 22% or 23,379 square kilometres of the total land in Sarawak is classified under NCL, but Zainie [1994] challenges this figure saying that only 13% or 1.5 million hectares of the total area is NCL. Because of its economic potential and a political leverage associated with the huge size of NCL, it creates uneasiness among non-Dayak economic and political elites.

The ideology behind such land classification is tied to what political science calls a divide-and-rule policy based on the principle of fear-and-favor by giving rewards to both rebels and supporters. The Rajah's Land Order VIII 1920 designated land occupied by natives as "Native Holdings" and with a supplementary Order Number IX, which empowered the Land Office to

create “Native Land Reserves,” while the “Town and Suburban Lands” and “Country Lands” specifically demarcated areas for commercial purposes. To please the Chinese community, that formed the economic backbone of the colony, Mixed Zone Land was made available to the Chinese, although there is no legal restriction for other races to acquire such land if they can afford it, unlike NAL, where ownership is non-transferable to non-natives. For fear of native displeasure, lands occupied by natives were adjudicated under the 1933 Settlement Order as Native Area Land (NAL). On top of that, natives are still permitted until today to occupy untitled lands claimed under customary rights, which are yet to be adjudicated by the Land Office, if such rights were created prior to 1 January 1958.

In 1962, a last minute attempt was made by the colonial government prior to independence in 1963 to review the land policy under the Land Code 1958 by commissioning a Land Committee. Following the Land Committee Report 1962, a Land Bill was introduced in the State Assembly “Council Negeri” three years after independence, in 1965. Such legislative attempt, among others, was intended to alienate more land to satisfy Chinese demands for farmland within reach of towns or bazaar [Malaysia, Sarawak Government 1962: 1–2]. However, the Land Bill was withdrawn [Porter 1967] due to a strong opposition against the idea of converting more native customary land to Mixed Zone Land.[6)]

With declining voice representing the non-Muslim natives in the state government due to the political fragmentation of the Dayak community [Jayum 1993; 1994; 2003; Jayum and King 2004], the Chinese economic elites, through their strong economic leverage, have tremendous political influence on land policies in Sarawak. Their influence colludes with Bumiputera economic elites’ interests in land development in Sarawak via the government’s aggressive implementation of commercialisation of the agriculture sector in the 1990s. A compounding effect of these colluding forces has generated commercially biased land policies to allow native customary lands to be developed in favor of the private sector in the name of development. Thus, the Chinese community’s need for more farmlands in recent years has shifted from ethnic-based demand to private sector’s acquisition through a government-sponsored private sector partnership with natives in order to develop native customary lands for plantation [Bulan 2000; Ngidang 2002; Majid-Cooke 2003]. In this situation, the intermediary role of the state in land development helps to balance the private sector’s economic interests against the natives’ interests so that such partnership is not perceived as a land conflict between natives and non-natives.

A somewhat similar pattern of framing also applies to native blockades against logging activities, where blockages are framed as anti-development or anti-government [Ngidang 1993;

6) See Malaysia, Sarawak Government [1962]. The colonial Land Code, which came into force on 1st January 1958, was severely criticized in the 1959 Annual Report of the Land and Survey Department, in which it stated that:

> The introduction of the Code was premature and its preparation should have been preceded by a review and clarification of Government policy regarding land and an attempt made to obtain some unification of more important principles of Native Customary Rights. The Code is extremely detailed and rigid and the effect of its application is to dictate rather than interpret Government Policy [Malaysia, Sarawak Government 1962].

Majid-Cooke 1997], or seen either as conflicts between natives and logging companies, or between the government and natives, rather than portraying them as conflicts between natives and non-natives. However, Majid-Cooke [2002] views such conflict as being tinged with elements of ethnicity in that most of the private companies involved are Chinese-owned. But as Brown [1995: 2] says in his analysis of ethnic politics in Southeast Asia, "keeping the lid on ethnic politics" and "assertion of autocracy" are damage-control strategies adopted by state authorities so as to prevent such problems from reaching a flashpoint for three important reasons.

The first reason is that logging and plantations are closely guarded-industries [Majid-Cooke 1997] and therefore portrayed in the government-controlled media as vehicles of development [Ngidang 1993; Majid-Cooke 1997].

The second reason is due to a Sarawak's strong tradition of ethnic diversity and mutual acceptance of ethnic differences within a diverse community due to high level of tolerance underwritten by a shared heritage based on an ethos of pluralism [Reece 2004].

Thirdly, the federal government respects customary land rights in relation to ethnicity in the East Malaysian states of Sarawak and Sabah. So far, it has not interfered in any land issues in the two states because natural resources in Sabah and Sarawak are state matters. As Kingsbury [1998: 430–431] states:

> Constitutional recognition of Orang Asli and natives of Sarawak and Sabah as indigenous is in some respects a continuation of British practice, overlain by Bumiputera policy. This policy actively privileges, on grounds of indigenousness, a politically dominant and economically influential Malay group and confers juridical recognition, if more limited practical benefits, on natives groups in Sabah and Sarawak where they collectively constitute numerical majorities but wield an uneven degree of political influence and economic power.

VII Land Code Amendment Bill 2000: Justifying Brooke and Colonial Constructs

The Sarawak Land Code (SLC) 1958 remains the most important piece of land legislation in the present post-independence period and continues to serve as a point of reference for land policy and administration today. As demand for land has increased due pressure and/or demographic changes over time, together with an expansion of logging activities and plantation development, new legislation and amendments to the SLC have been introduced in the post-independence era. These changes were instituted without prior consultation with the affected native communities, although they obviously have a profound impact on the natives' way of life today and will have for years to come.

VII–1 *Legislative Control over Land Use, Hunting and Gathering*

Several ordinances were passed by the state legislature to curtail claims on land rights by natives and to bring the clearing of primary forest under control in Sarawak. In 1964 the practice of issuing permits (under the Land Classification Ordinances 1948 and later amended

in the Land Ordinance 1955) to create customary rights over Interior Land was discontinued as stated in Part II, Section 10 (3) of the 1974 Land Code, making it is an offence for natives to occupy Interior Area Land. Section 209 of the Land Code Amendment Ordinance of 1979 was added to further reinforce legislation concerning unlawful occupation of state land. The 1979 Forest Ordinance (Section 90) extended the powers of the state to persecute offenders, who carry out activities within protected forests, forest reserves or on state land. These ordinances were introduced to protect the logging industry and to discourage natives from encroaching into virgin forests.

In addition, hunting and gathering activities were restricted with the introduction of Part II of the Wildlife Protection Ordinance in 1990 and 1998. The SLC Amendment 1989 (No.2), Section 10 (3) re-enforced the previous ruling that any native attempting to create customary rights on Interior Area Land without prior permission from the District Office is guilty of an offence.

While the statutory provisions seem to give protection to native customary rights to land, the 1994 Land Code Amendment, Part II, Section 5(3) empowers the Minister of Resource Planning to extinguish such rights through compulsory land acquisition, by applying Section 47, 48 and 49 (SLC, page: 49–50) supposedly for public and development purposes.

VII–2　*Nullifying the Inheritance System under Customary Law*

The latest piece of legislation that has far-reaching implications for native rights to land is the Land Code (Amendment) Bill 2000, which was passed by the State Assembly on 9 May 2000. The new land bill deleted the clause of Section 5(2)(f) “any other lawful method” from the SLC. The state authorities interpreted of Section 5(2)(f) of the SLC as redundant and ambiguous; therefore, the meaning of customary rights was not taken away when it was deleted [Zainie 1997]. Fong [2000] interprets Section 5(2)(f) as irrelevant because the only way for natives to occupy Interior Land is to obtain a permit in writing from a District Officer to fell virgin jungle in the interior land. The state government asserts that proof of lawful occupation is accepted if the evidence can be proved or verified by: (1) aerial photographs, (2) permit or certificate issued pursuant to Order No.VIII, 1920, (3) records kept by Native Courts pertaining to disputes over land claims, (4) proclamation or modification made under the Forests Ordinance, and (5) physical occupation of the land coupled with evidence that such occupation occurred prior to 1 January 1958, or if after 1958, a permit under Section 10 of SLC [*ibid.*]. As I have pointed out earlier, such permits were discontinued in 1964.

To the indigenous peoples, Section 5(2)(f) is crucial to their customary rights because it integrated and codified their cultural practices in the SLC, and therefore these practices are legal in their opinions. Customary law is an integral part of their institutions of inheritance, and therefore, it is lawful to practice such a culture. Deletion of 5(2)(f) nullified the *adat* system as mentioned in section three of this paper; it denied those people their rights to continue the practice of their culture. For instance, they could no longer claim rights over their territorial domain *(pemakai menua)* and communal forest (*pulau galau*, in Iban), or their *pengurip*

(Penan) that denotes forest area for hunting and gathering, or their *jelajah asal* (Kayan-Kenyah) [Bian 2000].[7] When culture is detached from land rights, then the only means of claiming such rights to ancestral lands is through physical occupation as pointed out by Fong [2000]. In the absence of written records, even if customary rights were created prior to 1 January 1958, lawful occupation of state land is difficult to prove over time, without taking into account of oral history, existing native traditions and institutions, and boundaries of ancestral lands, especially when members of the older generations are dead.

VII–3 *Natives Should Have Only Three Acres of Land*

The Land Code (Amendment) Ordinance 2000 created history in itself: it was well received by all Dayak representatives in the State Assembly or "Ahli Dewan Undangan Negeri (ADUN)" because the new bill made provisions for the registration of native rights to land. Surprisingly, an official statement from the state government contradicts this by saying that although the bill contains provisions for the registration of native rights, it is not equivalent to granting a document of title to the natives [*ibid.*].

A rather strange official viewpoint related to the Land Code (Amendment) Ordinance 2000 was given by Fong [*ibid.*: 3], where he pointed out that each native should be restricted to occupy and cultivate one lot of three to five acres. Fong misinterprets the Land Order VIII in 1920 to justify his argument. The Land Order was introduced by the Second Rajah in 1920, which systemized land classification into "Town and Suburban Lands," "Country Lands," and "Native Holdings." It states that:

> The provisions concerning the Native holding allowed the free occupation of land for the cultivation of fruit trees, padi, vegetables, pineapples, sugar cane, bananas, yams and similar culture in accordance with the customary law. [Porter 1967: 48]

However, what Fong refers to was the supplementary Order No. IX, which provided for creating "Native Land Reserves," to be divided into three acres for occupation by any native free of charge. It also allowed a subdivision of land in certain localities into five-acre lots to be held under squatters licence. Again, additional regulations were issued for the creation of reserves in adjoining jungle land, for the benefits of peppers gardeners and for the survey of "extensive

7) In May 2000, the state government of Sarawak passed the Land Code Amendment Bill 2000 to delete Section 5(2)(f) of the Land Code. Many scholars consider this a step backward, primarily because of the fact that many former British colonies, such as Canada, Australia, New Zealand, and also Africa have made very significant progress in restoring customary rights of the indigenous peoples to their ancestral lands. A precedent had already been created by the Mabo case in Australia [McIntyre 2000; Netthein 2000]. We also have two cases in Malaysia. The first case was between Orang Asli versus the state of Johore. The High Court ruling recognized the rights of Orang Asli to the forest land in Johore [Sidin JCA 1997; Bulan 2000; Bian 2000]. The second court battle was between Rumah Nor ak Nyawai versus the Paper Pulp Plantation in Bintulu, Sarawak. A "landmark decision" was made by the High Court, which ruled that the native customary rights claimed by the indigenous communities in Sarawak do not owe their existence to any Orders or legislature, but were in existence long before and have survived all Land Orders and legislature [Ian Chin 2001].

holdings" before the issue of title.

Fong's argument, which apparently represents the state viewpoint, if taken seriously humiliates bona fide natives because by limiting natives to cultivate and occupy only three acres of ancestral land can be interpreted as: (1) a deliberate move to push natives out of farming without taking into consideration of the consequences in their livelihoods, and (2) the logic of such displacement can be equated to disempowerment. Moreover, Fong's line of argument is contrary to the requirements of forest-fallow farming system. Hatch [1982: 65] has calculated that the average fallow period in Sarawak is in the region of 10–15 years. On this basis, a *bilik* family could not possibly survive on only three acres of land.

VII–4　*Physical Occupation as a Basis for Claiming Land Rights*

Further examination of the issue of deleting of Section 5(2)(f) of SLC reveals that when the cultural aspect of customary rights and inheritance based on the *adat* law is abrogated from the existing Land Code, the government has a stronger basis to use "physical occupation" as stated in the Section 5(2)(c) of the Land Code, as the prerequisite to claim land currently under customary rights. Fong [2000: 4–5] justified this by quoting paragraph 7(3) of the *Adat* Iban, 1993, which says that:

> Whoever moves out from his longhouse to another division or district or the jurisdiction of another Penghulu or to another longhouse under the same Penghulu without prior approval of the District Officer or the consent of the Tuai Rumah concerned or the Penghulu of the area shall be fined in accordance with section 68 hereof and shall be deprived of his untitled farm and or any customary land that has not been planted with crops and all such land be owned in common by the people of the longhouse concerned. So he shall be deprived of untitled land and any land not planted with crops. [*ibid*.: 4]

This *adat* law was adopted from the Fruit Tree Order in 1899 to discourage migration (*pindah*) of Iban from one district to another. It is important to note that once Section 5(2)(f) was deleted, the state authorities could apply the Land Order No. L–7 of 1933 to justify the position that the only recognition given by written laws as pronounced by the Rajah is by physical occupation of an area. Following this argument, *pindah* is equivalent to abandonment, which is justified by the Land Code (Amendment) Ordinance 2000, Section 5(2)(c), where customary rights to land are recognized by SLC on the basis of physical occupation or cultivation of land as opposed to leaving the land in forest-fallow. However, using *adat pindah* to extinguish land rights is a nineteenth-century argument, which defies the logic of modern communication and transportation. A government servant may be working and residing in Kuching, but that does not mean he or she has abandoned his or her ancestral land, say in Mulu, because he or she can fly to Mulu and back to Kuching on the same day.

VIII　Development Logic of a Politico-Economic Alliance

In this section, I examine the way in which legislation and institutional constrains have been

used to support a public-private sector alliance in developing native customary land for commercial plantations in post-independence Sarawak.

VIII–1 *The Private-Public Sector Alliance*

Forty years after an agreement had been signed between Malaya, North Borneo (now calls Sabah) and Sarawak to form the Federation of Malaysia in 1963, the politics of resource control [Leigh 2001], which Majid-Cooke [1997] calls the politics of "sustainability," took center stage during the 1970s and 1990s, and has become increasingly prominent since. It began with timber politics in the 1970s and 1980s, and was followed by what state officials call the politics of development. Ngidang [2000b] describes the politics of resource control as a clash between market forces and culture, where natives are caught between state and private sector interests.

The periphery is linked to the center via a production process of primary commodities, which is tied to local-global market arrangements, where a globalization process operates vigorously at the local level through various politico-economic agents. Underpinning these colluding forces is a noble-sounding development agenda of poverty eradication, equity distribution, developing entrepreneurship among Dayaks, a promise of job opportunities, and a creation of wealth via commercial plantations that would benefit landowners. Central to such economic linkages are the state power structures that act not only as a conduit but also as a powerful legitimizing authority, which provides official sanctions in the form of: (1) a provisional lease (PL)[8] protocol to enable both local and outside economic elites to gain access to huge tracks of lands that are protected by the SLC, and (2) forest concession licenses for extracting timber from the rainforest of Sarawak. Similar political-economic links exist in Kalimantan, Indonesia, where natives are being evicted from their lands to make way for plantations [Anonymous: 2002]. There the role of the power structure is rationalized in the name of *reformasi* [McCarthy 2000], where a heavy-handed military-bureaucratic approach to regional control of resources has been used to deal with any resistance to the power of the state [Elmhirst 2001].

In recent years native customary land, which has a total area of 1.5 million hectares [Zainie 1994] has been an easy target for commercial plantations. The reason is that most state lands, which are suitable for plantations have already been alienated to big private companies for commercial plantations. The remaining suitable lands left where most opportunities exist for commercial agriculture are found in areas claimed under native customary rights. It is for this reason that these areas have become a focal point of contention between politico-economic

8) See the Sarawak Land Code (Chapter 81: 210) [Malaysia, Sarawak Government 1999]. The provisional lease (PL) of state land is issued by the land office to a private individual or developer pending the issuance of the final lease for oil palm estate, forest plantation and quarry licence on a designated area. The holder of PL is not entitled to a lease of an area above the designated area. By the fact that a designated area is issued under PL, it implies that there is a native customary rights land already in existence in the area. A conflict usually occurs when PL encroaches into customary lands if the holder of PL either fails to verify with the state authorities or ignore native claim over a designated area under PL.

elites and native landowners, the majority of whom are still dependent on smallholders' agriculture with rice as a subsistence crop plus ancillary cash crops such as pepper, rubber, cocoa and vegetables. For economic reasons, the Dayaks, particularly the Iban, are under constant political pressure from the top to change and to participate in the market economy through large-scale commercial plantation agriculture.

There are two sources of conflicts that occur whenever state land is alienated by using a provisional lease protocol. The first is due to often overlapping claims by the affected natives and private investors regarding the lands that have been provisionally approved for plantations. The investors are expected by the government to sort out things with local people to determine the size and boundaries of NCL and state land affected by the project before they commence land clearing.[9)]

The second source of conflict usually stems from the opposition of landowners to political pressure from the top when government-selected private investors, government agents and landowners are required to form a tripartite alliance in a joint venture (JV) partnership to develop the native customary land for plantations. In this JV arrangement, fragmented native customary lands are surrendered to the government and consolidated in a land bank. Motivated by potentially high returns to investment, private developers, local planters and state agencies have taken advantage of the available opportunities given by the state to develop these land resources under JV. In this venture, the private investor owns a 60% stake in the plantation, a 30% share is shared among landowners, and the remaining 10% share is given to the government-appointed managing agent. Under the JV agreement, land ownership is transferred to a JV company through a 60-year lease [Ngidang 2002].

Problems with regard to such JV partnerships have been documented by Ngidang [*ibid.*] in Kanowit and Ulu Teru. Native landowners have been pressured into participation without understanding, through a psychology of consensus based on compliance with decisions made by local politicians that by-passed traditional Iban institutions of *randau* (participatory dialogue), ignore the cultural attachment of Iban communities to their land as the basis of their livelihood, selective patronage by Iban politicians with certain community leaders, all of which contribute to conflict between landowners and government-approved private developers and managing agents. Moreover, the Iban "landlords" automatically become minority shareholders in the JV plantation project in favor of the private investors. Landowners become only laborers on their own land without any say in the management of JV, because they are not on the board of directors, but are represented by a managing agent as trustee to their interests.

Contrary to official claims, it is not development per see that affected longhouse communities are against, but rather the high-handed manner in which these projects are planned and implemented without due considerations of the differences in values regarding land use, and the lack of understanding on the part of private developers and elites of the

9) See Rengah Sarawak [1999] dated 10 September 1999 concerning the Niah tragic clash; Bakong shooting case, problems faced by Penan in Ulu Baram, Sebatu-Suai illegal land clearing dated 17 August 1999. Also see Cleary and Eaton [1995].

psychological, social and cultural orientations of the affected local people [Kedit 2001].

Majid-Cooke [2002] provides a revealing explanation as to why Kuala Lumpur seems to turn a blind eye to these resource conflicts. To the federal leadership, according to Majid-Cooke [*ibid.*; 1997], the natives in Sarawak have a primitive lifestyle, so they must be "domesticated." It is a well-known fact that state leadership in Sarawak enjoys the strong support of the federal government in promoting timber and plantation industries in the state. Moreover, according to Majid-Cooke [2002], land and forestry are state matters based on the agreement when Sarawak joined the Federation of Malaysia in 1963. Therefore, the prerogative to exploit, dispose and develop these resources is exclusively in the hands of state leaders.

IX Conclusion

The debate concerning the relationship between development and customary land tenure in this article is examined in the context of a discourse in political economy of the nation-state of Sarawak. Somewhat different from the usual affirmative action programs to uplift the socio-economic status of rural beneficiaries implemented under the New Economic Policy from 1970s to the 1990s, the current state-sponsored market economy is tied to the politics of development where market forces and development runs a parallel agenda using land resources as the common denominator to rural stakeholders and power brokers and/or economic elites. But asymmetrical power relations between the two stakeholders makes sharing a common denomination problematic because the current state agrarian laws are more biased against the former in favour of the latter. Upon examining the relationship of this antagonistic-cooperation, this article concludes that the principle of legal pluralism in the current SLC that allows the traditional land tenure based on the *adat* system to co-exist alongside formal land laws is now dysfunctional due to contradictions between the current land policies and practices.

This conclusion reinforces strong state and weak society relations, an analytical framework that is drawn from Migdal's [1988] theory of state-society relations, of which in the context of the nation-state of Sarawak, is central to the current government policy of the politics of development. What is new concerning the debate on the political economy of land tenure today is a clear distinction between the concept of legal pluralism as practiced during the Brooke and colonial regimes and what is being practiced under the politics of development in the post-independence Sarawak. In the former, although the traditional land tenure based on the *adat* system was subjected to foreign laws, the two regimes allowed customary tenure to co-exist with the formal land tenure by guaranteeing personal liberty to natives the freedom to exercise their customary rights to ancestral lands within the context of culturally defined longhouse territorial domains as stated in the Secretariat Circular 12/1933 and in the colonial Land Code 1958. The *adat* system was accorded a crucial role in framing the meaning of customary rights where the past two regimes gave a great deal of flexibility within the laws for negotiating physical boundaries between state and ancestral lands in the Land Code.

On the other hand, the current agrarian laws operate contrary to the original principle of legal pluralism in favor of profiteering goals of stated-sponsored market economy by abandoning the social responsibility component of legal pluralism that once served as an important institutional measure to protect customary rights. As a result, it removes socio-cultural spaces accorded by the *adat* law, thus leaving very little room for negotiation of competing claims between the state and the affected natives. The process of deconstructing social life and reframing its new meaning is linked to the dynamic of political economic reasoning, as it is to the best interest of the nation-state that all lands are free from rights to make more lands available for development. Following this rationale, it is no wonder that the Land Code Amendment Bill 2000 and the Land Survey Bill 2001 [Urit 2001] were legislated for the sole purpose of making the agrarian laws become more ambiguous, but not amounting to extinguishing customary rights outright in order to make it difficult to use cultural justification as basis of native claim provided for under the original concept of legal pluralism. Another reason for creating such ambiguity is to avoid triggering outrage from natives if customary rights were completely extinguished. But no one can deny the fact that these laws were subtly crafted in order to reinforce that natives are only regarded as licensees on state land, and licenses are terminable. Natives have only cultivation rights to their ancestral lands, rights to plant the seeds and harvest their grains, but as Zainie [1994] states, they have no absolute rights to landownership. It is now the nation-state that defines what customary rights mean and how these rights should be practiced in the context of the state-society relations. The role of the *adat* law is taken over by the nation-state, making customary land tenure irrelevant. Any suggestion to amend a codified *adat* has to be approved first by the state authorities.

The consequence of dismantling the foundation of legal pluralism is synonymous with a zero-sum game where the loser pays for the cost of benefit accorded to the winner. Therefore, the pivotal point of departure from the Brooke and colonial land polices and practices is that natives are required to borne the cost of state-sponsored market economy by sacrificing their personal liberties, trading-off their rights, forgoing their lands, and selling their labor in order to support the nation-state to achieve economic growth as they make way for development.[10] However, the promise of a trickle-down benefit may only look good on paper, but in reality what normally happens under this circumstance is that if ever the benefit is forthcoming, it is likely the crumb that trickles down to the masses.

The ability of the nation-state to dismantle the very foundation of legal pluralism that supports both the private and common property regimes, and allows the two property regimes to co-exist alongside each other in Sarawak for more than a century is centred upon a selective participation of state-imposed co-opted leadership at the state level policy decisions. The co-optation process operates through a mutual inclusion and exclusion practices, a divide-and-reward system in the politics of development by eliciting the agreement from the Dayak elected

10) See Malaysia, Sarawak Government [1962] concerning Report of the Land Committee 1962. According to Richards [1961: 11], if the Secretariat Circular 12/1939 were to be implemented, “there would be no land left to alienate if the demarcations were completed.”

representatives to support the current agrarian laws. The process precipitates a psychology of consensus in the form of a conspiracy of silence, whereby these representatives who are supposed to protect their community's interest apparently have chosen to support a series of amendments to the Land Code over the past 40 years. This political behaviour is related to "a culture of denial as used in the context of a refusal to accept what is known to be correct" [Abraham 2004], but because of fear that they would not be re-nominated as Barisan Nasional candidates in the general election becomes a very strong motivation for them to trade-off community's agenda for political reward and/or personal pursuit. Drawing from Khoo's [2004] analogy, keeping their silence is crucial for their political survival rather than defending the community's interests, but by doing so it also defeats the purpose of the politics of representation [Jayum 2003; Jayum and King 2004].

In order to get rural stakeholders on board, the process of co-optation is extended to the grassroots level by rewarding political supporters through various official appointments for the purpose of extending the tentacles of state control from the top down to the heart of longhouse territorial domains.[11] Once rural stakeholders are under control compliance from below is automatically guaranteed, which subsequently eliminates upward influence and stifles local resistance from the development equation. By pacifying rural stakeholders through the co-optation process, they become indebted, obliged and willingly comply with the leadership decision to trade-off their personal liberties in support of state-sponsored development. Therefore, when all interested parties are already on board in supporting the policy of the politics of development, there is no longer a political will on the part of the nation-state to resolve the controversies surrounding the native claim to ancestral lands once and for all.[12]

Acknowledgements

I would like to express my heartfelt thanks to Professors: Clifford Sather, Vinson Sutlive and Dee Baer; Jayl Langub and Khoo Khay Jin and to anonymous reviewers for their constructive comments on this article, without which this article would not be publishable.

References

Abraham, C. 2004. Our Cultural of Denial. *Malaysiakini*, 30 September 2004.

Adam, F. J. 1998. Native Customary Rights over Land in Sarawak. *Journal of Malaysian and Comparative Law* 25: 218–231.

Anonymous. 2002. Conflicts between Community and British-owned Plantation Company Kalimantan. *Down to Earth* No. 55 November 2002. Available at: http://www.dte.gn.apc.org/550P.htm.

11) See Ngidang [1995] on his discussion on politics of development in longhouse communities in Sarawak.

12) Field observations reveal that regardless whether protests are in the form of blockades [Lian 1993; Ngidang 1993; Rengah Sarawak 1999], law suits against plantation developers, logging companies and even unnecessary untoward incidents such as the Bakong and Niah killings [Rengah Sarawak 1999], so far, natives have no influence at all on the nation-state to create agrarian laws that maintains legal pluralism without requiring natives to sacrifice their personal liberties for the sake of development.

Appell, G. N. 1971. System of Land Tenure in Borneo: A Problem in Ecological Determinism. *Borneo Research Bulletin* 3: 17–20.

_____. 1991. *Resource Management Regimes among the Swidden Agriculturalists or Borneo: Does the Concept of Common Property Adequately Map Indigenous Systems of Ownership.* Working Paper No. 5. Department of Anthropology, Brandeis University.

_____. 1995. *Common Resources in Borneo. Community Resources in Borneo: Failure of the Concept of Common Property and Its Implication of Forest Resources and the Protection of Indigenous Land Rights.* Working Paper No. 98. New Haven, Connecticut: Yale University.

_____. 1997. The History of Research on Traditional Land Tenure and Tree Ownership in Borneo. *Borneo Research Bulletin* 28: 82–97.

Bian, B. 2000. Native Customary Land Rights in Sarawak: The Impact of Adong Case. A paper presented at the "Conference on Customary Land Rights: Recent Development," organized by the Law Faculty of Universiti Malaya, Kuala Lumpur, on 18–19 February 2000.

Brown, D. 1995. Reconstructing Ethnic Politics in Southeast Asia. A paper delivered at ARC Seminar on 8 September 1995.

Bulan, R. 1998. Indigenous Identity and the Law: Who is a Native? *Journal of Malaysian and Comparative Law* 25: 127–174.

_____. 2000. Indigenous Peoples and Property Rights to Land: A Conceptual Framework. A paper presented at the Conference on "Customary Land Rights: Recent Development," organized by the Law Faculty of Universiti Malaya, Kuala Lumpur, on 18–19 February 2000.

Chandrasena, U. A. 1993. The Struggle for Survival of an Aboriginal Group: The Veddas of Sri Lanka. In *Indigenous Land Rights in Commonwealth Countries: Dispossessions, Negotiation and Community Action*, edited by G. Cant, J. Overton and E. Pawson, pp. 13–23. Proceedings of the Commonwealth Geographical Bureau Workshop, Christchurch, February 1992. Christchurch, NZ: University of Canterbury and the Ngai Tahu Maori Trust Board.

Cleary, M. 1997. The Regulation of Land in North Borneo under the Chartered Company. *Borneo Review* 8 (1): 45–62.

Cleary, M.; and Eaton, O. 1995. *Borneo: Change and Development.* Kuala Lumpur: Oxford University Press.

_____. 1996. *Tradition and Reform: Land Tenure and Rural Development in South-East Asia.* Kuala Lumpur: Oxford University Press.

Cramb, R. A. 1986. *The Evaluation of Iban Land Tenure.* Working paper No.39. Centre of Southeast Asian Studies, Monash University.

_____. 1988. The Commercialization of Iban Agriculture. In *Development in Sarawak,* edited by R. A. Cramb and R. H. W. Reece, pp. 105–134. Monash Paper on Southeast Asia No.17. Centre of Southeast Asian Studies, Monash University.

Cramb, R. A.; and Wills, I. R. 1990. The Role of Traditional Institution in Rural Development: Community-based Land Tenure and Government Land Policy in Sarawak, Malaysia. *World Development* 18 (3): 347–360.

Daes, E. A. 2000. Human Rights of Indigenous Peoples: Indigenous Peoples and Their Relationship to Land. A paper presented at the Conference on "Customary Land Rights: Recent Development," organized by the Law Faculty of Universiti Malaya, Kuala Lumpur, on 18–19 February 2000.

Dale, P. 1997. Land Tenure Issues in Economic Development. *Urban Studies* 34 (1): 1621–1633.

Davies, J.; and Harrison, W. 1993. Aboriginal Land Management and Community Development in Western South Australia: A Case Study from Ceduna. In *Indigenous Land Rights in Commonwealth Countries: Dispossessions, Negotiation and Community Action*, edited by G. Cant, J. Overton and E. Pawson, pp. 13–23. Proceedings of the Commonwealth Geographical Bureau Workshop, Christchurch, February 1992. Christchurch, NZ: University of Canterbury and the Ngai Tahu Maori Trust Board.

Eaton, P. 1997. Land Policy, Customary Rights and Rural Development. A type written Paper, University of Brunei Darussalam.

Edmund, D.; and Wollenberg, E. 2001. A Strategic Approach to Multi-stakeholder Negotiations. *Development and Change* 32: 231–253.

Elias, A. A.; Jackson, L. S.; and Cavans, R. Y. 2004. Changing Positions and Interests of Stakeholders in Environmental Conflict: A New Zealand Transport Infrastructure Case. *Asia Pacific Viewpoint* 45 (1):

87–104.
Elmhirst, R. 2001. Resource Struggles and the Politics of Place in North Lampung, Indonesia. *Singapore Journal of Tropical Geography* 22 (3): 284–306.
Fong, J. C. 2000. Recent Legislative Changes on the Law Affecting Native Customary Land. A summed up paper presented at the Seminar/Workshop on "Land Code (Amendment) Ordinance, 2000," organized by the Land Survey Department on 23 August 2000, Santubong Resort.
Foo, A. Nyuk Kian. 1986. Land Classification and Land Tenure in Sarawak in Relation to Land Development. *Development Issues in Sarawak* (Jernel AZAM) 2: 30–35.
Freeman, J. D. 1955. *Iban Agriculture: A Report on the Shifting Cultivation of Hill Rice by the Iban of Sarawak*. Her Majesty's Stationery Office, London.
Hannan, M. T.; and Freeman, J. 1989. *Organizational Ecology*. Cambridge, Massachusetts: Harvard University Press.
Hatch, T. 1982. *Shifting Cultivation in Sarawak: A Review.* Technical Paper No.8, Soil Division, Research Branch. Kuching: Department of Agriculture.
Helgason, A.; and Palsson, G. 1997. Contested Commodities: The Moral Landscape of Modernist. *Journal of the Royal Anthropological Institute* 3 (3): 451–470.
Heremaia, S. 2000. Native Title in New Zealand. A paper presented at the Conference on "Customary Land Rights: Recent Development," organized by the Law Faculty of Universiti Malaya, Kuala Lumpur, on 18–19 February 2000.
Hollis, C. 2000. Land Code (Amendment) Bill 2000. Available at: http://www.rengah.c20.org/news.
Hong, E. 1987. *Natives of Sarawak.* Penang: Institut Masyarakat.
Hooker, M. B. 1975. *Legal Pluralism*. Oxford: The Claredon Press.
_____. 1997. Customary Law in the Late 20th Century Lessons from the Past. A paper presented at the Conference on "Legal Pluralism: The Role of Customary Law in Preserving Indigenous Heritage," jointly organized by the Law Faculty, University Malaya, the Majlis Adat Istiadat and the Office of Registrar of Native Courts, Chief Minister Office, Sarawak, on 11–12 November 1997, Kuching Hilton International Hotel.
_____. 1999. A Note on Native Land Tenure in Sarawak. *Borneo Research Bulletin* 30: 28–40.
_____. 2002. Native Title in Malaysia Continued: Nor's Case. *Australian Journal of Asian Law* 4 (1): 92–105.
Ian Chin, H. C. 2001. Judgement Made in the High Court in Sabah and Sarawak in Kuching, Suit No. 22–28–99–1, on 12 May 2001.
Jayum, A. J. 1993. *The Iban Factor in Sarawak Politics.* Serdang: Universiti Pertanian Malaysia.
_____. 1994. *Iban Politics and Economic Development: Their Patterns and Change*. Bangi: Universiti Kebangasaan Malaysia.
_____. 2003. Political Representation and Participation: A General Survey of the Sarawak State Constituencies with Special Reference to the Iban. A report submitted to the Tun Jugah Foundation.
Jayum, A. J.; and King, V. T. 2004. *Ethnicity and Electoral Politics in Sarawak.* Bangi: Universiti Kebangsaan Malaysia.
Kedit, P. M. 2001. Special Commentary on NCR Land: Interaction of Traditional and Modern Legal Systems. *The Malaysia Today,* May 23, 2001.
Khoo, P. 2004. The Taming of the Dayak. *Aliran Monthly* 24 (6): 26–31.
Kingi, T. T.; and Maughan, C. W. 1998. Legal Devices to Manage Customary Maori Land: Overcoming the Conflict between Retention and Development. *Journal of Malaysian and Comparative Law* 25: 253–267.
Kingsbury, B. 1998. Indigenous Peoples in International Law: A Constructivist Approach to the Asian Controversy. *The American Journal of International Law* 92 (3): 414–457.
Lang, E. 1998. Administration of Native Courts and Enforcement of Native Customary Laws in Sarawak. *Journal of Malaysian and Comparative Law* 25: 89–122.
Langub, J. 1998. The Ritual Aspects of Customary Law in Sarawak with Particular Reference to the Iban. *Journal of Malaysian and Comparative Law* 25: 45–60.
Leigh, M. 2001. Land Development in Sarawak: Exploring the Construction of an Ideology. A paper presented at the Conference on "Colonial History, Native Land Rights and Economic Development: A Comparison between Taiwan and Sarawak."

Lembat, G. 1994. Native Customary Land and adat. A paper presented at the Seminar on "Pembangunan Tanah Pusaka Bumiputera" held in Santubong Hotel Resort on 29 September–3 October 1994.

Lian, F. 1993. Blockades of Timber Roads in Sarawak: Assertion of Land Rights. In *Indigenous Land Rights in Commonwealth Countries: Dispossessions, Negotiation and Community Action*, edited by G. Cant, J. Overton and E. Pawson, pp. 154–162. Proceedings of a Commonwealth Geographical Bureau Workshop, Christchurch February 1992. Christchurch, NZ: University of Canterbury and the Ngai Tahu Maori Trust Board.

Majid-Cooke, F. 1997. The Politics of Suitability in Sarawak. *Journal of Contemporary Asia* 27 (2): 217–241.

_____. 2002. Vulnerability, Control and Oil Palm in Sarawak: Globalization and a New Era. *Development and Change* 33 (2): 189–211.

_____. 2003. Maps and Counter-Maps: Globalised Imaginings and Local Realities of Sarawak's Plantation Agriculture. *Journal of Southeast Asian Studies* 34 (2): 265–284.

Majlis Adat Istiadat. 1993. *Adat Iban.* Kuching: Printing Office.

Malaysia, Sarawak Government. 1962. *Report of the Land Committee 1962.* Kuching: Printing Office.

_____. 1999. Land Code Chapter 81 (1958 edition). *Laws of Sarawak.* Kuching: State Attorney-General's Chambers.

Marasinghe, L. 1998. Customary Law as an Aspect of Legal Pluralism: With Particular Reference to British Colonial Africa. *Journal of Malaysian and Comparative Law* 25: 7–44.

Martin, C. 1997. Indigenous Identity: A Crisis Point for Government in Australia. A paper presented at the Conference on "Legal Pluralism: The Role of Customary Law in Preserving Indigenous Heritage," jointly organized by the Law Faculty of University Malaya, the Majlis Adat Istiadat and the Office of Registrar of Native Courts, Chief Minister Office, Sarawak, on 11–12 November 1997, Kuching Hilton International Hotel.

McCarthy, J. F. 2000. The Changing Regime: Forest Property and Reformasi in Indonesia. *Development and Change* 31 (1): 91–129.

McIntyre, G. 2000. Fiduciary Obligations of Governments towards Indigenous Minorities. A paper presented at the Conference on "Customary Land Rights: Recent Development," organized by the Law Faculty of Universiti Malaya, Kuala Lumpur, on 18–19 February 2000.

Migdal, J. S. 1988. *Strong Societies and Weak States.* New Jersey: Princeton University Press.

Mundy, R. 1848. *A Narrative of Events in Borneo and Celebes from the Journals of James Brooke Esquire.* London: John Murray.

Netthein, G. 2000. Mabo: Its Influence on Aboriginal Rights to Land in Australia. A paper presented at the Conference on "Customary Land Rights: Recent Development," organized by the Law Faculty of Universiti Malaya, Kuala Lumpur, on 18–19 February 2000.

Ngidang, D. 1993. Media Treatment of Land Rights Movement in Sarawak, Malaysia. *Media Asia* 20 (2): 93–99.

_____. 1995. Politics of Development in Longhouse Communities in Sarawak, East Malaysia. *Development in Practice* 5 (4): 305–312.

_____. 1997. Native Customary Land Rights, Public Policy, Land Reform and Plantation Development in Sarawak. *Borneo Review* 8(1): 63–80.

_____. 2000a. Managing Natural Resources in the Iban Community. In *Ethical Values in Sarawak's Ethnic Groups*, edited by the Ministry of Social Development and Urbanization, Sarawak, pp. 32–42. Kuching: Dewan Bahasa dan Pustaka.

_____. 2000b. A Clash between Culture and Market Forces: Problems and Prospects for Native Customary Rights Land Development in Sarawak. In *Borneo 2000: Environment, Conservation and Land*, edited by Michael Leigh, pp. 237–250. Proceedings of the Sixth Biennial Borneo Research Conference. Kuching: Universiti Malaysia Sarawak.

_____. 2001. Brooke Rule, Colonial Ideology and Native Customary Land in Sarawak. A paper presented at the Conference on "Colonial History, Native Rights and Economic Development: A Comparison between Taiwan and Sarawak," organized by the Institute of Ethnology, Academia Sinica, Taipei, Taiwan, on 29–31 October 2001.

_____. 2002. Contradictions in Land Development Schemes: The Case of Joint Ventures in Sarawak. *Asia Pacific Viewpoints* 43(2): 157–180.

Oii, K. G. 1997. *Of Free Trade and Native Interests: The Brookes and the Economic Development of Sarawak, 1841–1941.* Kuala Lumpur: Oxford University Press.

Peang-Meth, A. 2002. The Rights of Indigenous Peoples and Their Fight for Self-Determination. *World Affairs* 164(3): 101–144.

Porter, A. F. 1967. *Land Administration in Sarawak.* Kuching: Govt. Printing Press.

Pringle, R. 1970. *Rajahs and Rebels: The Ibans of Sarawak under Brooke Rule, 1841–1941.* New York: Cornell University Press.

Reece, B. 2004. Learning from Sarawak History. A paper presented at the Sarawak–New Zealand Alumni Conference on 15 April 2004 held at the Riverside Crown Plaza, Kuching.

Rengah Sarawak. 1999. Konsep Baru of NCR Land Development by Sarawak State Government. Available at: http://www.rengah.c20.org.

Richards, A. J. N. 1961. *Sarawak Land Law and Adat.* Kuching: Govt. Printing Office.

Sather, C. 1990. Trees and Tree Tenure in Paku Iban Society: The Management of Secondary Forest Resources in a Long-established Iban Community. *Borneo Review* 1(1): 16–40.

Sawing, A. 1993. The Protection of Native Customary Laws under the Sarawak Laws. In *Indigenous Land Rights in Commonwealth Countries: Dispossessions, Negotiation and Community Action*, edited by G. Cant, J. Overton and E. Pawson, pp. 163–168. Proceedings of the Commonwealth Geographical Bureau Workshop, Christchurch, February 1992. Christchurch, NZ: University of Canterbury and the Ngai Tahu Maori Trust Board.

Sidin JCA, M. 1997. Adong bin Kuwau and Ors V Kerajaan Negeri Johor. *Malayan Law Journal* 2: 418–436.

Tough, F. 1993. The Criminalization of Indian Hunting in Ontario, Canada, CA, 1892-1930. In *Indigenous Land Rights in Commonwealth Countries: Dispossessions, Negotiation and Community Action*, edited by G. Cant, J. Overton and E. Pawson, pp. 37–55. Proceedings of the Commonwealth Geographical Bureau Workshop, Christchurch, February 1992. Christchurch, NZ: University of Canterbury and the Ngai Tahu Maori Trust Board.

Urit, M. 2001. Land Surveyors Bill Goes against NCR Lands. Available at: http://www.rengah.c20.org/news.

Walker, J. H. 2002. *Power and Prowess: The Origins of Brooke Kinship in Sarawak.* Australia: Allen & Unwin.

Zainie, Z. K. 1994. Native Customary Land: Policies and Legislation. A paper presented at the Seminar on "Native Customary Land Development," on 29 September–3 October 1994, Santubong Hotel Resort.

_____. 1997. Native Customary Rights and the Creation of Land Bank. A special briefing on the "New Concept of Land Development," jointly organized by the Ministry of Land Development and the Society for Progress, 30 August 1997.