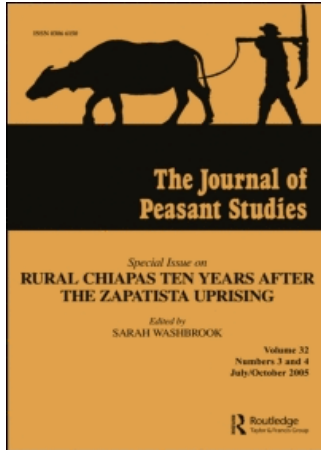


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Journal of Peasant Studies

Publication details, including instructions for authors and subscription information:
<http://www.informaworld.com/smpp/title~content=t713673200>

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Online Publication Date: 01 July 2007

To cite this Article: Doolittle, Amity A. (2007) 'Native land tenure, conservation, and development in a pseudo-democracy: Sabah, Malaysia', *Journal of Peasant Studies*, 34:3, 474 - 497

To link to this article: DOI: 10.1080/03066150701802793

URL: <http://dx.doi.org/10.1080/03066150701802793>

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Native Land Tenure, Conservation, and Development in a Pseudo-Democracy: Sabah, Malaysia

AMITY A. DOOLITTLE

This article explores the interacting politics of native customary law, conservation, and rural development in Sabah, Malaysia. Drawing on the specific details of native property rights in a rural community and state conservation and agricultural development initiatives, this article delves into the inherent contradictions between the logic of conservation, commercial land development, and native land tenure regimes. Native smallholders in Sabah see their customary land tenure as remnant expressions of local autonomy, which has not been fully experienced since the advent of colonial rule at the end of the 19th century. Conversely, state-driven conservation and development plans, and the ways in which they adversely affect individuals' access to natural resources are viewed by villagers as the quintessential expression of the power of a centralized and undemocratic government. By probing at the intersection of these polarizing practices this article explores the relationship between the Malaysian state and agriculture-based villagers from the vantage point of access to and ownership of land and resources. The article concludes that Sabah's ruling elite benefit from the contradictions between conservation, development, and native land rights. It is to their advantage to maintain the status quo since

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The Journal of Peasant Studies, Vol.34, Nos.3&4, July/October 2007, pp.474–497
ISSN 0306-6150 print/1743-9361 online
DOI: 10.1080/03066150701802793 © 2007 Taylor & Francis

political positions are not dependent on voter support in Malaysia's pseudo-democracy. Native people have tried to resist state control over their land tenure practices for over a century through de facto practices that undermine the intent of state rule. But these small-scale actions have not resulted in widespread changes. Therefore, the marginalization of native agriculturalists will continue until the time comes when Malaysia's pseudo-democracy transitions to an authentic democracy in which the interests of a broader section of society are a priority for the state.

INTRODUCTION

In 1881 the colonial government of the North Borneo Chartered Company (hereafter, the Company) claimed ownership of all the land and resources in what is now known as the Malaysian state of Sabah. As a colonial government whose primary objective was generating revenue for British shareholders, the Company declared its intention to settle all native land rights rapidly so that vacant lands suitable for plantation agriculture could be identified. But native land rights turned out to be exceptionally difficult to settle [Black, 1983; Doolittle, 2005] and when the British turned North Borneo over to the Federation of Malaya in 1963, it left a tangled legacy of unresolved native property rights [Doolittle, 2005].

Today conflicts rage on over how native Sabahans can substantiate ancestral claims to land and over the thousands of land claims where there are counter claims on the same plot of land. The failure of the state to adequately settle customary land rights begs the question: Why has over a century of centralized governance failed to produce a legible land registrar? A partial answer can be found through the close study of natural resource governance at both the state and local level. And at the heart of natural resource governance lie two antagonistic relationships. The first is between the politics of economic development and conservation [Chhatre and Saberwal, 2006].¹ And the second is between native agriculturists who often bear the costs of both development and conservation, and the dominant economic and political elite who inevitably benefit in these matters. These conflicts also obscure a deeper obstacle to resolving competing property claims. The on-going confusion over land rights benefits those who hold political and economic power in Sabah. There is a link between the lack of political accountability to the electorate in Malaysia's pseudo-democracy and the prioritization of both development and conservation projects over local property rights and livelihoods.² Despite the rhetoric, state land administration policies produce benefits for

the already powerful ruling class, rather than for conservation of resources or development opportunities for rural agriculturalists.

This article explores property relations and control over land and resources as a window into state–society interactions. Drawing on archival and anthropological data it is argued that current state interventions into village life in Sabah continue to reproduce beliefs and practices that are deeply rooted in colonial ideologies that are over a century old. The colonial beliefs are two-fold. First, resource-dependent people are backward, lazy and responsible for the past and current state of deforestation and resource degradation in Sabah. Second, state interventions are necessary to curtail subsistence-based agriculturalists' destructive and wasteful practices through the introduction of modern agriculture techniques and internationally legible conservation areas. Since the advent of colonial rule in the 1880s, rural communities in Sabah that suffer from land policies stemming from these ideologies have attempted to resist the pejorative labels and inequitable land policies through small-scale resistance and *de facto* land-use practices [Doolittle, 2005]. However, unlike other nations where political leaders suffer electoral loss from similar long-term discontent from their electorate [Chhatre and Saberwal, 2006], in Sabah's pseudo-democracy agriculturalists have been unable to fully reject labels of 'backwardness' or influence the process of conservation, development and land settlement to their advantage.

These particular colonial ideologies and practices have endured into the present day since they are extremely effective techniques to ensure the entrenchment of Sabah's ruling class. Reinforcing the age-old rhetoric that native or indigenous people are the agents of land degradation, the state is able to draw attention away from other more destructive uses of the landscape that benefit the political and economic elite. A close look at both state conservation projects and development initiatives³ in Sabah reveals that these practices of resource governance serve to support a long tradition of political cronyism.

The first section of this article outlines the contours of Malaysia pseudo-democracy and the implications of this form of democracy for conservation and development schemes, exploring the limited ability of civil society to effect changes through daily practice and electoral politics. In the second section we turn to village-level data; here we are introduced to the village of Tempulong⁴ which shares a boundary with Kinabalu Park, a state park and World Heritage Site measuring over 75,000 hectares,⁵ and the impact of the park regulations on local people's access to natural resources is outlined. The third section describes the mosaic of agricultural practices that form the livelihood strategies of farmers in the village, and the relationship between variations in crop ecology and land tenure practices. In the fourth section data from both the state level and village level are brought together, focusing on

the ways in which native customary law and statutory law are interwoven into present land tenure regimes. At the village level the discourse of land ownership tends to be very elastic, drawing on customary law and statutory law when necessary. In this section three examples of natural resource-based conflicts are presented. The cases demonstrate the inherent incompatibility of customary law and statutory law and the contradictions between the imperatives of conservation and rural development. These cases also show that while native people can partially undermine statutory law through daily practices, as soon as a resource is determined to be valuable, the elite in Sabah capture the profits through renewed efforts to eliminate customary land use practices. In this section the intersection of discourse and practice between state and society over natural resource management is explored. The impacts of these practices on civil society and their livelihoods are highlighted, as is the limited ability of native people to resist inequitable state land policies. The final section explores an example of more coercive measures undertaken by the state when civil society takes a more active form of resistance to contest the state's land claims that they perceive are unjust. In cases where farmers refuse to be pushed aside for the purpose of conservation and development we see how heavy-handed a pseudo-democracy can be at various institutional levels. In the concluding section we consider the implications of these coercive state actions for the future of both conservation and small-scale agriculturalists.

MALAYSIA'S PSEUDO-DEMOCRACY: CONSOLIDATING POLITICAL AND ECONOMIC POWER

Native or indigenous people⁶ in Sabah are highly heterogeneous, some urbanized, some peasants, and some shifting cultivators and hunter-gatherers [Shamsul, 1989: 31]. For purposes of clarity in this article, the use of the phrase 'native agriculturalists' refers to indigenous people who practice a combination of small-scale, commercial agriculture and shifting cultivation. For the most part, native agriculturalists lack title to all the land they cultivate, have little or no cash reserves, and feel disenfranchised by the ruling elite. The ruling elite is ethnically a very heterogeneous category. They are as likely to come from the same native groups as small-scale agriculturalists, as they are to be Chinese or Malay-Muslim. The one characteristic that the political and economic elite throughout Malaysia share is allegiance to the dominant political party, UMNO (United Malays National Organization).

Under UMNO leadership, Malaysia's most noteworthy development project was launched in 1971, the New Economic Plan (NEP). As a massive social reengineering project, the main objective of the NEP was to

'accelerat[e] the process of restructuring Malaysian society to correct economic imbalance, so as to reduce and eventually eliminate the identification of race or ethnicity with economic function.'⁷ 'Restructuring Malay society', however, translated into policies that would facilitate the expansion of the Malay educated middle and upper classes, which would in turn create a Malay entrepreneurial and shareholding class, and thereby correct the dominance of this sector by the Chinese and, to a lesser extent, the Indians. The implementation of the NEP involved measures that strongly favoured Malays over non-Malays. Governmental agencies were expanded to help Malays go into business, and preference was given to Malays in the distribution of manufacturing licenses, government contracts, and concessions to land [Crouch, 1996: 26]. It is not uncommon for state and federal representatives from UMNO to 'compete' for government contracts, and UMNO politicians have special access to land grants from the government [Crouch, 1996: 39]. This blurring of political and business interests has resulted in the increasing dominance of UMNO in the Malaysian economy and has given rise to what is called, in the Malaysian context, 'money politics' [Shamsul, 1989: 8].

In Sabah, the same phenomenon of consciously employing the ideology of the NEP to create a group of rich businessmen who would then underwrite political leaders has also been observed. The result is a vicious cycle of 'timber politics', where business and politics are tied together to exploit the timber and other natural resources in a powerful constellation of mutual interests [Kaur, 1998: 138]. For decades a system of crony capitalism, which describes the close relationship between politicians and big business, has permeated politics throughout Malaysia [White, 2004] particularly with respect to valuable natural resources, such as timber and land. In the latest of many corruption scandals in Sabah, Kasitah Gaddam, the former Minister of Land and Cooperative Development has been accused of abusing his position by attempting to repay over \$3.2 million of personal loans through a series of land transactions under the umbrella of the Ministry of Land and Cooperative Development [Jasudan, 2007].

Malaysia is also known for its arbitrary electoral practices which result in significant distortion of voter preference [Case, 2001: 45]. While general elections are held regularly, many techniques are used to ensure victory for the UMNO government. These include awarding development funds only to regions which support UMNO [Doolittle, 2005], losing names of voters from the electoral rolls, allowing votes to be cast for deceased or 'phantom' voters [Case, 2001: 48] and providing illegal immigrants with working papers and a Malaysian identity card in exchange for votes [Chua, 1995]. Additionally UMNO has many techniques to breaking pockets of resistance, such as finely calibrated gerrymandering [Case, 2001: 48].

In many small villages in Sabah, the state and its crony capitalism processes are not often experienced in daily life. This is particularly true if villages lack resources of significant value. However, once a specific natural resource is identified as valuable, the conflicts between state legislation and native customary land tenure are quick to emerge. In the following section land tenure regimes in one small village, located on the border of Kinabalu Park, are described, highlighting the importance of multiple property regimes (customary as well as statutory) for the survival of native agriculturalists who lack secure tenure to sufficient agricultural land.

VILLAGE LIFE IN THE SHADOWS OF MOUNT KINABALU

The village of Tempulong provides a rich case for exploring the workings of state and society in terms of property rights, the governance of natural resources, and the attendant land disputes for several reasons. First, Tempulong has a history of disputes with the state over the exact location of their boundary with Kinabalu Park. Second, the farmers there engage in a complex composite agricultural economy, which makes use of multiple, and at times conflicting, property regimes. These competing property regimes are typical in rural villages in Sabah and are the legacy of colonial rule. The North Borneo Chartered Company attempted to impose the concept of private property on land ownership, while simultaneously trying to preserve elements of native customary law [Doolittle, 2005]. The ensuing legal pluralism continues today and is at the heart of nearly all land disputes in Sabah.

The village of Tempulong is a small town, with slightly over 400 people.⁸ The majority of the villagers belong the Dusun ethnic group, which is one of the larger ethnic groups in Sabah. Traditionally the Dusun have lived in the interior of Sabah. Their livelihood practices depended on a combination of shifting cultivation, hunting and gathering, and trade with coastal groups. Tempulong, while far from the political and market centres of Kota Kinabalu and Kota Belud, is not isolated. Today the village is accessible via four-wheel drive from these centres. And farmers have to travel less than an hour to reach a small, district market centre where they sell their surplus crops and buy household goods.

Tempulong is increasingly influenced by the growing tourism around Kinabalu Park. In 2000 the park substation nearest to Tempulong received around 250,000 visitors. Of these visitors more than 50% are Sabahans from urban areas on day picnicking and hiking trips. However, the vast majority of tourists who pass through Tempulong, on their way to visit Kinabalu Park, rarely notice the clustering of 40 or so houses surrounded by home gardens, nor the children playing alongside the road. The fact that cows napping on the warm tarmac often block the road is more of a nuisance to the average tourist

than evidence that people live nearby. But people have lived right next to the park boundaries since it was established in 1964, and prior to that the forests within the park were part of the natural resources that the villagers from Tempulong used and managed on a daily basis.

Today hunting and gathering forest resources within the park is illegal; the local traditions of resource use are now criminalized. Most villagers do not dare break this law since the fine is high – \$1000 ringgit per offence (approximately US\$400), equivalent to well over a month's salary in the mid-1990s.⁹ But conflicts between the park and villagers are also minimized because the park offers employment, which is hard to find in Tempulong (32% of the household heads were employed in the park in 1996).

The formation of the park in 1964 meant that native peoples lost access to important sources of protein and building materials in the forest.¹⁰ But when it was discovered that portions of the park had particularly high economic potential, the region was not returned to natives, but rather the ruling elite in Sabah degazetted areas of the park to be exploited to their personal economic advantage. Between 1970 and 1984 two modifications to the park boundaries were made with sizable benefits going to a few powerful individuals. The first modification occurred in 1970 when 2,555 hectares were removed from the park for the development of the Mamut Copper Mine [*Nais*, 1996].¹¹ Second, in 1984 a large area of high-value timber forest was removed from the park. This area, known as Pinosuk Plateau, was 'the least known region of the mountain, richest in life, and most deserving of fuller study' [*Beaman and Regalado*, 1989]. Unfortunately, the timber on the plateau also had a high commercial value. Once the logging was completed the denuded land was used to develop an 18-hole golf course, experimental farms for chrysanthemums, shitake mushrooms, and mulberry trees (for silk production), and a dairy farm – industries with limited value to local farmers. All of these ventures were undertaken by partnerships between quasi-governmental agencies and private companies, many of which are owned by Sabah's political leaders.

Internationally it is recognized that such large-scale developments pose a far greater risk to conservation than the activities of small-scale agriculturalists [*Chhatre and Saberwal*, 2006: 699]. Yet, politicians in Sabah do not view these large-scale incursions into the park as a failure of conservation; instead they are lauded as efforts to bring economic development to rural Sabah. Despite the rhetoric of rural development, citizens in Sabah (and elsewhere in Malaysia) know that politicians exploit any opportunity to prolong their political tenure and line their own pockets [*Case*, 2001: 46]. In particular, politicians appointed to committees with authority over land are able to win valuable concessions for companies that they own [*Case*, 2001: 53]. Thus the removal of valuable land from the park is yet another reminder to rural agriculturalists that Sabah's political and economic leaders are able

and willing to alter the land laws to ensure personal gain while unwilling to make similar concessions for the benefit of smallholders. This context of crony capitalism is important to understand as we now explore the details of local property relations and land disputes in Tempulong between villagers and the state.

CROP ECOLOGY AND MULTIPLE LAND TENURE STRATEGIES

In the mid-1990s Tempulong had four types of agriculture systems: home gardens, swiddens, vegetable gardens, and fruit orchards, and each system had varying property relations that governed access to the land. Passing through the village – avoiding sleeping livestock – one can see the village houses, raised on stilts and clustered on either side of the road. Houses are built on quarter-acre house lots, which are gazetted in statutory law as village land, not private land. The village headman assigns each lot to a single family, and each family has the usufruct rights to the land to build a home and to plant small home gardens around it. These home gardens usually consist of useful trees (such as *pinang* or betel nut palm, *Areca catechu*) and medicinal and ornamental plants. While the villagers improve these lots during their occupation of the house, they do not have the right to sell the lot. According to both customary village practice and statutory law, if a family leaves, the lot reverts back to the village, and the headman can reassign it, perhaps to a newly married couple who wish to establish their own household separate from their parents.

Past the house lots is a mosaic landscape of forests and gardens. The dense green forest vegetation is periodically broken by yellow, brown, and light green patches of clearings for gardens and by secondary forest regeneration on fallow agricultural land. There are numerous footpaths leading from the centre of the village to the gardens and the forest. Within this forest-field mosaic there are three other types of agricultural areas: swiddens, vegetable gardens, and fruit orchards. As in many villages in Sabah few people have private title to sufficient land for their livelihood; most have applied for title to their lands and continue to cultivate it in hopes that their claims will eventually be recognized. Additionally, usufruct access to other lands within the village boundaries makes an agricultural life in Tempulong possible. This *de facto* access to other lands is central to villagers' livelihood strategies, and is also central to current conflicts with the state, as we will see below.

Most families in Tempulong have a swidden field planted with dry rice, cassava, corn, and other vegetables for household use. Some villagers also have vegetable gardens where they specialize in commercial vegetables that they can sell to the park restaurant and to buyers at the regional market. These vegetables are mostly leafy greens and green beans. This type of vegetable

garden is relatively new to Tempulong. Vegetables are planted on a very small scale, usually by young women who wish to increase the household income. These crops require a significant investment of time, labour (especially watering), and chemical inputs, yet are considered a temporary crop, since they produce several harvests a year. Since both swidden fields and vegetable gardens are considered short-term or temporary crops, they are often planted on land to which villagers have only usufruct access, which could be terminated on short notice. If access to the land is lost, the farmer only faces the loss of one year's or one season's crop. It is not uncommon to see vegetable gardens planted on the edge of the road, on land that is not considered alienable for agriculture. This use of such marginal lands, and lands that the state can easily reclaim at any moment, is indicative of the land shortage in Tempulong.

Farmers reserve their land that they hold as private property for permanent crops, such as fruit orchards.¹² With private property, the security of a long-term investment in the land is ensured. With an increasing number of tourists coming to the area and with better transportation to the coast, durians (*Durio zibethinus*), tarap (*Artocarpus* spp.), rambutan (*Nephelium* spp.), and other fruit crops have grown in value. One local school teacher, who planted fruit trees fifteen years ago, is now able to make \$8000 ringgit a year (approximately US\$3200, an amount equivalent to 10–12 months wage) from his orchard. Many villagers hope fruit orchards will provide them with a market-oriented produce and increase their income. For most farmers in Tempulong, they see their economic futures in fruit production, but they are blocked from achieving this goal since few have secure title to all the land necessary for both subsistence crops and a long-term investment in fruit trees.

Usually a family tries to diversify plantings, and therefore has a swidden, a vegetable garden and a fruit orchard (when possible). In this way they can lower the risk of investment in the long-term, high-yielding cash crops such as durians with short-term subsistence and cash crops. This dual emphasis on food and cash crops functions as a subsistence safety net. When the market value of fruits or commercial vegetables declines, there is always rice and subsistence vegetables to carry the household through to the next harvest. The amount of land a farmer plants in fruit trees, therefore, depends on several variables such as how much land they hold under private title and how much access they have to other land for short-term crops. Farmers in Tempulong are able to plant fruit trees on their private property *only* if they have usufruct access to other plots of land to plant swidden gardens.

Two areas of forest surrounding the village figure prominently in the agricultural cycle in Tempulong. These forested areas are locally known as Nababak and Tarasan and are reached by footpath, between half an hour and two hours away from the village centre. Two absentee landowners hold

private titles to the land in Nababak, totalling approximately 485 hectares. Tarasan, a 100-hectare plot owned by the state, is the source of a boundary dispute between the state and the village that began early in the 1980s. These areas are critical for most families in Tempulong; usufruct access to this land for short-term crops has freed up land they hold under private title for fruit orchards.

One of the absentee landowners is John Dusing, the district officer for the region in the 1950s. The other plot of land is owned by a Chinese merchant, locally known as 'Toukay Cina' who in the 1950s intended to establish coffee and rubber plantations. In 1963 Toukay Cina went bankrupt, abandoned his land without ever harvesting the coffee or rubber, and has not paid taxes since. It is rumoured that he ran away to the Philippines. Although Dusing's taxes are paid, he has never used nor visited the land that he owns, so the villagers also consider him an absentee landowner. Every family in Tempulong has at some point used the land in Nababak for swidden gardens; the land is widely perceived as village communal lands open for farmers to plant with short-term crops. No one in the village pays rent for the use rights, nor has anyone ever been asked to pay any rent. And as such, the current livelihood practices of villagers are entirely dependent on usufruct rights to land that could be terminated at any point.

CUSTOMARY LAND TENURE, SMALL-SCALE RESISTANCE, AND A COERCIVE STATE

Multiple social, economic, and political factors shape land-use systems, property relations, and land disputes in the village of Tempulong. These factors include cultural practices surrounding resource management regimes and struggles between individuals as some seek ways to become more integrated in the market economy, while others resist being drawn into the larger political economy. In this context, customary land-use practices have persisted, both expanding and constricting under pressure from statutory laws. The intermingling of customary law and statutory law provides farmers with competing sources of legitimacy at the village level to justify actions in resource related disputes.

Although all individuals in Tempulong applied for private title to their land during (or soon after) the colonial period, local customary rules of access have endured to the present, overlaying the statutory laws associated with private property. Thus, statutory law and customary law are intermingled in locally specific patterns of property relations. For instance, following customary law, agriculturalists in Tempulong have primary use rights to all land they cultivate. Colonial officials misinterpreted these primary use rights as private property rights during the land settlement process. Yet even today,

ownership to land held under private title is limited in two ways by customary practices. First, it is expected that kin and neighbours needing land to cultivate can borrow any fallow land, even if it is private property, as long as permission is first sought. And second, useful forest products growing naturally on fallow land, as well as abandoned or naturalized cultivated crops (e.g., taro [*Caladium ssp.*] and bananas [*Musa spp.*] which propagate naturally as an abandoned field returns to secondary growth), can be harvested by anyone in the village who needs them. This customary practice of community access to certain categories of land and resources can be conceptualized as an ethic of access [Peluso, 1996] rooted in cultural values of reciprocity and exchange.

In Tempulung the ethic of access to fallow land and forest resources is culturally elaborated through two intertwined discourses. The first emphasizes societal norms or a 'moral economy of the peasant', in which reciprocity and exchange form the foundation of strong social relationships [cf. Thompson, 1971; Scott, 1976]. The second discourse, specific to Tempulung, emphasizes the 'natural' (non-domesticated) state of resources. Individual people do not cultivate resources found in the forest, so no one person can claim ownership of these resources, nor can they attempt to exclude other members of the community from access to them. Wild growing forest products are referred to as *kepunya'an hutan* or as belonging to the forest (lit. 'the property of the forest') and therefore are seen as resources to be shared by the community. The local practices surrounding this moral economy and community access to forest resources are seen in everyday practices in Tempulung. The following example of the durian harvest demonstrates how this moral economy and access to forest resources interact on private property.

Fruits of the Forest: A Shared Harvest

Customary land tenure in Tempulung allows any person to stake out a campsite at the foot of a wild durian tree to await the fall of the fruit, no matter who owns the land that the tree grows on. Furthermore, if a second person joins in waiting for the durian harvest to fall, the first person is obligated to share the harvest equally. Lenieh, an elderly woman in Tempulung, described the wait for wild durian harvest:

Even if a wild durian tree is on your own land, you must guard it when the fruit begins to ripen. If you are not there, someone else can take the fruit. You must even sleep in a temporary shelter under the tree. In one day 50–200 fruits will fall. The season lasts for 30 days, but each day the harvest diminishes. Everyone who sits under the tree can have a share of the harvest.¹³

Recent commercialization of some forest resources that previously held no monetary value is challenging this customary practice of community access to natural resources on private property. The following example of a state-sponsored effort to conserve rare rafflesia plants (*Rafflesia spp.*) and local efforts to profit from foreigners' fascination with what is known as the world largest (and smelliest) plant demonstrates the incompatibility of the cultural patterns associated with a moral economy and the ideologies embedded in private property and commercialization of natural resources.

Rafflesia Conservation Scheme: Commercialization of a Shared Resource

In the early 1995 Sabah Parks department began an initiative to protect the rare and endemic rafflesia plants (*Rafflesia spp.*) that are found in and around the park. As the largest flower in the world, the rafflesia is a natural tourist attraction [Nais, 1996]. Researchers within the Sabah Parks Department established a 'hotline' for tourists call in to find the location of blooming rafflesia plants. Local villagers were invited to participate in the Rafflesia Conservation Scheme by protecting rafflesia on their private property. Landowners were encouraged to charge an entrance fee for tourists to view the gigantic flowers. According to Sabah Parks, this community-based conservation scheme has the potential to be successful because it puts locals in charge of tending the blooms and safeguarding them from being cleared for gardening [Nais, 1996]. The plan, however, had unexpected negative consequences in Tempulong. One farmer, finding a rafflesia on his property, set up a small booth on the roadside and charged tourists \$5 Malay ringitt (approximately US\$2) to take pictures of the blooming flower. Many people in Tempulong were angry with him. Community members felt it was inappropriate for one individual to profit from the rafflesia flower. As '*kepunya'an hutan*' (property of the forest), rafflesia are community property, not private property.

In the middle of one night the plant was destroyed, presumably by another villager. Villagers explained that an individual should not be allowed to profit by excluding others from community resources. In brief, the conservation scheme was a breach in the community's customary property relations, and therefore its effectiveness was compromised. The incident with the rafflesia plant shows that villagers have conflicting views as to whether customary practices or statutory law should prevail in daily practice. The struggle over property rights parallels the variations between individuals who wish to remain on the margins of Sabah's growing economy and those who are looking for opportunities to enter the market economy. This case also shows that state-led commercialization of resources can lead to disputes over natural resource use. As long as these disputes are still small-scale, they have little implications for the state. But if villagers' discontent grows it is likely that they will take more dramatic actions.¹⁴

The next section focuses on another example of disputes over natural resource use and land rights. This example is a more long-term and complex view of local agricultural systems, property relations, and the state's land titling process. This case illustrates the ways in the ecology of a crop and the combination of both market-orientated and subsistence-oriented farming practices can shape the expressions of property relations.

Intertwining Customary and Statutory Law: Attempts to Transition Usufruct Rights to Permanent Rights

While many people use Nababak (the area of land abandoned by the 'Toukay Cina and John Dusing) for short-term crops and hunting and gathering, other families are taking bolder steps to obtain ownership over the land – they have begun to plant fruit trees. Attempting to counter-appropriate Dusing's and Toukay Cina's land on a permanent basis, some of these farmers boldly state that if the landowners ever come back to reclaim the land, they will drive them out, using their fruit trees as evidence of their new rights to the land. Historically the presence of fruit trees is seen as evidence of native customary rights to land [Doolittle, 2005]. Although this way of establishing ownership over land is no longer recognized in statutory law, these actions represent on-going attempts to use customary practices to contest statutory law and to claim land in a situation in which land is scarce and villagers witness significant inequalities in terms of access to land.

In addition to this *de facto* appropriation of land mentioned above, villager leaders have tried other strategies to gain title to this land. Since the early 1980s the headman of Tempulong has petitioned the district officer and the land office to release the land in Nababak to the village of Tempulong, based on the notion that the villagers have customary rights to land within their village boundaries that has been abandoned by the original owner. Again, according to customary law, when a landowner leaves the village, his land should be redistributed to the remaining villagers who need it, in much the same manner that house lots are redistributed. But, according to the district officer, the villagers in Tempulong will never get state-sanctioned ownership of the land in Nababak. Since Toukay Cina has failed to pay taxes for 30 years, the government will auction his land off to raise money; the highest bidder will become the new landowner. In the eyes of the state, Tempulong's past claims on the land as village property were revoked when the Toukay Cina requested and received the land from the headman in Tempulong in the 1950s. Even though John Dusing has never used his land, all the taxes are paid, so the state would not allow villagers to challenge his title.

Additionally, leaders from Tempulong have also tried – again without resolution – to negotiate with the state for village ownership of the area,

known as Tarasan, that occupies the disputed territory between the boundary of Kinabalu Park and Tempulong. The original request for the land in Tarasan came in 1982 from the headman of Tempulong. In a letter to the district officer, he requested that over 500 hectares bordering Kinabalu Park be set aside for his village. He argued that Tempulong needed this land as compensation for the agricultural lands that were poisoned when the pipeline from the mine broke in 1978 covering villagers' fields with toxic effluents from the copper mine (recall Mamut Copper Mine is located on land that was excised from the Kinabalu Park in the early 1970s).¹⁵

In 1995 the chairman of the village development committee began to pursue the issue of village ownership of Tarasan with new vigour.¹⁶ The chairman of the village development committee is a political appointment and as a result has stronger ties to the political elite than the headman (who is chosen as a village elder to oversee customary laws). In his efforts to acquire Tarasan, the chairman chose not to rely on native customary laws but rather to co-opt the language and concerns of the state. Specifically, he emphasized the need for a grazing reserve for the livestock owned by Tempulong's villagers. The chairman pointed to the complaints of tourists and regional politicians that cows and water buffalo were roaming freely around the tourist area in Tempulong. These concerns, however, did not reflect local concerns; none of the villagers in Tempulong expressed any interest in grazing their livestock in Tarasan. In fact they complained that Tarasan was so far away that they would not be able to mind their animals.¹⁷ And since only 39% of the villagers owned livestock, the majority would not benefit from a grazing reserve.

Later in 1995, the headman, distressed that all the attempts to negotiate with the state over land rights have failed, organized four or five families to take ownership of the land in Tarasan through direct action. In direct violation of statutory law, they cleared the land in Tarasan and established swidden gardens. Looking out from the park boundaries towards the hillside that villagers cleared one can see a relatively small clearing in the forest. The farmers used only collective labour and hand tools to clear the land. This clearing seems insignificant, particularly if one shifts their gaze towards the Mamut Copper Mine, a gaping hole in the ground surrounded by piles of slag, or the state's dairy farm and golf course which were created with giant machinery that could clear large areas in a short period of time. Yet the park rangers, repeating the colonial rhetoric of old, only saw 'slash and burn' cultivators 'encroaching' on park boundaries when they looked towards Tarasan. One ranger recounted his conversation with the headman: 'I warned the headman not to clear the land. In 20 years he will be sorry when there is no water for the village and no place to get wood for their houses.'

Park officials and other people involved in the conversation over the illegal land clearing in Tarasan often comment that communities in Sabah should learn to manage their forested areas in a more sustainable manner. It is frequently argued that Tempulong villagers should be 'taught' to sustainably manage their land instead of 'destroying' it for swidden cultivation; outsiders have even wondered why local farmers have not adopted alternative land use practices such as agroforestry techniques. Arguing for community-based, sustainable forest management, these outsiders do not take into account natives' lack of secure tenure to land or the obstacles presented by the state that make permanent land uses like agroforestry difficult. Few, if any, consider that farmers use forested areas such as Tarasan for swidden gardens, rather than for fruit orchards, precisely because they *cannot* gain state sanctioned ownership of the land, and are not willing to risk the investment of a long-term cash crop on land that they do not own. Thus, historical circumstances and political and economic inequalities have made it difficult, if not impossible, for villagers to manage resources with a long-term time frame in mind. If they were permitted secure access to the land in Tarasan, it is likely that many villagers' first choice for land use would be to plant fruit orchards.

Converting the forests in Tarasan to fruit orchards and other agroforestry land uses would be a useful strategy for developing a buffer zone between the park and more intensive land uses and would be compatible with local land management strategies and farmers' desire to compete in the growing fruit market. In sum, the constraint to planting orchards in Tarasan is not the villagers' 'backward' and 'wasteful' land use strategies, but instead it is the state officials who are unwilling to allow village members secure title to the land. This opportunity for more effective conservation of biodiversity and development of a local, sustainable fruit industry has not been explored by park administrators or state agents involved in land administration. This oversight indicates that despite the rhetoric, conservation and sustainable livelihoods is really only a secondary priority in regional land management; much more attention is paid to the ability of the state to subvert environmental agendas and local livelihoods in their pursuit of economic gain for the political elite through their 'rural development' programs like Mamut Copper Mine.

The conflicts between villagers in Tempulong and the state over land use have been based mostly in dialogue and small-scale actions. In the following section we will turn to another community along the border of the park where villagers refused to leave the lands they had managed for generations. As a result the state and allied companies took far more coercive action and forcibility removed native people from the lands they had cultivated and destroyed their homes.

FORCIBLE REMOVAL FROM LAND: A HUMAN RIGHTS VIOLATION

Even though colonial officers optimistically declared the completion of settlement of native land rights in the 1916 [*Land Department*, 1916], as we saw in Tempulong, many native people still have not received legal title to the land that has been in their family for generations. In most cases, the head of the household has gone through the appropriate steps of filing their claim with the land office. Many have returned to the land office countless times to check on their applications. And sons have continued checking on claims their fathers made before they died [*Bernama*, 2004]. Most native farmers, who cannot afford a private surveyor, must wait an average of 20 years (and up to 50 years [*Bangkaui*, 2003]) before the state surveyor makes it to their land to register their claim. Most continue to farm the land, assuming that state will make good on its promises to provide private titles to those who can prove ownership through native customary rights and continuous use of the land. Yet in reality, in the ensuing decades since filing their claims, it is commonplace for multiple counter claims to have been made on overlapping pieces of property. Yet the single biggest obstacle to natives gaining title to their land in the 21st century is the very same obstacle that natives faced in the 1880s; large companies find ways to get their claims to the front of the application process, overriding pre-existing native claims to the land.

In 2003 a highly publicized land dispute took place between 18 farmers living on the boundary of Kinabalu Park and the Desa Highland Company (a flower farm run by a subsidiary of the Rural Development Corporation, a state entity that falls under the Ministry of Agriculture and Agro-Based Industry [*Ministry of Agriculture and Agro-based Industry*, 2006]). Desa Highland Company's activities around Mt Kinabalu include the state-run chrysanthemum farm on land that was excised from Kinabalu Park in 1984.

It is not possible to trace the very beginnings of the 2003 land case. But in the public eye (and as reported in the newspapers) the legal origins of the battled started in 1989 when a group of 18 villagers made an application for 74 acres of land in the village of Kundasang, on the southern boundary of Kinabalu Park. They had the approval of the village headman, and one of the farmers claimed his father had taken care of the land before him and that they used to 'harvest damar and rattan from the land' when he was a child [*New Sabah Times*, 2004].¹⁸ The farmers cleared the land in 1989 to start new gardens and build new homes. They cultivated the land for five years with no objection from other parties. The villagers assumed that they had legal title to the land and were just waiting for the state to complete the paperwork.¹⁹ However, the villagers' request for title to the land was denied. Then in 1992 the Desa Highland Company made an application to the land office for the

same land. The villagers made a futile objection to the company's application in a letter to the land office.

In May 2003 representatives from the Desa Highland Company accompanied by about ten police officers and three bailiffs came to 'chase the villagers away from the land' [Suhakam, 2003: 1]. They came with chainsaws and heavy machinery to destroy the homes of the villagers and claim ownership of the land. The villagers resisted the demolition of their homes, and as a result they were arrested on 28 May 2003 and placed in jail for 14 days, on orders from the district officer [Suhakam, 2003].

On 17 June 2003 the farmers sent a memorandum to the Suhakam (Malaysian Commission on Human Rights) claiming that the company and the police had violated their human rights. The villagers' allegations fell into the following categories: (1) the land was improperly alienated to the company; (2) the order of possession of the land and the subsequent jailing of the farmers were invalid actions; (3) there was improper use of force by the police during the eviction of the farmers and the police were not impartial (the manager of chrysanthemum farm and company's lawyers accompanied the police on the eviction making it appear that the company and the police were working in collusion); and (4) the conditions of the prison cells were inhumane [Suhakam, 2003: 2–3]. In February and March of the following year, the Malaysian Human Rights Commission held a panel to investigate the allegations; the panel is referred to in all subsequent documents and reports as the 'Kundasang Public Inquiry'.

According to the reports from the Kundasang Public Inquiry [Suhakam, 2003], the Suhakam determined that they had no jurisdiction to deal with the first two allegations, those regarding the proper alienation of the land and the validity of the actions taken against the villagers. Regarding the allegation about improper police force and lack of police impartiality, the Suhakam gave the police a slap on the hand, recommending that 'the police take steps not to give the perception through future actions that they are partial, however misconceived the perception may be' [Suhakam, 2004a: 43]. The majority of the panel's recommendations dealt with the inhumane conditions of the cells and treatment of the prisoners.

There is no doubt that the conditions of the cells were deplorable and warranted close attention from the Suhakam [see Suhakam, 2003: 2–3]. But it is curious that the Human Rights Commission chose to turn away from dealing with the issue of native land rights. The Suhakam is a relatively new authority in Malaysia, established in 2000. It has clearly stated in all annual reports that native land rights is one of the most pressing concerns for the native people in Sabah.²⁰ Yet when presented with a case of native land rights the commission took a timid and ultimately ineffectual stance. Suggesting that the question of proper alienation of land to a company over native

peoples who have occupied the land is outside the jurisdiction of the Suhakam, when nearly 50% of the complaints they receive in Sabah are regarding land matters, is a poor excuse to avoid a particularly thorny issue.²¹ This disjuncture between discourse and practice regarding the importance of resolving native land case leaves one wondering: Whose interests does the Suhakam represent? Given the extent of political cronyism in Sabah, it is fair to assume that even the Human Rights Commission is vulnerable to corruption. This is not such a stretch of imagination. Absurdly, even the head of Malaysia's a powerful Anti-Corruption Agency is under investigation for corruption. According to a report from the Associated Press Worldstream [2007], the former senior Anti-Corruption Agency officer Mohamad Ramli Manan has accused the agency's Director-General Zulkipli Mat Noor of being 'a very corrupt senior police officer who had amassed substantial property and assets through corrupt practices'.

The Suhakam's recommendation in the Kundasang case was that questions of native land rights should be dealt with by the state, effectively refusing to take any direct action on natives' complaints. Yet to date the statements of Sabah's politicians have not indicated that the state will take on the issue more aggressively. In 2005, the President of the Consumer Association of Sabah (CASH) called for the state to set up a commission to look into the problems with land applications. In an appalling understatement, bordering on naiveté, the President of CASH said:

What is most perplexing is that is that there are cases of local people who had submitted land application earlier but did not get the land title whereas applications made later for the same land by big companies were approved by the Land and Survey Department . . . This problem is getting serious and there is a need for the department to explain why these big companies are given special treatment at the expense of local people [*Bernama* 2005c].

In an equalling underwhelming speech launching the Ninth Malaysia Plan, 2006–2010 by Malaysia's Prime Minister Yab Dato'Seri Abdullah Ahmad Badawi [2006], the following is the only mention of native land rights:

We will also assist the development of customary land in Sabah and Sarawak. . . This includes creating more income generating opportunities through Skim Pembangunan Kesejahteraan Rakyat (SPKR [Peoples Prosperity Development Scheme]) and relocation schemes as well as introducing rural entrepreneurship programmes.

Apparently not only will the Human Rights Commission turn away from solving native land rights, but so too will the state and federal governments who seem unlikely to pursue the problem with any depth. Instead they suggest relocation and new development schemes, two initiatives that have historically failed to produce any tangible benefits for small-scale agriculturalists. For politicians to make such disingenuous statements of surprise and passivity suggests that there is no intention at multiple levels of government to take the steps necessary to correct over a century of inequality in land matters.

CONCLUSION: WHAT IS THE FUTURE OF CONSERVATION AND NATIVE LAND RIGHTS IN SABAH?

This article began with brief look at Malaysia's pseudo-democracy and the effects of this form of democracy on social mobilization and resource use. From this context we turned to village level data, with specific emphasis on native property rights and the ways in which crop ecology, along with land settlement policies, have influenced current land tenure practices. The result is a tapestry of land tenure practices, drawing on customary law and statutory law. While at times these two forms of land regulation are contradictory, at other times the elasticity of these terms provides villagers multiple mechanisms to claim ownership of land. Looking at the case of the rafflesia conservation scheme and the *de facto* usufruct rights that villagers used to justify their temporary cultivation of land they do not own, it was shown that native people can partially undermine statutory law through daily practices. However, these victories are short-term; the true coercive nature of a pseudo-democracy emerged in the final example of forcible removal of agriculturalists from their land.

Politicians and businessmen in Sabah have routinely used state power to subvert conservation and native land rights in order to increase their own wealth and power. While lip service is paid to conservation and rural development goals, in reality they only occur as long as the resources in question do not hold significant value to the ruling elite. With little accountability to their electorate, state agents are able to continue their agenda of large-scale development projects that benefit those in power.

In this article we have seen examples of how the lack of accountability to the electorate has resulted in the displacement of rural people from the lands they cultivate and the excision of well over 2500 hectares from Kinabalu Park for the development Mamut Copper Mine, a golf course, and other state industries. These projects have carried significant human and environmental costs, borne largely by native agriculturalists. But these examples are just a few of many violations against native land rights. For instance, in July 2007,

Malaysian newspapers carried the headline: 'Plantation Firms Use Strong-Arm Tactics to Grab Land in Sabah' [*Bernama*, 2007]. According to the news reports over the past 15 years oil palm companies have seized thousands of hectares of land belonging to locals by using forged documents that transfer ownership to the company. Furthermore, company 'thugs' have been employed to make sure farmers do not return to their land. And when one landowner tried to lodge a complaint with the police he was advised 'not to mess with the thugs as they had been employed by "powerful companies"' [*Bernama*, 2007]. This story carries echoes of the plight of the farmers' from the Kundasang region who were displaced by the Desa Highland Company.

At the most basic level this article asks the questions: In a pseudo-democracy is conservation and sustainable rural development that benefits both the environment and marginalized people possible? Does civil society have the capacity of self-organization to penetrate the lock politicians and businessmen have on land and resources? We have seen here that the small-scale organization of *de facto* resistance that is currently occurring at the village level has not had widespread success; villagers' motivations and actions are too splintered. And the remarkable unresponsiveness of politicians suggests that more a democratic approach to resource ownership and governance use is still a long way off in Malaysia.

Would intermediate organizations, such as churches, political parties, women's groups, and mutual aid societies be more effective places for marginalized people find the capacity for collective voice and action [cf. *Calhoun*, 1993]? At the moment in Malaysia race and religion remain the most salient issues around which organizations form [*Weiss*, 2005]. In a nation where so much of the political and economic power is based on race and religion, the capacity for collective action would be much more powerful if it were to cross these boundaries in order to represent a more diverse range of Malaysian citizens. One notable exception in Sabah is PACOS, a community-based, voluntary organization. PACOS aims to build capacity in rural communities across the state on issues such as land and natural resource management, socio-economic development, education, and native land rights. PACOS has been instrumental in helping communities defend their rights to land in Sabah's High Court, with some success.²²

Were organizations at an intermediate scale, such as PACOS, to thrive, they would find that there is ample opportunity to arrive at better outcomes for both conservation agendas and native agriculturalists. But this would require they place sufficient and sustained pressure on the state so that they prioritize conservation issues and rural development, not only in rhetoric, but also in practice. It would also require that the state become responsive to societal entreaties. Consider for a moment the farmers from Tempulong whose goals include developing a more lucrative fruit market in Tempulong.

A fruit orchard of mixed species would be a far better land use in the buffer zone between the park and the communities than their current illegal clearing for swiddens on contested lands. A civil society organization that facilitated open and inclusive negotiations between the state and villagers might have success in finding this middle ground, providing incentives for villagers to plant fruit trees along the park borders. These orchards would simultaneously protect the biodiversity and habitats within the park, and provide a better source of income for rural agriculturalists. But until open and true competition between political parties in Malaysia thrives, disrupting the dominance of UMNO and its coalition parties, such negotiations between state and society cannot be expected. Likewise it is unlikely that there will be major gains in conservation goals, native land rights, or sustainable rural development.

NOTES

- 1 Conservation here is defined as long-term, state-driven efforts aimed at protecting areas that have been determined to be important to the preservation of ecosystems and biodiversity.
- 2 According to Case [2001: 43] a pseudo-democracy 'offers more to their citizens than plain authoritarian regimes... Yet because civil liberties remain brittle, indeed retractable, pseudodemocracies "lack... an arena of contestation sufficiently fair that the ruling party can be turned out of power."' Accordingly, pseudodemocracies have few of the protections associated with liberal democracy, but also lack the more systematic repression associated with hard authoritarianism'.
- 3 In this article I distinguish between rural, small-scale development and state initiated, large-scale development. This distinction is based not only on the amount of land involved in development plans, but also on who benefits from the project. Small-scale, rural development initiatives directly benefit smallholders through different cropping options, access to new markets, or other locally valuable programs. Large-scale development initiatives are not motivated by improving the livelihoods of rural farmers, but instead focus on land uses that generate large revenues for extra-local businessmen. An example, used later in this article is the removal of land from Kinabalu Park for the development of a copper mine. Three Malaysian businessmen own 51% of this mine; the Japanese government owns the remaining 49% [*Rasihah*, 1999]. Very few people living around Kinabalu Park or the mine benefit from its activities, and in fact many have been harmed by the toxic tailings it produces [*Ali, et al.*, 2004].
- 4 I have used a pseudonym for the name of the village and surrounding place names.
- 5 Kinabalu Park is noted for its diversity of orchids (1200 species), pitcher plants (9 species, 5 endemics), rhododendrons (29 species, 9 endemics) and rafflesia (2 species). The animal diversity is rich, including 101 mammal species (including orang utans), 290 birds, a great number of reptiles and frogs [*Nais*, 1996]. It is also the highest mountain (4,095 meters) between the Himalayas and New Guinea and harbors a wide range of habitats, from rich tropical lowland and hill rainforest to tropical mountain forest, sub-alpine forest and scrub on the higher elevations [*Kitayama*, 1992].
- 6 The term 'native' used in the context of Sabah refers to indigenous peoples who come from ethnic groups such as Dusun, Rungus, Bajau, Kadazans, Orang Sungai, Murut, and others. The term is usually used in contrast to the Chinese, Indian, and Malay-Muslims.
- 7 For a full elaboration of this and other objectives of NEP, see *The Second Malaysia Plan 1971-1975* [*Government of Malaysia*, n.d.: 1-10].
- 8 This figure is based on a June 1996 household survey.

- 9 According to local rumors, the park administration has gone so far as to install surveillance cameras on the trees in the park.
- 10 A total of 45 villages share common boundary with the Kinabalu Park. Approximately 15,800 people live in these communities bordering the park, the majority of which are of the Dusun or Dusun-Kadazan ethnic group [Nais, 1996: 30].
- 11 Some documents report the figure to be 3,555 hectares [Government of Sabah, 2002].
- 12 While most people do not yet have private title to the majority of the land they own under customary law, they nonetheless consider land that they have cultivated for many years and for which they have applied for title, as private property. It is their belief that their tenure on land that they have applied for is secure, and that it is only a matter of time before they have the title in hand.
- 13 Excerpt from field notes, interview with L. 21 March 1996.
- 14 An example of more drastic action occurred in the early 1990s when the government attempted to expand the boundaries of Kinabalu Park without consulting surrounding communities. Community members became quite angered over a long history of watching politicians taking valuable resources for themselves. One night someone set fire to the area, damaging all the vegetation. The state was forced to back down from its attempts to expand the park, particularly since the land was now seen as valueless from a conservation standpoint. Feeling disenfranchised from legal avenues to claim rights to land, people felt that burning the remaining forest was the only way that they could assert their control over the land.
- 15 Villagers were afraid to cultivate this land due to the high levels of heavy metal contaminants (such as copper, lead, iron) in the soil that resulted from the flood [see Ali et al., 2004]. At the time of my fieldwork, nearly 20 years after the flood, the land still was unused.
- 16 The village development committee (Jawatankuasa Kemajuan dan Keselamatan Kampung [Authority for Village Development and Protection] or JKKK) was initiated in Sabah in 1968 as a way to institutionalize a system of community development. Its role at the village level is supposedly to give local people a voice in deciding which development projects they feel are necessary [Kitingan, 1990: 54]. However as a political appointment, it also becomes UMNO's man-on-the-ground at the village level.
- 17 Two cows had recently been stolen from Tempulong and owners were afraid that more thefts would occur if the animals were grazed even farther away from the house lots.
- 18 Claims of past hunting and collection of forest products are commonly used by natives trying to establish a history of ownership of the land, even if they have not cultivated it [Doolittle, 2005].
- 19 According to current state regulations governing customary law, if land is continuously occupied for three years and if no one raises any objections, then the occupants are entitled to the land [Sabah Times, 2004].
- 20 In 2004 and 2005, nearly half of all complaints lodged with the commission were about land rights [2004a, 2004b; 2005].
- 21 In some places it is reported that complaints on land issue were up to 80% of the complaints the Suhakam receives [Bernama, 2005a, 2005b; see also Thien, 2005].
- 22 See http://www.kkhighcourt.com/Master_Schedule/master2007a.htm, cases JR 25-05-05, JR24-240-02, and K22-72-00, Ramblinin binti Ambit vs. the Director of Lands and Survey and Ramblinin binti Ambit vs. Ruddy Awah.

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