

# Sabah: Genting Plantations and the Sungai and Dusun Peoples

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Of course, since there is a lot of oil that now comes from here and goes to Europe, or whoever it is being bought by, they should realise that the production of this oil by this company is causing us a lot of problems, as they have robbed us of our land and caused a lot of suffering. So, if they know the oil they buy comes from this company, then they should stop buying it. (Nanak Binti Andani, Napagang, 25<sup>th</sup> September 2012)

■ *Demonstration by Tongod villagers outside the KK High Court, 15<sup>th</sup> May 2012, with placards reading 'Don't seize our rights', 'Land for livelihoods not for profiteering' / Galus Ahtoi*

■ *Nanak Binti Andani, Napagang / Marcus Colchester*



## Introduction

Sabah, at 7.4 m ha is the second largest and easternmost Malaysian State, lying at the northern end of the Island of Borneo, and has a long history of plantation agriculture. The promotion of plantations was the main economic project in British North Borneo in the 20<sup>th</sup> century, with a focus on crops such as tobacco, pyrethrum and rubber. Especially since the 1980s, a great deal of

land has been allocated to oil palm. By 1999, Sabah had 941,000 ha and by 2012, almost 1.5 million ha of oil palm had been planted. Mean yields per hectare are high and as more and more palm trees mature, production has



■ *Entrance to the Genting Tanjung Bahagia estate near Napagang. The signboard reads: 'BEWARE Private area – trespassers will be prosecuted' / Marcus Colchester*

been increasing rapidly, making Sabah the number one palm oil producing State in Malaysia. In 2011, Sabah produced some 5.84 million tonnes of crude palm oil,<sup>1</sup> over 11% of global production, generating 38% of the State of Sabah's revenues.

Sabah's forested interior has long been home to communities who still arrange their affairs and regulate access to land through their customary laws. Resistance to colonial impositions<sup>2</sup> and to the expansion of plantations has been a recurrent feature of Sabah's history, and while native customary rights have always been nominally acknowledged, the State's land laws, both during and since the colonial period, have been crafted with the express intention of freeing up lands for plantations.<sup>3</sup>

This study examines an oil palm plantation being developed in the very centre of Sabah by the Kuala Lumpur-based Malaysian company Genting, which has interests in real estate development, casinos, tourism as well as palm oil. Its subsidiary Tanjung Bahagia Sdn Bhd has opened up some

8,000 ha of lands with an associated palm oil mill on lands claimed by the Sungai and Dusun peoples of Tongod District in the headwaters of the Kinabatangan river. After unsuccessful attempts at dialogue with the company and appeals to the government, in 2002, the communities took their case to court. During the past 10 years, the case has proceeded laboriously through the hierarchy of high courts, appeals courts and the Federal Court but owing to sustained objections by the defendants the communities' pleadings have yet to be heard. The case exemplifies the tensions between the RSPO's voluntary standard, which requires respect for customary rights and the right to Free, Prior and Informed Consent, and the State's laws and land allocation procedures, which deny these same rights.

### **Land, forest and rivers**

Sabah, famously the 'The Land Below the Winds',<sup>4</sup> enjoys a humid, tropical climate relatively little impacted by the typhoons which sweep the East Asian seaboard. It is a mountainous and forested territory. On its western side, a narrow coastal plain rapidly rises up into the Crocker Range and the Mount Kinabalu massif, which are cut through by short torrents flowing westwards to the South China Sea. Going east of these

mountains, the major rivers flow over much greater distances down to the Sulu Sea and, for long reaches of their lower courses, meander through extensive lowland plains, once forested and now substantially cleared for crops.

The area selected for this case study is in Tongod District which lies east of the coastal ranges in the mountainous centre of Sabah and is the westernmost part of what is now Sandakan Division. It is an area of tangled hills and valleys, just east of the State's second highest mountain, Trus Madi, which rises to 2,642 metres. From these hills, the streams and rivers find their way down steep valleys to the eastern coastal plain. They first flow into the river Kinabatangan which in turn debouches into the Sulu Sea near Sandakan, for long the principal town of the State.

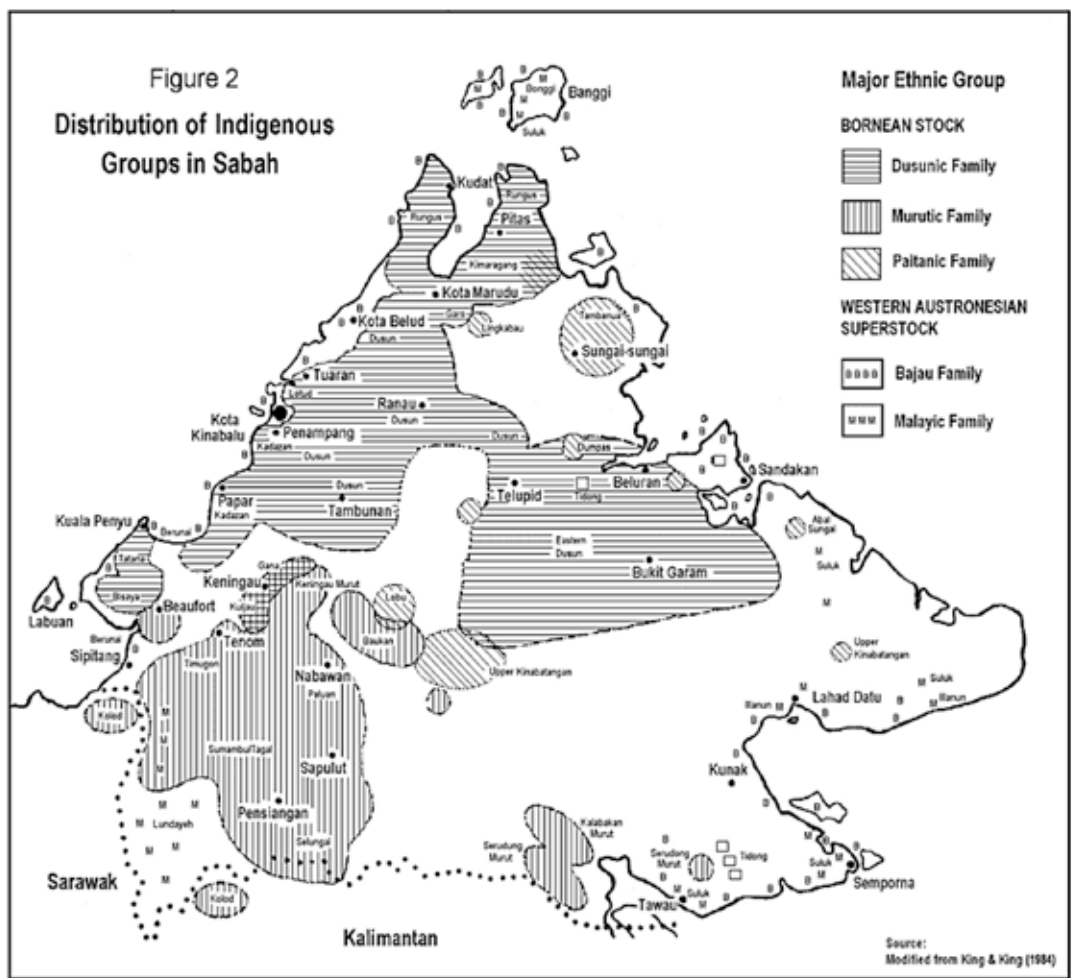
types, with much of the more accessible land being converted to farmlands and secondary forests, until recently the area retained substantial areas of primary forests, mainly lowland mixed dipterocarp forest, hill mixed dipterocarp forest and lower montane forest. The higher hills are also clothed with upper montane forest and summit scrub, and large areas have been set aside as Forest Reserves.

### The peoples

Until quite recently, Sabah was relatively thinly populated. This is considered to have been the result of the area's heavy involvement in slave raiding from the 15<sup>th</sup> to mid-16<sup>th</sup> centuries.<sup>5</sup> Sabah's population density was quite low at the time it was

Although the long occupation of the Tongod area has resulted in a mosaic of ecological

■ *Distribution of indigenous peoples in Sabah. (Source: Lasimbang and Nicholas nd)*



granted to the North Borneo Company by the Sultan of Brunei in 1881. Population grew from an estimated 67,000 in 1891 to 334,000 or so in 1951,<sup>6</sup> a slow rate of growth attributed to high mortalities from introduced diseases. Thereafter the population began to expand much more rapidly due both to natural increase and immigration.

According to a study carried out for UNDP and based on the 2000 census, an estimated 39 indigenous groups now make up about 60% of the estimated 2.6 million total population of Sabah. They speak more than 50 languages and 80 dialects, with the Dusunic, Murutic and Paitanic groups the largest among them.<sup>7</sup> This estimate includes peoples whose own traditions and histories link them to places outside what is now the State of Sabah.

According to available historical research, including a detailed analysis of local legends, the Upper Kinabatangan region, which this study focuses on, has been inhabited by groups ancestral to the area's present indigenous peoples since at least AD 1200.<sup>8</sup> The area was close to the legendary ancestral home of many of the Kadazan and Dusun peoples, which bordered where many of the Paitanic speaking peoples, later to be referred to as Orang Sungai, also originated.

The peoples in the study area around Tongod still refer to themselves as Sungai and Dusun, being those who live along the larger rivers and those who live further up-country, respectively. These are generic terms used locally to refer to clusters of peoples who see themselves as ethnically related. The British referred to them all as 'Pagan Tribes' to distinguish them from converts to Islam, although among the Sungai the influence of Malay and Bajau downstream has been quite strong. Both the Sungai and Dusun of the Tongod area describe themselves as subdivided into numerous peoples or clans (*bangsa* and *kaum*) each with its own dialect, custom and area, although intermarriage between the groups is apparently not rare.

In Tongod, the subgroups of the Sungai people that are locally recognised are Rumanau, Makiang, Sinabu and Kalabuan and the subgroups for the Dusun are the Minokok and Mangkak. According to those interviewed, and indeed the earliest records, these peoples have been in the area since long before the British colonial era. The area remained a sparsely populated upland, which was never effectively under the jurisdiction of the coastal trading principalities and Sultanates but which may have suffered sporadic incursions of slave traders who supplied the pearl and sea cucumber fisheries of the Sulu Sea.<sup>9</sup>

Before the British introduced a formal hierarchy of chiefs, the Dusun and Sungai peoples did not recognise any authority above the level of the village headman.<sup>10</sup> Villages, made up of clusters of family dwellings (the people did not live in longhouses like the neighbouring Murut or the Dayaks further south), tended to be located beside larger rivers (*sungai*) or small creeks (*susun*), and each had its own headman, chosen for his personal qualities rather than his ancestry.<sup>11</sup>

According to the interviewees, both the Sungai and Dusun peoples assert rights to their hunting and gathering territories. The boundaries between communities are not marked but they are widely known, as these boundaries run along natural features, such as watersheds and stream courses, or were marked by prominent trees.<sup>12</sup> Within these village areas, the Sungai and Dusun give emphasis to the rights of individual families to their farmlands and to the secondary forests that they use for fallows and fruit trees. Any disputes about lands are settled through customary law, the emphasis being to fine violators more for causing a disturbance than for the offence itself. Customary law emphasises the importance of maintaining village harmony.

Under custom, land rights are passed equally to male and female descendants, and elders may make provisions to pass their lands to both their children and their

grandchildren to ensure their daily needs can be met. This customary system of land use, land ownership and inheritance retains its vitality to this day.<sup>13</sup>

Until very recently, these communities' connections with the outside world were by forest trail and canoes up and down the rivers. These remained the main means of communications right up till the 1960s, as Tongod in the headwaters of the Kinabatangan river, lies at the extreme western end of what became under the British the 'Sandakan Residency'. From the town of Sandakan, the colonial administration was only able to extend its influence into this remote area relatively late in the history of British North Borneo.<sup>14</sup>

The oldest resident of the area to whom we were referred is Martin Ambisit who reckons he was born in 1931 at a time his family lived up in Lelampas. In 1940 his family moved down to Mananam, where some of them remain to this day, although he himself moved to Sanam, near Telupid, in 1972. As he recalls from what he was told, the British had imposed a system of tribal chiefs (*panglima*) sometime before he was born. Their duties, as recorded by the British, were to oversee law and order, extract the head tax (of which the *panglima* were entitled to keep 20%) and recruit labour for keeping bridleways open.<sup>15</sup> Martin can recall that during the Japanese occupation the *panglima* also visited to extract a tax of one and half dollars.

At that time people were mainly self-sufficient, living from hill rice grown in their shifting cultivation plots as well as crops like cassava, other roots and vegetables. They also hunted, fished and used the forests for many things, including gathering medicines. Their main source of cash income came from the sale of dammar resin and to a lesser extent rattan, which were harvested from the surrounding forests. The resin and rattan had to be carried to the navigable rivers and then taken downstream in canoes. There was an annual trade fair (*tamu*)<sup>16</sup> held at Kuala



■ *Martin Ambisit is considered the oldest spokesperson for the community / Marcus Colchester*

Tongod, where they could exchange their produce for vital items like metal – which they could fashion into *parang* (machetes), spears, hoes, axes and adzes. By that time there were already missionaries active in the area and local people began to turn to them for medicines.

During the 1940s, a school was set up in Lelampas, and by the 1960s the first road was built through the area, about the time that the logging started. Forestry was important in Sabah in that period and Martin himself got a job as a silviculturalist working for the Forestry Department. His main task was to thin the forests of the less valuable timber species. Martin insisted that the British respected the natives in those days but admitted that they did not give the people any proof of ownership of their lands. The District Officers would make periodic visits but rarely came further upstream than Kuala Tongod. So, if you wanted a permit for anything you had to travel out. To get a permit for a shot gun you had to travel all the way to Sandakan and get one signed by the Resident.<sup>17</sup>

Although the road did cross some people's farmlands and caused some losses, it was welcomed for the links it provided to the outside world, so at that time nobody

objected to it.<sup>18</sup> Once the road came into the area, the cash economy started to pick up but only slowly as no one had a vehicle and so they remained dependent on the rivers and foot travel for transportation. In the 1980s, however, people did start to plant commercial crops like oil palm, durians, rambutan and *langsats*, but even this had little impact on the forests and wildlife. Some animals even prospered as they liked the fruits: wild pigs and small deer were plentiful.

As Martin recalls, large-scale logging only started in the 1960s after Malaysian independence (1963).

In those days, although we did not have much to sell, we lived in peace on our own land and no one came to destroy what we have. There was no disturbance or encroachment, so we were satisfied with what we had. But then, in 2000, trouble came.<sup>19</sup>

### **Sabah land laws and Native Customary Rights**

Underlying the ‘trouble’ that was to come from oil palm plantations is a long history of land administration in which the indigenous peoples’ rights to their lands, while respected in principal, were never secured in practice.<sup>20</sup>

As lucidly explained in the works of Yale University scholar, Amity Doolittle, starting in 1885 the British commenced a process which, while recognising the principle that the native people had rights in land based on custom and their ancestral occupation of the area, encouraged the ‘settlement’ of land claims through the registration of individual lots.

Successive laws imposed greater and greater strictures on this registration process and even tried to set deadlines by which all land registration would be completed. However, the overstretched administration was never able to keep up with these ambitious schedules, as the remoteness of much of the interior, the limited infrastructure, the lack

of personnel and budgets and the priorities of the government never gave it the capacity to complete its task.<sup>21</sup>

The priority of the administration was to open up the most fertile and accessible land to plantations and so native land registration tended to be done just ahead of, or too often behind, the encroaching agribusiness frontier. The urgent matter then was to register each family’s farmed plot and then either facilitate compensation payment if the native could be persuaded to relinquish his land or advise the planter to leave these small cultivated areas aside.

Many of the officials posted to work with the native peoples realised that the land registration process was only addressing a small part of the native peoples’ ancestral rights to their wider village or ethnic territories. However, they never got around to recognising these wider areas either because recognising the full extent of the natives’ communally owned areas was too complicated<sup>22</sup> or because they simply lacked the time and resources to reach this far. Nonetheless, the officials were fully aware that the natives did have rights beyond their areas of permanent cultivation, including to village communal reserves, to forest reserves, to lands used for shifting cultivation, to isolated fruit trees and so on.<sup>23</sup>

Doolittle concludes that:

... the Company instituted a system of legal pluralism in which native customary laws were supported while those that hampered the commercial exploitation of land were replaced with western legal concepts.<sup>24</sup>

She notes that the same problems that were common in the colonial period prevail today.

The largest obstacle to natives gaining title to their land in the 21<sup>st</sup> century is the very same obstacle that natives faced in the 1880s; large companies, working in collusion with ruling elite are able to place their claims in the forefront of the application process, overriding pre-existing native claims.<sup>25</sup>

## Land registration today

Following the regulations established in accordance with the Land Ordinance 1930 and the procedures adopted for the registration of claims by the Lands and Survey Department, native people seeking title to their Native Customary Rights (NCRs) have first to apply to the Assistant Collector of Land Revenue and, once processed, the claims are passed through to the Director of Lands and Survey for titling (or rejection). The process is necessary to ensure that there are no overlapping claims or tenures. The general view among native people in the State of Sabah is that this process of land registration is unduly onerous and expensive for the people to follow through. Moreover, it is extremely slow, as the Tongod case examined in more detail below also shows.

During 2012, the government and the Attorney General for Sabah have made statements to the press that, according to their reading of the 1930 Land Ordinance, no new NCRs could be asserted or recognised after 1930. The statement of the Attorney General made in early 2012, was repudiated by Anne Lasimbang of the indigenous NGO, PACOS Trust, who noted that it is the courts that have the authority to interpret laws, and they had nowhere stated that 1930 is a cut-off date for the creation of NCR land. She also pointed out that the British colonial

government had continued to accept NCR claims long after 1930 because colonial efforts to register all NCR land claims had never been completed.<sup>26</sup>

More recently, the Director of Lands and Surveys Department has also made statements interpreting the 1930 Land Ordinance as a cut off date for NCRs. This position has likewise been contested by the Sabah Law Association (SLA). As SLA Chairman, Datuk John Skayun, is quoted as saying, ‘the Director’s views clearly do not represent the state of NCR law established in cases like Rambilin and many others’. He pointed out that the denial of NCRs to any claimants after 1930 would be likely to lead to manifestly unjust situations and lead to land conflicts. He highlighted the problem that in fact the majority of land applications are being made by companies, which on being approved by the Department ‘inevitably leads to a clash of vested interests between business interests and the livelihood and traditions of the natives’.<sup>27</sup>

The arguments of the Attorney General and the Director of Lands and Surveys are peculiar as the Department of Lands and Surveys itself has been recognising NCRs, albeit slowly, long after 1930. Indeed, based

■ *Interview with community leaders, Jaafar Dorong and Lius Meliton / Marcus Colchester*



on the Department's own record, between 1997 and 2010, the Department registered 562 NCR land claims, of which 192 had been verified, 40 were not and therefore rejected, while another 328 cases are still under investigation and two cases were withdrawn.<sup>28</sup> In 2011, the Department began issuing communal title to NCRs.<sup>29</sup> Moreover in late 2012, the Department itself has just announced its intention to launch a mobile Native Customary Rights Fast Unit, which will visit communities to resolve outstanding NCR claims.<sup>30</sup>

The statements of the Director and Attorney General are also in contradiction to the highest court of the land which, as noted above, has issued explicit judgments in favour of recently established NCRs in Sabah. The issue thus raises questions about whether or not there really is rule of law in Sabah or whether the government considers itself above the law. At the least, it is asserted, the government is in breach of its fiduciary duties to protect the interests and rights of the people.<sup>31</sup>

It is the view of some indigenous leaders, that the policy of the government to deny customary rights is bound to provoke more and more land conflicts. During the first decade of the 21<sup>st</sup> century, the Department of Land and Surveys was receiving over 40,000 applications for native title annually but was only able to process 12,500. By 2009, it is claimed that over 265,000 applications for native title remain outstanding.<sup>32</sup>

Not all these claims made it into the official system, the main reason seems to be that:

Most native farmers, who cannot afford a private surveyor, must wait an average of twenty years, and up to fifty years, before the State surveyor makes it to their land to register their claim.<sup>33</sup>

According to official records there are some 32,554 cases of unresolved land applications or land claims in the State of Sabah. Of these, about 2,000 are outstanding applications for the recognition of Native

Customary Rights with the Assistant Collector of Land Revenue.

As Doolittle notes:

This massive backlog of applications for land title lies at the heart of many current conflicts over native land rights. With such a large number of unsettled land claims, it is inevitable that overlapping claims for land are submitted and boundaries between lands never properly delineated.

The Islamic Association of Sabah notes that the blame for the lack of progress securing native land rights should not be laid on the administration. It notes that 'native land rights are almost gone because of political masters' decisions and not the Land and Survey Department or Forestry Department'... and it referred to recent land allocations whereby 'the natives and other Sabahans lost 906,330 acres to plantation companies [so] that 90 per cent of it now belongs to Peninsular Malaysia-based companies.'<sup>34</sup>

The National Inquiry into the Land Rights of Indigenous Peoples carried out by the National Human Rights Commission, Suhakam, which reported in 2013, took detailed testimony from indigenous peoples and other experts in all parts of Malaysia. In Sabah, the Commission heard repeated complaints from witnesses that their applications for recognition of their Native Customary Rights were delayed. No fewer than 221 out of 407 witness statements fell into this category.<sup>35</sup> A further 88 cases were from complainants whose claims had been dealt with incorrectly.<sup>36</sup> The Commission heard of numerous cases of land conflicts being caused by the alienation of lands without a fair process and more than a quarter of the cases it heard related to plantations granted over areas encumbered with customary rights.<sup>37</sup> Apparently many companies were unaware that they were expected to themselves ensure the lands granted to them were first freed of native customary rights, even though this is expressly noted on their titles according to the Sabah Natural Resource Office.<sup>38</sup>



## Communal title

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One of the consistent demands of the indigenous peoples of Sabah has been for an amendment to the laws to allow the titling of communal lands as a way of both securing the larger territories on which communities depend and strengthening their capacity for self-governance. On 10<sup>th</sup> December 2009, the legislature did adopt an amendment to Section 76 of the Sabah Land Ordinance, which allows the issuance of communal titles through a fast track method. It now reads as follows:

In cases where any State land planned by the Government of Sabah or a claim to customary tenure of land has been established or a claim to native customary rights has been dealt with by a grant of land and such land is to be held or is held for the common use and benefit of natives and is not assigned to any individual as his private property it shall be lawful for the Minister to sanction a communal native title for such land to be issued in accordance with the relevant provisions of this Ordinance in the name of the Collector as trustee for the natives concerned but without power of sale and such communal native title shall be held to be a title under this Part, but shall be subject to such rent as the Minister may order.<sup>39</sup>

While the objective of the communal title according to the amended version is to overcome issues involving NCR in Sabah and to optimise native land development, many indigenous peoples organisations have rejected the new provision in the law. Far from protecting their customary rights, they argue, the law has been designed to give the State a controlling power over customary lands, whereas the communities are only treated as participants and beneficiaries in the title, not as land owners. Several land development schemes founded on this new provision of the law have now run into trouble. The National Human Rights Commission found that ‘communities affected by these projects describe them as top-down programmes with no consultations or consent-making mechanisms for the project.’<sup>40</sup>

## Notes Doolittle:

From the perspective of native people, it could be argued that the new communal titles are not full titles that recognise customary land rights. Instead communal titles can be seen as a way to control the nature of agricultural development on native lands and to limit individuals’ ability to make their own decisions regarding land development.... it could be argued that these communal titles are a very limited form of ownership that serves the State’s interest more than native peoples’ interest.<sup>41</sup>

## Native title

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Although successive governments have been tardy to recognise and title native peoples’ lands, it does not follow that all untitled areas are vacant lands unencumbered with rights and therefore freely available to be allocated to other interests. On the contrary, the Constitution of the Federation of Malaysia protects custom and the national legal framework follows English Common Law, which allows for the continued operation of customary law.<sup>42</sup> The National Human Rights Commission’s recent National Inquiry into the Land Rights of Indigenous Peoples notes:

Native title arises out of native customs, and these customs, which define the content of native title, are part of the law of Malaysia and are protected under the Federal Constitution.<sup>43</sup>

As Ramy Bulan, Associate Professor of the Faculty of Law of the University Malaya notes, in Sabah customary law is recognised so long as its provisions are not ‘inhumane, unconscionable or contrary to public policy’.<sup>44</sup>

Based on these principles of law, the Federal Court has repeatedly found that customary rights in land derive from customary law and do not depend on grants by the State under Statutory law. This means that customary rights in land pertain and do so for so long as they have not been fairly extinguished by due process of law. In North America

and Australia these principles are described as 'Native title' or 'Aboriginal title'.

Two notable cases show how these same principles of law have been recognised by the courts in Sabah. In the case of *Rambilin Binti Ambit versus the Assistant Collector for Land Revenues*, the judge noted in 2007 that when Sabah was first ceded by treaty to the North Borneo Company in 1881, the company undertook that:

In the administration of justice by the Company to the people of Borneo, or to any of the inhabitants thereof, careful regard shall always be had to the customs and laws of the class or tribe or nation to which the parties respectively belong, especially with respect to the holding possession transfer and disposition of lands and goods, and testate or intestate succession thereto, and marriage, divorce, and legitimacy, and other rights of property and personal rights.

The judge ruled that rights in land obtained under custom subsist unless extinguished and that persons can continue to obtain rights on State lands in accordance with custom. After carefully reviewing the full history of the land laws in the State he concluded that:

There never was and not even after the passing of the Land Rules 1913 any requirement that the natives would be required to obtain permission

■ *Paulus Gahin is a member of the village committee in Napagang / Marcus Colchester*



to enter upon land before they can establish customary tenure or native right. Native rights were never subject to any permission of the Company not even the right to communal land which was governed by the customs of the community... the native customary right which included the right to enter state land for the purpose of establishing it still subsists until today.<sup>45</sup>

In 2010, the government sought to strengthen its powers to take over lands for public purpose though the Land Acquisition Ordinance, but the requirement remains that the State must follow due process to ensure lands are first vacant and unencumbered with rights before they can be reallocated.

This principle was reaffirmed in the High Court in 2011 when it overruled the criminal prosecution of native persons carrying out shifting cultivation in the Kuala Tomani Forest Reserve. In that case the judge found that the natives could show customary connections to the lands while the State could not show it had lawfully extinguished their rights in establishing the reserve.<sup>46</sup> This is not an isolated case. On the contrary, the National Human Rights Commission found that forest reserves had frequently been imposed on customary lands without due process.<sup>47</sup>

As at 2012, there were some 15 active cases related to Native Customary Rights before the High Court. As the government is contesting the recognition of NCRs, it is anticipated that all these cases will go through the full gamut of legal procedures all the way up to the Federal Court and Court of Appeal before final judgments are reached.

### **Land administration in Tongod**

As noted the British system of administration and the land laws of Sabah were all retained with little change after independence. In Tongod, it seems, awareness of the law and importance of regularised title to land came late as hitherto there was no pressure on their lands. However, once the road was constructed, Forestry Reserves were

declared and logging commenced (see below), the villagers became aware they needed paper proof of their land rights to deal with outsiders bearing licences.

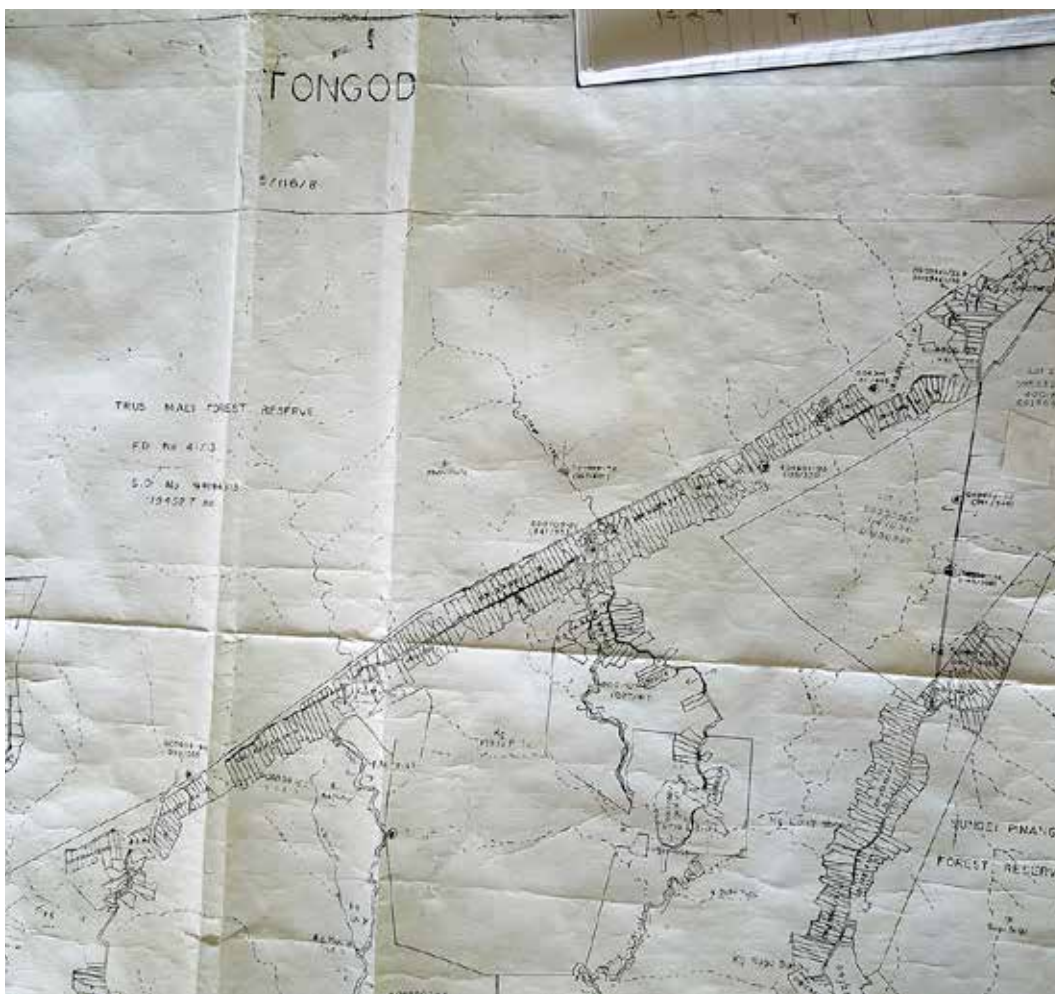
According to those we interviewed, community members began asking the administration for recognition of their customary lands in the mid 1970s. Most of the community members were by then beginning to develop cash crops on their lands and build more modern dwellings and they wanted land security. In 1984, in an effort to clear people out of the Forestry Reserves, the Forest Department began a process of resettling people, previously more spread out within their communal lands, along the roadsides. Houses were provided through the UNDP-supported community-forestry programme.<sup>48</sup> Although the convenience of the housing and the other services provided by the government are readily acknowledged by the villagers, they point out that although many of them have moved to roadside houses, some of them still retain their farms and farmhouses near their crops. The crops require quite intensive labour inputs and oversight, at planting, for weeding, to

scare away pests as the crops mature and, of course, at harvest time.

In retrospect the communities now think that their applications for land were dealt with in a very selective way, based not on their rights but on the convenience of government planners. Thus, while individualised 'native titles' did begin to be handed out along the road side, those applying for lands further into their communal territories were told to wait until the Tongod Regional Planning Study (TRPS) was put into effect. This survey which made some welcome promises to the local peoples to promote development based on their own ways of life, was however never put into effect. The communities were thus left waiting for a development programme that never came to fruition.

This situation prevailed right up until 1997, when the new administration abruptly announced that the TRPS had been dropped.

■ *Individual lots have been granted as native titles along the roads, while their wider claims were denied / Marcus Colchester*



This was the very same year that Hap Seng Sdn Bhd applied for a 20,000 acre lease for oil palm development in the area.

As recalled by interviewees, the communities repeatedly asked for seeds to diversify their crops but no sustained support was given to the communities until in 2009, when the government initiated the Agropolitan scheme upstream of the Hap Seng country lease.<sup>49</sup> Reflecting on their current situation, community interviewees now think they were tricked and that the government knew it was not going to implement the TRPS but was just holding these lands for the companies.<sup>50</sup>

### **The companies move in**

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During group discussions with the affected communities, it was hard to reconstruct the exact history of logging operations in the area. As different interviewees recall, logging really started when the first road was driven through the area in the early 1960s, trees being extracted first to clear the path of the road itself and then gradually extending into the surrounding forests.

The villagers do recall that there were some disputes about the logging when it came into nearby areas and impacted on their farmlands. In one instance, after their complaints were ignored, the communities placed a barricade across the logging road of Kilang Papar Kayu United, and this led to negotiations. The people asked for 50 houses as compensation, the company agreed to provide 20 but in the end only built 10.<sup>51</sup>

Logging was the main motor of economic development in Sabah from the 1960s to the 1980s, at which time the emphasis gradually began to shift to palm oil. Since 1999, all companies planning oil palm operations in Sabah are required to carry out an Environmental Impact Assessment (EIA).<sup>52</sup> This includes the requirement that companies resolve claims of native customary rights to the area. Companies are advised that the:

Status of land may be determined by obtaining the cadastral map for the relevant area. If the land is not yet alienated, ground truthing should be carried out to verify whether there are any claimants. Any land under dispute or claims by the locals should be clearly demarcated until decisions are made as to whether it will be acquired or excluded. Under Section 16 of the Land Ordinance, the procedure to follow is as follows: 'Native customary rights established under section 15 shall be dealt with either by money compensation or by a grant of the land to the claimant and in the latter case a title shall be issued under Part IV'<sup>53</sup>..... When the native rights had been established, recognizing those rights is the main measure to mitigate potential social impacts relating to land ownership issues.<sup>54</sup>

Following the approach pioneered by Sarawak, the government advises companies that find their lands overlap areas of native customary rights, to offer the communities joint ventures:

Recognition of rights may be further enhanced through formation of a joint-venture between the Project Proponent and interested landowners to develop their lands in tandem with the plantation development. This approach will reduce potential conflicts due to land matters and helps to provide an additional source of income for the affected people that may be translated into improved standard and quality of living. Formation of joint-ventures between the smallholders and Project Proponent may be implemented by:

- Identifying the plantation area that comprises native land. The areas shall be properly surveyed and marked on the ground. The acreage shall then be determined and the coverage incorporated into the overall plantation plan;
- Exclusion of native land area from Land Title. Based on the information from above, the Project Proponent may now appeal to the Land and Survey Department for exclusion of such areas from the Land Title and thus will effect some reduction in payable premiums as well as other payments related to the holding the land. On the landowners' side, this information will ascertain their land area that will be included in the joint-venture;
- Development arrangements. Prior to execution of the joint-venture, the following aspects shall be



clarified between the Project Proponent and the smallholders: distribution of development costs, distribution of profits and possible employment of the smallholders to work at the plantation.<sup>55</sup>

According to the information available, the plantation company Hap Seng Sdn Bhd first applied for a country lease over the disputed area in 1997. It then began to develop the land, as described below. The country lease and associated development was then bought by Asia Development Bhd as a property of its wholly owned subsidiary Tanjung Bahagia Sdn Bhd, which it had acquired in 1980. This deal was effective from 2002. Asia Development Bhd was later renamed Genting Plantations, which thus retains overall responsibility for the 8,830 ha plantation area as of 2002.<sup>56</sup>

Genting Plantations is a majority owned subsidiary of one of Malaysia's largest conglomerates, Genting Bhd, which is managed as the Genting Group and which now has a global reach. The company chairman, billionaire Tan Sri Lim Kok Thay, is according to Bloomberg Billionaires Index, Malaysia's third richest man.<sup>57</sup> The Genting Group includes casinos, hotel resorts, property development, electrical power generation, oil and gas development,

■ *'First they take the logs then they take our land' / Marcus Colchester*

biotechnology ventures, pulp and paper schemes, and oil palm plantations in its very wide portfolio. The company is a client of RSPO executive board member HSBC.

The Genting Group holds a 54.6% holding in Genting Plantations which profiles itself as Malaysia's fourth largest palm oil company<sup>58</sup> and which holds some 166,000 ha of land.<sup>59</sup> According to Genting Plantations report to the RSPO in 2012, it currently has 96,000 ha of oil palm plantings in its 37 palm oil plantations in various parts of Indonesia and Malaysia and also owns six mills producing 276,000 tonnes of Crude Palm Oil in 2011.<sup>60</sup> The company advertises itself as one of Malaysia's fastest growing plantation companies with a market capitalisation in 2012 of US\$2.3 billion.

According to its website:

Genting Plantations continues to inculcate and strengthen "green practices" and best operating standards across its plantation and oil mill activities to promote the growth and use of sustainable palm oil. Its Malaysian estates

have either received Code of Good Agricultural Practice certification from the Malaysian Palm Oil Board or are in the process of gaining certification. Genting Plantations has supported the Roundtable on Sustainable Palm Oil since its establishment in 2004 to promote the growth and use of sustainable palm oil ([www.gentingplantations.com](http://www.gentingplantations.com) 2011 Annual Report).

## Impacts

A detailed village census, recently conducted by the village committees with the help of the PACOS Trust, establishes that there are some 2,660 families in the seven villages still claiming Native Customary Rights in the 8,830 ha concession. That is about 13,000 people.<sup>61</sup> These are listed as:

|       | Village name | Number of families |
|-------|--------------|--------------------|
| 1     | Minusoh      | 441                |
| 2     | Liu Pampang  | 273                |
| 3     | Namukon      | 399                |
| 4     | Mananam      | 200                |
| 5     | Napagang     | 386                |
| 6     | Lanung       | 451                |
| 7     | Maliau       | 510                |
| Total | 7 villages   | 2,660              |

Among the many impacts that the communities list as a result of the takeover of their lands are: loss of access to old growth forests used for hunting, fishing, and for collecting forest products such as rattan and dammar.<sup>62</sup> Community members also allege that the company has even cleared areas planted with durian trees outside their leased area and they complain that ‘they have also cleared the catchment area of the people’s main source of drinking water’. Kampung Tekulong, which features on a map of the British period, has also been cleared and planted with company palm trees.<sup>63</sup>

All this has had a significant impact on the peoples’ livelihoods as their lands and forests are the source of their daily needs. It means that they have lost house building timbers and wild vegetables. Others complain that the water is now dirty and polluted when

it used to be clean. ‘The wild game has now almost all gone and the fish have been depleted, there are few birds left, and there is no honey anymore, which usually had their hives in the tall *menggaris* trees’.<sup>64</sup>

As Martin Ambisit recalls:

Of course the impact of the company has been serious. They destroyed a lot of things in the process of establishing their plantation. They even destroyed the burial sites of our loved ones without any sign of respect – and our crops and our gardens. We have been trying to tell them to stop, that we wanted our land protected but until now there has been no positive response from the authorities. They have made no payment for the damage and destruction done to the land or the burial sites of my relatives. The bulldozers just came in and when I went to look, it was all destroyed.<sup>65</sup>

Montamin also noted that:

Our house in *kampong* Mananam was simply bulldozed by the company. It is true that the house was empty at the time but we used it seasonally when we went to harvest our fruits – we had durian, rambutan, *langsar*, *terap*, *campadak* (jackfruit), *belimbing* (starfruit), *mata kucing* and *pau*. We reported it to the police. Yes, there is a police report about it... but no action was taken.<sup>66</sup>

The main period of clearance was between 2002 and 2008. The consensus is that the last year Genting did any clearing was either 2008 or 2009. The last remaining area is a riparian strip and it seems that the company has decided not to clear it. It too is community land.<sup>67</sup>

Interviewees also complain that the waters downriver of the mill are now too polluted for drinking and even bathing. The company does have an impoundment to treat waste water from the mill, but, villagers note:

Sometimes during heavy rains, the waste pond overflows into the river and then we have had cases of lots and lots of fish dying along the river downstream.



In such cases community members have lodged complaints with the government department dealing with the environment.

Normally they would say they have made an inspection or have taken the issue up with the company, but later on it turns out they actually stayed overnight with the company, so we are not sure how effective they were as our problem has not stopped. We still have the same problem.<sup>68</sup>

The same interviewees claim that that company never shared its environmental impact assessment report with them and if there was a High Conservation Values Assessment (HCVA) they have no knowledge of it: ‘they never disclosed any information with us’.

The Sungai peoples have been especially badly affected by the water pollution. Some of them have even had assistance from government to set up Small and Medium-sized Enterprises (SMEs) to catch and market the fish, but according to the interviewees ‘these are now useless because there are no longer enough fish resources left.’<sup>69</sup>

Because of our dispossession of our customary lands which have been taken over by the company

■ *This house has been abandoned now that it is wholly surrounded by oil palms / Marcus Colchester*

for its oil palm plantation, we now have no choice and have to use the gazetted protected forests to carry out our farming activities and this has brought us into conflict with the government. We have to use these forests now for farming, hunting and collection of forest products, like for example we get timber from the Forest Reserves for coffins... Some are even using the Forest Reserves for burial grounds as our original burial areas have been taken over by the company. (Pius)

Other problems have come with the influx of migrant workers who work for the company, most of whom are from Indonesia. The villagers report that there have been thefts from their houses, pilfering of crops from people’s gardens, fistfights and commotions when they have attended village festivals and got drunk. Drugs have become more prevalent in the area and there have been also incidences where the estate workers have got involved with local women, who have then been left when the workers moved on.<sup>70</sup> In one case, a Bugis estate worker allegedly involved in dealing



■ *Putani bin Salag is the penghulu for the Dusun peoples of Tongod / Marcus Colchester*

drugs, cut his wife's throat and he is now serving a jail sentence.<sup>71</sup>

### **Demands and protests**

As soon as community members learned that the area where they had for many years been asking for recognition of their native customary rights had been handed over as a Country Lease to Hap Seng, they contested the takeover of their lands, by appealing to the local government.

Some of the interviewees were despondent about the effects of their appeals:

It seems that the Department of Lands and Surveys is collaborating with the company to give all our land away to the company. They are not doing anything to help us but only take the side of the company. There are many levels of government, but personally, I feel Lands and Surveys are responsible for our problem. They have given our lands away. Looked at from the point of view of our customary law, they are in violation of our custom.... we have appealed (to them) for this area for many years, and we are still trying, yet when the company asks for a huge area, affecting so many people, they get it all within two years.<sup>72</sup>

Community members also appealed to State Assemblymen but no action was taken:

Of course, we feel very disappointed by the way we have been treated by those in power and our government. We brought this (problem) to their attention but they have not solved it. But the problem continues. They have still not given us title to protect our lands.<sup>73</sup>

Community leaders note:

Our main demand is that the government should take measures to make sure that the land that was taken can be returned to the communities for their farming and other livelihood activities. This would also help ensure that we do not encroach on the Forest Reserve. Our second demand is that the company and government should protect the remaining forests in the country lease, to make sure it is preserved for the needs of the villagers. They must return our NCR lands even if they have been planted with oil palm, because they have planted their oil palm on lands that were already of value to the people or even had crops on them, so it is only fair.<sup>74</sup>

As noted below, after the failure of their efforts to get redress through appeals to the company and the government, the communities took their case to court in 2002. There have been long delays and, frustrated by the lack of progress, at one point community members burned down the company's camp. While the police made some arrests following this incident no one was charged.<sup>75</sup>

The communities have long considered what they should do if they did get their lands legally restored to them but now planted with oil palm. They recognise that they would probably have to form some kind of a cooperative through which to manage the area and market the fruits. If good relations can be restored they could even sell these fruits to Genting's mill.

The fundamental thing is that the rights to the land should be with the people and the company would then become an entity to make sure the palm oil is managed smoothly.



### **The Tongod case goes to court**

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In 1999, communities in the Tongod area, with the help of the Kadazan-Dusun NGO, Partners in Community Service (PACOS), sought legal support to contest the takeover of their lands by Hap Seng. The case was then very carefully prepared. PACOS worked closely with the local people to map customary lands. This included both 3-D modelling of land use and occupation and then the survey and mapping of the extent of the NCR claims using GPS and GIS technologies. With the help of the lawyers, sustained efforts were undertaken to ensure that the communities were aware of their rights under the Constitution and the law. The risks and possibilities of securing a favourable judgment in the courts were also carefully explained, as were the possibilities of provoking an adverse reaction by the government. A series of lengthy community discussions followed as the communities debated their options. Seven communities decided to file claims for their lands, while others decided to accept the compensation monies on offer from the company.

The claim was thus submitted to the courts in 2002 in the name of five community leaders as representatives of the seven communities of Kampung Maliau, Kampung Minusoh, Kampung Liupampang, Kampung Namukon, Kampung Mananam, Kampung Napagang and Kampung Lanung. The defendants were named as the three companies - Hap Seng, Asiatic Development and Tanjung Bahagia – as well as the Department of Lands and Surveys and the government of the State of Sabah.

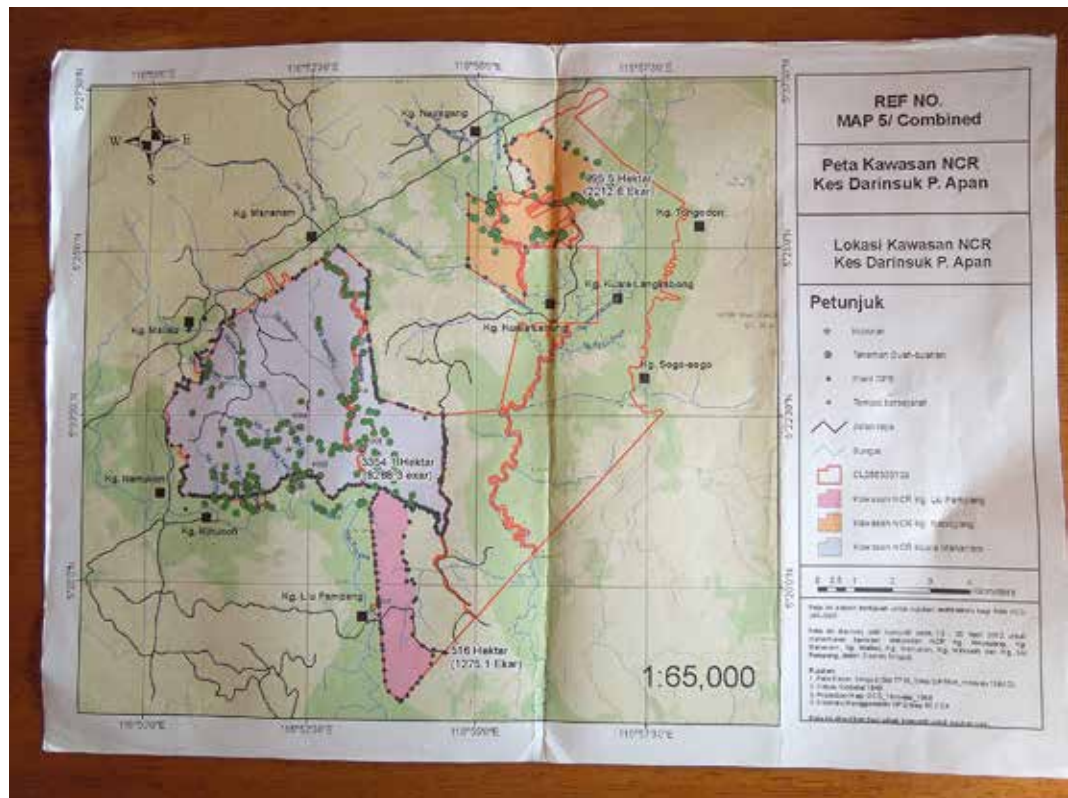
The communities contend that the area of the Country Lease overlaps their Native Customary Rights, which have never been extinguished by any act of the State. The government has therefore acted unlawfully by alienating their lands and awarding them to the companies in the form of a Country Lease. The Country Lease is therefore null and void having been issued in contravention of Articles 8 and 13 of the Federal Constitution which guarantee equality

before the law and the right to property, which the State has a fiduciary obligation to protect. The Country Lease has also been issued contrary to the provisions of the Land Ordinance which protect native rights. The companies are therefore trespassing on NCR land. Accordingly the lease should be cancelled and vacant possession given to the customary owners or the areas of NCR should be excised from the lease.

The communities also demanded a prohibitory injunction to halt the companies trespassing, clearing, using and occupying the land and to get the company to cease all operations and remove all structures and machinery. They also demand damages, aggravated damages, interest and costs, and such ‘other relief as the Honourable Court finds fit and just’.<sup>76</sup>

Both the companies and government defendants have disputed the communities’ case. The lawyers acting for the defence have argued that the case was not ‘admissible’ in the courts as the communities had not sought to have their NCR claims verified by the Assistant Collector of Land Revenue nor had their claim been considered by the Director of Lands and Surveys. The case thus had to be heard at a ‘preliminary interlocutory court’ just to make a judgment on whether or not the case could be heard.

The lawyers acting for the communities, for their part have argued that the case is admissible as the responsibility of Lands and Surveys was over State land, whereas the land in dispute was alienated land. Moreover, the case is not just about whether or not Lands and Surveys should recognise rights based on the Land Ordinance. On the contrary, the claim being made by the communities was that their Native Customary Rights to land were also based on the Common Law and on the protective provisions of the Constitution, matters which the Assistant Collector of Land Revenues (ACLR) and the Director for Lands and Surveys are not competent to examine. The case, the lawyers argued, thus has to be heard in Court as it raises issues that only the courts are competent to give judgment on.



■ *Community mapping done with the help of PACOS shows the extent of customary rights and how they overlap the Country Lease now held by Genting's Tanjung Bahagia Sdn Bhd / Marcus Colchester*

The case thus had to be heard by the full legal process and wound its way all the way up to the Federal High Court, including through several rounds of appeal. As the lawyer for the Tongod communities noted:

They fight you all the way and while the case is delayed they are harvesting the crop. While they are making money and so can afford to contest the case all the way, the communities are stretched to meet the legal costs. They hope to frustrate us in this process, hoping we will give up, that it will take too long and we will lack the resources to fight the case all the way through.<sup>77</sup>

In the event, the communities and their lawyers have shown greater stamina than the company and government hoped. In December 2011, the Federal Court ruled that the case was indeed admissible and, while there were delays in naming a judge to hear the case, the hearings on the case have now begun.

## Community perspectives

As noted, the communities sought to prevent the company from entering their lands as soon as they realised it had been issued a Country Lease and they entered a plea for an injunction to halt the companies' operations in 2002. Unfortunately, the companies and the Government have successfully managed to stall such a ruling for 10 years and meanwhile the community has to suffer the consequences of the companies' presence.

Additional problems have since come to the fore. As one young farmer noted:

There is also a problem of the company more or less restricting the movement of the people. They place gates across the roads. If you then go in, they take your number plate number and report you to the police. Even when we tried to go to see the condition of the burial sites, we were not allowed in.<sup>78</sup>

The restrictions on their livelihoods continue. As one woman resident in Napagang told us:

Before we were happy living here on our land but now we face difficulties because so much of our land has been taken over by the company for the oil palm plantation. Before there was rattan and other forest resources but now these are very hard to obtain. Now I am very worried, yes, very concerned as it will definitely affect our future. There is no rattan for our handicrafts, and the baskets we use for our farming activities.<sup>79</sup>

She has a good knowledge of medicinal plans. She used to get them from the forests but now there are no more.

Now to get medicines I have to go all the way to Telupid to the clinic.

The community is also expanding rapidly in numbers and there are concerns that there is not enough land for the next generations. She has more than 20 grandchildren and three great grandchildren but now she has only 2.09 acres of land to hand on to so many people.

I don't feel happy about that, it is not enough. My main concern is to get the land back. The land means so much to us: its value cannot be described.

My hope is that when we get through this case and win it, and get our lands back, then our lands will be reinstated. Our people have tried our best to appeal to the Government about what we are facing with regard to our land. It should be given back to us. But, so far, our appeals have not been given due consideration. They just make us promises but until now nothing has been done about. They make promises but their promises are empty.<sup>80</sup>

The way things are going on, I am very uncertain and worried about our future. While maybe at present we have enough to sustain us, for our children and their children we have nothing to pass on to them. And with the population increasing there will not be enough for them. If this is not addressed now, with our land given to the companies this may lead to serious conflicts between our people and other parties. The way things are going on, it seems that the government is more interested in the companies than in our rights and our future generations. Even now, the

way some people have been resettled without sufficient lands for their farming or to supplement their needs from the surrounding forests, there are already serious problems.<sup>81</sup>

A lot of our people are very concerned because what we have is so much less than what we used to have – right now people feel pressured and feel something must be done... We hope you can help our people to bring this information about our problems to the attention of other people, so they can support our cause. Maybe more people can make a noise about our situation, so we don't feel we are alone. We now hope that if many people support us it may create a solution. Otherwise it will drag on and things will get worse and make many problems for our children and grandchildren and the next generations.... You have made a great effort to be here and we are very grateful for that, it shows you people are concerned.<sup>82</sup>

## Conclusions

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It is clear from the judgments of the courts that under the laws of Malaysia, and of Sabah in particular, native communities can continue to assert rights in land and that custom is the source of such rights. This continues to be the case even though successive governments both under the British and since independence have sought to limit and hedge in these rights through legal impositions. Arguably, as a result of over a century of pressure from government, communities have begun to consider their lands more as individual holdings than as heritable family usufructs within communal tenures.

The government however continues to contest customary claims and even rejects the judgments of the courts, preferring instead to free up lands for commercial development by private companies. Genting, having taken over the Country Lease of Hap Seng, is a beneficiary of this contempt of the communities' rights. The courts have yet to determine whether or not in this case the Lease they have acquired is valid and whether or not the lands legitimately belong to the communities or the company.

The current intransigence of the government, in refusing to honour the decisions of the courts and respect customary rights, makes for both a problematic investment climate and provides a very difficult basis for community development. Faced with this refusal of the administration to recognise or process their claims, communities are instead obliged to fight every single case through the courts. Even though the time these cases are taking has now begun to lessen from over a decade to more like two or three years, this is still a formidable and unjust burden to place on the communities. A more reasonable approach would be for the State Assembly to amend or repeal the laws in a way that could facilitate the determination of rights and titling of lands. This might be done by a Tribunal which could process claims and instruct the Department of Lands and Surveys to issue titles.

Unfortunately, Genting Plantations Sdn Bhd has declined to be interviewed for this case study<sup>83</sup> and has also refused to supply copies of its social and environmental impact assessments and its High Conservation Value assessment.<sup>84</sup> It has done so on the grounds that the disclosure of these documents may adversely affect the court case.<sup>85</sup> Unavoidably we are therefore obliged to draw conclusions about the Tongod operation without being able to set out the company's own point of view. This is regrettable.

Genting Plantations is an ordinary member of the RSPO and has been prominent in participating in the RSPO's standard setting committees, and on occasions has represented the Malaysian Palm Oil Association in these discussions. The Tongod investment does not sit well alongside this public positioning.

It seems clear from the findings from the field and the testimony of all those who agreed to be interviewed that Genting Plantations is in violation of some key principles of the RSPO. Neither it nor its subsidiary Genting Tanjung Bahagia

Sdn Bhd has shared basic documents about its operations, management, impact assessments, and operational procedures with the affected communities (Criteria 1.1 and 1.2). Its right to use the land for its operations is being legitimately contested by local communities (Criterion 2.2). Its use of the land is diminishing the communities customary rights to their lands (Criterion 2.3) and the company is operating contrary to the free, prior and informed consent of the peoples concerned (Criteria 2.3, 6.4 & 7.5). No effort has been made to carry out participatory mapping of the areas claimed by the communities (Indicator for 2.3). There is no mutually agreed system in place for the resolution of disputes (6.3). The company has continued to clear land and expand its plantings without the communities' consent (6.4), without a participatory HCV assessment, and, so far as we can ascertain, without setting aside lands for HCV 1, 2, 3, 5 and 6 (5.2, 7.3).<sup>86</sup> There are allegations that waste waters from the mill are polluting downstream waters (5.3). These are serious violations and constitute reasons for suspending the certification of all Genting Plantations' operations.<sup>87</sup>

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  12. Group discussion in Napagang, 25<sup>th</sup> September 2012. See also Ranjit Singh 2000.
  13. Group discussions in Maliau, 23<sup>rd</sup> September 2012, Telupid and Sanam, 24<sup>th</sup> September 2012 and Napagang 25<sup>th</sup> September 2012.
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  16. For a colourful description of a *tamu* see Cook 1924 (2007).
  17. Martin Ambisit, interviewed in Sanam, 25<sup>th</sup> September 2012. A ‘Resident’ was the senior authority in each major subdivision of the colony.
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  67. Community discussion in Napagang, 25<sup>th</sup> September 2012.
  68. Interview with Jaafar Dorong and Pius Meliton, 24<sup>th</sup> September 2012.
  69. Interview with Jaafar Dorong and Pius Meliton, 24<sup>th</sup> September 2012.
  70. Under Sabah’s laws regulating migrant workers, they are not allowed to get married.
  71. Group discussion, Napagang, 25<sup>th</sup> September 2012.
  72. Martin Ambisit, interviewed in Sanam, 24<sup>th</sup> September 2012.
  73. Martin Ambisit, interviewed in Sanam, 24<sup>th</sup> September 2012.
  74. Jaafar Dorong and Paulus Meliton, interviewed in Telupid, 24<sup>th</sup> September 2012.
  75. For obvious reasons interviewees were reluctant to provide details about this incident.
  76. ‘Tongod Region’ vs. Hap Seng, Asiatic Development, Tanjung Bahagia, Dept. Lands and Surveys and the Government of the State of Sabh, Kes No: K22-245-2002.
  77. Kong Hong Ming, interviewed in Kota Kinabalu, 28<sup>th</sup> September 2012.
  78. Rashid Jamail, 25<sup>th</sup> September 2012.
  79. Nanak Binti Andani, 25<sup>th</sup> September 2012.
  80. Nanak Binti Andani, interviewed in Napagang, 25<sup>th</sup> September 2012.
  81. Martin Ambisit, interviewed in Sanam, 24<sup>th</sup> September 2012.
  82. Martin Ambisit, interviewed in Sanam, 24<sup>th</sup> September 2012.

83. Email from Chew Jit Seng to Marcus Colchester, 3<sup>rd</sup> October 2012.
84. Email from Chew Jit Seng to Marcus Colchester, 2<sup>nd</sup> October 2012.
85. Email from Chew Jit Seng to Marcus Colchester, 2<sup>nd</sup> October 2012: in the email GENP states:  
'In view of the status of the case being still ongoing and pending hearing by the High Court, it is therefore not appropriate for us to disclose at this time, any information or documents pertaining to the above Tongod land as these may be deemed sensitive and may influence the proceedings and/or the outcome thereof.'
86. During our field visit, we did note evidence that at least one area of forest has been set aside as a riparian strip in conformity with Sabah environmental laws and this may also be considered an HCV4 Management Area.
87. RSPO Certification Systems 4.2.4, as revised March 2011.