

Chapter 2

Gender Impact of Large-Scale Deforestation and Oil Palm Plantations Among Indigenous Groups in Sarawak, Malaysia

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Abstract Land and forest ecosystems form the core of the belief systems and daily lives of indigenous forest people and communities. However, State policies and laws introduced in the colonial period, retained and reinforced by post-colonial states have substantially increased the state's power and are restricting and removing indigenous rights to land and forest resources according to *adat* (traditional customs). This chapter examines the impact of changing land use and land tenure systems in Sarawak on human rights, livelihoods, and local gender practices. Conversion of forests to oil palm plantations is regarded as a disaster given the importance of land for customary practices, food security and income-generating activities, and other fundamental rights of indigenous peoples. We use the term 'disaster' from a variety of perspectives, foremost is the communities' perspective placed alongside other perspectives such as gender, legal, socio-cultural, economical, and environmental. To support these arguments, this chapter studies the Iban community of Kampong Lebor whose customary lands were cleared by companies to plant oil palm without free, prior, and informed consent (FPIC). Large-scale plantations on these lands contributed to significant social and environmental risks and other negative socio-economic and climatic consequences. A human-made disaster in Sarawak was partly averted by restoring traditional land rights and tenure systems; however, without restoring women's access to forest.

Keywords Sarawak • Oil palm plantations • Land grabbing • Customary rights • Disaster

Abbreviations

BN	Barisan Nasional
FPIC	Free, prior, and informed consent
Kpg.	Kampong

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LCDA	Land Custody and Development Authority, Sarawak
NASA	National Aeronautics and Space Administration
NCR	Native customary rights
NGO	Non-governmental organization
PBB	Parti Besaka Bumiputra
SACCESS	Sarawakians Access
SOPPOA	Sarawak Oil Palm Plantation Owners Association
UN	United Nations

2.1 Introduction¹

Current studies using satellite-based imaging, NASA data and other tools reveal that only small areas of intact forests remain in Malaysia, especially Borneo, because much of the forests have been heavily logged or cleared for timber or oil palm production (Bryan et al. 2013; Hansen et al. 2013). Experiences of many Sarawak landowners reveal that land acquisition by the state authorities to feed hungry plantation owners, loggers and developers is threatening the survival and livelihoods of indigenous peoples and local communities. Many of these lands are held under customary tenure by local communities, and over 200 cases have been challenged by NCR landowners in courts. Too often, the State cites poverty eradication, development and modernization of agriculture to justify land acquisition and oil palm plantation development, specifically targeting *native customary rights* (NCR) lands, and lately, using dam building as the only way to develop remote areas.

To identify the link between oil palm agribusiness land-grabs and disasters, our starting point is that land and forests form the core of the belief systems and daily lives of indigenous forest people and communities in Sarawak and other parts of Malaysia as well as globally where indigenous peoples live. From this perspective, customary rights and relationships with their traditional land uses have existed long before statutory regulations. We also know, as told by communities, that lands are continuation of generations and their lands are filled with stories, good and bad, memories, boundaries, sacred places, mountains that gave birth to legends, and so on. But what is happening on-the-ground through communities' experiences, and more generally research/fieldwork/documentation by NGOs, researchers etc., we see communities' forests and customary lands continuously exploited through

¹We are grateful for the comments, insights, criticism, and support provided by SACCESS and land rights lawyer and Sarawak State MP, See Chee How. We are also grateful to the anonymous reviewers who commented on earlier versions of this case study.

concessions and licenses issued for development and traditional land uses being completely disregarded and ignored by the so-called modern state, throwing into complete doubt even the whole definition of indigenous communities. Here we are talking about communities being uprooted, destroyed and much of what is lost can never be recovered. Thus in fact saying development-induced land and other problems for communities is a disaster is putting it mildly.

Secondly, the UN and other international and domestic laws and human rights treaties have validated the rights of indigenous peoples to self-determination including their rights to land. Yet, under current power relationships, it also becomes obvious that the state is in cohort with capitalists, whilst in the Sarawak/Malaysia context such relationships are reportedly connected to practices of cronyism and nepotism (cf. <http://www.sarawakreport.org>; Ross 2001; Yong 2010). With the Federal court reaffirming landmark cases granting NCR rights, the human-made disaster brings to forth how the executive is refusing to acknowledge the third pillar of democracy, the judiciary, thus seriously undermining the whole notion of democratic institutions and practices.

Economically, the once self-sufficient, subsistence communities have since turned into wage earners to sustain themselves. Without lands to cultivate and grow staple food such as rice, hunt and collect jungle produce, communities are increasingly dependent on the cash economy and jobs available, but opportunities are limited for rural families. What we then see on the ground is a situation where rural folks are becoming more dependent on outsiders and outside system—a survival disaster perhaps, as once independent communities continue to be forced into dependency.

Likewise, environmentally, degraded lands, polluted rivers and streams, and land clearing methods all combine to alter the natural environments and ecosystems. Once clean rivers and streams meeting the water needs of communities have since become unsuitable for human use, bringing diseases when people have little or no choice but to use polluted water. During the dry season, there is no rain to collect water to supplement needs. Mostly women bear the burden of meeting the family's water needs.

This chapter first looks briefly at the context of the site of the study, namely Sarawak and an Iban village called Kampong (Kpg.) Lebor. It then clarifies the methodology and the terms used referring to customary land tenure and traditional land uses based on communities perspectives. Next, the chapter analyses changes affecting customary lands, in particular Sarawak's large-scale oil palm plantations which we consider a disaster for indigenous peoples and for women. Here we present the case of Kpg. Lebor to illustrate how the community is addressing the issue of non-FPIC appropriation of their customary land and reclaiming their rights. The chapter ends with a holistic and practical understanding of land as held by the Kpg. Lebor people as opposed to the state's view which focuses on land as an economic asset to be exploited for profit generation. This changing view has a huge impact on women who are primarily responsible for the well-being of the family and community.

2.2 The Context: Sarawak and Kampong Lebor

Sarawak is Malaysia's largest state with a total land area of 124,450 km². It was ruled by the Brooke family for 100 years (1841–1941).² After a brief period of Japanese occupation (1941–1945), Sarawak and Sabah became British colonies (1946–1963). In 1963, Sarawak together with Sabah and Singapore formed Malaysia with 11 other states. (Singapore became an independent republic in 1965.)

In 2010, Sarawak's total population was about 2.47 million (Census 2010). Its population density is low at 22 persons per sq. km. The 28 indigenous groups and subgroups in Sarawak are collectively called Dayak and Orang Ulu. They compose over 50 % of the population in Sarawak. The Iban are the largest indigenous group (30.3 %) followed by the Bidayuh (8.3 %). Other groups include Kenyah, Kayan, Penan, Melanau, Bhuket, Lun Bawang, and Punan Bah. Chinese, Brunei-Malays, Malays, Indians, and Eurasians also form part of the population.

Most indigenous people live in the rural and interior regions and practice a range of traditional livelihoods that depend on land and forests and their ecosystems. These include fishing, hunting, and gathering or collecting forests products such as timber, rattan, fodder, jungle fruits and vegetables, and other materials essential for their existence. Food is derived from *padi* (rice) cultivation, mixed vegetable gardening, and rearing chicken. Income is derived from smallholding rubber plantations or paid employment. Some women also sell handicrafts for cash.

Kampong Lebor (henceforth Kpg. Lebor) is an Iban settlement of 186 people.³ It is located in the district of Serian in Samarahan division, about 70 kms from Kuching, the capital of Sarawak. The Iban community of this village is the eighth generation now occupying and cultivating the *native customary right* (NCR) lands.

Information was obtained through direct involvement and observations, community dialogues, interviews with community leaders, organising communities, focus-group and individual discussions/interviews. Information was also collected from court documents, oral history, court proceedings, etc. by a researcher, who has worked with the communities for a long time. Our personal and professional experiences and understanding of these themes and issues is supported by relevant literature.

²The Brooke family, starting with James Brooke, installed themselves as the White Rajahs (rulers) of Sarawak. James Brooke, a middle-class English adventurer, was rewarded with a block of territory (now the First Division of Sarawak) by the Sultan of Brunei in 1840 for helping to suppress a miners' rebellion against the Sultanate. He acquired further territories and by 1864, the entire area under the control of the Brunei Sultanate was recognized as the independent state of Sarawak. James Brooke was succeeded by his nephew Charles Brooke as Second Rajah (1868–1917). Charles Vyner Brooke became the third Rajah in 1917 until the end of the Brooke's rule in 1941.

³Information on Kpg. Lebor is used with the permission of the villagers, supplemented with information obtained from the NGO SACCESS and See Chee How, a Sarawak state MP and land rights lawyer.

The Kpg. Lebor community and the Sarawak NGO SACCES have forged a partnership since 1998 when the case was first filed. It has been a lengthy, costly and dangerous struggle to defend their rights to NCR land, including arrest by police, threats by gangsters, and punishment by the government. Even today, people opposing plantations face police investigations after reports are lodged against them by a minority camp within the community, accusing them of siphoning off money, etc.

After winning the court case, the community wants to learn how to develop their lands and regain full control. So Kpg. Lebor is more than just a successful case to show community resistance to agribusiness expansion. It is a community that wants to develop themselves, while remaining deeply rooted in their social, cultural, traditional, economic and political roots. Ultimately, this means the community wants to regain their independence and self-determination in social, economic and political positions as before, but with modern agricultural business and other sustainability options that are being explored with experts. Furthermore, such determination from the community demonstrates a stark contrast to the state model of development in which people are placed as passive and unknowledgeable ‘natives’ that must have ‘saviours’ from the state and capitalists private sectors to develop their idle unproductive NCR lands, a biased and non-objective claim at best (see, Matsubara 2003). For these reasons, Kpg. Lebor makes an interesting case study, whereby multiple interests, frictions and pressures emerge to unite or divide the community in different ways.

2.3 Customary Land Tenure

The lands of the Iban, like other indigenous groups in Sarawak, are held under what is termed customary land tenure. Based on Kpg. Lebor’s genealogies and traditions, their rights over the current village area were established through first clearance and settlement by their ancestors a long time ago. Their ancestors, of Remun Iban origins, were one of the earliest Iban migrants from the Kapuas Basin,⁴ who moved into the area, felled sections of unexploited primary forests, and cultivated the land. Thus, they acquired NCRs to that particular territory, referred to in Iban as *pemakai menoa*, which also encompassed the higher forests (*pulau galau*).⁵

⁴In pre-colonial times, an area of the Island of Borneo was known as Kapuas Basin. European colonial powers partitioned Borneo into Kalimantan under Dutch rule and Sarawak (initially under the Brooke family and subsequently) as a British crown colony, along with Sabah then called North Borneo.

⁵While each indigenous group has its own concept and terms, this chapter uses the Iban’s explanation of *native customary right* lands (NCR lands) or *native customary lands* (NCL). The Iban concept of NCR was affirmed in the High Court judgement on the Kpg. Lebor case delivered in March 2012, reaffirmed in the decision of the Court of Appeal in September 2013.

Traditional territories are communally owned areas within defined boundaries that are well-known and agreed upon by neighbouring communities, normally marked by small or big valleys, small hills or ridges, rivers, streams, watersheds, or an area planted with bamboo, specific tree species, and big trees. Each village territory includes rivers, water catchment areas, and cemeteries or ancestral burial grounds which are sacred lands (*pulau mali*). Individuals and families can claim usufruct rights to farmlands (*temuda*) by clearing forests or opening up land but all villagers must first agree unanimously on this. Female and male children can inherit their parent's share of *temuda* lands, but these rights usually cease if they move out of the longhouse or break their links with the community. When this happens, the *temuda* lands revert to the community and can be granted to other community members.

For the Kpg. Lebor people, at the very least, land enables them to cultivate rice, their staple food. Rice is also used for other purposes, such as making the traditional Iban rice wine (*tuak*) used in festivals and rituals. If they did not cultivate rice, they would have to buy it but they do not have much cash in the first place as theirs is not a cash economy. The Iban recognize the importance of using *pemakai menoa* and *pulau galau* in a sustainable and efficient manner. Each household also has usufruct rights to *temuda* lands. They maintain their customs and the associated rules, inter alia:

- recognition of local land-tenure systems whereby those who first cleared lands have rights to them;
- land-use practices that rejuvenate, not harm, nature, e.g., new farming sites with sufficient fallow periods;
- strict observances for sacred sites such as ancestral graves, water sources;
- intercropping food crops; and
- selected harvesting of fruit trees and preserving specific tree species.

The Iban have been occupying and cultivating NCR lands for subsistence and trading forest products long before Sarawak was ruled by external powers. Elderly women and men inherited skills and extensive knowledge about forest resources and local oral traditions and rituals closely connected to ancestral land that they pass on to younger members through oral and practical teachings. The women collect and process rattan and make craft items out of it. Given that rattan is limited, women find practical uses for other resources like *bemban*, a local name for a type of reed. Some 30 women from Lebor are involved in craft making. Rattan and *bemban* are strongly guarded by the villagers in communal forests that are still intact. However, other parts of the forest have already been destroyed by commercial oil palm companies.

Such locally evolved practices formed part of the day-to-day life of the community and helped it conserve land and forest resources and mitigate the effects of deforestation and forest degradation. Respect for nature and security of land tenure forms the basis of their existence and livelihood. Traditional use and management of land and forests help to mitigate the consequences of climate change, global warming, extinction of plant and animal species, soil erosion, catastrophes linked to

deforestation (e.g., flash floods, mudslides), and deteriorated watersheds and water quality.

Differing views on land and land tenure systems reflect two sets of priority for land uses. Indigenous people view lands and forests as sources of livelihoods, socio-cultural identity, and links between past, present, and future generations. Political and economic developers, however, prioritize commercial interests. The Kpg. Lebor community has struggled to have its land rights reinstated, demonstrating its desire to manage its lands and forests with innovative options that are sustainable, gender sensitive, and have minimal adverse effects on humans and resources.

2.4 Traditional Methods of Land Use in Kpg. Lebor

The Kpg. Lebor villagers still rely on land as a main source of livelihood, with the traditional practice of swiddening cultivation of hill *padi*, which is discussed in detail below. Some also plant crops like tobacco and rubber on a small scale to earn cash income. Meat is bought or derived from farmed livestock including a species of pig called *babi kampong*, chickens, ducks, and goats.

In hilly and low-lying areas, villagers grow rice as their staple food. For the Iban, rice cultivation is more than an economic activity; it is an elaborate system of rituals conducted at various stages of the farming cycle, starting with the clearing of the farming site and ending with the storing of the rice after the harvest. Underlying this traditional method of farming is the possession of ritual knowledge and skills, for example, on appeasing spirits to ensure bountiful harvests. Women play an important role in farming activities and rituals; they reap sacred rice, known as *padi pun*, before harvesting commences. Elderly women perform many of the elaborate rituals associated with *padi pun*, blessing the rice planted to ensure a bountiful harvest. *Padi pun* is never sold or given away, and generations of women have inherited the *padi pun*. While the senior-most man of the family presides over the offering (*piring*) ceremony and chants prayers summoning spirits to return when the rice is ready for harvesting, women pick the first strains of *padi pun* and bring them home for safekeeping until the next planting cycle. The Iban believe that the fertility of the new *padi* planted rests on the *padi pun*; thus, the first seeds are sown in the centre of the cleared farm during the new cycle.

The soil on the slopes of hilly and low-lying areas is generally poor. The traditional practice is to maintain a fallow period for regeneration of soil and forest cover. Under customary rights arrangements, traditional rights to the forest areas left fallow are vested with the family and its heirs. So, fallow forest areas are not abandoned as incorrectly perceived by the state government, but are owned by individuals or families for subsistence cultivation. These areas are also not non-productive, as the Sarawak government continues to insist and use as an excuse to bring in large-scale monocrop plantations. This policy has reduced the land available to the villagers for farming. The 'adopted' practice of chemical fertilizer and pesticides is also gaining ground and increasing costs even with government subsidy.

Often farms are far from the village, which makes daily travel difficult. Temporary huts known as *dampa* are then built close to the farms and groups of families live there for an extended period of time. Thus, rice farming is closely associated with community kinship and working together using the labour-exchange system (*bedurok*). In swidden rice farming, and in most non-rice farming activities, the entire family puts in labour. There is, however, gender variation in some of the tasks. For instance, men usually choose the site of the farms. After a site is identified, women and children clear the undergrowth and small trees while men clear the dense bush and bigger trees. Thereafter, men dibble while women sow seeds.

The traditional system of land tenure and land-use practices, as all social, economic, religious, and political aspects of Iban life, are governed by *adat* or traditional customs of the Dayak and Orang Ulu indigenous communities of Sarawak.⁶ Generally, *adat* ensures a harmonious relationship among community members and maintains a general state of wellbeing in the spirit world. Breaching this *adat* would risk a breakdown in social relationships which is punishable in both the secular and spiritual senses (SACCESS 2008). Yet, the *adat* has evolved over time with communities adapting to changes around them or colonial and post-colonial governments changing it to exert control over indigenous communities and their lands and resources. Alteration of the *adat*, especially aspects of customary law on lands, or the Sarawak government's assertion that the *adat* on NCR lands does not include *pemakai menoa* and *pulau galau* inevitably affected land-use and traditional ways of life.

2.5 Changes Affecting Customary Land Tenure and Land Use

In pre-colonial times, the indigenous people of Sarawak traded many jungle products (e.g., *getah jelutong*, a milky latex that was an important ingredient of chewing gum; *damar* resins; incensed wood *gaharu*; etc.) with local and foreign traders for Chinese bronze wares, ceramics, glass beads, textiles, and large jars. These form part of family inheritances today. The forest was also a resource base for the family's basic needs: food, fuel, water, and raw materials such as rattan for their traditional crafts.

The natives' NCR was first legally 'codified' under James Brooke, the first White Rajah, who seemingly understood that land was central to the way of life of Sarawak's indigenous people practicing swidden cultivation.⁷ Thus, in the 1812 Code of Laws, immigrants were only allowed to settle on land not already occupied by natives. NCR was recognized under the following conditions:

⁶Colchester et al. (2007: 9) defined 'custom' (*adat*) as a body of beliefs, social norms, customary laws and traditional practices passed on from one generation to the next as oral tradition.

⁷That meant first converting non-written into a written law with governmental statutory power. While previously localized *Adats* held power over lands, usage and other aspects tied to life, not as how statutory laws were compartmentalized with one law each for lands, forests, agriculture, and so on up to now. Effectively, colonial law did not recognize NCR but rather destroyed *Adats*.

- the felling of primary forests and the occupation of the land thereby cleared;
- the occupation or cultivation of land;
- the use of land for burial grounds or shrines; and
- the use of land of any class for right-of-way.

Nevertheless, the past century saw gradual changes to land tenure and land use, especially forests. Land policies and legislations were instituted by British colonizers to exploit resources to boost the colonial economy. Two key colonial legislations on forests and lands were the Forest Ordinance 1953 and the Sarawak Land Code 1958. The Forest Ordinance brought ownership and use of forests in Sarawak under the jurisdiction of the state forest department. The Sarawak Land Code enacted certain provisions that curtailed any NCR land claims after 1958. NCR land was, as it is today, defined as land in which NCR, whether communal or otherwise have lawfully been created prior to January 1, 1958. Changes in land use also occurred with the shift from subsistence farming to cultivating cash crops. Further changes in land use resulted from the development of infrastructure such as roads (for marketing and transportation of cash crops) and new settlements, facilitating access for migrant populations.

The post-colonial state government followed much of the same policies and legislation. The Sarawak Land Code (Cap 81), the main land legislation, was amended frequently to limit NCR lands (SACCESS 2008). Amendments in 1994 empowered the Land Minister to abolish NCR to lands. In 1996, the burden of proof for NCR over land was put on native landowners who had to prove that they had been on the land before January 1, 1958, and had exercised their *adat* to clear forests, cultivate, live, and occupy the lands and continued to do so. The 2000 amendment removed the category ‘any other lawful method’ from Article 5(2), allowing land-grabbing of native lands that were then handed over to private developers. These amendments contradicted the land code and the specific stipulations recognizing NCR in written law under Section 2(a) and through the classification of lands into Mixed Zone, Reserved Land, Native Area Land, Interior Area Land, and Native Customary Land.

2.6 Sarawak State Government Priorities

Private sector involvement in oil palm plantations was encouraged through the ‘New Concept’ or *Konsep Baru* land development policy of 1996 engineered by the Sarawak government under Taib Mahmud.⁸ Under the scheme, native landowners were expected to surrender their lands to the State for 60 years. This was to be held in trust for native landowners by an appointed state agency. The state agency and private companies then formed joint-ventures for oil palm schemes. In theory, native

⁸As of March 1, 2014, Taib had been appointed the new governor of Sarawak, a day after he resigned as the Chief Minister after 33 years in office. Taib appointed his former brother-in-law, Adenan Satem, to succeed him as Sarawak’s fifth Chief Minister.

landowners can apply to reclaim their lands on expiry of the lease. In reality, the land rights of communities are now uncertain; recovery of their land is not guaranteed.

Holding three key posts (Chief Minister, Finance Minister, and Planning and Resources Management Minister) for a long time gave Taib excessive control over land, timber, minerals, and other resources. He was directly responsible for handing out leases, concessions, and licenses for commercial plantations, logging, and privatization of infrastructure projects such as dams and roads (IDEAL 1999; Yong 2010). Investigations by several international NGOs have exposed his involvement in corruption, tax evasion, and land grabbing through his control over licenses on logging and oil palm plantations in Sarawak.⁹ FPIC as a precondition for exploration, development, exploitation, and utilization of natural resources in areas occupied by indigenous peoples was ignored. Large-scale industrial logging and clearing of forests for commercial oil palm plantations in Sarawak resulted in conflicts with the indigenous people that still continue. Hundreds of landowners have filed cases in courts over the past three decades under Taib's rule (see below, the Kpg. Lebor case).

Sarawak's Land Development Minister, James Masing, claims that the government's intent is to double the area of land under oil palms, currently around 1 million hectares, to 2 million hectares by 2015, while the Sarawak Oil Palm Plantation Owners Association (SOPPOA) accidentally disclosed that the government's actual goal is 3 million hectares.¹⁰ Increasing global market demand, consumption, and trade in bio-fuels have led countries like Malaysia to respond eagerly with forest conversion, especially in Sarawak and Sabah, for commercial oil palm plantations to facilitate related exports.

2.7 Large-Scale Oil Palm Plantations—Environmental Risks and Other Impacts

Around 1996–1997, the Lebor villagers found out that the Sarawak government had chosen the Sarawak *Land Custody and Development Authority* (LCDA) and a private company to start clearing lands and planting oil palm seedlings on their customary lands. Bulldozers were used to clear the area, destroying the villagers' sources of food, fodder, water, valuable medicinal plants, wildlife, and forest products. Damage was also inflicted on fruit trees, rubber groves, and other essential trees and crops that provided the villagers food and income. In other words, local economies were destroyed. This added the burden onto women to find alternatives since women traditionally assume these roles.

⁹For details about Taib and the companies owned by him or members of his family, numbering over 400 companies in 25 countries and offshore jurisdictions, see at: <http://hornbillunleashed.wordpress.com/>, <http://www.sarawakreport.org>, <http://www.bmf.ch>. The family's stake in 14 Malaysian companies alone is over USD1.46 billion (MYR4.6 billion). See <http://www.bmf.ch>, <http://www.stop-timber-corruption.org> for additional information.

¹⁰*Sarawak Report*, January 20, 2014.

Clear-felling of vast tracts of forest land also resulted in biodiversity loss, soil impoverishment, and depletion and pollution of natural habitats and water resources. The river was polluted by soil erosion and waste from land-clearing activities, which, in turn, affected the villagers' water source, fish, and other riverine resources. These hazards posed serious health problems for the villagers, again increasing women's workload as the primary caregivers.

Monoculture species are more susceptible to pests and diseases than indigenous species. However, the use of agrochemicals to control pests and diseases could contribute to further long-term risks to humans and ecosystems. Experiences of other communities forced off their lands and employed as plantation labourers revealed the heavy or widespread use of chemical pesticides and fungicides to control pests and diseases, common with mono-crops such as oil palm. Women and men from poorer families are involved in weeding. They also tend to suffer more health-related effects because of the lack of resources for nutrition as well as medical and other needs. The companies did not seem to be bothered about these negative effects on the villagers.

Led by their then headman, TR Nyutan, the community made several attempts to meet with government and company officials and lodged nine police reports to oppose the encroachment. The authorities did nothing except to tell them the government had issued permits to the LCDA and the company to develop the disputed lands. In effect, the government completely disregarded the land rights of the people of Kpg. Lebor and issued land leases to the company.¹¹ The villagers were also denied compensation. The only option left was to access legal means to defend their rights.

2.8 Kpg. Lebor: A Success Story

On November 24, 1998, on behalf of his community, TR Nyutan and few other villagers as plaintiffs filed a case in the Kuching High Court.¹² However, after the case was filed in the Kuching High Courts, a few villagers began distancing from the main group that continued to protest against land-clearing works. Throughout

¹¹Research by SACCESS found that the private company Nirwana Muhibbah Sdn Bhd was wholly owned by a ruling *Barisan Nasional* (BN) State Legislator, Mohd. Naroden B. Haji Majais, and his family. He was also an Assistant Minister with multiple portfolios in the Sarawak Government, in Planning and Resource Management, Assistant Minister in the Chief Minister's Department, Assistant Minister of Land Development, Sarawak, and Assistant Minister for Entrepreneurial Development. He is a central committee member of *Parti Besaka Bumiputra* (PBB), the main component of the ruling BN alliance. It is alleged that since Naroden is a very powerful and influential member in both the Sarawak Government and the ruling BN, no action was taken against him by the authorities or the police.

¹²High Court Suit No. 22-249-98-III (I) Tuai Rumah Nyutan ak Jami and two others vs the LCDA and two others. From this case study, it is argued that the State as in Sarawak Government refused to acknowledge land rights and lease out lands to private entities and communities have to sought rights through the courts.

the main group's long struggle, both in court and on the ground, the minority had stayed away. The minority group started trying to assert its authority, with the headman's (appointed in 2005 after TR Nyutan resigned, see below) involvement, after the High Court victory and when communities started benefitting financially from the sale of palm fruits. Interpreted in the broader context, this is another typical and often neglected dimension of both land-grabs and disasters. Companies seek to create divisions among community people with payments etc., to generate or build up the sense of creating potential 'winners' as well as losers, and, as such increasing companies' bargaining power, while also creating rifts in communities.

Land clearing for planting expanded closer to village land; even land with timber was cleared. After extracting valuable timber from the villagers' NCR lands, the company planted oil palm in the area. Villagers alleged that gangsters were employed to intimidate the villagers, particularly their leaders and strong supporters. The community retaliated by coming together for meetings, attending trials, and putting up blockades. A few villagers were against filing a court case and supported the government and the company. This issue is not within the scope of this chapter, so we restrict ourselves to pointing out that companies often give landowners verbal assurances of providing jobs once the plantations are opened. This is to ensure their cooperation. However, later, they realize that they are only hired as contract workers with daily fixed-rate wages; and often they are replaced by cheaper Indonesian labor.

With no resolution in sight and the plantation edging nearer to the village, the women and men asserted their rights by removing oil palm seedlings planted by the company on their NCR lands. Further police reports were lodged against the company but no action was taken. In contrast, when the company reported that the villagers were removing their oil palm seedlings, the police immediately responded and began an official investigation. Constant pressure to back the 'development' forced TR Nyutan to resign and the villagers' situation worsened in 2005 with the appointment of a new village head, backed by a local incumbent politician involved in the land dispute.

In the meantime, there were internal conflicts in the community as well. Once the people discovered that their customary land was taken over by oil palm plantations, they approached the late Kuching MP, Sim Kwang Yang. Then NGOs and concerned individuals (e.g. See Chee How, now a prominent land rights lawyer and state MP) followed up the community's call for support to defend and reclaim their land rights and then the court case with lawyers. Then, oil palm companies also started developing strategies to weaken opposition to the plantations. Villagers allege the company's involvement in creating internal village conflict, for example, paying and promising certain benefits to some people. As a result, despite the strong opposition to the occupation of land by the oil palm plantation, a minority of the indigenous people support the plantation company. However, even those who oppose the struggle for land rights want to claim the benefits that come from reclaiming plantation land. Such men would ask their wives to collect the money being disbursed. Such utilization of women to gain benefit suggests the invisibility and lower status of women in public space. Women's actions are not taken as seriously as that of men,

and hence women take the money from community harvesting, while the men maintain the public stance of opposing the majority of villagers who are managing the returned portion of NCR lands. Basically, a minority of villagers are opposed to the majority managing and distributing benefits.

Although men were more visible in this struggle, directly confronting the government and the company, women were equally active in the struggle, attending court hearings, facing the police and company officials, and participating in blockades. Women also took care of the children and elderly women and men in the community when men attended court hearings. Different gender roles were adopted because the emphasis was on the need for the community to organize and strengthen itself against land grabbers. Land tenure was seen as a serious community issue and strategies adapted to local needs and situations.

The trial of this case ended in 2006. After a long wait, the Kuching High Court, in March 2012, delivered a judgment declaring the Lebor villagers rightful owners of about 4000 ha of lands. Disputed plantable lands, meaning those NCR lands included in the provisional lease issued by the state to oil palm companies and cultivated with oil palm (excluding roads, storage, nursery, workers' quarters and the likes), are about 1400 ha. The community had regained 300 ha of planted land which they engaged their own private company to harvest and reap the benefits from, after the court verdict in their favor. The company refused to accept the court decision and filed an appeal. Meanwhile, in August 2012, the villagers harvested around 261 acres of matured oil palm from the lands they won back after the court case. Legal recognition of the villagers' rights to the land was reaffirmed in the decision of the Court of Appeal in September 2013. This implies that the courts have held that NCR lands extend to an area wider than the *temuda*, to encompass the *pemakai menoa* (territorial domain) and *pulau galau* (reserved forests), under the Iban *adat*. However, numerous communities' experiences have revealed that instead of respecting court rulings which favor native landowners, the Sarawak state government continues to issue provisional leases and timber licences over such lands or to appeal against such judgments (Wee 2012). Thus, it is still unclear if the final decision by the courts in fully recognizing the NCR lands of Lebor villagers will be challenged in future; a final appeal has been made to the Federal Court by the company and the government.¹³

2.9 Gender Dimensions and Community Dynamics

The majority of the villages continue to oppose the land grab. Women and men, young and old are all involved in various aspects of the struggles, directly confronting the government and the company, attending court hearings, facing the

¹³In mid-2014, the judicial process was awaiting the final appeal by the companies and the State government to the Federal Court after the Court of Appeals had agreed with the High Court's decision recognizing land rights.

police and company officials, and participating in blockades, just to mention some examples. Another example is the “Action Committee” which includes both women and youths. The young equally opposed and are increasingly active in doing more paper and computer-related work as in book-keeping and accounts. Likewise, a group of young people are documenting the history of the village struggles, oral history and *adat* aimed towards a village publication.

Another issue, noted above, is that the Lebor community had access to matured oil palm from the lands they won back after the court case. This meant that the community had income from the harvests. As the court decided that the land belonged to the community, the community had since August 2012 earned monthly income by contracting out a portion of plantation to get a share of the proceeds from the 300 ha of lands returned after the High Court judgement.¹⁴ Once the ‘Action Committee’ started distributing the money, villagers who were formerly opposed to indigenous struggle for land rights also wanted a share of the income. Such conflicts and deterioration in community cohesion impacted heavily on women who depend on other women in the community to complete their reproductive tasks. Moreover, the benefit of the contracted lands is paid out to the ‘head of the household’, usually a man. This has affected the egalitarian gender relations within Lebor households.¹⁵

2.10 The State, the Market and the Customary Use of Land

We have described above the politics and development policy of the Sarawak government, which has intensified acquisition of customary lands and effected unprecedented changes in customary tenure. Privatization has significantly affected security of native land tenure. It has also reduced access to and use of forest resources and lands, and as the Kpg. Lebor case revealed, removed or restricted a community’s rights to its customary lands. The control exercised by the recently retired Chief Minister and current Governor (Taib) over lands and forest laws and policies has effectively negated the rights of native people with respect to customary lands and weakened their *adat*-based land tenure systems. The Kpg. Lebor community took its battle to court, where its stand was vindicated.

In Sarawak, where land-grabbing is justified by the State, only the judiciary seems capable of safeguarding these rights. The court victory for Kpg. Lebor, until

¹⁴Only about 300 ha of the original 1,395 ha disputed NCR lands was returned to the community. The company refused to hand over the remaining lands, pending the final outcome of the company’s appeal to the highest Federal Court. The company did not pay anything at all to the community; and only returned a small part of their lands.

¹⁵In writing this case study, we recognize the need for more detailed research from gender perspectives on conflict and resistance to fully understand the impacts on indigenous women. The research questions, among others, include “How is the continuing land conflict changing the historically egalitarian Iban *Adat*?” “How do traditional societies disempower women—who could earlier be head of longhouses—when gender and other power relationships change with new land tenure systems?” and “Is the egalitarian system altered after lands are returned to communities by the judiciary?”

now at least, is an encouraging sign for indigenous communities to seek legal support against the might of the State and private companies. However, filing land dispute cases in courts has not always been easy for indigenous communities in Sarawak primarily because many do not have the resources needed. Realistically, trials can drag on for years; the Kpg. Lebor case was decided 14 years after the date of filing, and the process still continues with the Federal Court considering an appeal. The court process is costly even with *pro bono* lawyers, due to the high costs of travelling, food, and, at times, accommodation, when attending court trials (Wee 2012). Furthermore, attending courts means neglecting livelihood activities like farming in the village. While only certain people were expected to attend court hearings, other villagers had to assume their responsibilities. For example, women and older girls assumed the burden of farming and looking after the children and the elderly when the men went to court. Women also provided mental support to their men who were under constant stress or pressure from the government and companies, when they themselves and their children were also targeted. Money for household needs was markedly reduced as case-related expenses had to be met.

Native landowners once had gender-equal access to lands and resources. Today, land is increasingly controlled by the State and private companies that are male-dominated. As a consequence, native landowners are faced with growing landlessness and poverty, with poorer families and women more affected. The loss of NCR lands can result in the loss of indigenous resource management and local knowledge systems, by shifting access and control rights from community and family hands to political and economic elite. Through their everyday contact with and dependence on natural resources, women acquire knowledge about nature and their surroundings. The loss of land can cause women's roles and functions in traditional rituals and customs to disappear and transform the food self-sufficiency of communities to food dependency. Land privatization and land-use changes also affect women's rights to access the land and produce food for themselves and their families.

The practices of the people of Kpg. Lebor provided an insightful contrast to modern land-use patterns that seldom devote adequate attention to human and environmental impacts. Commercial logging and large-scale conversion of lands into commercial oil palm and other tree plantations development—in which greed and corruption of local political and economic elites, and the excessive consumption of the industrialized states are two of the underlying causes—are not only depleting natural forest resources but also significantly contributing to forest loss and environmental degradation. Consequences of environmental degradation and loss of forests and forests resources impact most on the rural poor and indigenous communities. Their vulnerability include diminishing lands for food production, scarcity of food from the forests, rivers and other natural resources, changing weather and climate patterns (severe drought, extreme rains, flooding, etc.), high rates of biodiversity loss (e.g. extinction or loss of rare/endemic flora and fauna species), degradation of ecosystems, and so on. Lack of access to NCR and the degradation of NCR lands has not only deprived women of access to forest land, but also access to clean water.

Furthermore, monoculture cash crops such as oil palm use significant amounts of chemical fertilizers and pesticides, contributing to pollution and other

environmental hazards or rivers contaminated by pesticide run-off. Worse, the open burning of peatland forests for conversion to large oil palm plantations can lead to smouldering fires that linger for days which, in turn, can contribute to increased haze.¹⁶ But in many cases, the Malaysian government officials and plantation companies often point fingers to swidden cultivators as the main culprits.

Environmental degradation increases vulnerability to disasters such as flash floods, mudslides, flooding, and extreme droughts. Poor people and especially women within groups that are already marginalized, such as indigenous peoples, often bear the brunt of disasters connected to increasingly degraded environments and resource scarcity. For the Kpg. Lebor people, therefore, winning back their lands goes beyond a legal victory. The challenge now is to strengthen customary rights to land and promote the interests of the community as a whole while ensuring gender-equal opportunities and rights in local resource management and in building resilience against man-made disasters.

2.11 Conclusion

In Kampong Lebor, people's relationship with land has changed dramatically over the past 51 years. Beginning with *usufruct* rights shared by an individual family within large community lands, we saw State takeover and privatization for large-scale oil palm planting in late 1990s. Then the legal struggle, ending with the return of a fraction of the disputed NCR lands to the Lebor people. The nature of land use has changed from family-worked subsistence agriculture to community-owned plantation bringing in a cash income in just two generations.

The implications for women are more far-reaching when the entire community is faced with insecurity over the tenure of their NCR lands. Women were more affected because of their higher dependence on forests for subsistence food, fuel and water. Though the courts have restored people's rights over land, the decision is being appealed. Further, the plantation is not being uprooted to restore the forest. Instead, the community is harvesting oil palms for income generation. This income is being handed to men, while women have lost their access to forest-based resources.

Women's unequal opportunities to access rights and use land from within their own society is exacerbated when the application and practice of *adat* law has been undermined by the State. Men could use this to deny women the rights to access communal lands. Women may also lose their access and control of specific forest resources that are sacred to spiritual activities, when such resources have

¹⁶The role of Malaysian and Singaporean companies in forest burning has been documented. For example, a police investigation into three Wilmar subsidiaries in Landak, West Kalimantan, found that they "were guilty of burning land intentionally and systematically with the intent to clear land for plantation development" (Milieudefensie, Lembaga Gemawan, & KONTAK Rakyat Borneo, 2007: 26 cited in Pye 2009).

degraded. For instance, Iban women's role as the guardians of the *padi pun*, or padi spirits, would be diminished or eliminated. With the new land use patterns, men have gained control over cash income, making them dominant within the family as well. This in turn will negatively impact on women's role and position in the family and community. The next generation of girls will likely have few resources and little control over their own lives. The degradation of forest and environment also affected people's access to clean water. Access to clean water is far more important for women than for men, since women are often in charge of washing and cooking.

There is a need to ensure that women's roles in the struggle for indigenous lands are openly acknowledged. As people adapt to live within this man-made disaster, it is critical that the new social structure be kinder to women and girls and ensure that they have access to and control over natural and financial resources to make their lives less difficult in the long run.

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