

LAND TENURE IN RELATION TO CROCKER RANGE NATIONAL PARK

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ABSTRACT

The establishment of a National Park often caused conflicts between national administrations and local populations when access to forest products and land becomes restricted. These conflicts stemmed from the different definitions of land tenure. What was seen as a legitimate and traditional use for some was seen as an encroachment of property by others. In the Dusun village of Tikolod (Tamhunan district), the Land Tenure Ordinance, based on a secure ownership of land, was slowly replacing the traditional Adat, which used to define the use rights attached to communal land. Villagers have accepted the new rules of the Land Ordinance and have officially applied for titles to all the land available in the area. They have internalised a new definition of property and the fact that land could only exist in a finite quantity. The boundaries of the CRNP are therefore unlikely to be encroached upon for the purpose of cultivation by these communities. However, the Adat would continue to play an important role in defining the land-use strategies of the farmers, both on private land and on state property, for as long as people continued to practice hunting and gathering of non-timber forest products.

INTRODUCTION

The Crocker Range National Park (CRNP) was established in 1984 to protect a water catchment supplying clean drinking water to the West Coast and the interior regions of Sabah. Additionally the rising concern to protect its rich biodiversity and rare species of flora and fauna inhabiting these forest areas had been the prime mover in the initiative to gazette it as a National Park. The Park was surrounded by numerous settlements of the Kadazandusun and Murut communities harbouring moderately fast growing populations practicing mainly shifting agriculture. The establishment of national parks often denied the local communities access to forest products, which in turn could spark conflicts over access to the resources placed within the boundaries of these parks (Cleary and Eaton 1996: 106). These conflicts often stemmed from the divergence in both the local and state attitudes towards land tenure issues especially with respect to resource management and land use practices (Doolittle 1999). The differences in the concept and understanding of sustainable resource use often resulted in the 'illegal' encroachment into the national parks boundaries by the indigenous communities living around the Park. In this context, it would be useful to understand the present system of land tenure that included issues pertaining to use-rights, property ownership and inheritance of land as perceived by the communities living around the CRNP. A thorough understanding of these land tenure issues could serve to keep the conflicts between the indigenous communities and the Park administrators to a minimum and presumably yield a win-win situation in the long run.

The system of land tenure in Tikolod was characterised by a negotiated coexistence between the Sabah Land Ordinance and the traditional Adat rules; a customary system of rules, norms and values. By negotiated coexistence, we referred to a situation where two sets of rules co-existed side-by-side, influencing and complementing each other, and sometimes competing with each other (Doolittle 1999). The Land Ordinance, although it was partly based on the recognition of customary rights, often took precedence over the traditional system. It was slowly replacing the Adat, allowing land to be privatised, inherited, and commoditised. On the other hand, the Adat prevailed on land for which a title had not been granted.

Our study aimed to address these complex land tenure issues in the village of Tikolod, in Tambunan District. Tikolod stood as a Kadazandusun village consisting of four hamlets situated in a river valley stretching from the main road between Tambunan and Keningau to the CRNP. The ridges on each side of the valley demarcated the Tikolod village which was defined by the physical boundaries of the landscape; its topography and infrastructure. The largest hamlet held around 40 households and the three other hamlets consisted of around 10 households each. In the late 1970s, there were only around 100 people in the village but today the population had increased to about 470. This dramatic increase was partly caused by the population migration from Kionop village located within the boundaries of what was recently known as the Crocker Range National Park.

(CRNP). Small-scale farming remained as the main economic activity in the area supplemented with some handicraft production. All the land in Tikolod Area was categorised as Native Customary Land; meaning only those people who were 'native' to a given area could apply for the ownership of this land. Hence only Kadazandusun speaking people could apply to own and cultivate the vast tracts of land found in these areas. Today applications had been submitted by numerous individuals for the ownership for every hectare of land found in the Tikolod area. Yet not all the land applied had yet been granted with a title.

METHODOLOGY

The methods used during our study were based on participatory mapping techniques as well as semi-structured interviews. In our research, besides looking at various interests within the Tikolod village, we interviewed a number of government agencies and authorities in relation to possible conflicts over access to areas within the CRNP boundary. These included individuals from the Sabah Parks, the District Officer in Tambunan and the Department of Agriculture in Tambunan and finally the PACOS Trust (an NGO working with community resource management issues). Not all these institutions were directly related to the CRNP, but when dealing with land tenure issues, the direct and indirect involvement of these institutions could offer useful insights and understanding on the matter especially on the allocation of resources in a given area.

RESULTS AND DISCUSSION

The Effect of CRNP on the Land Tenure

As previously stated, rules concerning the use of resources in national parks and different

interpretations of the legitimacy of resource use found within the park boundary often result in misunderstandings between the national park administration and the local people (Clearly and Eaton 1996: 106; Colchester 1994; Dove 1998). This can be in relation to a range of aspects such as land use practices such as shifting cultivation, land tenure issues and property relations.

The primary forests can be considered a resource in many ways and from many perspectives. Among the possibilities, it can be a resource for hunting and non-timber forest products, potential farmland (small-scale economic activity), timber extraction and plantation farming (large-scale economic activity), biodiversity, clean water, and eco-tourism (Clearly and Easton 1996; and also Doolittle 1999). On one hand, the area within what is now the CRNP has traditionally been a resource for hunting and collecting (although most non-timber forest products are collected in secondary forest) as well as an area for potential farmland. It should be mentioned however, that neither hunting nor collecting of non-timber forest products seemed to be particularly widespread in Tikolod because of the inherent difficulty in accessing these areas and the already large availability of land for small farming activities. There is therefore no great need for collecting or hunting, since these activities are often done in pursuit of additional income for poorer households. Hence, the combination of excess arable land and the distance to the Park weighs heavily on the cost-benefit of such activities. Furthermore, the Sabah Parks Authority considers the area within the CRNP of great importance in relation to the protection of water catchment supplying clean drinking water to the West Coast and the interiors of Sabah. The CRNP is a source of rich biodiversity and serve as a conservation protective site for many species of flora and fauna that are currently under threat of extinction, such as the world's largest flower *Rafflesia* spp. The fact that a majority of the work conducted by various research teams during the 99 XPDC centres around inventorising and documentation of the CRNP's immense biodiversity is clear testimony to the rising concern to the need to protect biodiversity in this area. In an attempt to provide protection to these threatened species found within the boundaries on the CRNP, the Sabah Parks Authority has assumed control over the traditional use of the natural resources within the park.

This restrictive attitude is partly based on the idea that local communities are involved in environmentally damaging agricultural practices, through its shifting cultivation, or slash and burn techniques (King 1996; Lundberg 1993; MacKinnon and Sumardja 1996). These techniques involve the clearing of land for cultivation which sometimes include removing pristine rainforest. In order to avoid this 'damaging practice' it is argued that the state authorities are best suited in the role of stewarding the land designated for protection, hence local communities are prohibited access to the areas within the Park boundaries. These restrictive gestures by the state authorities however often run contrary to the views of the local NGOs and the indigenous peoples themselves. They argue that the indigenous peoples are the best stewards of their land, since their local knowledge has long been adapted to play that role and their genuinely strong interest in sustaining its use and productivity (Redford 1991; Schlegel 1998).

Customary Tenure and the Adat

A third misunderstanding that prevailed when dealing with land tenure issues in Tikolod village stemmed from the different definitions of land property and use rights as perceived by the local and state authorities. Before the Land Ordinance was introduced, land tenure in

Tikolod was determined by the Adat. It was not possible to give a precise description of the Adat in precolonial time, since the system was too arbitrary and highly flexible. The Adat also varied from village to village and tended to change over time. Upon closer scrutiny, our study revealed that the Adat in fact encompassed a number of useful and interesting elements that could be central to our understanding of the land tenure issues at hand.

The Adat functioned as a holistic system of rules and customs that determined how the land should be cleared and cultivated. It also encompassed decision making procedures pertaining to the kind of rights on land ownership status and its use. Our interviews with the inhabitants of Tikolod showed that there were two different categories of land under the rule of the Adat; namely the 'ordinary' land and the sacred 'pesaka' land. The latter referred to not only land but also to other items and properties found on the land. For the purpose of our study, emphasis had been laid on the 'ordinary' land, thus not differentiating between sacred and non-sacred land.

Arable land had traditionally been the communal property of the village. According to the Adat, all the members of the Tikolod community had the right to use the land for cultivation, but access to this land was forbidden to outsiders. The term communal here did not refer to land as communal in the sense that everybody could just cultivate any land within the community, but rather 'communal' in the sense that people from other communities were excluded (Birgegård 1993). Hence, the Adat gave the villagers the use right to the land, meaning that they could freely open up land and cultivate. However, opening up land did not mean that the farmer could keep this land forever or sell it at will. Opening up land meant that the farmer had the sovereign right to cultivate the land. This right prevailed for as long as the land continued to be cultivated. Once cultivation by the original individual ceased, the right to cultivate the land then will belong to the next claimant. Interestingly though, the fruits trees and crops previously cultivated on the land would continue to belong to the original cultivator.

The procedure for acquiring land under the Adat entailed that conferment with and agreement of the headman was obtained prior to opening the land and cultivating it. This ensured that other individuals would have no rightful claim over the land in question. However, the responsibility and jurisdiction of the headman was only to ensure that one claim did not overlap with another. The claims to the land and the right to cultivate it however were highly dependent on the investment of labour that had been placed to cultivate the land under application (Rose 1984). In other words, by working the land, one could rightly obtain customary tenure to the land.

The Modern System of Land Tenure — The Land Ordinance

The present Land Ordinance that governs the right to access and own land in Tikolod was a legacy of the former British rule. It was based primarily on the British law and partially on the local customs. The latter was included in what was termed as Native Customary Law as stipulated in Section 15 of the Land Ordinance, Part I, pp. 14.

Before one could understand the reason behind the initial efforts to codify Native Customary Law, one must understand the need for such a codification. In the case of Sabah, as with so many other past British Colonies in this part of the world, the need for revenue and acreage

for cash crop production led to the enactment of Native Customary Law. In reality, it was the commercial need to turn agricultural produce to commodities that sparked off the idea to codify land by the British Colonial masters.

The early codification of tenure rights in Sabah resulted from the emergence of cash crop cultivation of tobacco and rubber (Cleary 1992). The aim of the North Borneo Chartered Company then was to make profit. Soon after the establishment of the Chartered Company in North Borneo, there was an urgent need to legally differentiate land earmarked for plantations from those that belonged to the natives. This was necessary if the Chartered Company were to gain revenues from the sale of land for plantations and increase production of cash crops (Cleary 1992).

Unfortunately, there were some complications that ensued from the enactment of the Native Customary Law. Firstly, the Europeans viewed land as a commodity that could be owned privately whereas most land in Sabah was held communally and thus could not be sold. Another difficulty arose from the fact that the system of shifting cultivation made it difficult to know what land actually belonged to a given community. The Forestry Department in North Borneo, which at the time was more interested in the timber revenue than in conservation, was hostile to the practice of shifting cultivation. The forest officers and surveyors were directed to persuade and encourage indigenous population to abandon their practice of shifting cultivation in favour of *ladang* cultivation which was at the time primarily permanent wet-rice cultivation. To act as a further discouragement to shifting cultivation, a decision was made to impose an annual rent on shifting cultivation at the same per unit rate as that on permanent cultivation (Cleary 1992). Finally, there were additional complications stemming from the native system of land uses which also included ownership of certain valuable trees and plants (Cleary 1992). In order to overcome this, the Chartered Company set out to not only demarcate, but also define what customary tenure implied.

The registration of land was accorded on an individual basis and the holder of the land title must pay an annual quit rent. After a three-year period, land that had not been applied for ownership by the natives will belong to the State (Sabah State Archives, Secretariat Files 1928 in Cleary 1992: 173) which later could be alienated and sold to European investors. This appeared to be the primary reason and purpose for the land codification exercise undertaken by the British Colonial masters in Sabah then. The Land Codes nevertheless were useful as they served to protect the ownership of land by indigenous populations who were constantly enticed to part with their native customary lands into selling to the European investors for plantations.

After independence, the Sabah State developed a Land Ordinance very similar to the British Land codes which had not changed much over time. Although this Land Ordinance was a more detailed specification of land codes, the core elements dealing with native customary rights had remained essentially unaltered.

The Procedure for Land Application under the Land Ordinance

In stark contrast to the Adat, the Land Ordinance allowed land ownership claim to be made through titled grants but not through the investment of labour. The granting of titles to land owners made selling or mortgaging of native lands less cumbersome and attractive to the in-

indigenous peoples who were after quick cash. To successfully procure a land title based on one's investment of labour on the land in question, one must first make a claim on the property before anyone else could. However, such application could involve complicated procedures and usually took some time before approval was given by the land office. In Tikolod, such predicament was highlighted by the fact that many farmers were cultivating land that they had applied for ownership but had not received the title for it. The ramifications of this had been far-reaching as our study revealed that such delay in granting land titles to natives had adversely affected the status of the land ownership and land use in Tikolod village to a great extent. To understand the issue at hand, a closer look at the existing land application procedures could be worthwhile.

The application procedure consisted of three stages. In the first stage, the (native) farmer acquired an application form at the District Office, filled in application form and submitted to the District Office with a drawn map showing the location of the land. Some farmers could undertake this independently but most would consult and seek the assistance of the village headman at this stage. The headman would accompany the farmers to the plot desired and helped in producing the location map. By consulting the village headman, the farmers would be aware of that no one else had applied for the same piece of land. Thus, already at this first stage the farmers were somewhat provided with the security and assurance that they will be the future owners of the land applied.

Official approvals from a number of State agencies must be obtained before the applications were brought before the Land Utilisation Committee. It was at this stage of application that the processing often stalled simply because one or more of the departments failed to give due response to the application. In Tikolod, it seemed that most of the farmers who applied for land since 1980's were still waiting for the title to be issued.

Upon approval by the Land Utilisation Committee, the Land and Survey Department would be responsible in having the land surveyed for the issuance of the ownership title. Here again, there existed a serious bottleneck in the entire application procedure because it typically took as long as ten years to get the land finally surveyed. Nevertheless, realising this bottleneck stage, the farmers seemed to be aware that by privately engaging a private company to survey the land, this process could be shortened. Once the land had been surveyed, the title could be forthcoming. Unfortunately, this willingness to dish out payment for a private surveyor could only be practiced by those who could afford to do so and had been the over-riding factor in deciding the success of an application where more than one individual had applied for the same piece of land.

Dealing with Conflicts in a Society with two coexisting Land Tenure Systems

All conflicts relating to land title application would be dealt with in accordance to the Land Ordinance. This however, did not diminish the importance of the Adat in the ultimate resolution of such conflicts. Section 15 of the Land Ordinance was essentially a codified version of some customary practices which had resulted from the incorporation of the Adat into the Native Customary Rights. Consequently, the right to the land at the time of the application was determined by the Adat. Thus if one farmer applied to own a piece of land being cultivating by another, the right to cultivate the land would remain with the one who was cultivating the land and not with the one who had submitted the application form. This

introduced the notion of property as described by Rose (1984), which stipulated that the validity of claims to property made through the investment of labour should apply in such a situation. If the one cultivating the land subsequently apply for the same piece of land, he should be more eligible for the land title. However, the Adat element that was incorporated into the Native Customary Rights appeared to have failed in protecting the right of such individual. The Adat system seemed to differ from place to place and the Native Customary Rights could only be seen to represent a few central aspects common to all these many place-specific Adats. Somehow the Native Customary Rights had failed to capture the inherent complexity and spirit of the Adat.

Thus, when applying for the land title, a failure to highlight one's right as specified by the Adat would result in the land ownership being given to another who had not invested in the labour to cultivate the land but who had submitted the application and surveyed the land by engaging a private survey company to do so. On the other hand, a farmer could have decided to clear and cultivate a piece of land that had long been applied by another. In such a situation, the rights to cultivate the land remained with the applicant since the land title had not been issued to the one who applied because of the long wait for the land to be surveyed by the State's Land and Survey Department. When such conflict arose, the case would be brought to the attention of the village headman who would then inform the aggrieved farmer of the land title application that was pending approval. Amicable settlement of such conflict would be decided either by allowing the farmer to continue harvesting the crop to its last season in the case of short-term crops. For cash-crops and long-term perennial crops such as fruit trees, payment of compensation for expenses incurred in cultivating the land will be made by the title applicant who would gain full possession of the crops grown. Alternatively, sharing of the produce from planted crops between the cultivators and the title owner can be arranged and mutually agreed. The vast knowledge and experience of the headman in handling conflicts according to both the Adat and Native Customary Land would normally come in handy at times such as these. Unresolved conflicts would end up in the purview of the District Office which usually hinge its decision upon the clauses stipulated in the Land Ordinance rather than the Adat. Thus conflict resolutions here would first sought the assistance of the local authority by drawing on the indigenous knowledge and local customs. This however did not necessarily mean the Adat was their first tool used in settling conflict as our study indicated that in most instances the Land Ordinance was referred to undermine the Adat, not just in theory but also in practice.

The Security of Land Tenureship

The introduction of the Land Ordinance had not resulted in a complete shift in the land tenure system for the people of Tikolod. Although it was officially introduced in the beginning of the last century, land tenure of Tikolod was still dominated by the Adat at the time of independence in 1963. It was not until the decades following independence that the Land Ordinance grew in importance in determining people's relationship and rights to the land around them. The last stretch of land left for ownership application was that located in close proximity to the CRNP in 1998. Since then, the villagers here only had the opportunity to own more land by cultivating the Native Reserve land available in Tikolod. The Native Reserve Land, which differ in its codification to the Native Customary Land, were land given in the name of the community as a whole and therefore cannot be sub-divided into individual titles. The use of Native Reserve Land was governed by a set of Customary Rules and

ownership claims to the plots of land for cultivation could only be established through investment of labour. To avoid any complication on the future ownership right to the land, perennial crops were not allowed to be cultivated on Native Reserve Land since that would entitle an individual to the use- right of communal land on a long term basis.

Because of the dominating role the Land Ordinance had assumed in questions of land ownership in Tilkolod, the concept of land security in this community had eventually changed to becoming more complex. Although all farmers seemed to acknowledge the overriding role of the Land Ordinance to the Adat and the strong sense of security that came with the possession of the land title, some farmers still tried to secure their land by following the Adat. Thus some had worked on land that had not been officially owned by them in accordance with the Land Ordinance because of fear of losing the land to someone else through application. According to the Adat, continuous cultivation was one way of getting and keeping the right to the property.

The scenarios cited above represented some of the “everyday resistance” or negotiation of rule in relation to the statutory law, i.e. the Land Ordinance that had existed in the communities living in the vicinities of the CRNP. It illustrated the complexity and sensitivities that came into play when statutory laws intermingled with the Adat in the daily practice of land tenure system here. The Adat continued to play an important role in the present land tenure system, primarily for land for which nobody had applied. It could also explain the observation why some farmers preferred to farm the land for which they had not received a title rather than the one they had title to. These cases also showed that the communities here had accepted and internalised the new set of rules as stipulated in the Land Ordinance and had devised strategies in a race to get as many land titles as possible. Some individuals had applied for more land than they actually need because ownership was given out to those who applied first rather than those who had invested on labour to cultivate the land as stipulated under the Adat.

With the application of the Land Ordinance, the security of land tenureship here at Tikolod had dramatically changed. Traditionally land could not be sold, since land was not considered a commodity. It was owned communally and accessible to any member of the community. In Tikolod, land was plentiful, and attracted many new migrants who settled in the community. Today however, farmers seemed to think and act within the framework spelled out by the Land Ordinance. Land with a title meant security and could be sold or mortgaged at will. Fortunately, there had been only one instance of selling land in Tikolod on record. Moreover, securing a title to property opened up the possibility of obtaining credit from financial institutions. In Tikolod, title to land gave farmers the possibility of getting subsidies to cultivate certain types of crops. Securing the future of their children was often cited as the primary reason for their enthusiasm in obtaining land titles. Hence, to the communities living in this surrounding, land was not so much considered a commodity as it was considered an element of security for their future generation.

Consequently, all the land in Tikolod had to date been applied for ownership. The security of access to land, which used to be the concern of the community as a whole, had today become a pursuit at an individual or family level. Formerly, it was easy for outsiders with relatives living in Tikolod to work on the land and establish themselves here because the Adat required

that one could allow landless relatives to cultivate land. Thus when the CRNP was first established, outsiders from the nearby village of Kionop, came to Tikolod and worked on the land of their relatives or on land that had not been applied for ownership. Today, all the land had been applied for and newcomers could no longer find new land to open for cultivation.

CONCLUSION

The land tenure system in Tikolod was not only constituted by the Land Ordinance, but also by elements of the Adat. The coexistence of the Adat and the Land Ordinance was complex and dynamic, and it was not possible to make clear differentiation as to which of the two can be applied appropriately to resolve land tenure conflicts. Our study however showed that the Land Ordinance was playing a more dominating role in conflict resolution here. The concept of land access and rightful ownership had changed as a result of Land Ordinance and had been largely accepted by the inhabitants of Tikolod. Their undivided support to the concept of individual ownership of land stemmed from the security they felt by owning the property and the ability to transfer this ownership to their future generation. The communities living within the vicinities of the CRNP seemed to have accepted fact that the park was no longer accessible to the villagers and had come under the protection of the Sabah State. They were also aware of the existence of the Parl boundaries and the requirement for their keeping their agricultural activities away from these boundaries.

The acceptance of the notion that the CRNP was a private property meant that the probability of encroachment by the villagers into the Park would not pose a big problem. However, the generally strong influence of the Land Ordinance in changing the land tenure structure of the populations living in the vicinities of the Park might be challenged in future as the size of the population surrounding the Park increased. The scarcity of land eligible for title application had indeed become serious since the gazettelement of the CRNP. A future increase in population size, either due to emigration or increased birth rate, could put further pressure on the land. A possible consequence would be an intensification of the agricultural production that could put further pressure on the environment.

As a form of “everyday resistance”, local people continued to hunt and collect plants for a variety of purpose within the CRNP. Villagers would knowingly violate statutory laws that failed to take into account their daily needs and requirements. This would continue to occur in light of their general acceptance of the concept of private ownership to land because the mindset for land ownership had been for agricultural purpose only. When taking other uses into consideration, such as hunting and gathering, the Adat was still taking precedence over the Land Ordinance. In other words, people could still hunt and collect wild products on each other’s titled land including in the CRiNP. On most instances, such activities were not seen as an encroachment. Fortunately, hunting and collecting plants did not seem to be a widespread phenomenon in Tikolod, especially within the boundaries of the CRNP. This could however increase when people’s needs were not met in the form of arable land.

In everyday life, customary laws and statutory laws could intermingle in various ways. ‘Technology of rule’ was negotiated in these ways (Doolittle 1999). The notion of private property had certainly been widely internalised by the people of Tikolod. In the event that

conflicts and uncertainties appeared, the Adat would apply. An individual often resorted to the system of rule that could provide a sense of security for the future needs and, if pressured, would be inclined to encroach on the Park. However, the population density being still low in most villages surrounding the CRNP, illegal encroachment of people into the Park was remotely a problem to contend with at the moment.

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