

Part II. Framework and Institutions

Chapter Two

Expanding State Spaces Using 'Idle' Native Customary Land in Sarawak¹

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It is noted that claims over *pulau* ... could not be sustained for reasons that the characteristic of a *pulau* ... is that it is a small pocket of original jungle deliberately preserved by the natives, i.e. ... it remains a virgin jungle. To acknowledge native customary rights ... would not be consistent with the cardinal principle that for the creation of NCR ... a native must clear the land for farming and remain in occupation thereof (Fong 2000: 18).

Introduction

Current interest in the decentralisation of state and administrative power has provided lessons about state strengths or weaknesses and why the reform process in many countries has met with difficulties. Examining factors contributing to those difficulties by studying state management of natural resources could provide a beginning for understanding the challenges faced by reformists.

Following Dove (1986, 1999), the state is seen here as having its own developmental and environmental agenda, but is not monolithic. A most ambitious social engineering program has been attempted in Sarawak, East Malaysia, since the mid-1990s, with the large-scale redesign of rural life through the introduction of plantation agriculture. This chapter argues that oil palm development from the mid-1990s and continuing into the 21st century is different from that of earlier decades in the systematic targeting of 'Native Customary Land', or land claimed under native customary rights.² The systematisation is reflected in discourses and practices concerning the management of land and

¹ This chapter has been reshaped from an earlier paper presented at the Resource Management in Asia-Pacific Program conference on 'Resource Tenure, Forest Management and Conflict Resolution: Perspectives from Borneo and New Guinea', held at the Australian National University, Canberra, 9–11 April 2001. Parts of the paper presented at that conference, combined with others presented elsewhere, were published in the journal *Development and Change* (Majid Cooke 2002). Changes occurring on the ground in Sarawak since 2002 have influenced the tone and content of the present chapter. The last section is based on previously unanalysed fieldwork material in the middle Baram and Ulu Teru. Fieldwork was conducted in April–May 2000 and August–September 2001 and formed part of an ongoing interest in Sarawak beginning 12 years ago.

² In some discourses, official or otherwise, Native Customary Land is also referred to as 'Native Customary Rights Land'.

the Dayak peoples of Sarawak.³ Differing from views that regard this kind of development as merely bringing Dayak peoples into the 'mainstream' of economic life, this chapter suggests that oil palm development under Konsep Baru (New Concept) is concerned with expanding state spaces.⁴ 'Contemporary development schemes, whether in Southeast Asia or elsewhere, require the creation of state spaces where the government can reconfigure the society and economy of those who are to be "developed"' (Scott 1998: 185).

The expansion of state spaces involves a range of strategies. One frequent feature of such strategies is that they reflect a normative 'civilising process' (Scott 1998: 184). First, the process promotes the depersonalisation of social life and its separation from economic life. Once depersonalised, social life can then be conceived of solely in *economic* terms.⁵ In Sarawak, Dayak groups are frequently warned about their 'backwardness' and are regularly informed of their rights as economic citizens; in other words, their 'right to develop'. Expressions of other rights (such as cultural or political rights) by citizens are regarded as venturing outside the realm of citizenship, or a result of prompting by 'unscrupulous elements' or 'trouble makers'.⁶

A second strategy of state expansion involves territorialisation (Vandergeest 1996). In this process, state power is expanded into local geographies and economies through administration, with legal codes and classification systems put in place to enable the state to take over local property rights. Vandergeest and Peluso (1995: 385) have argued that the state exercises power in actions that 'include or exclude people within particular geographic boundaries', which 'control what people do and their access to natural resources within those boundaries'. The state's territorial organisation of people and economic activities makes use of abstract space (guided by maps and land use planning) which often

³ Since this is not a paper focusing on ethnicity, 'Dayak' here refers to all the ethnic groups in Sarawak who are largely non-Muslim, especially Iban, Bidayuh and Orang Ulu. Among the more prominent of the Orang Ulu group are the Kayan, Kenyak, Kelabit, Lun Bawang and Penan.

⁴ State spaces in Scott's (1998: 186–9) conceptualisation are best understood in relation to non-state spaces. State spaces are those localities that are economically and politically visible to the state and largely controlled by it. In state spaces, economic surplus is usually generated through state-managed development programs, often involving discipline or appropriation of resources. Being regarded as 'civilised', state spaces are integral for the extraction of economic surplus and labour, and populations are disciplined through codification of their religion, settlements and households. By contrast, non-state spaces are those in which are found populations that cannot be relied upon to produce all those surpluses that the state requires. Such spaces and their inhabitants are regarded as 'exemplars of rudeness, disorder and barbarity' and, more worryingly for the state, have often 'served as refuges for fleeing peasants, rebels, bandits, and ... pretenders' (Scott 1998: 187).

⁵ For a review of the literature on economic nationalism and the creation of Malaysian citizenship in economic terms, see Williamson (2002).

⁶ Daily newspapers are full of these expressions. Some examples include: 'Taib: Interaction vital at grassroots level to create greater understanding' (*Sarawak Tribune*, 11 May 2000); 'Taib takes tough stance against trouble-makers' (*Sarawak Tribune*, 11 May 2000); 'Tajem: If a Dayak cannot speak for Dayaks, who can?' (*Daily Express*, 21 June 2004); 'Explain NCR land development policy, YBs told' (*Daily Express*, 14 July 2004). (YB is Malay for *Yang Berhormat*, and is a local form of address for elected State Assembly members.)

does not correspond with people's lived space (ibid.: 385–6). This takeover process is best exemplified when viewed historically (Peluso and Vandergeest 2001).

This chapter argues that the current attempt in Sarawak at providing economic value to Native Customary Land through a form of land certification is based on what I have termed a fundamental error, arising from a misinterpretation of unoccupied land as 'idle' or 'waste' land, originating during the Brooke period in the 19th century and continuing into colonial times between 1945 and 1963. This error resulted in serious repercussions for local access and management regimes, and has still not been questioned today. In contemporary times, and in association with Konsep Baru, the introduction of the *Land Code Amendment* of 2000 further perpetuates this error. It is important to examine the basis and usefulness of the error in order to understand why it has been perpetuated.

However, the state is not monolithic, and in the context of natural resources, although states may have coercive power, complete control cannot be assumed (Rangan 1997). As well, tension emanates from the imperatives for control and the need for state legitimacy. This tension led to the 'discovery' of customary rights in colonial times and of 'development' today. Because development in Sarawak, as in Peninsular Malaysia, is directed not only towards physical or structural change, but towards cultural transformation as well, contestation in the cultural realm is possible. Living at the frontier as they do, some of the people who are regarded as requiring 'civilising' can have a different view of development. For many the creation of state spaces is traumatic; for others the process is tolerable. But for all, some amount of 'persuasion' is required. From its inception in the mid-1990s until 2005, only 17 per cent of the Native Customary Land targeted for development under Konsep Baru has been successfully converted, prompting the Sarawak Assistant Minister for Land Development to exclaim that '[we] have only five more years to go to achieve our target' (*Daily Express*, 7 September 2005).

Focusing on strategies employed by the state in promoting oil palm development, this chapter discusses the methods involved in state 'persuasion' processes associated with the introduction and implementation of Konsep Baru, and also the limits of these strategies. Attempts at expanding the public space from below have been treated elsewhere (see Majid Cooke 2003a, 2003b).

High Modernism in Sarawak

Malaysia is a developmentalist state (Embong 2000), and Sarawak lives up to Scott's description of high modernism (Scott 1998). Developmentalist states assume a direct role in promoting and guiding economic expansion and growth. High modernist ideology generally favours rational engineering of entire social orders in creating 'realisable utopias', pervasive planning and rationalised

production (Scott 1998: 97–8). In Sarawak, strategies used by political parties in power, bureaucracies, and non-state economic actors make two assumptions: that rural Dayak groups are vulnerable to being left behind in the face of globalisation, and that they need to be brought into the ‘mainstream’ of development (Majid Cooke 2002).

As a land development program, Konsep Baru is viewed by officials as promoting Dayak into the ‘mainstream’ of economic development. It promotes the conversion of Native Customary Land into oil palm plantations. Although plantations are not new to Sarawak, having been introduced by the government since the 1960s (Ngidang 2002), Konsep Baru is novel in its systematic targeting of land claimed under customary rights. That the emphasis is on productivity is clear. Lands regarded as ‘idle’ are to be converted into tangible assets, in the form of shares, so that native peoples can become shareholders in oil palm companies working on their land on a joint venture basis. The ratio for the joint venture is 60 per cent for the company and 30 per cent for local communities, with the government acting as a trustee and enjoying a 10 per cent share. Companies are given provisional leases of 60 years (considered good for two production cycles and a necessary incentive for return on investment), the renewal of which will be dependent on the outcome of negotiations among stakeholders. Local communities as landowners are to receive ‘certificates of title’ upon registration of their land in a land bank. Such registration enables the conversion of rural landscapes into oil palm plantation blocks (see Figure 2.1).

To help hasten the registration of Native Customary Land for use in the joint ventures, the *Land Code Amendment* was introduced in the year 2000. The emphasis on productivity is different from earlier phases of plantation development which had a mixture of aims, one of which was Dayak social and economic development on what was considered in planning circles as ‘state land’ (Ngidang 2002). Community responses to Konsep Baru have been varied, ranging from outright acceptance to resistance (Majid Cooke 2002). In between are those who engage in strategic agriculture, converting their land to oil palm themselves, as a smallholder crop, ahead of company bulldozers. Overall, regardless of the responses, there has been widespread anxiety over many issues, including: the exact role of government as trustee, if and when the oil palm market crashes; the tying up of land for 60 years; and confusion over what ‘certification’ implies, that is, whether it suggests individual or group entitlements and what it means in terms of access in the long term (see Majid Cooke 2002, 2003a).

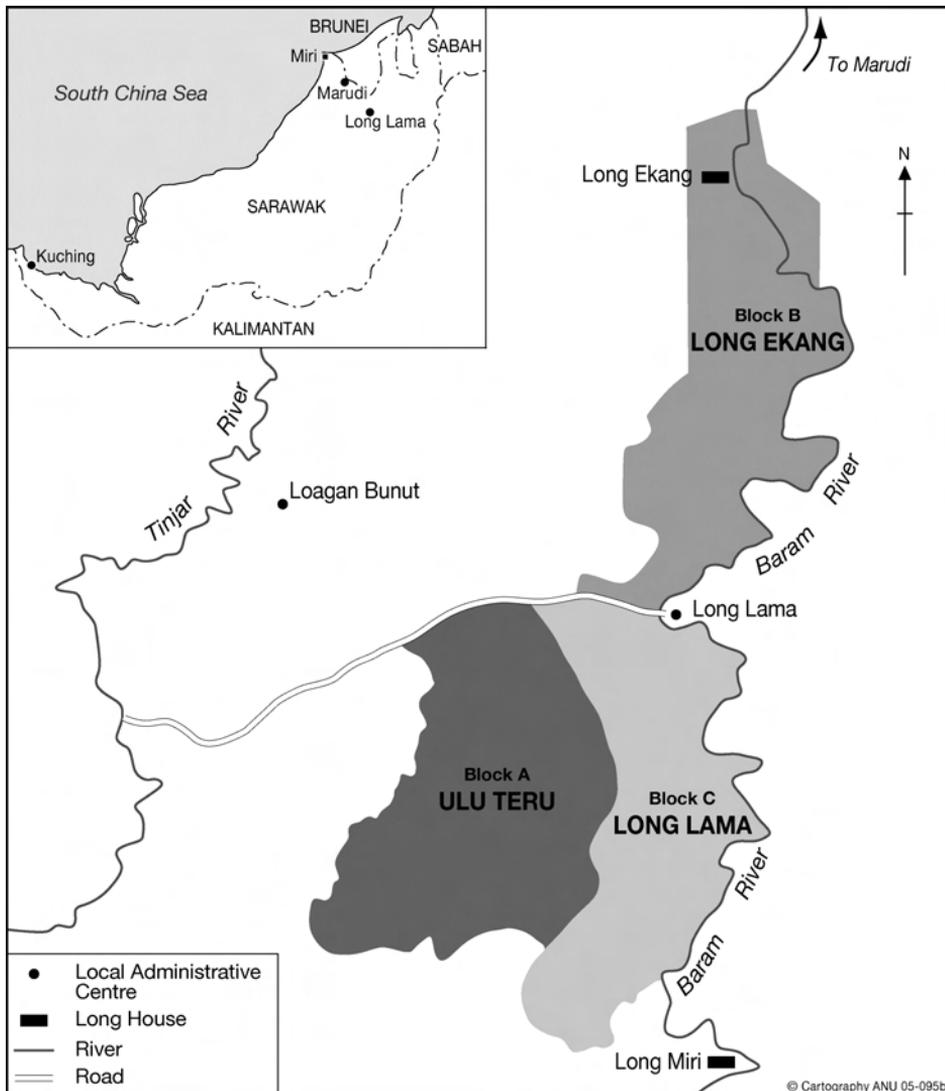


Figure 2.1. Plantation blocks of the middle and lower Baram, Sarawak

These concerns are the surface manifestations of a much deeper uncertainty over tenure. Although customary rights are legally acknowledged in the Sarawak *Land Code*, they are often superseded or ignored in practice, depending on which state institution interprets them. While there are moves towards making customary rights universal through the court system, in most interpretations state institutions regard customary rights as contingent, easily overridden by state development needs (see Majid Cooke 2003a). A major question was how land ‘certificates’ could provide customary owners with better security against

future capture by government development projects or against potential manipulation by large corporations (Majid Cooke 2002).

A second group of concerns was linked to the ambitious scope of the project. Although targets were not specific, officials made clear that, in order to meet the target of creating one million hectares of oil palm by 2010, at least 400 000 hectares were to come from Native Customary Land (interviews at Kuching, September 2001; *Daily Express*, 14 July 2004). Since many issues remained unresolved, the ambitious scale of the program created anxiety. Unresolved doubts about the status of the land have not died down, and they became an election issue in the Ba Kelalan by-election in October 2004, providing the opposition candidate with a substantial margin of votes (*Daily Express*, 20 September and 3 October 2004).

As recently as 2004 and 2005, many issues remained unresolved, while others had surfaced. These were raised during a number of hearings organised by the Malaysian Human Rights Commission. At the hearings, questions were raised about administrative and planning procedures, and interpretations made about government 'sincerity' with regard to developing Native Customary Land (*Daily Express*, 31 December 2004, 1 February 2005). First, in relation to administrative and planning procedures, questions were raised by rural Dayak as to whether frequent encroachments onto their land were a result of a planning process where maps were drawn awarding provisional leases or logging concessions without appropriate ground checks being made. Second, with regard to the many concerns among rural Dayak about land ownership, a key issue was whether land 'certificates' would be given to individuals or to 'landowning groups'. Many answers were given in the meantime. Finally, when some Dayak landowners drew their own conclusion, they were said to be sceptical about the government's real intention in land development because, since the adoption of the *Land Code Amendment* pushing for land registration under Konsep Baru, they had observed a lack of government action to make Native Customary Land more transparent. Since 2000, Dayak claimed that progress on perimeter surveys of customary land had been slow, as was the process of issuing titles to owners (*Daily Express*, 1 March 2005). As a result, they claimed to have experienced continued encroachment onto their land by logging and oil palm companies. Among those who have submitted their land for development under Konsep Baru, a new concern is the temptation of selling their developed land for quick gain. Using the sale or attempted sale of titled customary land by some Dayak individuals at Kanowit (one of the first areas where customary landowners enlisted in the Konsep Baru program), the government expressed concern about further titling (*Daily Express*, 17 May 2004). When such sales take place, Dayak are considered innocent objects, 'robbed' by reckless speculators, not a people who actively made viable decisions considering the new and complex situations they find themselves in, even though some of those involved were said to be a

syndicate of 'prominent community leaders and businessmen' (*Daily Express*, 18 and 27 May 2005). With many issues remaining unresolved. Konsep Baru is seen to be moving slowly.⁷

Officials and planners attribute Dayak selectiveness in embracing development projects to traditionalism or anti-developmentalism. Under Konsep Baru, native peoples are urged to become 'modern'. Modernity is contrasted with conservatism and this duality is seen as seeping through every level of social life. But it is the mental attitudes that officials want to change. 'A radical mental revolution is required to effect paradigm shift in the attitudes and perceptions of landowners towards developing [Native Customary Land]' (Sarawak Ministry of Land Development 1997: 17). Accordingly, to become 'modern', a person must see land as a commodity or an economic asset, to be traded and not treated as an heirloom nor seen as the only form of wealth. Dayaks are told that individuals must be prepared to take risks, share the cost of development (against being overly dependent on government assistance), and choose better alternatives for land use instead of keeping land in its 'original' state (*ibid.*: 17–18). In Sarawak persuasion is the key to the exercise of state power.

The process of persuasion as engaged in by state officials forms the crux of the next section of this chapter, which examines the discursive and practical element to Konsep Baru. Persuasion involves a two-step process. The first step entails convincing the more sceptical rural Dayak groups that they are in danger of being left behind, and that Konsep Baru is a vehicle for 'catching up'. A second step calls for persuading rural groups to accept a trade-off: economic development and welfare against some aspects of citizenship rights, especially freedom of expression and association. Given spatial limitations, the second step will be dealt with only briefly (based on fieldwork in Ulu Teru in 2000 and 2001), and ought to be the subject of another paper.

Persuasion: Creating Vulnerable Identities and Places

For at least two years prior to the adoption of Konsep Baru in 1994, Dayak 'vulnerability' was a recurring theme adopted in different guises in the print media. Rural communities had real concerns over major shifts in their status from landowners to workers or minor shareholders in plantation companies.

⁷ Dayak scepticism required assurance from political leaders: 'Large scale development is not a ploy to take away land from the owners but a genuine long-term plan to bring them into the development mainstream' (Deputy Chief Minister of Sarawak, quoted in the *Daily Express*, 6 July 2005); 'We want to use especially Native Customary Rights (NCR) lands for the purpose [of large scale plantation projects] because we want to help the native landowners' (the Chief Minister of Sarawak, quoted in the *Daily Express*, 30 June 2005). The semi-government agencies responsible for the implementation of Konsep Baru reported that in order to achieve the set targets they had to work hard, but their objectives are far from being met. As of September 2005, only 70 000 of the targeted 400 000 hectares (17 per cent) of Native Customary Land have been converted. Since the deadline for achieving this goal was the year 2010, the Sarawak Assistant Minister for Land Development expressed his concern, '...and [we have] only five more years to achieve our target' (*Daily Express*, 7 September 2005).

Fundamental concerns about access to the means of livelihood and tenure were not addressed or, if they were, only handled in a negative manner. These concerns were considered unfounded or old-fashioned by the proponents of Konsep Baru, who painted economic globalisation as inevitable and the perceived Dayak backwardness (*katak di-bawah tempurong* — ‘frog under the coconut shell’) as making them more ‘vulnerable’. If rural Dayak did not become active participants in globalisation, it was claimed, they might be left behind: ‘We have to transform the rights to our land into much more tangible assets that can increase in value, that can be transferable, and that can fit into our system of trade and business. Otherwise we will be left out.’⁸ Public debates were reduced to issues regarding technicalities, such as appropriate measures to adopt for land registration, so as to avoid confusion or delay, and for just compensation when land is withdrawn from the people for development.⁹

Official claims of Dayak vulnerability are based on perceptions about their land tenure system, of leaving rich land ‘idle’, as the following quotations show. Chief Minister Taib was quoted in the *Borneo Post* of 19 July 1999 as saying: ‘The NCR [Native Customary Rights] land will be of not much use, unless something productive is done to exploit the natural wealth to help the people.’ He was supported by Polit Hamzah, General Manager of the Land Consolidation and Development Authority:

A large number of people have lands but they do not do anything about it. The Chief Minister wants to transform these lands into tangible assets. If these abandoned lands are transformed into plantations, landowners will receive shares making their rights over the lands become tangible assets (quoted in *New Reality*, May–June 2000: 18–19).

Similarly, an industry representative spoke of native peoples simply ‘wandering around’ in the jungle because there was abundant land.¹⁰

Dayak can circumvent this vulnerability to poverty by making their land more marketable — so the argument goes. One sure way of making ‘idle’ land (*tanah terbiar*) more productive is through plantation agriculture. Plantations are equated with progress, while progress is seen as inevitable and not to be prevented: ‘Land owners who take harsh action to prevent the government’s

⁸ Chief Minister Taib, quoted in the *Borneo Post*, 8 March 2000. See also: ‘Taib raps instigators of false land claims’ (*Borneo Post*, 19 May 1999); ‘Amendment to Land Code: best Gawai gift to natives’ (*Borneo Post*, 23 May 2000).

⁹ See, for instance: ‘Pendaftaran NCR hapus keraguan raayat’ (*Utusan Borneo*, 11 May 2000); ‘Landowners should be given share options, says Lee’ (*Borneo Post*, 11 May 2000); ‘MP approve genuine NCR land directly’ (*Borneo Post*, 11 May 2000); ‘Amendment to Land Code, a jewel in BN’s Crown’ (*Borneo Post*, 11 May 2000); ‘Govt. sincere in recognising rights of native over NCR land’ (*Sarawak Tribune*, 11 May 2000).

¹⁰ Chairman, Perlis Plantations, at the seminar on ‘Undang-Undang dan Pembangunan Tanah Zon Utara (Law and Land Development in the Northern Zone)’, Sibul, 1999.

move to develop their land through the private firms will only mar their own progress' (Chief Minister Taib, *New Reality*, May–June 2000: 16).

The theme of rich but 'idle' land is picked up by many in government,¹¹ and is shared by some elements within the public service, although among the latter there is a range of views. From one point of view, the 'complex land tenure problem' see is expected to melt away as farmers become better educated and are drawn away from farming activities (Chua 1992: 104). On the other hand, the position represented by Dandot (1992) suggests that neither 'idle' land nor the land tenure system is to blame, but rather: 1) the failure to provide clear explanations about the benefits or options of land development that are available to farmers; and 2) the inadequate surveying, demarcation and recognition of customary land prior to the introduction of land development schemes. However, both positions regard the native land tenure system as a 'problem' to be solved, not a solution for arriving at alternative types of land development.

Recently, the ideology of rural backwardness and vulnerability has not diminished nor taken on new form. In 2004, close to 10 years after the inception of Konsep Baru, the critique against rural cultural life as embodied in notions about 'idle' or 'waste' land continues.¹²

Of 'Idle' or 'Waste' Land

All over southeast Asia, viewing unoccupied customary land as 'idle' or 'waste' land appears in different guises, and is based on a fundamental error which has several features. First, colonial legal codes transformed forests into two categories: 'natural forests' (a political category) and 'agricultural land'. Local management systems do not differentiate between the two categories. Once local spaces have been transformed through categorisation, they are then policed using techniques of power and discipline that include territorial zoning and mapping, the constitution of institutions of enforcement, and the creation of exemptions, among which are customary rights. '[T]he creation of Customary Rights and reference to this political process as "discovery" or "recognition" allowed state actors ... to appear generous in conceding access' (Peluso and Vandergeest 2001: 765).

During the Brooke period, ideologies of legal pluralism as well as financial constraints limited the space taken over as 'state land', so that the tension caused by the recognition of 'customary rights' and expanding state spaces was avoided.

¹¹ Some examples from the popular media include: 'Amendment to Land Code: best Gawai gift to natives' (*Borneo Post*, 23 May 2000); 'Third plantation on Native Land' (*Borneo Post*, 2 March 1997); 'Kerajaan di-geza wajibkan syarikat balak bantu penduduk terjejas' (*Borneo Post*, 13 May 2000). See next section of this chapter for the historical origins of the concepts of 'waste' and 'idle' land in Sarawak.

¹² 'Explain NCR land development policy, YBs told' (*Daily Express*, 14 July 2004); 'Owners of NCR land can make RM 5000: Chin' (*Daily Express*, 23 August 2004).

In the colonial period, the tension re-emerged and is seen in the ambivalence about customary land in the 1958 *Land Code*.

The provision for recognition of customary rights in the 1958 *Land Code* allowed occupation prior to 1958 by methods prescribed in Section 5(2) of the code.¹³ The basis for the 1958 *Land Code* dates further back, to the Brooke period. Recognition of local people's pre-existing rights in land and trees can be seen in the *Code of Laws* introduced in 1842, which was meant to forbid interference with native customary law and protect native peoples from 'immigrant races', especially Chinese (Peluso and Vandergeest 2001: 779). However, the 1863 *Land Regulations* gave the Brooke regime rights over all 'unoccupied and waste lands' which it could then lease out to individuals and companies (Richards 1961; Porter 1967).¹⁴ 'Unoccupied and waste lands' were defined as those lands outside of territories where natives could hold 'customary land rights' (Peluso and Vandergeest 2001: 779, citing the 1863 *Land Order*).

This is the start of the problem for native communities because 'unoccupied and waste lands' covered all land regarded as lying outside those classified as customary land. Areas that may appear to be lying 'outside' customary land from the official perspective may in fact lie 'within' it from a local perspective. Later orders showed that there was no understanding among Brooke administrators about land left to fallow or rotation for shifting cultivation, or deliberately left uncultivated for ecological reasons (watershed protection), or subsistence use (for wild meat, building material, rattan supply for mat and basket making, and so on).¹⁵ For example, in 1875 an administrative order was issued for the purpose of imposing a fine against the act of clearing land and then 'abandoning' it. 'This (administrative) Order ... suggests a curious misunderstanding on the part of Government, not simply of the practices permitted under native customary law but also of the biological demands the practices made on the land' (Porter 1967: 37).¹⁶ This initial 'misunderstanding' regarding 'unoccupied and waste lands' continues to cause problems to native communities today, because the error remained uncorrected and unquestioned

¹³ There were six methods: a) the felling of virgin jungle and the occupation of the land thereby created; b) the planting of land with fruit trees; c) the occupation or cultivation of land; d) the use of land for a burial ground or shrines; e) the use of land of any class for rights of way; or f) any other lawful method.

¹⁴ On the encounter between native agriculture and colonial administration over the issue of 'unoccupied and waste land' in another context, see also Leach and Mearns (1996).

¹⁵ There is a whole range of practices with similarities and differences in land tenure systems in Sarawak, as there are in the rest of the island Borneo (see Appell 1997). On joint community reserves for the Iban in southern Sarawak see Cramb (1989), Rousseau (1987) and Sather (1990). In Saribas, where Cramb worked, the reserved forest area included land strips bordering the Layar River which had fruit trees and illipenut trees planted many years previously, as well as the sites of many old longhouses (*tembawai*) (Cramb 1989: 282–3).

¹⁶ The imposition of the 1863 *Land Regulations* 'meant that indigenous groups could no longer automatically acquire additional land rights by clearing forest outside their existing territory' (Cleary and Eaton 1996: 55).

in the post-colonial era. The problem can be glimpsed in the quotation from the current Sarawak State Attorney General cited at the beginning of this chapter.

The idea that land was productive only when occupied or improved went hand in hand with legalising land ownership through title. These notions reflect elements of the Torrens system of property entitlement that influenced the Brooke land policies of the 1930s (Porter 1967: 51). During the Brooke era (and especially from 1875 onwards) a number of ideas were introduced: that natives were 'squatters' on government or 'state-owned' land; that rights were tied to specific lots in 'native land reserves'; and that surveillance was necessary to control cash crop production (ibid.: 35–51). Cash crop production was to be controlled through species regulation (gambier, rubber and pepper were encouraged) and through titles (registration, permits, leases or occupation tickets). Surveillance of species and territory was facilitated in the 1930s, when 'fairly accurate maps' were printed and published for the first time (ibid.: 49).

During the colonial period (1946–63), a new system of classification was introduced through the 1948 *Land (Classification) Ordinance* which divided land into five categories: mixed zone, native area, native customary, reserved, and interior area land. The design of the classification system was racialised in that it was intended: 1) to protect natives from encroachment by non-natives, by restricting the latter to land within the 'mixed zone'; and 2) to prevent natives from disposing of their land to non-natives (Porter 1967: 62–3). However, these intentions need to be framed against plans to open up Sarawak's forests to logging on a far larger scale than had been done during the Brooke era (Majid Cooke 1999: 46), which would have severe implications for customary land, given the lack of capacity of the colonial land surveying machinery to ensure sufficient safeguards. Equally, during the colonial period, the 1958 *Land Code* was found to be ineffective in terms of its original intention of 'protecting native interests', so that in 1962 a Land Committee proposed that tighter control be exercised through the Resident's office to prevent the 'disposal' of native land to non-natives.

Native Customary Land and 'Development'

State control over land did not change significantly in the post-colonial era, except that with intensified 'development' (state-sponsored oil palm in the 1960s, logging in the 1970s and 1980s, and then joint venture oil palm from the 1990s on), customary land came under severe pressure. When under pressure, and due to the ambivalence of the 1958 *Land Code*, 'state land' is often contested space. In brief, the *Land Code*, while acknowledging the rights of native communities to live on their land (access rights), was ambivalent about recognising their 'ownership' of the land. Today, this ambivalence allows for multiple interpretations of the status of Native Customary Land in relation to other lands managed by the state. For example, using one set of evidence

(Appendix to the *Native Customary Laws*), one interpretation of the law suggests that 'all untitled land whether jungle or cleared for padi farming (*temuda*) became "the property of the Crown"' (Fong 2000: 9). This is the view underpinning the quote by Fong at the beginning of this chapter. Without evidence including maps, records kept at district offices, or certificates issued by colonial administrators or Brooke officials, Native Customary Land was taken to be 'crown land' and Dayak landowners were interpreted as being mere 'licensees' (ibid.) as in the colonial period, except that they are now 'licensees' on 'state' rather than 'crown' land (ibid.: 19). However, most native communities were unaware of government edicts, since they did not have access to government gazettes, and continued to create new settlements and claim customary rights, both before and after 1958, in line with *adat* (customary) law. Regardless of the ambivalence in the *Land Code*, from the mainstream legal viewpoint such communities are 'illegal squatters' on state land (ibid.: 19), and the majority of those who occupied land after 1958 find their status especially uncertain.

A different view suggests that what observers mistake for 'virgin jungle' may in fact be *pulau*. From this perspective, *pulau* are forest reserves especially set aside by native communities for essential items such as timber for house construction and building boats, jungle vegetables, rattan and other produce. They may also provide the hunting ground for the community and be important water catchment areas (Bian 2000: 23). This view is in line with the contemporary discovery of 'anthropogenic forests' that were formerly classified as 'virgin' forests untouched by human managers (Leach and Mearns 1996).

Ambivalence and multiple interpretations are problematic to the hypermodernist agenda. The *Land Code Amendment*, introduced in conjunction with Konsep Baru, can be viewed as a way of cleaning up unfinished business left by the colonial legacy. Officially, the amendment was introduced for the dual purposes of recognising 'genuine' customary rights claims over land through land registration, and preventing 'all forms of unlawful occupation of State land on the pretext that such occupation is allegedly based on *adat*' (Fong 2000: 19). Registration of Native Customary Land is now seen in official circles as an attempt to provide statutory recognition to holders of customary rights, who were otherwise 'legally bare licensees in occupation of State land without title' (ibid.). For land to be registered, however, the usual requirements apply; namely, that natives would first have to be considered legal occupiers of their land prior to 1958, or would need proof that they had acquired customary rights over their land. The onus of proof is on the claimant. Proving that they have legitimately acquired their rights will keep most communities busy, regardless of whether they settled the land before or after 1958. For those who had settled after 1958, however, acquiring evidence is almost impossible because permits were very rarely issued to native landowners after that date (interviews at Miri, May 2000).

Having gone through the complicated process of claiming their rights, communities may then wish to have their land registered so that, under Konsep Baru, they could exchange it for shares in the joint venture oil palm companies working on their land. But registration does not make native peoples landowners in the eyes of the law. It is merely a 'registration of ... rights, not a registration of any estate or proprietary interests in land' (Fong 2000: 24). Small wonder, then, that as late as 2004, judging from the many appeals made by officials for natives to register their land, many rural groups seemed to be hesitant about doing so.¹⁷ Some resist oil palm plantations through blockades of company vehicles and/or government-linked surveying teams, or through the courts (Majid Cooke 2003a). In court, Dayak groups have been more successful in obtaining compensation for damage done to their land than for recognition of their customary claims to land.¹⁸ Their overall reluctance may be one reason for the perceived slow rate of acceptance of Konsep Baru in some rural areas of Sarawak.

The intention in passing the *Land Code Amendment* was to eliminate loopholes emanating from the 1958 *Land Code*. As noted, the *Land Code* recognised native customary rights, albeit in a limited way. The method described in Subsection 5(2)(f) as that of acquiring rights by 'any other lawful method' was particularly useful for negotiating access rights for those who had settled in their areas before 1958, but who possessed no legally acceptable evidence or proof.¹⁹ However, it also proved useful for those who occupied land after 1958 and who, in the eyes of the law, were 'illegal squatters' on 'state land'.

Some in the legal profession saw Subsection 5(2)(f) as a way of bringing *adat* (custom) into the legal system. According to Baru Bian (2000), *adat* establishes a bundle of rights and practices that are otherwise not captured by the *Land Code*. *Adat* carries an inherent flexibility in terms of land access and use as demographic or economic pressures change (Rousseau 1987; Cramb 1989; Sather 1990). Subsection 5(2)(f) provided the potential for capturing this flexibility, and by deleting this subsection, the amendment of 2000 restricts the potential for claiming access to land through *adat*. The effects are summarised by Bulan

¹⁷ Some examples include: 'Explain NCR land development policy, YBs told' (*Daily Express*, 14 July 2004); 'Owners of NCR land can make RM 5,000: Chin' (*Daily Express*, 23 August 2004).

¹⁸ However, the 2005 Court of Appeal decision in favour of the Temuan (Orang Asli) group of Peninsular Malaysia in recognising their 'communal ownership' of land is regarded by many observers as having a significant implication for the status of customary land in Sarawak (as well as Sabah).

¹⁹ Some of the rights acquired before 1958 were registered with the respective district offices, but others were not. Many communities did not register their land even if they had settled before 1958 because of lack of access to relevant information (especially government gazettes), or failure to move swiftly to register their land within the period stipulated by the *Land Code*. Land use classification and planning, on the other hand, is guided by aerial photography taken in or prior to 1958, which is now considered insufficient to distinguish vegetation details or settlement types, i.e. whether or not they were established prior to 1958. For some villages such photographs are simply not available (Fong 2000). After 1958, native occupation of land outside existing group territories was controlled, requiring settlers to first acquire a permit from the relevant district offices. In reality, such permits were rarely given.

(2000: 19) thus: ‘The deletion of “any other lawful means” under Section 5(2)(f) appears to have taken away every remnant of practical right of the natives to prove entitlement to customary land.’ This means that the rights of those who settled on their land after 1958 and who, under Subsection 5(2)(f), could have negotiated for recognition of their rights under *adat*,²⁰ remain unresolved. In some villages, even among those who have records to prove their occupation as being prior to 1958, the fear of Konsep Baru stems from the notion that it is a mechanism for ‘taking away’ Dayak land, with the benefits from plantations going to other people (Majid Cooke 2003a).

Trade-offs and the Limits of Persuasion

As mentioned before, development in Sarawak is considered to be a ‘gift’ from the government to the people. On the ground, the gift is translated in the provision of development goods, accessible to those who support the political parties in power. In rural areas such support can be well rewarded with good infrastructure (roads, energy and water supply) and services (especially education and health). People are made to understand that wanting development means supporting political parties in power, so that the continued provision of development gifts is conditional on sustained support for these parties. Such support is regarded as the people’s recognition of the government’s sincerity. By extension, doubts about particular development practices are regarded as doubting the sincerity of the government, and are by implication an ungrateful act. Furthermore, not wanting to vote for the ruling political parties is interpreted to mean that people are ‘anti-development’, which is considered a sin in Sarawak’s hypermodernist tradition. The dominant image that emerges, and one that is officially sanctioned, is that there is only one type of development (the modernisation variety), and only one institution able to undertake it (the government — which in the Malaysian context is synonymous with the ruling parties).²¹ This image is often supported in practice when planned projects are reportedly withheld when citizens vote for opposition parties, as happened in the 2004 by-election for the seat of Ba Kelalan in northern Sarawak.²²

In top-down development such as Konsep Baru, the avenue for expressing dissent or merely asking for clarification about the program is extremely limited. As noted above, asking or raising questions at whatever level carries a certain

²⁰ Under the 1958 *Land Code*, the settlement of land beyond natives’ existing boundaries is generally not allowed unless a permit is issued for this purpose by the local district offices, under Section 10(4) of the code (Fong 2000: 18). In reality, however, such permits are rarely given (interviews at Marudi and Miri, May 2000).

²¹ There are many examples. A selection includes: ‘People thirsty for development’ (*Daily Express*, 20 September 2004); ‘Mawan: people want development’ (*Daily Express*, 20 September 2004).

²² In this election, a group of people from the village of Long Semado in the Ba Kelalan constituency, decided to vote for an Independent candidate, an action which they may pay dearly for as they are reportedly threatened with the withdrawal of a Rural Growth Centre project already planned for the area (*Daily Express*, 31 October 2004).

amount of risk. As a result, confusion and lack of information abound among the implementers of Konsep Baru as well as the longhouse communities (Ngidang 2002).

Ngidang (2002: 168) claims that the politics of implementation of Konsep Baru is based on co-optation, which is built on a 'psychology of consensus'. For fear of being labelled deviant, 'anti-government' or 'anti-development', community leaders in Ulu Teru and Kanowit (where he conducted his fieldwork) agreed to participate in the joint venture program.²³

Under Konsep Baru, though, there is some small room to ask questions. From the perspective of officials or implementers,²⁴ there are two kinds of queries, although they may be similar in substance. From the perspective of officials what makes the questions appear different is their source (who does the asking). The first type is raised by individuals, groups or institutions considered 'friendly' to the government and its programs. The second type of questioning may come from those who have a history of voting for political parties other than the dominant ones, those who have connections with non-government organisations (NGOs), or those who are merely seeking clarification or have reservations about public policies that affect their lives. These groups are regarded as 'unfriendly' (Ngidang 2002: 169) and are often ignored, while officials show a preference for communicating and interacting only with those considered 'friendly'. By contrast, among the 'friendlies', difficult questions can be comfortably glossed over, because even among officials some of the legal and economic implications of Konsep Baru are not fully understood (Ngidang 2002). One significant feature of Ngidang's findings is that the politicised nature of land development has created a pattern of communication wherein, at the official and community levels, key questions about Konsep Baru concerning security of tenure of Native Customary Land and the economic viability of joint ventures were not being

²³ In other parts of Sarawak, such as Bekenu near Miri, Iban participate in Konsep Baru, even when they know very little about it, because they 'hope' that government will look after their interests (Majid Cooke 2002). In the 1980s, large-scale oil palm agriculture was introduced to Bekenu by a state-sponsored development agency, the Sarawak Land Development Board. At the time, the people who protested against part of their customary land being mapped as 'state land' were arrested and later released. Many benefited from not opposing the project, and by the year 2000, were clearly being showered with development goods; namely, good roads, telephone connections, and some private and public sector employment in the nearby town of Miri for the younger generation. This time under Konsep Baru, Iban of Bekenu continued to put their trust in government, since they thought that the government, through its 10 per cent share in the joint venture program, would be involved in looking after its own interest, in addition to exercising its role as trustee.

²⁴ Officials appointed to implement the Konsep Baru are mainly employed in the Ministry of Rural and Land Development, the Land Consolidation and Development Authority, and the Sarawak Land Development Board. Some of these officials are members of the political parties in power; others may be supporters (Ngidang 2002: 169)

openly debated, for fear of being stigmatised. However, these important questions were discussed freely among perceived detractors.²⁵

Not being able to clarify important issues breeds confusion and generates unnecessary division among perceived supporters and detractors within communities and across rival ones. More importantly, not being able to address questions that matter to communities places implementers at risk of not being able to plan efficiently. That is because the feedback they need in order to evaluate the social and economic sustainability of projects may be subject to two levels of filtration, as evident from my own research at Ulu Teru.²⁶

For various reasons mentioned earlier, some of the Ulu Teru longhouses were regarded by officials as 'anti-government' and 'anti-development'. In the context of Konsep Baru, those considered 'anti' were merely concerned with the same sorts of issues that were harboured by the perceived 'supporters', who did not dare express their reservations openly for fear of being stigmatised. The difference was that the 'anti' group wanted to be better informed before they made decisions about Konsep Baru. These groups were consulted at the initial stages when officials visited Ulu Teru, but as a result of their daring to ask questions, they were labelled 'anti'. As the process unfolded, the 'anti' groups missed out on the series of dialogues held in Ulu Teru regarding Konsep Baru. Since officials were only comfortable dealing with their perceived supporters, the 'anti' groups were often not invited to these information sessions. To gain information, the perceived 'anti' group resorted to other means. Not losing faith in government, they visited the local government offices at Long Lama, Marudi or Miri. Local government offices are a mixed group of institutions with varying degrees of understanding about local issues. While some local officials may be politicised to the point of regarding the independent-minded groups as 'anti-government', others can be counted on for support, and rural longhouse dwellers learnt quickly about these differences. Longhouse people's creativity also led them to seek information from NGOs in Miri and Marudi.

Putting the different types of information together, several longhouses in Ulu Teru decided in 1998 that they would prefer not to be part of the plantation program under Konsep Baru. Since most implementers were not interacting with the more independent longhouses, they were not aware of changes in local sentiments (interviews at Ulu Teru, May 2000). In 1998, when longhouse residents resisted company bulldozers or stopped surveyors from working on their land, implementers were caught unaware. About 60 men and women blockaded bulldozers from what they regarded as 'trespassing' on their land. All were

²⁵ I have written about freely expressed concerns among perceived 'detractors' of Konsep Baru elsewhere (Majid Cooke 2002, 2003a).

²⁶ I worked at several longhouses in the middle Baram area, and intermittently at Ulu Teru, over a period of four months in April–May 2000 and August–September 2001. This section of the chapter draws on in-depth interviews with largely Iban groups from two longhouses of the area.

arrested and later released. This unfortunate episode was interpreted by many as an attempt to 'defend' their 'land and lifestyle'. Although many other longhouses in Ulu Teru were keen to accept Konsep Baru, the oil palm company pulled out because of unresolved 'sensitive issues', and the project had to be put on hold (see Ngidang 2002).

Conclusion: Development, the State and Localities

The process of persuasion that is taking place in Sarawak supports the possibility that the production of primary commodities such as palm oil is similar to raw material extraction (such as mining) because it is about the production and creation of marginal or frontier areas. For centuries, the frontier has been imagined as free for the taking, and opportunities abound through resource extraction and quick profits (Tsing 2000: 121). In 'frontier country', the culture is dedicated to the abolition of local land and resource rights as well as local commitment to landscapes. In line with contemporary analysis of state formation, this levelling process has been viewed here as an expansion of state spaces. The fundamental error which began in the Brooke period, and extended into the colonial era, is propagated during the 21st century using persuasion and legal codes that complete the unfinished business that may have accumulated during the colonial era. This chapter has shown that the oil palm story is not just about raising the standards of living of native communities — 'bringing them into the mainstream of development' so to speak — but is also about power, control and the expansion of state spaces. Such expansion by persuasion has been effective in some instances, but has been contested locally in other cases.

A culture of looking towards the government for 'development' is well entrenched in Sarawak (as it is in other parts of Malaysia). It is a culture that involves a trade-off. From the perspective of government and some community groups who are their supporters, the trade-off is worthwhile, the result being economic growth and the raising of living standards for many. From the perspective of community groups looking for more than economic growth, this trade-off may be too costly if what emerges from the exchange are measures that lead to a loss of their autonomy and a more dependent lifestyle.

With Konsep Baru the trade-off is once again being tested. The network of uncertainties surrounding the program, and the way they are addressed, shows up the lack of an avenue in the state system for the expression of non-economic rights. In a situation where the implementation machinery of a development program has been politicised, the feedback regarding Konsep Baru that enters the state system is one-sided and self-censored by party supporters, creating an inability to deal with non-economic development needs. Options for state creativity in dealing with social and political development are therefore closed. By extension, opportunities for understanding the real reasons for Konsep Baru's slow progress are closed as well.

Through strategies of control, state capacity to enforce the law against its citizens may enhance its ability to implement change in the economic sphere, but it is not necessarily the sign of a strong state in the social and political sphere. Reformists interested in decentralising state power are often able to notice and capitalise on this weakness by promoting change in the cultural sphere of economic development (Majid Cooke 2003b). By contrast, where the administrative machinery may be less politicised, as in the part of Sabah that Vaz (Chapter 7) worked in, feedback into the state system may come from a variety of sources and is less censored, contributing to a less rigid form of administration.

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