

Malaysia

Securing Indigenous Peoples' Rights in Conservation Reviewing and Promoting Progress in Sabah, Malaysia

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Securing Indigenous Peoples' Rights in Conservation: Reviewing and promoting progress in Sabah, Malaysia

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1 Context

1.1 Malaysia

Malaysia was formed in 1963 through a federation of the former British colonies of Malaya and Singapore, including the East Malaysian States of Sabah and Sarawak on the northern coast of Borneo. The country is divided into 13 States and 3 Federal Territories.

Malaysia is located in Southeast Asia with its primary peninsula bordering Thailand and Indonesia, and includes one-third of the island of Borneo, enclosing the independent kingdom of Brunei.



Demographics

According to the national census in 2000 approximately 94.1% of the population of Malaysia, are Malaysian citizens of which 65.1% are Bumiputera, while Chinese and Indians comprise 26.0% and 7.7% respectively. Sarawak's predominant ethnic groups comprise 30.1% Ibans and the Dayaks, while Chinese and Malays comprise 26.7% and 23.0% respectively. Sabah is predominantly composed of the ethnic group Kadazan Dusun (18.4%) followed by the Bajas and Malay groups of 17.3% and 15.3% respectively.

Religious affiliations as recorded in the 2000 census revealed that Islam was the most widely professed religion totaling 60.4% of the population while Buddhism comprised 19.2%, Christianity at 9.1%, Hinduism at 6.3% and forms of Chinese religions were 2.6%. Bahasa Melayu is the official language of the country, however English and Chinese dialects are used in business and administration. There are several indigenous languages spoken in Eastern Malaysia including Iban and Kadazan.

Population

The same census gives the total population of Malaysia as 23.27 million people compared to 18.38 million in 1991 thus giving an average annual population growth rate of 2.6% over the 10-year period. The median age is 23.6 years old compared to 21.9 in the 1991 census. Over 33% of the population is below 15 years old, while only 3.9% of the population is over 65 years old. The urban population grew from 50.7% in 1991 to 62.0%.

1.1.1 Protected Areas in Malaysia

Malaysia has one of the richest biodiversities in the world, with many endemic species. The total land area of Malaysia is approximately 330,433 sq. km., of which 132,828 sq. km. are the Peninsular Malaysia, 123,985 sq. km. are Sarawak, and 73,620 sq. km. are Sabah. The forest cover in Malaysia is estimated to be 19.52 million hectares or 59.5% of the total land area (Forestry Department Peninsular Malaysia, 2004). 14.45 million hectares or 44.0% of the total land area are Permanent Reserved Forests (PRF) managed by the Forestry Department. The PRF is divided into Production Forest and Protection Forests. The protected forest comprise 3.21 million hectares of the PRF. Together with 2.15 million hectares under National and State Parks, Wildlife Reserve, Wildlife Sanctuary and other classes of protected areas, the protected area coverage in the country is estimated to be 5.36 million hectares, representing 27.5% of its total forested land or 16.3% of the land area (Department Forestry Peninsular Malaysia, 2004).

There are three different bodies managing the natural resources in Malaysia, corresponding to its three geographical regions: Peninsular Malaysia, Sabah and Sarawak. Thus the resource management systems also differ between the three regions.

Peninsular Malaysia has 40 protected areas distributed in all eleven states with a total area of 751,413 ha. Taman Negara National Park is the largest park, with an area of 453,037 ha. It is spreading across three states: Pahang, Kelantan and Terengganu. It was gazetted by each of the states under separate state enactments between 1938 and 1939. The terrestrial protected areas are mainly managed by the Department of Wildlife and National Parks (DWNP) and the Department of Forestry but increasingly, the various State governments are also becoming involved in protected area management. The States of Johor and Perlis now have their own State Parks while Kelantan and Perak are in the process of gazetting State Parks. Marine protected areas in Peninsular Malaysia are managed by the Federal Marine Parks Section under the Ministry of Natural Resources and the Environment.

In Sarawak, all marine and terrestrial protected areas are managed by the Sarawak Forestry Corporation. The protected area system in Sarawak covers about one million hectares or 8% of Sarawak's total area. This forest land is divided into: National Parks, Wildlife Sanctuaries, Wildlife Rehabilitation Centres, Nature Reserves and Marine Parks. National Parks and Nature Reserves are open to the public for recreation, but the wildlife sanctuaries have limited access, it is for conservation and research.

In Sabah approximately 70,000 ha are considered Wildlife Sanctuary, approximately 909,000 ha considered Protected Forest Reserves and approximately 266,000 ha are considered Parks (including coral reefs). These different categories are managed by different government departments. The Wildlife Sanctuaries are managed by the Sabah Wildlife Department; the Protected Forest Reserves are managed by the Sabah Forestry Department and the Parks are managed by the Sabah Parks (www.sabah.gov.my).

Malaysia is a signatory to the Convention on Biological Diversity (CBD) and has formulated its own National Policy on Biological Diversity with the vision to *'transform Malaysia into a world centre of excellence in conservation, research and utilization of tropical biological diversity by the year 2020'* (MoSTE, 1998). The decision by the Seventh Conference of Parties (COP7) to the CBD on Protected Areas stressed the obligation of Parties to ensure that the establishment, management and monitoring of protected areas takes place with full respect for the rights of indigenous communities. Parties at COP7 elaborated that this includes indigenous peoples' rights to their traditional lands.

1.1.2 Indigenous Peoples of Malaysia

The total population of Malaysia is 28.6 million and 12% of them are considered indigenous peoples. However, the division of the indigenous peoples throughout the country is very uneven. The Orang Asli of Peninsula Malaysia only makes up 0.5% of the population by numbering 145,000 people. The Orang Asli are traditionally seen as consisting of three main groups: the Negrito, the Senoi and the Aboriginal-Malay. Nonetheless, within these three groups there are several distinct tribes and sub-groups.

In Sarawak the indigenous peoples are referred to as Dayaks, but more precisely these groups include: Iban, Bidayuh, Kenyah, Kayan, Kedayan, Murut, Punan, Bisayah, Kelabit, Berawan and Penan. In contrast to the Orang Asli, they make up over 50% of the 2.3 million people in Sarawak.

Sabah has vast indigenous diversity. At least 39 different indigenous groups make up the indigenous population in Sabah (IWGIA, 2008). They speak more than 50 languages and 80 dialects. They comprise 60% of the 2.3 million people in Sabah and are collectively referred to as the natives or *Anak Negeri*. The Kadazandusuns and the Muruts are considered the two largest indigenous groups (www.sabah.net.my/PACOS/people.htm).

Most of the indigenous peoples in Malaysia live in the rural areas and have mixed economies combining subsistence farming with varied other ways of making a living. Many of the indigenous communities rely on plants in the forest for their food, medicine, fuel, building materials and so on. Furthermore, hunting and fishing are important aspects of their livelihoods. For centuries they have also been engaged in regional markets exchanging forest products and agricultural surpluses for valued trade items. In short it can be said that the indigenous peoples have a large reliance on the land around them for their everyday life.

Malaysia voted in favour of the adoption of the United Nations Declaration on the Rights of Indigenous Peoples in September 2007, and thereby officially supports and recognizes the rights of Malaysia's indigenous peoples. However, the government has not ratified ILO Convention 169.

1.1.3 Indigenous People and Protected Areas in Malaysia

Some indigenous communities continue to live in many of the parks in Malaysia. In the Bako National Park in Sarawak, established before Malaysia even existed, the Park Ordinance allows indigenous peoples to continue collecting mangrove poles. The Penan, Berawan, Iban and other Dayak groups continue to live within the Mulu National Park and Batang Ai National Park, as they are depending on the natural resources within them. In Sabah, the Crocker Range National Park has been home for generations of indigenous communities, in particular the Kadazandusuns and the Muruts. They are also still living within the Park, even though the laws attached to the park prohibit any settlements in the area. In Peninsular Malaysia, Orang Asli continue living in the Tasek Bera Park.

Nevertheless, numerous conflicts exist with respect to indigenous peoples and protected areas, often in regard to the legal recognition of their traditional land and their way of life. In both Sabah and Sarawak, customary rights to land and customary law of the indigenous peoples are recognized by the state law. They were introduced by the British during their colonial rule, however they are not properly implemented and sometimes they are directly ignored by the government agencies. In Peninsular Malaysia the administration accords almost no recognition of the Orang Asli's customary land or laws at all.

1.2 Sabah

1.2.1 Protected Area Management and Protected Areas in Sabah

Sabah is empowered by the Federal Constitution to autonomously enact and implement its own laws and policies to manage its lands and forests. Relevant state departments managing protected areas are thus governed by different enactments, which outlines their mandate and work. The Wildlife Department has been established under the Wildlife Conservation Enactment 1997 governing wildlife sanctuaries and other such areas. The Park Enactment 1984 governs the Sabah Parks, which consist of six marine and terrestrial Parks. Lastly, the Forest Enactment of 1968 governs other types of terrestrial protected areas in Sabah (J. Nais; 2006).

Because of their different enactments, the department agencies are very isolated from one another in terms of implementation. This makes it difficult to make changes and implement new policies for protected areas across the State. Any change will have to be accepted by several different departments simultaneously for the policies in protected areas in general to change. In addition, it must be understood that changing an enactment has to happen at the highest level (i.e. the Governor of Sabah or the *Yang Di-Pertua Negeri*), which is very difficult. The process of changing policies, however, can be eased by seeking amendments instead. This can be done by the relevant department, and are therefore often more realistic. Nevertheless, an amendment in one department's enactment does not result in changes in the policies of other departments, because they operate with different enactments. This complicates matters when the objective is to implement new policies that include better recognition of the rights of indigenous peoples and their knowledge.

The Parks in Sabah governed by the Sabah Park Enactment are considered totally closed areas. This means that the communities living in and around these parks have no access or user rights to the resources within them. The Sabah Parks slogan is *'Take nothing but pictures, leave nothing but footprints'*. The Sabah Parks Enactment of 1984 gazetted three terrestrial national parks namely Kinabalu, Crocker Range and the Tawau Hills which are now directly under the authority of Sabah Parks. These areas contain important highland forest ecosystems and facilitate tourism, especially Kinabalu Park. They cover a total area of 243,216 ha and the Crocker Range Park in the Western part of Sabah is the largest park with an area of 139,919 ha. There are 17 communities whose customary lands overlap the Crocker Range Park, a situation which has created many conflicts between them and the park's authorities.

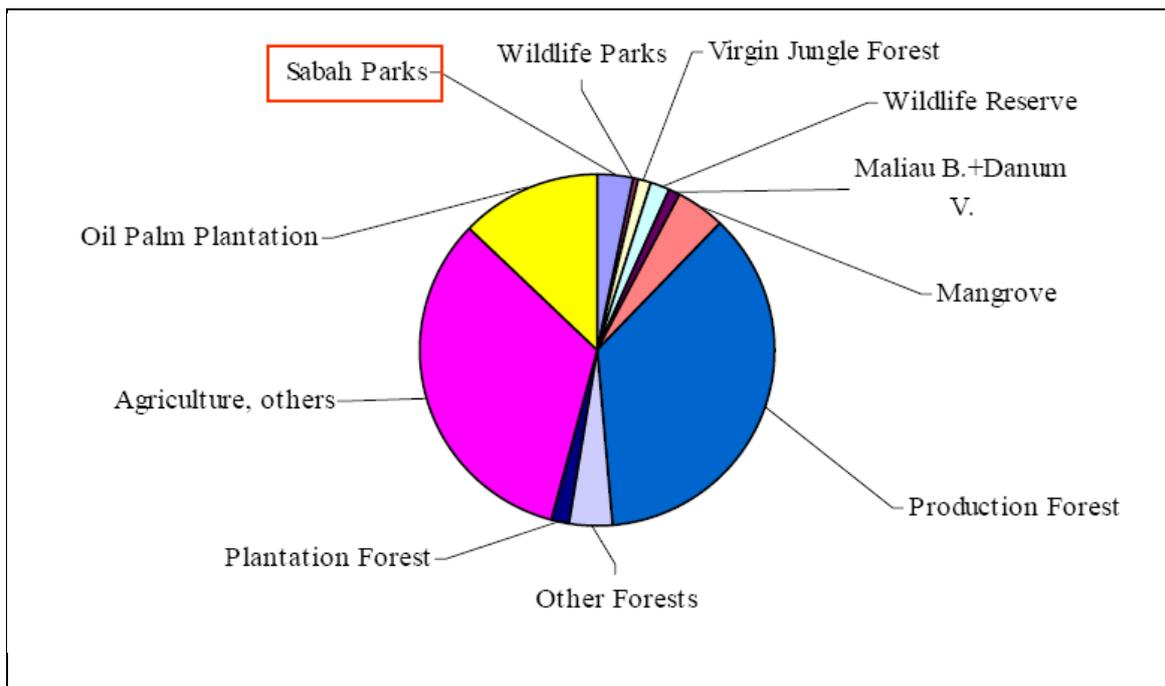
When Sabah's state-wide forest inventory was first completed in 1972, the resulting maps clearly showed the availability of timber resources throughout the state. Inadvertently, these encouraged the timber industry to increase logging rates to such an extent that during the 1970s the revenue from timber royalties accounted for 80 to 90% of the state's budget, amounting to \$M1.1 billion in 1979. Meanwhile, the de-gazettement of forest reserves continued throughout the 1970s and early 1980s. The first major change in forest laws occurred in 1984, when the Forest Enactment of 1968 was revised. With this change, forest reserves could no longer be reclassified within Sabah Forestry Department; any changes to the classification of forest reserves, especially those in Class II Commercial Forest, required the approval of the State Cabinet and the Governor of Sabah.

Forest reserves are classed into seven categories, and most of them are under the jurisdiction of Sabah Forestry Department. There are 3,594,515 ha of forest reserves in Sabah (48.8% of the total land area), 2,685,119 ha (75%) of which are in Class II Commercial Forest for production

purposes. Class III Forest Reserves, or domestic forest reserves, were established mainly to provide forest areas for local communities to hunt, fish and collect minor forest produce for their own domestic use, subject to permits. The area in this class is 7 355 ha, only 0.2% of the total forest reserve area. Class IV Forest Reserves, or amenity forest reserves, were established mainly to provide recreational opportunities for the general public. The total area in this class is 20,767 ha, 0.6% of the total forest reserve area. Four classes may be regarded as protected areas: Class I Protection Forests, the main function of which is to safeguard water supplies, soil fertility and environmental quality; Class V Mangroves; Class VI Virgin Jungle Reserves, which comprise 50 relatively small areas intended to provide undisturbed forest for research purposes and the preservation of gene pools; and Class VII Wildlife reserves, which are for the protection of wildlife and are managed by the Sabah Wildlife Department.

A forest reserve is gazetted under the provisions of the Forest Enactment of 1968, which requires notices to be posted to forest communities to allow for objections. It is widely known that this requirement was often not properly observed in the past, and many communities were not aware that their customary land had been included in a reserve until logging activities started.

The diagram below show the allocation of the different land covers and protected areas in Sabah.



Source: Sabah Parks 2007

2 Status and Progress Analysis of Indigenous Peoples' Rights and Protected Areas in Sabah

This status and progress report on the indigenous peoples' rights and protected areas will focus on the indigenous peoples and conservation in Sabah.

2.1 Protected Areas and Indigenous Lands

Protected areas and indigenous lands are key issues in relation to securing indigenous peoples rights in conservation. It is an area that is often much debated and involves a lot of conflicts.

2.1.1 Recognition of Native Customary Rights (NCR) Land

As mentioned, NCR land is officially recognized in Sabah via its inclusion in the Sabah Land Ordinance (SLO) 1930. However, in Sabah, communities' rights to their traditional land have not been respected, nor have communities been consulted when forest reserves, parks and other protected areas are gazetted, or when the state alienates land to logging and oil-palm companies. This has resulted in traditional territories that indigenous communities considered their own falling into the control of various state departments. The laws concerning land tenure and landownership in Sabah are characterized by legal pluralism. Two main institutions determine landownership and tenure rules for indigenous communities in Sabah are the SLO, and indigenous customary law or *adat*. *Adat* is a comprehensive system of traditional rules for a range of issues concerning the organization of communal life. It includes rules for inheritance, access and ownership to land, and management of resources such as land clearance techniques, what can be cultivated.

The SLO provides a degree of protection for indigenous or native customary rights through the codification of aspects of the *adat* laws. This provides indigenous peoples with legal ground to fight for their rights to their traditional land. However, *adat* is inherently complex and *adat* land use is changeable over time and according to circumstances – factors that a codified law such as that for indigenous customary rights cannot capture. In the SLO, native customary rights (NCR) are defined as follows:

Native Customary Rights shall be held to be-

- (a) *land that is possessed by customary tenure;*
- (b) *land planted with fruit trees, when the number of fruit trees amount to fifty and upwards to each hectare;*
- (c) *isolated fruit trees, and sago, rattan and other plants of economic value, that the claimant can prove to the satisfaction of the Collector were planted or upkept and regularly enjoyed by him as his personal property;*
- (d) *grazing land that the claimant agrees to keep stocked with a sufficient number of cattle or horses to keep down the [vegetation?];*
- (e) *land that has been cultivated or built on within three years;*
- (f) *burial grounds and shrines;*
- (g) *usual rights of way for men and animals from rivers, roads, or houses to any or all of the above.*

(SLO, 1968, Section 15)

There are serious shortcomings to these provisions. Under the SLO, NCR apply only to land that is in active use while the *adat* recognizes land lying under fallow or set aside, which is part of the traditional farming method of rotational cultivation.

NCR are formally recognized when a community registers a claim at the district land office. As section 16 in SLO states, the procedure should then be to provide money compensation or a grant of the land. If a grant is registered, a title will be issued. Each family is allowed to register no more than 15 ha as indigenous land, but collectively communities traditionally reserve far more under *adat*, and for future uses. However, the procedure for the processing land right claims is very slow. In many cases, indigenous peoples wait more than five years for their case to be processed. At the same time, big companies wanting land ten times the size of the local person has its case processed within a two year period. The total area of land so far claimed under NCR has not been calculated, but it is estimated to be 350,000 ha. (PACOS Trust 2008)

2.1.2 Tenure Issues

Unfortunately, protected areas in Sabah do not respect NCR land. With the gazettelement of national parks, the rights of communities living within the boundaries of these protected areas are considered to be extinguished. The frequency with which this occurs across the state is an indication of the fragility of local communities' rights in Sabah. The Parks Enactment does not provide legal rights for indigenous peoples to remain in the protected area, but each park manages the issue of communities separately. In the Crocker Range National Park, for example, Sabah Parks allows communities to remain in their traditional areas and is working with them to designate Community Use Zones (CUZ) within the park area, which will be addressed in the park's management plan. If this becomes a success and officially recognized, communities will regain some control over their land and natural resources (for elaboration, see next section). In other parks, some villages have been relocated outside park boundaries.

The establishment of forest reserves in Sabah has also led the administration to question the legitimacy of NCR land and respect over indigenous peoples' rights to their natural resources. Under the Forest Enactment of 1968, the state has the right to evict forest communities from forest reserves on which the communities are seen as 'encroachers' and there were many cases where houses of people who have been residing in the area were burned down and crops destroyed by the authorities. On the other hand, many other indigenous forest communities were left alone by the authorities. Ironically, in many cases communities' claim to forest lands were disregarded and instead logging companies encroached and logged traditional land areas. Now, forest management under the Sustainable Forest Management Licence Agreement (SFMLA) requires that social elements are included in management planning. With this, community and land tenure issues are formally addressed within Sabah's forestry framework.

In practice, however, the actual arrangements applied in the Sabah Forest Management model that the Sabah Forest Department (SFD) has adopted, are inadequate, even in areas slated for certification. The first issue that needs to be considered is the status of villages in the forest reserves. SFD has chosen to use a provision in the Forest Rules of 1969 that gives legal status to the indigenous villages in the reserves. Under this provision occupiers are required to obtain a Permit to Occupy Land in Forest Reserve that is included in Rule 20A of the Forest Rules, and found in Form 1X, a procedure also required for forestry operations, such as log landings, logging roads and base camps. The Occupation Permit (OP), as it is known, costs \$M250 (US\$68) per hectare per year. This creates some obvious drawbacks for communities. While those with a steady stream of income from cash crop agriculture might be able to afford the permit fee, others that depend on subsistence agriculture and forest resources obviously, will not – especially communities from remote areas with poor access to markets will have difficulties obtaining an OP. At the time of writing, no community in Sabah's forest reserves had received an OP, but several applications were being considered. In addition, indigenous communities with traditional claims to land find it unreasonable to have to pay for a permit to

remain on their ancestral land. Furthermore, it is stated that only land that is 'in active use' is considered for an OP, so fallow land that is part of *adat* and included in NCR is not recognized.

This is a new development in Sabah's forestry framework, and although the OP will solve the immediate problem of legality and provide communities with a degree of tenure security, it can also be seen as a stop-gap measure that is insufficient to address the inequities faced by indigenous communities with legitimate land claims. SFD is moving in the right direction by requiring all forest management plans under SFMLA to address community development. However, the fact that it is unable to act further regarding indigenous land claims creates contradiction and confusion about the initiative. Further changes will have to be made via the state's legal mechanisms.

So, even though NCR are officially recognized in Sabah law, where protected areas are concerned, this recognition is not given effect. As long as ambiguities continue to be attached to the legal status of customary rights land, it will continue to dominate discussions and exacerbate conflicts between Park authorities and the communities. Nevertheless, collaborative initiatives like the CUZ and the inclusion of social elements in the forest reserve's management plans can become the starting point for greater recognition of not only NCR land, but also indigenous practices in general.

2.2 Establishment and Expansion of Protected Areas

All of the existing parks in Malaysia were once forest reserves and were governed by forestry laws. Laws governing forests in Sabah state that the District Officers are responsible for declaring the intention of establishing a new forest reserve. Furthermore, this declaration shall be in a language that will ensure that the local inhabitants of the area or its vicinity have been properly informed about the establishment. At the same time, any objections would be considered in the process of establishing the protected areas. This is broadly in line with the requirement for 'free, prior and informed consent' in the Durban Action Plan. However, many elders from the communities in and around protected areas indicate that they never knew of such notice and thus lost their rights to their traditional land. In some cases, years of protests by the local residents over the declaration of a number forest reserves (which were converted into parks) were met with fierce resistance by the authorities, until the protests were eventually quashed.

The posting of the notice and public inquiry is highly significant because once a Forest Reserve is established, the communities in the area would either refrain from applying for native titles or their land applications would immediately be rejected by the land office. When the forest reserve is subsequently converted into parks, no such enquiries are carried out and communities lose out on claims to their traditional territories. As such, the establishment of tenure rights of indigenous peoples is critical at the onset of establishing a park.

2.2.1 Resettlement of Indigenous Peoples and Restrictions on Livelihoods

Although not usually occurring in Malaysia, the creation of protected areas has sometimes led to resettlement of indigenous communities. If authorities in forest reserves view the local indigenous peoples as encroachers, they have the right to evict the community from the reserve. The establishment of parks results in enforcement of the Park Enactment, which does not allow settlements in the park. Most parks' authorities choose to let the communities already living in these areas to stay, but the communities in the parks have no guarantee for the future. No laws have been made to secure the communities in the park areas' future in regard to not being

resettled. Communities have also unofficially been asked to move but have chosen not to do so. This has not resulted in forceful methods, but their insecurity has been made obvious.

When protected areas are established in Sabah, it always involves restrictions on the livelihoods of the indigenous communities in and around the areas. The land they rely on for everyday life (cultivation, collection of forest product, hunting, etc.) becomes inaccessible to them. This takes away their livelihood sources and must be considered as a serious restriction on their livelihood. This is still the case in Sabah. Forest Reserves has a less strict enactment when it comes to access and user rights, but parks are still very closed. In recent years, however, some initiatives have been taken to limit the restrictions on indigenous peoples' livelihoods in the affected areas, but only time will show how far these new initiatives will be taken.

2.2.2 Buffer Zones

Buffer zones are areas that share the same ecosystems as adjacent areas inside the park. In the Crocker Range park, for example, this has been found to be the cases in areas where the park boundaries cuts through an ecosystem, thus creating an artificial division where one part of the ecosystem is inside the park and the remaining part is outside. Officially the establishment of buffer zones is to encompass important species and water catchment areas, but it is also to prevent human activities directly bordering the park. Unlike the park area, the area of the buffer zone is not under a specific enactment, so several different regulations may be enforced. This can create opportunities for collaboration between departments, which under normal circumstances are isolated from each other. However, it can also create confusion about which regulation should be enforced when and where.

There is a need to review the idea of buffer zones as a way of preventing encroachment in protected areas, especially where land has to be alienated and there are NCR claims or there is a proposal to gazette the area for other purposes such as watershed area as is the case of many buffer zones along the Crocker Range Park. Indigenous communities directly affected by buffer zones should be involved in deciding on the demarcation of such zones and in the management of such buffer zone areas. As it is now, buffer zones often creates limitations to the affected peoples use and access to the area. If, for example, a buffer zone is set up in an area that has been gazetted as a water protection area, it falls under the Water Resources Enactment 1998. This results in the communities only being allowed to utilize non-forest timber forest products for subsistence. In addition, limitations are imposed and authorization by the Director of Water Resources is needed to enter the area.

Ulu Bundu Apin-Apin, located close to the Crocker Range Parks border, has recently had their NCR land included in a water catchment area buffer zone. In this regard, the communities in that area have expressed concern on limited access to resources in that area. Ironically, the same area was in 1987 being used for logging, and the villagers are denied their traditional use because the area needs to be protected even though they have been battling with illegal loggers for almost 15 years to protect the area. In 2000, the logging companies were back in the area that was now gazetted as a water catchment area. Paradoxically, they were there with a permit issued by government agencies. The case came to the attention of the villagers when their pristine river turned murky. This had a great impact on up to 30 villages in the area, as they need clean water for their rice fields, for cooking, etc. On July 28 2000, the community sent a letter to the Chief Minister and 25 government departments protesting against logging in the Apin-Apin River water catchment area. In October 2003, after the protesting and letters had no effect, the matters were taken to Kota Kinabalu High Court. It took five years for the case to be heard, but in April 2008, the Bundu community won the case. The logging company was asked to leave and compensation was paid to the community. This case shows that the communities

act as the custodians of the area and that they are the buffer when it comes to protecting the area against encroachment. This in itself makes it crucial that the communities are involved in the identification and management of the buffer zone as it enhances the effectiveness of the management and can help ensure the rights of the affected communities.

2.3 Indigenous Participation in PA Management and Decision-making

As a new paradigm in conservation that was agreed upon at the Durban World Parks Congress in 2003 to include and recognize indigenous peoples' rights, a review of indigenous participation in protected area management and decision-making is needed.

2.3.1 Community Use Zones

As mentioned, protected areas in Sabah and especially parks are governed by a very strict enactment. This often comes into conflict with the many communities living in and around these areas. Many have lived in the area for generations and were not consulted when their land or even villages were included in the park area. The consequence has been that the communities are banned from using their land, which means that their livelihood sources are taken from them. As explained earlier, changing enactments is very complicated and the process long, however, amendments can be a way of changing policies. In 2007, an amendment was made to the Park Enactment empowering the Park Board to allow zoning in sections of the Park for effective management.

In the Crocker Range Park, this amendment has been implemented in a new collaborative management initiative known as Community Use Zones (CUZ). The initiative was first introduced as pilot projects, which means that it is a still ongoing process that has not been officially recognized. The two chosen pilot project sites – Kg. Buayan & Kg. Kionop; and Kg. Ulu Senagang & Kg. Mongool Baru – are areas with indigenous communities settled inside the park. With the CUZ project, the communities' areas inside the park are being demarcated as CUZ areas. To begin with, the areas were demarcated by the Lands and Survey Department and they only included cultivation areas as the CUZ. This is not a sustainable solution for the communities as their livelihoods also depend on hunting, gathering of forest products, medicinal plants, etc. They have therefore made their own demarcation of the area they need, and the two different maps are now being discussed via different dialogs and workshops with the park authorities.

The overall objective for the CUZ project is for the communities to regain their user and access rights to their NCR land. They will at the same time be responsible for the management of the area. This means that they have the responsibility of using the area in a sustainable way and making sure that outsiders do not encroach on the area. If the two parties can agree on the practical aspects of this collaborative management, CUZ has the opportunity to create a win-win situation where the communities get user and access rights to their area and the park authorities have more human resources to take care of the park. The current situation for the CUZ projects in Crocker Range Park is that it is stalled on the issue of the size of the CUZ area. For the project to proceed, compromises have to be made, so the next phases of the project can begin and it can be officially recognized. Generally all parties are pleased with the theoretical framework of the project, however, the practical implementation have caused some hiccups, which have made the process longer than first intended. To some degree, it seems like there is a lack of political will to follow through on this collaborative management, simply because there is a fear that the indigenous communities will overrun state priorities. The establishment of management plans

and collaboration agreements are therefore crucial for a project like the CUZ to be successfully implemented and officially recognized.

2.3.2 Management Organizations

In the CBD Program of Work on Protected Areas, it is recommended that effective participation of affected communities is enhanced and secured. In Sabah, inclusion of indigenous representatives in the park management committees is not ideal, but some initiatives have been made. The CUZ pilot project includes the formation of a Community Use Zone Management Committee, as the project is still ongoing and the full potential of the management committee has not been utilized. As it is now, it mostly functions as the channel through which the main communication with the park authorities are made. This use is found very helpful by both the park authorities and the community. The objective is that the management committee is going to have the main responsibility for the CUZ area. In a long term perspective, inclusion of representatives from the community management committee in the overall CUZ management committee has been discussed.

It may also be recommended that a Buffer Zone Management committee that includes indigenous representatives from affected areas are also established. It has to be noted though that any form of management committee should respect the perception of indigenous representatives, include them in decision-making and ensure that recommendations are in line with the CBD PoWPA, Durban Action Plan and IUCN Resolutions.

As explained earlier, it is important for indigenous peoples to participate in the management and design of protected areas. When the Crocker Range Park Management Plan was to be made, PACOS, a local CBO, made a great effort to include indigenous peoples' perspective in the plan, however this was on PACOS's own initiative. They were given 60 days to come up with comments and elaborations, however the management plan draft were in English and needed to be translated before any other action could be taken. Afterwards PACOS went to the affected villages and asked for their comments to the translated plan. The timeframe of 60 days were unrealistic considering the amount of work needed. At the end, the recommendations were not taken into consideration by the people creating the management plan.

2.3.3 Honorary Park Rangers

In 2002, an amendment was made to the park enactment, which included the use of 'Honorary Park Rangers' in the administration of the park. The amendment states:

'Honorary Park Ranger' or 'Honorary Park Warden' means any person, other than a park officer, appointed by the Director under section 41A (...) The Director may from time to time, appoint suitable persons to be Honorary Park Rangers or Honorary Park Wardens to assist in the carrying into effect the provision of this Enactment.

(SPE amendment no.10, 2002, section 2 & 19)

The idea of Honorary Park Rangers is to include a community member directly in the management of the park. It is thereby another way of enhancing community participation in the management of park areas. It has the opportunity to strengthen the collaboration between community and park authorities and thereby increase the knowledge of other parties' perspective and position. However, dialogues with communities on park management should not only be left to honorary park rangers. It is important that the collaboration between park and community involve the whole of the community. In addition, a sole focus on the honorary park rangers can lead to marginalization of the rangers by their own community.

There is a need for training modules to understand the Park Enactment, rules and regulations, and good communication and reporting skills. It is also important to provide training, perhaps with park rangers and staff, on skills to work with communities, to enhance good working relationship and to avoid assumption that the honorary park rangers know how to work with community since they are from the villages. It is also noteworthy that the Sabah Wildlife Department has also recently appointed Honorary Wildlife Rangers with the same objectives as the Honorary Park Rangers.

2.3.4 Community Forestry

An estimated 20,000 to 25,000 people live within forest reserves, and an unaccounted number on the fringes of forest reserves. Most of these people are chronically poor, with little access to basic facilities and amenities, and many still practice rotational agriculture to meet subsistence needs. SFD considers the forests within the vicinity of these populations as under threat of further encroachment and degradation. The department's Community Forestry programs was directed to the impoverished villages that were affected by logging activities in the 1970s and 1980s, which had left them more destitute by forest degradation. In the mid-1980s, demands for community control over resources started to be made, and SFD found willing communities to engage in community projects, the first of which started in 1984, in Kg Minusoh in the Kinabatangan Division.

In the 1980s and 1990s, the Community Forestry (CF) concept and projects were criticized for focusing only on village infrastructure projects, such as provision of wooden houses, roads, water and electricity supply, and not paying enough attention to improving the socio-economic status of communities. Poor planning and implementation were blamed. To date, the socio-economic or ecological benefits of CF projects have not been evaluated, even though approximately RM40 million from the Community Forestry Cess Fund has been spent since 1984. According to SFD, the main benefit has been in paving the way for other government agencies to bring development to the villages.

However, such government development itself also faces problems, particularly lack of funds and insufficient cooperation among participating government agencies. As a result, planned livelihood activities such as bamboo and rattan planting, fish rearing and paddy cultivation failed to take off, and further CF projects have tended to concentrate on the 'safe' side, i.e., infrastructure development. SFD's own analysis of the problems highlights weaknesses in the early concepts, planning and implementation of CF programs.

Recently, SFD has introduced more participatory methods of planning and implementing community projects, in light of past problems. As written in their web site:

Community or social forestry is a component of many forestry projects in Sabah. The emphasis of community forestry is the direct involvement of local farmers in all aspects of forest management including investigation, decision making, planning and implementation, allowing farmers to derive revenue from the forest resources. Community forestry requires close co-operation between government authorities and the local community.

SFD is pursuing this in the Forest Management Units under its management, which will be presented as models for the CF projects required by SFMLA.

2.4 Inclusion of Indigenous Knowledge in Protected Area Management

Many indigenous communities have lived in and of the natural resources for generations, and have therefore developed a complex and keen awareness of the environment and an appreciation for conservation. This knowledge is often not recognized and therefore not harnessed by the relevant government agencies in the eye of conservation.

2.4.1 Indigenous Natural Resource Management

The indigenous resource management practices of '*Tagal*' has been recognized and promoted by the Sabah Fisheries Department and is an example of community participation in the sustainable utilization and management of resources.

The *Tagal* system has been in place and enforced at community levels for generations but some time after the 60s, a declining process started, caused mainly by logging activities and uncontrolled fishing activities, often with the use of explosives, poison or electricity. As a result, rivers, lakes and ponds – vital for the livelihood of the indigenous people – were greatly polluted. Also the society, in a larger scale, was affected by these new tendencies as it caused serious problems for the balance of the riverine system, so even a short draught could cause thousands of taps to run dry.

Tagal is a traditional river management system implemented by the community to promote sustainable use of river resources. In 1997, villagers in Kg Notorus, Penampang, started to implement the system to address the serious decline of fish in the Babagon River. The decline was caused the destruction of fish breeding areas, population increase and the use of poison and '*tuba*' when fishing. A committee was set up to manage the implementation of the system and one of its first tasks was to identify areas in the river for *Tagal* implementation (fishing prohibition). Whenever the *Tagal* system is enforced, no fishing is allowed for a length of time as decided by the community. Anyone found guilty of breaching the *Tagal* regulations will be fined heavily in the form of a 50kg pig and RM200 cash. If a case cannot be solved by the village chief, it will be brought to the native court. Fish can only be harvested when the community decides and the fish harvest would be shared equally amongst members of the community. To date, 179 villages practice and enforce the *Tagal* system and the implementation of the system have resulted in a significant growth of fish and maintenance of river systems.

Sabah laws now empower the local community to protect and manage their fish resource using the *Tagal* system. This is done with reference to Section 58 in Sabah Native Courts Rules 1995:

Nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court in any case involving native customary laws not expressly covered by these Rules, but which is otherwise recognized under the native customary laws of the native community in the district in which the Court is established.

More relevant are Sections 35, 36 and 37 of the Inland Fisheries and Aquaculture Enactment 2003 related to Community Fisheries Management Zones. Section 35 allows for the declaration and recognition of indigenous system of resource management, while Section 36 and 37 create a new protocol by providing for the creation of a committee to administer such zones, and by introducing punishment related to the Community Fisheries Zone.

Tagal has become one of the core activities for the Fishery Department. They want to see more *Tagal* sites in the state and are therefore supporting and encouraging communities to organise themselves so they can carry out such practices. However in this respect, it is important that the Fishery Department respects and recognize the traditional systems that the *Tagal* system is build upon, namely the traditional institution that governs the system. In this regard, indigenous law and management systems should be respected and not replaced by state institutions.

This recognition of indigenous natural resource management system is an important turning point for the inclusion of indigenous knowledge in the conservation in Sabah. However, as this recognition has only has been included in the Fishery Departments Enactment, it is not yet used in protected area management. As explained earlier, there is a degree of isolation between the different departments. So even though *Tagal* has been recognized as an important and sustainable approach to secure the river systems and the population of fish within them, it has not been included in the enactments of protected areas, as the fishery department do not have authority to implement *Tagal* inside the parks. So there is a need to make links between programmes that are already recognized by government agencies to ensure its implementation. In short, the different departments need to work together to a larger extent. If these linkages are made, it would, in the case of *Tagal*, mean that indigenous people could actively be part of the park management, as the management relies on traditional knowledge. Another example where inter-departmental coordination is needed is between the SFD and the Sabah Wildlife Department to ensure the recognition of traditional hunting areas. Furthermore, this might start a process that could be replicated to other practices and thereby enhance the involvement of indigenous knowledge. Linkages between the departments will also ease the efforts to amend different rules.

2.4.2 Customary Law & Traditional Institutions

As mentioned earlier, although the Sabah Inland Fisheries and Aquaculture Enactment itself is very progressive in recognizing indigenous system of managing riverine resources, Section 36 has in a sense contributed to the weakening of the traditional authority for the *Tagal* system. And even though the state Fisheries Department has done an admirable job in promoting *Tagal*, the formation of Commitees who then decides on the rules, this has in a sense taken over the some aspects of customary laws. Needless to say, if traditional institutions continues to be weakened, customary laws governing the *Tagal* system could eventually be overruled.

Past efforts of the government to recognize customary law has involved some form of codification eg the Sabah Land Ordinance or the Inland Fisheries and Aquaculture Enactment, rather than recognition of customary laws per se. Part of this unwillingness to recognize customary law stems from the fact that customary law in general, and on indigenous resource management in particular, is not well-understood or undocumented, and there is often fear of recognizing it from the side of governments. The process of codification of customary laws is however, inappropriate and rejected by communities as it ignores the diverse nature of customary laws of communities.

2.5 Benefit-Sharing and Poverty Alleviation

2.5.1 Sabah Biodiversity Centre

The Sabah Biodiversity Enactment 2000 (SBE2000) was adopted by the Legislative Assembly in November 2000, however it can not be implemented until 'Rules to the Enactment' are drafted, formalized, and officially adopted. Forming these rules to the enactment is going to be the main

task for the Sabah Biodiversity Centre. Specifically in relation to indigenous peoples, the task is to fulfil the requirements of Section 9(1)(j) of the SBE2000, which calls for the creation of a system whereby indigenous peoples shall be seen as the rightful originators and owners of traditional knowledge, and shall benefit collectively from any and all use of that knowledge. Indigenous peoples contributed to the drafting of the Rules by organising a series of consultations, bringing together indigenous and local communities, government agencies, and nongovernmental organizations. The result of this extensive consultation process with representatives from over 40 indigenous communities was an elaboration of a system that provides a culturally appropriate means for the dissemination of information; obtaining consent on mutually agreed terms, in accordance with customary law; and the equitable sharing of benefits with indigenous communities. Practical benefits include an increased efficiency in collection efforts and effective monitoring of illegal collection activities, poverty alleviation and the realization of human food security and health and cultural integrity within indigenous communities. Drawing upon relevant international instruments, an initial set of Rules was drafted for comment. In July of 2004, these recommendations were then commented on by more than forty indigenous communities during four workshops held in Kota Belud, Tambunan, Telupid, and Kudat. For clarity, the direct recommendations of the consulted communities have been highlighted (underlined) within the Rules; however, the communities have reviewed and granted tacit approval to the entirety of the sections presented. In addition, the relevant international law upon which each section is based is detailed in the accompanying footnotes. It must be stressed that these suggested Rules are intended only to provide a framework for the involvement of Indigenous communities. It is strongly recommended that such consultation be maintained during the formulation of the system itself.

On the regulations for the Sabah Biodiversity Enactment, indigenous peoples have been included and suggestions have been made regarding inclusion of indigenous communities in conservation, their rights to their traditional knowledge, their rights to benefit, and the issue of poverty alleviation. Until now the regulations have not been formalized, so the question of whether these input made by indigenous communities will be included is still unknown. However, an effort has been made to include the indigenous communities in new and very important conservation policies and now time will tell whether they actually honour this initiative.

2.5.2 Eco-tourism Benefits

Park authorities in Malaysia all aspire towards the promotion of tourism, particularly community-based ecotourism as a way of earning income to maintain Parks. Ecotourism management, training and licensing of tourist guides need to be detailed and supported before any ecotourism activities benefit the villagers.

In April 2008 JICA and Sabah Government have launched the phase 2 of the in the Borneo Biodiversity Ecosystem Conservation (BBEC) and in the document it is clearly stated.

Protecting the natural environment requires the understanding and cooperation of people living in the region. One way to do this is by promoting eco-tourism. This would not only change local people's attitudes towards environmental protection, but also offer them an alternative source of income, thereby reducing the wanton cutting of trees.

(JICA BBEC2; 2008).

This clearly shows that under BBEC Phase 2, Sabah Parks through assistance from JICA focuses on Eco-tourism in their strategy in addressing the community issues within the Crocker Range Park.

Nevertheless, it is important to keep in mind that livelihood issues related to land tenure and conservation will still remain vital to communities, and these may hinder effective participation in other socio-economic venture such as ecotourism. In addition, if affected indigenous communities are to benefit from initiatives like ecotourism, a good system of revenue-sharing needs to be established and mutually agreed upon.

2.6 Impact Assessments

Environmental Impact Assessments (EIA) have been done for a number of years in Sabah, however the Social Impact Assessments (SIA) only started a couple of years ago among government agencies. So one can say it is beginning to come into force, particularly by the Forestry Department. However, often there is a lack of understanding of the concept of SIA as well as the lack of knowledge and capacity among government agencies, NGOs and communities to implement and understand its purpose. As it is now, there is no distinct methodology that is locally relevant for Sabah. Documentation is therefore needed to generate a SIA that can be implemented in a methodological way, so it is not just going to be everybody trying their own model. With the right research in the area, SIA could become more important in Sabah.



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