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The Evolution of Property Rights to Land in Sarawak: An Institutional Perspective

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The paper examines the evolution of customary land tenure in Sarawak. It first reviews economic theory relating to the evolution of land tenure, then outlines the tenure system of the Iban, the major indigenous group in Sarawak. The impact of the Sarawak state on customary tenure is examined for the Brooke period (1841-1941), the British colonial period (1946-63) and particularly the period since the formation of Malaysia (1963 to present). The paper concludes that both economic and political factors have affected the evolution of property rights to land in Sarawak.

1. Introduction

Land tenure institutions frequently referred to as 'customary' or 'communal' are widespread in developing countries. These institutions have often been viewed by administrators and policy-makers as obstacles to agricultural development. Hence it is important to gain an understanding of such institutions and the forces guiding their evolution.

This paper adopts an institutionalist approach to examine the evolution of customary or communal tenure in Sarawak, Malaysia. Titled land accounts for less than 4 per cent of Sarawak's total land area whereas customary land, held mainly by Dayak shifting cultivators, accounts for about 25 per cent (Cramb and Dixon 1988). The so-called 'problem of Native Customary Land' is currently a major policy issue.

The paper briefly reviews the economic theory relating to the evolution of land tenure. It then outlines the customary tenure system of the Iban, the most numerous Dayak group in Sarawak. The impact of the Sarawak state on customary tenure is examined for the period of Brooke rule (1841-1941), the British colonial period (1946-1963) and particularly the period since the formation of Malaysia (1963 to present). Finally, some general conclusions are noted.

2. Theoretical Perspectives

The land tenure institutions of a group or society specify property rights in land and procedures for allocating and enforcing property rights. A property right is a socially recognised right of action or decision-making with respect to a particular resource, each right being associated with reciprocal duties, liabilities, disabilities, or the absence of rights on the part of others within a network of property relations (Commons 1924, pp. 83-142; Furubotn and Pejovich 1972; Crocombe 1974; Becker 1977, pp. 7-23; Denman 1978).

Increasing attention has been given in recent decades to the economic analysis of property rights and property institutions. Two broad schools of thought have emerged—the so-called 'property rights approach' associated with the writings of Demsetz, Alchian and others (e.g., Demsetz 1967, Johnson 1972, Alchian and Demsetz 1973, Anderson and Hill 1975, Ault and Rutman 1979, De Alessi 1980, Nablí and Nugent 1989) and the 'institutionalist approach' in the tradition of John R. Commons (1924, 1934) (e.g., Parsons 1974, Bromley 1985, Lemel 1988, Neale 1990).

The property rights approach is largely based on the propositions (1) that the emergence and evolution of property institutions is the naturally occurring result of voluntary exchange among atomistic, self-interested agents, and (2) that the direction of change is towards a more efficient institutional structure, usually assumed to be one in which exclusive individual (or private) property rights are fully specified, assigned and enforced. This is clearly stated in a seminal article by Demsetz (1967) in which he argues that "the emergence of new property rights takes place in response to the desires of

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the interacting persons for adjustment to new benefit-cost possibilities" (1967, p.350). In Demsetz's (1967) view, property rights in land and other natural resources tend to evolve so as to replace 'communal' property with a more efficient arrangement of 'private' or 'non-attenuated' property rights.

From an institutionalist perspective, the central difficulty with the property rights approach is that, in emphasising the role of *economic* factors (resource endowments, technology, markets) in generating individual demands for property rights, it largely ignores the role of *political* factors (values, interests, power) in collectively 'processing' those demands. Olson makes this point succinctly: "There cannot be property rights in any social setting unless individuals find it profitable to claim a property right and the government of a community also finds it in its interest to allow that property right" (1974, p.7). (See also Ciriacy-Wantrup 1969, Dorner 1972.)

In other words, individual economic behaviour needs to be seen within the context of the collective choice processes of the group or society to which the individual belongs. Bromley, articulating the institutionalist perspective of Commons (1924, 1934), argues that "it is collective choice that *precedes* individual action; it is the group that defines the norms and expectations which in turn define opportunity (or choice) sets within which individual maximizing agents behave" (1985, p.786).

Given the importance of collective choice in shaping property institutions, and the wide range of socio-political circumstances affecting the process of collective choice in different societies and in different historical periods, there is, in Bates's view, "no particular reason to expect one or another form of agrarian institution to emerge as a consequence of social change. The outcome would depend on the configuration of power" (1984, p.246). (See also Field 1979.) Moreover, the priority of collective choice in the evolution of property institutions suggests there is no reason to expect that the direction of change will be towards a more 'efficient' outcome. As Bates points out, "economic inefficiency can be politically useful" (1990, p.157).

(See also Basu, Jones and Schlicht 1987, Feder and Noronha 1987.)

Hence in attempting to explain the evolution of property rights to land in Sarawak, it is necessary (recalling Olson's (1974) dictum) to consider not only the economic factors generating individual 'demands' for property rights (or 'property claims'), but the interests and institutional structures of the 'government of the community', whether the local group or the Sarawak state, in allowing or modifying these claims.

This requires an understanding of the nature of government in traditional, small-scale communities such as those of the Iban. It also raises the question of the nature of the state. Economists have tended to assume that governments at this level exist to pursue the public interest or maximise social welfare and that failure to do so is due to ignorance or incompetence, or lack of 'political will'. Bates (1990) criticises this view as being unable to explain the agricultural policies which are actually adopted in developing countries. He advocates an approach which "views governments as agencies that seek to stay in power" (1990, p.157). It is the latter approach which proves more useful in understanding the evolution of property rights to land in Sarawak.

3. Customary Land Tenure in Sarawak: The Iban Case

As noted, much of the property rights literature depicts customary or communal land tenure as inherently inefficient and predicts its evolution towards a system of private or individual rights as population pressure and new market opportunities increase the value of land. The evolution of Iban land tenure has not conformed to this pattern (Cramb 1987, 1989, Cramb and Wills 1988, 1990).

3.1 The Traditional Tenure System

Historically, the Iban were an aggressive and expansionist group of shifting cultivators. The basic unit of traditional Iban society was the household. Anywhere from 5 to 50 households residing together in a longhouse constituted a community or village. The longhouse community was an inde-

pendent political unit occupying a discrete territory of up to 10 or 15 square kilometres, though there were close links between neighbouring longhouses within a river system.

Each longhouse recognised a headman. However, issues affecting the whole community were decided by consensus at a general meeting (*aum*) in which all households participated. An elaborate body of legal and ritual norms and conventions, termed *adat rumah* or 'longhouse custom', guided and constrained the behaviour of community members, as well as contributing to the cohesion of the wider Iban society within a river system.

The Iban system of land tenure was forged during the pioneering past when shifting cultivation in primary forest was the dominant form of land use. A pioneering group of households would appropriate for itself an extensive tract of forested land which then became its exclusive territory, recognised as such by the neighbouring communities with which it was allied. The longhouse group regulated access to land within its own territory. Hence the system was 'communal' in the sense that property rights were specified, assigned and enforced by the local community, though in fact most property rights were held exclusively by individual households and only some were held in common.

An individual household's rights to land were gained in the first instance by virtue of its membership in the longhouse community. This membership bestowed a general right of access to the longhouse territory, held in common with all other member households. The right of access was in fact a bundle of rights, the most important of which was the right to clear primary forest for the cultivation of hill rice and other food crops in order to meet the household's subsistence requirements. The apportionment of primary forest for this purpose was decided by the longhouse meeting at the start of each farming season.

Once the forest was cleared, and during the cropping period, a household had exclusive rights to the plot it had cleared. Moreover, it retained the right to recultivate the same plot in subsequent years. A household also had an exclusive and on-going right to individual forest trees which it was the first to

harvest or utilise, as well as any trees which it planted. These household rights to land and trees were inheritable. They were also transferable. The household could lend, rent or sell its land to other households.

Thus, in the initial situation, with low population density and little exposure to trade, Iban households already effectively had exclusive individual rights to land, contrary to the assumptions of the property rights school.

3.2 Response to Change

As population grew and opportunities to clear primary forest diminished, the original system of communally sanctioned, individual property rights in land remained in force in the majority of communities. This system, though developed in pioneering conditions, continued to function well as land scarcity increased. An emerging inequality in land ownership was largely offset by more frequent transfers of cultivation rights through lending or renting.

However, in some communities, notably in long-settled regions, a system of land tenure emerged whereby some or all of the land used for shifting cultivation was pooled and households were allocated plots by the longhouse meeting each year regardless of who had previously cultivated them. In such cases the trend was opposite to that predicted by property rights theory.

From the late 19th century the Iban began to incorporate perennial cash crops in their farming system, particularly after 1910 when rubber became the major smallholder crop. However, the allocation of land for rubber planting and other commercial crops proceeded in an orderly manner. The rules providing for individual household rights to land and indigenous tree crops were readily extended to cover the case of exotic cash crops such as rubber.

3.3 An Evaluation

Contrary to the assumptions of the property rights school, the Iban system of customary or communal land tenure has provided individual households with relatively secure and well-defined property

rights to land, trees and other forest resources. This has enabled productive use of these resources, within the limits of available technology and market access.

The Iban system has also been flexible enough to accommodate changing demographic and economic conditions. However, the institutional response has not necessarily been in the direction predicted by property rights theory.

The key to understanding the success of Iban land tenure (and to explaining its evolution) lies in the nature of the overarching community structure, which has permitted the on-going specification, assignment and enforcement of property rights in land to be conducted in such a way that all households are directly involved. Hence both decision costs and governance costs have been low. The longhouse community has thus been able to 'internalise' the major interdependencies (production externalities) associated with traditional agriculture, achieving the necessary restraint on individualistic behaviour by the essentially voluntary observance of endogenously developed rules.

4. The Impact of the Sarawak State

Iban land tenure has not, however, developed in isolation. Since the middle of the 19th century Iban institutions have been progressively incorporated within and subordinated to the institutions of the Sarawak state. From 1841 Sarawak was the private colony of an English family, the Brookes. In 1946, following the Japanese occupation, the third Brooke rajah ceded Sarawak to Britain and it became a crown colony. In 1963 Sarawak became one of the thirteen states in the Federation of Malaysia. Each of these regimes has sought to intervene in the administration and management of customary land.

4.1 The Brooke Period: 1841-1941

The Brookes are widely believed to have upheld and protected traditional customs, including customary land tenure. James Brooke, the first of the three Brooke rajahs, wrote of his newly-acquired subjects in 1845: "Here, we want not their land, but their produce; and we desire to become their benefactors by ever so slow and gradual means" (Mundy

1848[2], p.30). However, as Reece observes, "the worst excesses of European exploitation were avoided, largely because there seemed to be so little to exploit. Furthermore, the preservation of traditional ways of life was self-serving because it protected the power-position of European officers" (1982, p.12). The reliance on traditional institutions was a form of indirect rule, made necessary by the limited resources of what was, through most of its 100 years in power, a relatively weak government.

Notwithstanding their rhetoric, the Brookes implicitly claimed state ownership of land and progressively sought to restrict Dayak autonomy in land matters by introducing essentially British notions of individual property held by licence from the state. Brooke land legislation, though frequently ambiguous and difficult to apply, nevertheless indicated the degree to which customary rights to land were in fact being curtailed.

The Land Regulations of 1863, which according to the preamble were for the "disposal of land throughout the state of Sarawak", provided that "all unoccupied and waste lands, the property of Government, required for agricultural purposes ... shall be granted at the pleasure of the Government to applicants ..." (Porter 1967, pp.32-4). There was a requirement to bring one quarter of the land under cultivation within ten years, failing which it was liable to resumption by the state.

An 1875 order allowed 'squatters' to occupy land cleared and 'abandoned' by others—meaning land under forest-fallow within the system of shifting cultivation. This was subsequently translated into the principle that "jungle of over 3 years growth on swamp and 7 years on hill land cannot be claimed by anyone, being the property of the State ... [A]nyone wishing to fell same for the purpose of farming, may do so without the necessity for a permit" (Betong Court Book 1920, p.483). In a judgement concerning the sale of customary land to Chinese farmers, one of the Resident's courts gave the opinion that "asking for large sums of money for such land must be discountenanced as the Dyaks have no actual rights over same other than squatters" (Simanggang Court Book 1918, p.142).

New laws and regulations were also introduced for land under cash crops (e.g., pepper, gambier, rubber). For example, from 1910 a permit was needed to plant rubber, rubber gardens were required to be registered and an annual assessment was levied. There was also a prohibition on the sale or transfer of non-European owned gardens.

Thus, notwithstanding the claim that customary rights were being upheld, it is clear that the relatively secure, permanent and transferable rights to land which Iban households enjoyed under the traditional system of land tenure were rendered increasingly insecure, impermanent and restricted through the imposition of alien land laws by the Brooke state. In principle, land had become the property of the state and customary landholders mere 'squatters' with restricted rights of usufruct only, unless they obtained some form of written lease in the form of a permit to plant, registration certificate or occupation ticket. In the absence of an accurate survey and system of registration, these documents added nothing to the information already preserved informally within the longhouse community. They nevertheless came to be valued because they strengthened individual claims to land in the eyes of the Brooke courts. Thus their usefulness was merely an artefact of the imposed institutional structure, the primary function of which was to exercise political control.

Recalling Olson's dictum, the 'government of the community' (in this context, the state) did not find it in its interest to allow the full play of customary rights, hence it sought to 'attenuate' these rights in order to consolidate its power, as well as to impose essentially British notions of an appropriate property system.

4.2 The British Colonial Period: 1946-1963

The British colonial government which ruled Sarawak from 1946 to 1963 was better resourced and more determined to improve the administration of the countryside. It was concerned to eradicate shifting cultivation (particularly in primary forest) and to promote intensive wet rice farming and smallholder cash cropping, both to make the colony economically viable and to realise its particular vision of rural progress. Though committed

in principle to 'protecting' customary rights, especially against encroachment by Chinese farmers, as in the Brooke administration, many colonial officers saw the breakup of the longhouse and the establishment of independent peasant proprietors as a prerequisite to achieving the desired rural transformation. In this context, customary land tenure continued to be seen as an obstacle to development. A solution was sought through government legislation to provide registered individual title to land under the Torrens system and to restrict further the scope of customary rights.

In 1949 the Natural Resources Ordinance was passed, setting up a board with power to order the owner or occupier of any land to adopt those measures considered necessary for the conservation of natural resources, including "the prohibition, restriction or control of the firing, clearing or destruction of vegetation, or the breaking up or clearing of land for any purpose" (Sarawak 1972, p.444). Failure to carry out such an order rendered the offender liable to six months' imprisonment and a \$1,000 fine. However, any consistent attempt to enforce the ordinance would have soon filled Sarawak's jails to overflowing and sparked a peasant revolt.

The 1953 Forests Ordinance provided for the creation of three classes of Permanent Forest: (1) Forest Reserves, in which no customary rights to land could be established or exercised; (2) Protected Forests, in which limited rights of access were allowed; and (3) Communal Forests, which were reserved for the use of a particular local community (though subject to the authority of the district officer). The area actually gazetted as Communal Forest has remained small—about 0.1 per cent of the total Permanent Forest Area of 46,236 sq.km.

The cornerstone of colonial land policy was the 1958 Land Code which has survived largely unaltered to the present (Porter 1967). Under the Land Code, title to land became a formally registered (using the Torrens system), individually held, long-term (usually 99 years) lease from the state. The Code also entrenched a system of land classification with the following categories: (1) Mixed Zone Land, in which there were no restrictions on who could acquire title to land; (2) Native Area Land, in

which only legally defined Natives (such as the Iban and Malay, but excluding the Chinese) could hold a title; (3) Native Customary Land, that is, land not held under title but subject to Native Customary Rights; (4) Reserved Land, or land held by the government, principally as forest reserves; and (5) Interior Area Land, a residual category.

The status of Native Customary Land as at 1st January 1958 was preserved. However, the Code stated that “until a document of title has been issued in respect thereof, such land shall continue to be Crown land and any native lawfully in occupation thereof shall be deemed to hold by licence from the Crown” (Sarawak 1972, p.193). In practice, then, customary rights were viewed as an “encumbrance” on crown land (Porter 1967, p.84). The Code provided for native customary rights to be extinguished, “whether the land over which the customary rights are exercised is required for a public purpose or the extinction of such rights is expedient for the purpose of facilitating alienation” (Sarawak 1972, p.244).

Native customary rights could be acquired after the introduction of the Land Code by various methods, including “the felling of virgin jungle and the occupation of the land thereby cleared” (Sarawak 1972, p.193). However, this was only allowed on Interior Area Land and then only if a permit was obtained from a district officer. An administrative circular issued in 1958 instructed district officers not to give permission for the felling of virgin jungle, effectively precluding this method of acquiring rights to land.

Thus the colonial government had a stronger commitment to the policy goals which the government of the third rajah, Vyner Brooke, had haltingly pursued—conversion of Dayak shifting cultivators into individual peasant proprietors practising permanent cropping, reserving extensive areas of primary forest for future use as a timber resource and regulating access to land as between the Dayaks and the Chinese.

These concerns certainly reflected the government’s perception of the public interest (for example, there were no moves to alienate land to British plantation interests). However, the attempt to legislate shift-

ing cultivation out of existence was clearly misconceived and the concentration on establishing individual peasant proprietors meant that customary tenure itself remained in a kind of legal limbo, with holders of customary rights still essentially ‘squatters’ in the eyes of statutory law. The gazetting of forest reserves was clearly a necessary move, but the view that the Dayaks were “the major forest pest of Sarawak” (Spurway 1949, p.155) meant that little attention was given to securing *customary* rights to forest resources. Finally, the zoning of land for different ethnic groups left Chinese farmers with limited access to land and prevented Dayak farmers from legitimately engaging in land transactions with the Chinese, though there is evidence that customary tenure had readily adapted to the presence of Chinese smallholders in the country.

In all these respects, policies which arguably were well-intentioned (if poorly conceived and implemented) left the holders of customary rights to land in a vulnerable position when commercial interest in land and forest resources began dramatically to increase in the post-independence period.

4.3 The Post-Independence Period: 1963 to Present

On joining Malaysia in 1963 the Sarawak state government retained its autonomy over land matters. According to Leigh, post-independence politics in Sarawak “is concerned essentially with the control of land, timber and minerals. A consequence of the quest to gain power is the accretion of wealth from these natural assets” (1979, p.371), particularly the first two. There has also been “a proliferation of government agencies and statutory boards which might be seen as designed to provide jobs for ‘the favoured boys’” (1979, p.343). The granting of business contracts for government development projects has been a further source of political patronage. According to Leigh, “elective politics is becoming the province of the professionals, the government employees, and the businessmen, not of the agriculturalists, despite the latter’s numerical preponderance in Sarawak.... All the evidence points to an ascendancy of the urban, relatively rich, educated and Westernised over the rural people” (1979, p.369). These political developments have considerably lessened the degree to

which the 'public interest' theory of government policy can be usefully applied to explaining the evolution of property rights to land in Sarawak.

The 1960s in Sarawak saw little change from the policies of the late colonial period, largely due to the inexperience of the political leaders and indigenous government officers of the time. An unsuccessful attempt in 1965 to implement the findings of a pre-independence land committee, involving the replacement of the Land Code, was partly responsible for the removal from office of the first chief minister. However, in 1970 a new government came to power in Sarawak under the leadership of Abdul Rahman Yakub which, in contrast to its predecessors, "possessed a rather more coherent set of ideas as to the policies it wished to implement and demonstrated its sense of direction in the implementation of those policies" (Leigh 1974, p.147). These policies included large-scale, commercial land development and the increasingly rapid exploitation of Sarawak's vast timber resource.

4.3.1 The Sarawak Land Development Board

Accordingly, the Sarawak Land Development Board (SLDB), modelled on the Federal Land Development Authority (FELDA), was established in 1972. The Board immediately took over the management of seven resettlement schemes based on rubber which had been established in the 1960s. The land for these schemes was initially State Land, including in many cases Native Customary Land which had been surrendered to the government, but following development the settlers were to be issued with individual titles, subject to full repayment of housing and development costs. However, due to the poor economic performance of the schemes, the Board was directed in 1981 to withdraw from any further involvement, though only 20 per cent of settlers had completed their repayments. According to King, the basic reason for the failure of the schemes was that "the FELDA model was taken over without the means and expertise to implement it" (1988, p.280).

Nevertheless, in addition to the rubber schemes, SLDB began planting extensive areas of oil palm and cocoa in northeastern Sarawak, this time primarily on 'unencumbered' State Land (that is, land

over which customary rights had not yet been established). Initially, in keeping with its charter as a land settlement agency, the intention was to allocate established lots to selected settler families, most of whom would have been drawn from the more densely populated Dayak districts of central and southwestern Sarawak. However, according to an SLDB officer at the time (pers.comm.), the first arrivals wept when they saw their living and working conditions and soon went back to their place of origin. In 1974 it was decided to place a freeze on the allocation of lots and to date the oil palm and cocoa schemes continue to be run on conventional estate lines, with labour almost entirely provided by immigrant Indonesian workers.

Even without the problems of establishing settlers on individual lots, SLDB soon ran into financial difficulties and by the mid-1980s was accumulating losses of the order of M\$20 million a year. King (1986) attributes the financial problems to 'poor management'. However, there is evidence that rampant corruption, benefiting individuals with close links to the government, was the underlying problem.

Since 1987 a commercial plantation company (Sime-Darby) has been appointed to manage the estates and has succeeded in substantially increasing production and income (according to an informant, mainly by weeding out a corrupt and inefficient management). This confirms the well-established efficiency of conventional estate management but, at the same time, represents a further step in SLDB's progression from a land settlement agency to merely a government-owned plantation company. The end result is that one of the few extensive areas of suitable State Land which could have been made available for Dayak (and Chinese) settlers has been used rather as a vehicle for the generation of 'business' opportunities for those with links to the political elite and, as a consequence, is now effectively locked up in the plantation sector.

4.3.2 The Sarawak Land Consolidation and Rehabilitation Authority

While SLDB was moving away from the concept of settlement schemes on Native Customary Land

towards conventional estate management on State Land, another agency, the Sarawak Land Consolidation and Rehabilitation Authority (SALCRA), formed in 1976, was adopting an approach of *in situ* land development specifically oriented towards the improvement of Native Customary Land. For purposes of the Land Code SALCRA is deemed to be a 'native', enabling it to deal in Native Customary Land. After taking adequate steps to 'ascertain the wishes of the owners', SALCRA can declare a tract of land to be a 'development area', thereby giving it powers to carry out any work to improve or develop the land, without however affecting "the legal ownership of that land or any customary rights" (Sarawak 1976, pp.23,24). Participant households are employed as labourers during the development phase and once the crop is harvestable, they receive the income from its sale, with part of the proceeds deducted to repay development costs. In principle the consolidated and developed land is eventually subdivided and individual titles are issued. SALCRA has initiated projects for oil palm, cocoa and tea, principally in the more densely populated southwest of Sarawak.

SALCRA has also had severe implementation problems, again partly due to the limited availability of managerial and technical expertise and partly to political interference in its staffing and business operations. Nevertheless, in general the approach has met with more acceptance than SLDB's land settlement schemes. One reason is that it involves development of the participants' own land, with no question of forfeiting basic property rights (though temporary curtailment of rights occurs) nor of allocating land for the use of outsiders. In addition, participants can continue to farm their land outside the scheme area, enabling them to maintain a diversified farming system.

Thus the SALCRA model is more in accord with customary institutions and patterns of land use. For example, the incorporation of the longhouse community as the basic landholding unit within some schemes has been a major innovation by SALCRA which has reduced the costs both in consolidating the land for planting and in the ongoing management of the scheme. However, this approach has not been feasible in some more recent schemes, where there has been widespread resistance to

SALCRA's activities. Here it has been necessary to negotiate separately with individual households in order to assemble enough land for the scheme, and to issue individual titles in advance of the development to reassure participants that their property rights were not in jeopardy and that their land was not being used as collateral. In this case it is security of tenure against the actions of the state that is being sought.

4.3.3 The Land Custody and Development Authority

In 1981 a new chief minister, Abdul Taib Mahmud, took office in Sarawak and gave even greater impetus to the policy of large-scale land development. He declared: "My vision for the next 20 years is to see modern agricultural development along the major trunk road with rows of plantations and villages well organised in centrally managed estates with a stake of their own in them" (*Sarawak Tribune* December 9, 1984). Rather than use the existing agencies to pursue this policy, the chief minister established a new vehicle, the Land Custody and Development Authority (LCDA).

This authority was established in 1981 to initiate and coordinate schemes for land development on agricultural, residential and industrial sites, whether in its own capacity or by acting as an intermediary between landowners and private corporations. As with SALCRA, LCDA is deemed to be a 'native', giving it power to deal in customary land. LCDA, too, proceeds by declaring land to be a development area. However, the requirement for prior consultation evident in the SALCRA Ordinance is weakened, the only condition being that "it appears to the Minister that it would be in the interest of the inhabitants of any area that such area should be developed." Moreover, "where it is not possible to develop any land by arrangement or agreement with the owner, the Authority may, with the approval of the Minister, acquire such land by compulsory acquisition for the purpose of carrying out any of its functions under this Ordinance" (Sarawak 1981, pp.19,21). When an agreement to develop the land has been entered into with owners, they are required to transfer their title or rights to the land to the authority, which holds them in trust until the development is completed. In return, owners will

be issued with shares in the company set up to develop the land.

As a senior government officer in the Lands and Survey Department has pointed out, LCDA is "more powerful than the Land Code" (pers. comm.). Moreover, the establishment of LCDA has been accompanied by a subtle but important shift in land policy: the burden of proof in disputes between the government and farmers occupying land 'required' for development now falls on those claiming customary rights to land, rather than, as before, on the government.

Despite its powers, however, LCDA has not been able to negotiate any large-scale scheme on Native Customary Land. There has been strong resistance to the notion of transferring property rights to the Authority. Instead, LCDA has sought and obtained access to supposedly 'unencumbered' State Land to pursue its objectives. For example, LCDA has obtained provisional leases to over 8,000 ha of Native Area Land in west Sarawak, including 1,688 ha which was excised from forest reserves. This land has been sold to FELDA at around \$M60 per ha to develop as a commercial oil palm estate. However, development has been slowed because Dayak farmers claiming customary rights to the land refused to move and requested 4 ha lots in the scheme, thus preventing FELDA from getting the clear title to the land which it demanded. It is somewhat ironic that a request to be settled on the land by so-called 'squatters' has proved an obstacle to two agencies supposedly set up to assist small and landless farmers. LCDA has also provided a means whereby local companies with political connections can get access to smaller pockets of land for commercial agricultural projects, in return for giving the Authority a 10 per cent share in the venture. Many of these ventures have also met with local resistance, including the threat of armed attack. This has highlighted the difficulty of using legislative power to override customary rights. As a senior official in LCDA conceded, "we cannot send the police in round the clock!" (pers. comm.).

4.3.4 Forest policy

Even more important than land to the post-independence political system in Sarawak has been the

rapid exploitation of hill forests for timber extraction. The dramatic increase in logging activities in the 1980s to unsustainable and environmentally destructive levels has been well-documented and widely publicised, as has the stake of the political elite in this process. By 1985, 2.8 million ha (30 per cent of Sarawak's total forest area) had been logged and a further 5.8 million ha were licensed out for logging (World Rainforest Movement 1989). Most of these logging concessions were held by companies with close links to either Abdul Rahman Yakub (chief minister from 1970 to 1981) or his nephew, Abdul Taib Mahmud (chief minister since 1981). The extensive forest estate progressively reserved by the government since the late Brooke period has been yielding its wealth to a highly privileged minority.

One response of Dayak communities to the perceived threat to the forest resources they have traditionally claimed and utilised has been to apply for the forest in their vicinity to be gazetted as a Communal Forest under the Forests Ordinance. Though gazetted as Communal Forest would not alter the community's status as 'licensees' of the state, it was felt that this was one way to gain greater security of tenure in the face of the incursions of the timber companies. However, administrative policy dictated that requests for Communal Forest were not to be approved. In fact, the total area under Communal Forest in Sarawak has declined since independence.

Frustration with such attempts to secure their property rights led a number of communities in the worst affected areas to take direct action (World Rainforest Movement 1989). In March, 1987, a major campaign began involving the blockading of timber company access roads in about 25 locations. Various Dayak groups were involved in the protest, including the nomadic Penan who have been the most severely disadvantaged by the logging. The action successfully prevented logging in these locations for several months, inflicting substantial losses on the timber companies concerned.

In October 1987 the first of a series of mass arrests was initiated in connection with the blockades. In November 1987 the state legislative assembly amended the Forests Ordinance making it an of-

fence to set up any structure on any road constructed by a timber licence or permit holder. The offence carries a 2-year jail term and a fine of M\$6,000. Given that most timber roads must pass through Native Customary Land in order to have access to the rivers, this amendment represents a further major curtailment of customary rights. The validity of Olson's dictum can again be noted: "There cannot be property rights in any social setting unless individuals find it profitable to claim a property right and the government of a community also finds it in its interest to allow that property right" (1974, p.7). Nevertheless the campaign for recognition of the customary rights of the affected groups has continued.

5. Conclusion

Property rights theory predicts (and commends) an evolution from 'communal' tenure systems to a more efficient arrangement of private property rights in land "in response to the desires of the interacting persons for adjustment to new benefit-cost possibilities" (Demsetz 1967, p.350). This paper has argued that 'communal' or customary tenure systems can provide individual households with secure and well-defined rights to land and forest resources. Such systems are also capable of adapting to changes in the economic environment, though not necessarily in the direction of strengthening individual rights. This suggests that a more effective way of incorporating customary tenure within the institutional structure of the modern state would be formally to register the community's territorial rights, leaving the administration of property rights within the community to self-regulation (including the possibility of subsequently registering individual claims).

The case study has also shown that economic factors alone are insufficient to explain the evolution of property rights. It is necessary additionally to understand collective choice processes at the level of the local community and, increasingly, of the state. Successive governments in Sarawak have sought to change the specification, assignment and enforcement of property rights to land and forest resources traditionally held by customary tenure. The general direction of change has been towards an attenuation of customary rights, resulting in

greater insecurity of tenure and increased restriction on land transactions, leading to illegal, therefore insecure dealings in land.

It can be argued that intervention in customary tenure systems is a legitimate function of governments acting in the 'public interest' (Acquaye 1984) and may thus reflect underlying economic needs. However, it is more fruitful to assume, with Bates, that governments are, first and foremost, "agencies that seek to stay in power" (1990, p.157), regardless in many cases of the needs of the rural majority. Thus the attenuation of customary rights in Sarawak, particularly in the last 20 years, has primarily served the interests of the political elite and its clients. Nevertheless, there is clear evidence of what Bromley (1985) terms a 'struggle over entitlements', as expressed in growing local-level resistance to government laws and policies. The future evolution of property rights to land in Sarawak will depend on the outcome of this struggle.

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