

# ‘Shifting ground’: Renegotiating land rights and rural livelihoods in Sarawak, Malaysia

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**Abstract:** *In this paper, we use an actor-oriented perspective to explore the nature and extent of conflict and negotiation with regard to land use and tenure among the Iban of Sarawak. The Iban are shifting cultivators who have long been involved in smallholder cash crops. We argue that the complexity of land-use change and the major shifts in land law and policy in Sarawak in recent decades, particularly those favouring the rapid expansion of oil palm plantations on both state and customary land, have created a situation of indeterminacy that can be exploited to renegotiate land rights and livelihoods. We present a case history of an Iban community that has ‘shifted ground’ several times over the past century, both geographically and in its strategic position relative to state and private sector actors. We show how, under formidable pressure from these actors, this community has nevertheless renegotiated its access to land and other resources, and opportunistically developed a diversified livelihood system that has enabled it to survive in rapidly changing political and economic conditions. While not necessarily typical, the case sheds light on the limits and modes of negotiability in the context of a strong developmental state.*

**Keywords:** *land tenure, oil palm, plantations, smallholders*

## Introduction

The issue of land rights in Sarawak, Malaysia, is often presented in simplistic terms as a one-sided struggle between indigenous, subsistence-oriented Dayak communities seeking to defend their ancestral lands and the combined forces of the state and capitalist agribusiness firms seeking to appropriate these lands for large-scale development, mainly in the form of oil palm plantations (Majid Cooke, 2002, 2006; Colchester *et al.*, 2007). The reality is often more complex and the room to manoeuvre perhaps greater than at first appears. Dayaks who once relied on extensive shifting cultivation for subsistence are now engaged in the more intensive production of a variety of perennial cash crops (including oil palm), as well as non-farm economic pursuits (Cramb, 2011a). Moreover, as transport infrastructure is devel-

oped, land that was once remote and unattractive now attracts a premium, and individuals and whole communities relocate to be closer to markets, jobs and the provision of services, especially health and education. In their view, this potentially frees up their ‘idle’ fallow lands for large-scale commercial agriculture. These complex land use and livelihood transformations have major implications for the assertion and legitimisation of land claims and entitlements (customary and statutory), creating scope for both conflict and negotiated institutional change.

In this paper, following Long (2001), we use an actor-oriented perspective to explore the nature and extent of conflict and negotiation with regard to land use and tenure among the Iban, who are by far the largest Dayak group in Sarawak. An actor-oriented approach ‘accords priority to in-depth case studies for

understanding everyday life situations and the dynamic interactions between specific social actors', thereby highlighting 'differential responses to similar structural circumstances', recognising that 'all forms of external intervention are mediated and transformed by the social actors and structures affected' (Ye *et al.*, 2009: 176).

As Lund (1998) points out, negotiability – the ability of actors to alter the terms of their interactions regarding access to resources – is characteristic of all social arenas to some degree; hence, the crucial research question concerns how and when negotiability leads to significant shifts in the formal and informal structures governing resource use. Likewise, Banerjee and Bojsen (2005), in analysing land-use strategies in a resettlement scheme in Sarawak, emphasise the need to examine both the *modes* of negotiability and the *limits* to negotiability in a given context. Lund (1998) argues that analysis should focus on 'open moments' as 'particularly intense periods of rearrangement of the social order' (Lund, 1998: 1). He defines open moments as 'occasions when the social rules and structures are suddenly challenged and the prerogatives and legitimacy of politico-legal institutions cease to be taken for granted.' Such moments of indeterminacy offer a 'double-edged possibility of reassertion or erosion of power' – at multiple scales (Lund, 1998: 2).

Sikor and Lund (2009) further highlight the importance of exploring two 'grey zones'. The first is between property and access, that is, the fuzzy area 'between what people have rights to and what they merely have access to' at a given juncture (Sikor and Lund, 2009: 2). As discussed below, this includes the ambiguity between statutory rights and customary claims and access. The second grey zone is between authority and power, that is, 'successfully and less-successfully legitimised decisions about how resources are distributed in society' (Sikor and Lund, 2009: 2). Thus, laws and policies conferring authority over land allocation and development can be contested by the exercise of various forms of power.

We argue that the complexity of land-use change and the major shifts in land law and policy in Sarawak, particularly during the past 10–15 years, have created a situation of indeterminacy in which the stakes have dramatically risen for all the actors involved (Majid Cooke,

2002; Cramb, 2011b). That is, the social arena in which Iban land rights are being renegotiated displays critical 'open moments' and 'grey zones' in which different modes of negotiation have been employed to change the structures governing land resources. To explore how this is working out at the local level, we present a case study of an Iban community that has 'shifted ground' several times over the past century, both geographically and (more recently) in its strategic position relative to state and private sector actors. We show how, under formidable pressure from these actors, this community has renegotiated its access to land and other resources, and opportunistically (or to use Walker's (2009) apposite term, 'experimentally') developed a diversified livelihood system that has enabled it to survive in rapidly changing political and economic conditions.

The critical events in this localised story of agrarian change illustrate the major shifts in policy towards upland farmers in Sarawak that have received critical attention in recent years from scholars and activists – the licensing of extensive upland areas for logging, the narrowing official view of customary tenure, the widespread expropriation of customary land for private oil palm estates, official ambivalence towards the emergence of smallholder oil palm, and the use of joint-venture arrangements to bring officially recognised customary land into the commercial sphere (Hong, 1987; Majid Cooke, 2002, 2006; Ngidang, 2002; Cramb, 2011b).

However, the case study is not presented as typical or representative of the situation of Iban and other communities faced with these often overwhelming interventions. In fact, the outcomes in this case were 'not too bad'.<sup>1</sup> Logging did not have a major impact on livelihoods or the environment; the threat of losing customary land to private development was largely averted; smallholder oil palm was supported and flourished; and a joint-venture arrangement was cautiously pursued in such a way as to safeguard the community's interests. As Yin (2009) points out, a case can be selected precisely because of its special or extreme attributes in order to increase understanding of critical processes and thresholds. This case study can thus help to highlight the critical junctures that enable potentially negative interventions in land use and

livelihoods to be renegotiated. What elements were present in the 'open moments' encountered in this case that enabled the 'grey zones' between property and access and between authority and power to be favourably exploited? To what degree can these elements be replicated in other contexts?

The paper begins with an historical account of how the case-study community came to occupy and utilise its land, consistent with customary Iban modes of migration and settlement. It then describes a significant challenge to the legitimacy of this land-use claim in the form of a state lease to a large oil palm company and the negotiated compromise that eventuated. The next section explains the serendipitous emergence of smallholder oil palm as a profitable livelihood option for the land so retained. The penultimate section describes the on-going process of negotiation for a large-scale joint-venture project on that portion of the community's lands where customary claims have been legitimised but which is now regarded as 'idle'. The final section draws some conclusions for the larger process of agrarian change in Southeast Asia.

### Migration and settlement

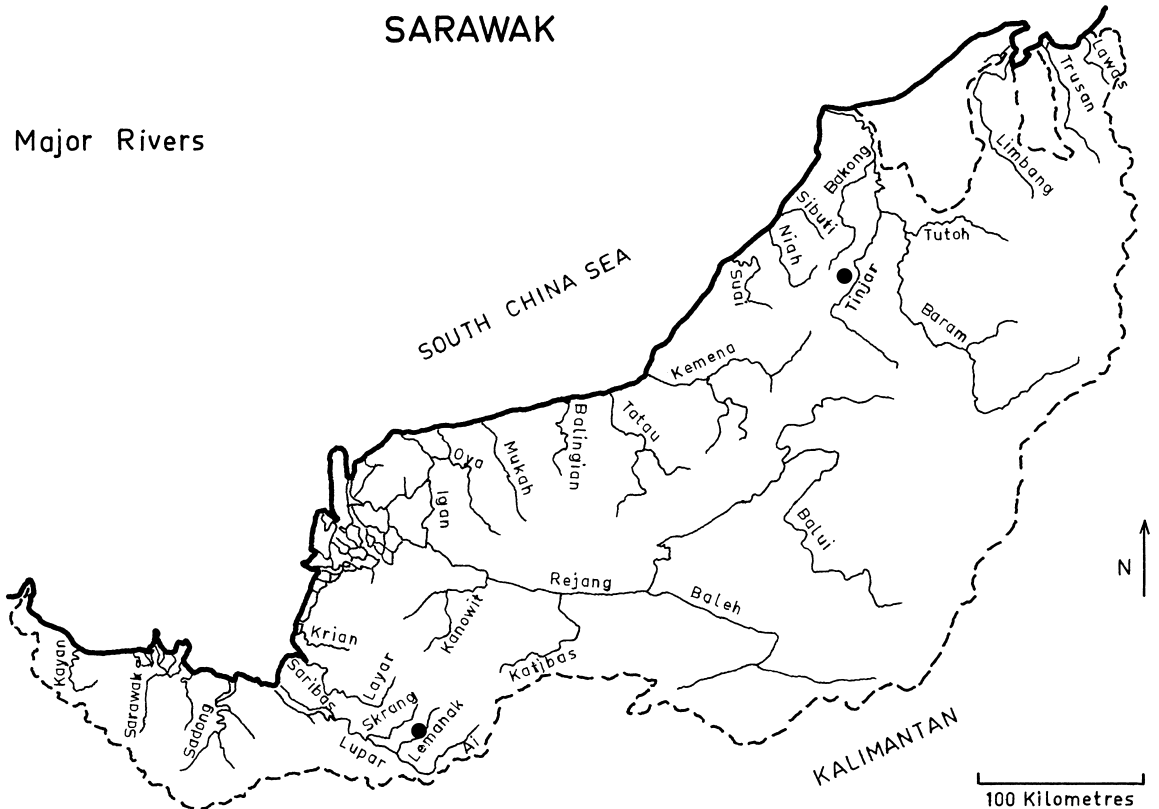
The Iban are well known in the anthropological and historical literature for their mobility, associated with the practice of pioneer shifting cultivation (Freeman, 1970; Pringle, 1970). It is important to emphasise that this mobility represented an *expansion* of occupied and cultivated land as some groups hived off and struck out for new territory – not the abandonment of degraded land due to prodigal land use (Cramb, 2007). From their original homeland in the Kapuas basin in what is now Indonesian Borneo, Iban migrants began to filter across the low range between the Kapuas and the Lupar basins into what is now the Malaysian state of Sarawak, perhaps as early as the sixteenth century (Fig. 1). Some groups moved westward while the predominant movement was northerly, from the Lupar and its tributaries (including the Lemanak, see below) into the Saribas and Krian.

From early in the nineteenth century, partly to escape the newly imposed regime of Rajah James Brooke and his successors, Iban had

begun to cross into the vast Rejang basin in central Sarawak, though the heartland (*menoa lama*) in the Lupar and Saribas continued to be occupied and cultivated on a rotational or forest-fallow basis. This north-easterly move continued incrementally throughout the nineteenth and twentieth centuries, but now with varying degrees of state control (both prohibition and encouragement) by the Brooke regime (1841–1941) and the post-war British colonial government (1946–1963) (Freeman, 1970; Pringle, 1970). Iban movement has continued since the formation of Malaysia in 1963, but mainly in the form of organised resettlement schemes due to internal and external security threats and the Batang Ai Hydroelectricity Project (Ngidang, 1996).

In the mid-1930s, the Brooke Resident at Simanggang (now Bandar Sri Aman) sponsored some Iban communities in the long-settled Lemanak River in the southwest of Sarawak to migrate about 400 km (as the hornbill flies) to the sparsely populated Tinjar River in the north-east, to alleviate population pressure and poverty in the former region (Fig. 1). A group led by headman (*tuai rumah*) Rimong, along with Radin, Pagon, and Sujang, took up the offer, keen to find a new and more prosperous territory (*menoa baru*) for their followers. The migrants (*orang pindah*) formally gave up their land rights in the Lemanak and were allocated land to the west of the Tinjar River along the north bank of its tributary, Sungai Bok, totalling about 8 km<sup>2</sup> (Fig. 2).

Kuala Bok (where the Bok joins the Tinjar) was set by the Brooke Government as the upriver limit of Iban settlement in the Tinjar. Beyond this point the land was reserved for the Penan, Berawan and other pre-existing groups. The Penan were initially unhappy to lose their lands along Sungai Bok to the Iban, but some compensation was paid for the land and fruit trees, and eventually the Iban and Penan became ritual 'blood brothers' (Iban: *menyadi kempit darah*; Penan: *pade*), entailing a sharing of use rights to land and other resources. Some intermarriage also occurred over subsequent years. In contrast to the Iban invasions of previous centuries, this was a relatively orderly process in which territorial boundaries were established and legitimised by the administrative authority of the Brooke state.

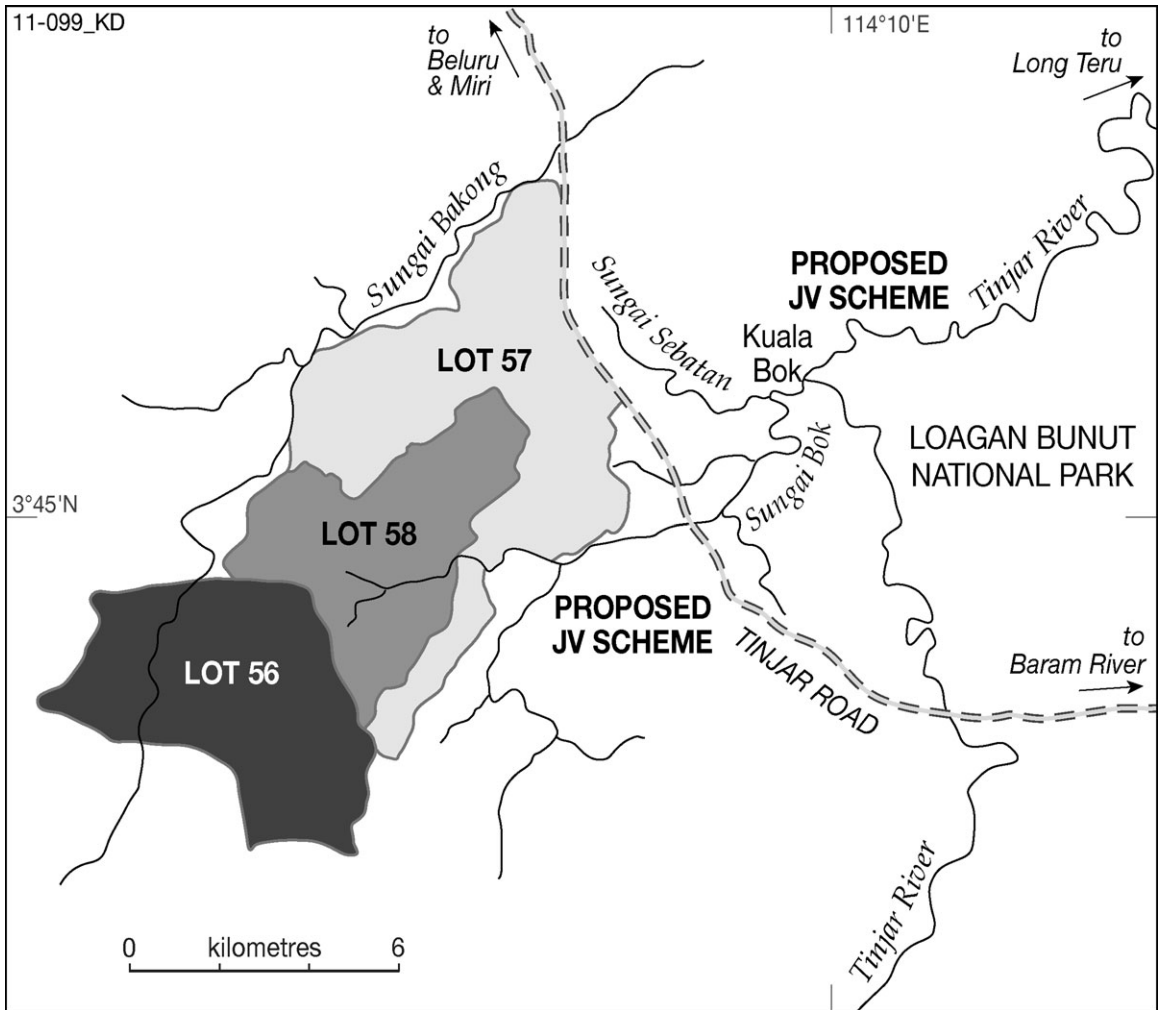


**Figure 1.** Major rivers of Sarawak showing original location of case-study community along Lemanak River and resettlement site along Tinjar River

The new community settled first at Kuala Bok on the north bank of the river, built a temporary longhouse (*dampa*) and proceeded to clear the forest for hill rice farming (Fig. 2). An old longhouse site (*tembawai*) exists at this location. From there, they moved to the middle of Sungai Sebatang, a tributary of Sungai Bok, and built a more permanent longhouse at a site called Bandong. There was a split in the community at this time – one group moved away to Sungai Teru, further down the Tinjar, while the other, under their new headman, Radin (the son of Rimong), remained. This house came to be considered unhealthy or ‘hot’ (*rumah angkat*) as a number of people died, so they moved to the upper part of the river (Ulu Sebatang) and built a new longhouse about a half-hour walk from the Bandong site. This house too came to be considered *angkat*, prompting a move downriver to a site at Sebatang Ili’.

In the mid-1950s another split emerged in the community, with one group, led by Pagon,

moving further up the Tinjar to Long Terikan, beyond the stipulated boundary of Iban settlement, while Rumah Radin<sup>2</sup> remained in Sungai Sebatang. Eventually, after several years, Rumah Pagon was persuaded by the British colonial government to move back downriver and returned to Kuala Bok, the original location. Meanwhile, around 1963, Rumah Radin suffered another wave of illness, with many young boys dying. Radin and some households scattered temporarily to farmhouses (*langkah*) in Sungai Alat, a tributary of the Sebatang, while Sujang led a group back to Kuala Bok, merging with Pagon’s group. This move was both to get away from the unhealthy site and to be more accessible to the bazaar downriver at Long Teru, which was now becoming more significant in the longhouse economy. Four or five years later attempts were made to consolidate the two groups, but Radin’s group refused and remained in the unfavourable location. In 1970, Rumah Pagon built a substantial



**Figure 2.** The Sungai Bok lands showing Tinjar Road, location of leases to Rimbanan Hijau and general location of proposed joint-venture scheme

longhouse at Kuala Bok, accommodating 25 households (*bilek*).

By this time, much of the forest in the allocated territory that was accessible by river had been brought into the shifting cultivation cycle and thus converted to secondary forest (*temuda*), subject to customary ownership by individual households (Cramb, 2007). In addition, rubber smallholdings had been established along Sungai Bok and Sungai Sebatang, some with the assistance of the colonial government's Rubber Planting Scheme (RPS) in 1966–1967, enabling households to supplement their subsistence production with cash income from the sale of rubber sheets at Long Teru.

From 1965, a Japanese logging contractor was operating a timber concession in the com-

munity's hinterland to the west but at the time this did not impact greatly on local livelihoods and was not seen as a major concern, even though the logging took place within the allocated longhouse territory. The terrain was not excessively steep and the logging was selective.

Then, in 1976, the Tinjar Road, linking the major north–south Miri–Bintulu Road through Beluru to Long Lapok on the Tinjar (and ultimately to Long Lama on the Baram), cut through this hinterland (Fig. 2). From this time, individual households started moving upstream to the roadside because of the vastly improved access it provided to towns and markets, especially the divisional capital, Miri. Some of this land had already been cultivated before the road was built, and some rubber planted with

the assistance of the RPS happened to be near the road. However, much of the land was selectively logged forest that people proceeded to clear for rice farms, including both hill and swamp rice. Permanent farmhouses were built and pepper gardens established in response to the boom in pepper prices at that time.

In 1985, the whole community of Rumah Radin moved to the road but, by mutual agreement, split into two longhouses, now called Rumah Musin and Rumah Jemat. Two years later, Rumah Pagon moved from Kuala Bok to the road, also dividing into two longhouses, now called Rumah Gansa and Rumah Ela. Altogether, there were about 70 households – too many to build one longhouse. The limited land and the desire to be close to farming land led to the decision to build several smaller longhouses distributed along the road. In 1995, Rumah Gansa burned down and was replaced by two shorter longhouses – Rumah Gansa and Rumah Engah.

Thus, the original migrants to Kuala Bok had, through complex processes of demographic and socio-economic change, given rise to five longhouse communities distributed along the Tinjar Road in the upper reaches of Sungai Bok. However, these five groups still shared access rights to their original territory (*menoa*), which remained undivided (*tanah saum*). Following Iban practice, they would first confer with each other (*baum dulu*) before any one group could make use of the land for farming or other purposes. The legitimacy of customary land tenure thus remained unchallenged, whether from within the communities or from the state.

### Plantation agriculture and contested land claims

However, the Sungai Bok lands are on the frontier of the dramatic expansion in oil palm cultivation that has been occurring in Sarawak since the 1980s, particularly in north-eastern Sarawak. With Abdul Taib Mahmud's accession to the chief ministership of Sarawak in 1981, official policy towards customary land shifted sharply towards a presumption of state proprietorship, mainly to facilitate the alienation of land for private-sector oil palm development (Cramb, 2011b). The customary ownership of the Sungai Bok lands was called into question in 1988 when the communities received notice

from the Land and Survey Department that the Sibu-based global timber and plantation giant, Rimunan Hijau (RH), had been given a provisional lease to an area of about 5000 ha along the western side of the Tinjar Road to plant oil palm (Fig. 2). The area (shown as Lots 57 and 58 in Fig. 2) included land that had been cultivated for hill rice and was now secondary forest, as well as some rubber and pepper gardens. One of the Sungai Bok longhouses was also on the western side of the road. Moreover, the whole area lay within the original territory acquired from the Penan and allocated to the settlers at Kuala Bok in the 1930s, including forested land that had never been farmed.<sup>3</sup> Nevertheless, the Land and Survey Department's position was that, as the land in question had not been cultivated before 1958 (the cut-off date in the Sarawak Land Code for acquisition of native customary rights (Porter, 1967)), it was legally State land, available for alienation to other parties. It is this narrow official interpretation of customary rights that has been behind many of the high-profile conflicts over oil palm development (Ngidang, 2002; Majid Cooke, 2006; Colchester *et al.*, 2007; Cramb, 2007).

The Bok communities objected to the notice, claiming that they held native customary rights to land inside the lease area. The basis for their claim was that the entire *territory* had been allocated to them by the Brooke Government when they were asked to migrate to the area, including cleared and uncleared land. A more practical concern was that of the 71 households at the time, 25 younger households that had formed since the move to the roadside would have had no land at all if the lease was enforced. There was much heated discussion in the longhouses and in government offices during 1989, partly informed by younger, educated members of the community, some of whom worked in or had links to relevant parts of the government bureaucracy.

At a longhouse meeting (*aum*), it was eventually decided to pursue a compromise with the government and the company. Rather than claim all their original territory, they would make a smaller claim that would encompass most of the land needed by households to maintain their livelihoods. There was much argument about how far to claim, some wanting to push the boundary further, while others were pessimistic

that their claim would be accepted. Eventually, there was consensus that they would use a logging track that followed a ridge to the west of the road, forming a 'natural boundary'. Beyond the ridge was mainly logged old growth forest, though there was also some *temuda* outside the proposed boundary. The community members then went to the ground to clear along the ridge (*ngerentis*) to mark the boundary, the usual procedure when land was to be formally surveyed.

Following this, a meeting was held in Beluru, the sub-district headquarters, with the Sarawak Administrative Officer in charge of the sub-district, the government-appointed Iban regional headman (*penghulu*), the headmen (*tuai rumah*) of the Sungai Bok longhouses and a representative of Rimbunan Hijau (formerly a government agricultural officer in Miri, known to some members of the Bok communities). The proposal to excise the area up to the ridge from the RH lease was accepted, subject to two conditions. First, the communities should plant oil palm on the land acquired and sell their fruit to the RH mill to be built at Simpang Empat. Second, they should support the company to apply for additional State land to the southwest (beyond Sungai Bok in the upper Bakong watershed), to replace the land surrendered. This was agreed. Subsequently, the Land and Survey Department subdivided the original lease area into Lots 57 and 58, as shown in Figure 2, with Lot 57, totalling 2800 ha, surrendered by RH due to the existence of native customary rights claims (though this did not entail formal recognition of those claims by the government). In return, Lot 56 was added to the RH lease (Fig. 2).

Some community members were not happy with this outcome, particularly those with *temuda* beyond the negotiated boundary. Some claimed that those in favour of the new boundary had sold land to RH. Others were suspicious about the planting of oil palm, fearing it would somehow enable the government to take back the land. Indeed, the legal status of the surrendered Lot 57 gave some cause for concern. A community member who worked in the Land and Survey Department indicated in an annotated map that having been surrendered to the State, Lot 57 was now registered as State land, meaning that in principle, anyone could apply for it in the future; it did not have the status of Native Customary Land. However, now that the

land had been excised from a lease to the powerful RH company, and as described below, was subsequently extensively planted with oil palm by the longhouse residents and others, it seemed unlikely that another company would be allocated the land. Nevertheless, the status of this crucial stretch of land exemplifies the 'grey zones' referred to by Sikor and Lund (2009), in which property and access coexist in uneasy ambiguity.

### The emergence of smallholder oil palm

In 1989–1990, the Department of Agriculture provided oil palm seedlings to the landholders under its Oil Palm Subsidy Scheme (since discontinued, largely because of a policy bias in favour of large-scale development (Cramb, 2011b)). All those with *temuda* along the road planted oil palm, though in a half-hearted way, mainly to reinforce their now-tenuous claim to the land. Prices were also relatively low at the time. Hence, there was no maintenance of the crop; in some cases, the young palms were even cut to harvest the edible pith or 'cabbage' (*upa*). Palms took three to five years to bear fruit, which is slow by commercial standards. Then in the mid-1990s the Sarawak Oil Palm mill was approached to see if they would buy the fruit (the RH mill was not yet operational). One longhouse member bought a truck and offered MYR 50 per ton to transport the fresh fruit bunches (FFB) to the mill. He was paid immediately by the mill and in turn immediately paid the owners. The incentive of cash in the hand encouraged them to clear, maintain and fertilise their oil palm plots, resulting in increased yields and profits.

Since then, there has been renewed interest in planting. The soils are quite productive, receiving annual depositions of fertile silt during flash flooding. Better planting material has been obtained from the Department of Agriculture's nursery at Kabuloh. Higher prices in the late 1990s led to further increase in profits. Although harvesting ceased with the price downturn in 2001 (falling to MYR 80 per ton of FFB), when the price rose to MYR 120 per ton in 2003–2004, profitable harvesting resumed and new planting continued. The cost of planting was reduced by cultivating hill rice and other crops between the oil palm for the first two years, which also minimised weeding requirements without impacting

on yield. Tuai Rumah Gansa, son of Pagon, one of the Kuala Bok pioneers, had 12 ha in production. He employed longhouse people in rotation and Indonesian plantation workers on Sundays (their day off). There were now several truck owners willing to transport FFB to the RH mill at MYR 50 per ton. The fruit was classed as Grade C but the producers were paid directly into their bank accounts in Miri.

Other longhouses along the road from Beluru to Long Lapok (especially the Sungai Laong group in Ulu Bakong) began planting in the 1990s as well. Holdings were mostly around 2 ha. In addition, some longhouses entered into new contractual arrangements with Miri-based investors. In one case (Sungai Temam), the community established a joint venture with a well-connected developer, with 80% of profits to the investor and 20% to the landholders. This arrangement was opposed by the Deputy Chief Minister, who was promoting the government's New Concept (*Konsep Baru*) of large-scale joint ventures (Sarawak, 1997; see below). However, the Member of Parliament for Baram (brother-in-law of the developer) supported the proposal and it went ahead. In another case, land was leased to a local Malaysian Chinese investor at MYR 0.20 per palm per month (about MYR 350 per ha per year). These emerging practices were outside official policy, reflecting Sikor and Lund's (2009) second type of 'grey zone' – between authority and power. As discussed below, these local-level precedents have provided an 'open moment' for negotiating policy change.

The focus on oil palm in the Bok communities and elsewhere has meant that other farming activities have fallen by the way. Few people cultivate pepper, once the mainstay of the longhouse economy, given the high labour requirement, the escalating cost of fertiliser, and the fall in price. Rubber prices have improved since 2002 but the established rubber gardens are mostly too far from the road, having been planted along the rivers when the longhouses did not have road access. Hence, rubber tapping has largely ceased. Rice is still cultivated on a small scale on nearby swampy land, using fertiliser and herbicide to improve the yield and the return to labour – the fallow vegetation is sprayed and left to decay, the rice is transplanted, and little further is done until harvest. These trends have been

reinforced by the out-migration of young people, many of whom have moved to Miri to work, buying low-cost housing with the help of their parents and the profits from oil palm. Consequently, the labour available for farming activities is increasingly limited.

The recognition that the land along the road, though part of the original territory, was legally State land, combined with the increasing commercialisation of agriculture and the trend to off-farm employment, led to a decline of customary community control over the allocation and use of land. One Iban-Chinese shopkeeper from Long Teru unilaterally cleared about 40 ha of logged-over land within the Sungai Bok territory and planted oil palm on his own account. No-one in the community openly objected as no-one's secondary forest (*temuda*) was affected. It was now generally accepted that this was State land, even though it was within the traditional territorial boundary. Other enterprising (or opportunistic) young men from within the community (but with various outside business interests) have also cleared this logged-over State land for oil palm without any decision by the headman (*tuai rumah*) or longhouse meeting (*aum*). Some have also cleared or bought land outside the territorial boundary. Effectively there is now an informal individual market for land along the road. There is some grumbling among the elders (*tuai*) about these developments but no action taken; they have a sense of inevitability about the loss of community control. The customs (*adat*) with respect to individual and common rights to farms (*umai*), secondary forest (*temuda*), graveyards (*pendam*), old longhouse sites and fruit groves (*tembawai*), are still generally upheld, but the 'grey zone' along the road is clearly witnessing a shift from customary authority to unregulated market power.

### The joint-venture proposal

In 2006, following the success of their road-based smallholdings, the Sungai Bok communities joined with others in the Bakong-Tinjar region to propose a large-scale joint-venture oil palm scheme on their *officially recognised* customary land (Fig. 2). The proposal, submitted to the Ministry of Land Development under the government's New Concept (*Konsep Baru*) programme, involved a total of 26 longhouse



communities with 537 households occupying six adjoining territories (*pemakai menoa*). New Concept or joint-venture schemes, initiated in 1995, involve customary landholders transferring their rights to designated plots (typically totalling around 4 ha per household) to the Land Custody and Development Authority (LCDA), which then forms a joint-venture company with a private investor. Ninety per cent of the paid-up capital is contributed by the investor (of which 60% constitutes the investor's equity and 30% the landholders' equity) and 10% by LCDA, with most of the funds for plantation development being borrowed. Dividends are distributed according to the equity shares as follows: 60% to the investor, 30% to the landholders and 10% to LCDA (Sarawak, 1997; Majid Cooke, 2002; Ngidang, 2002).

The reasoning of those Iban advocating the Bakong-Bok joint-venture proposal was that most of the legally recognised customary land rights were established along the Tinjar and Bakong rivers and their tributaries at a time when there was no road. Now that their longhouses and oil palm smallholdings were established along the road (technically on State land), their original farming land was remote from centres of settlement and economic activity, only accessible by canoe or by walking along forest paths for up to 3 hours. Hence, much of this land was no longer cultivated and considered 'idle' (*nadai diguna*).<sup>4</sup> Even though there were established rubber groves within this land, the rubber trees were no longer tapped. A joint-venture project was seen as a way to earn income from the land.

The project was also anticipated to provide a number of benefits unrelated to income from oil palm. The project would consolidate and validate their territorial claims. Moreover, within each territory, it would provide an opportunity to sort out the location and area of individual holdings, most of which were now under secondary forest. In particular, those no longer residing or working in the longhouse had rights by inheritance to as many as 10 or 12 parcels of land, but could not say exactly where those plots were located, let alone use them for productive purposes. The customary land that had once been intimately known through regular usage by everyone in the community had itself become a 'grey zone'. Converting these hold-

ings into shares in an oil palm company (though less attractive than receiving titles) would ensure that ownership of this asset was secure and inheritable by urban-based children. For a few longhouses away from the Tinjar Road (not part of the Sungai Bok cluster), the development of their land would be the only way to obtain road access to the longhouse itself.

The application was lodged with the Ministry of Land Development in March 2006. In August, the officer of the Ministry responsible for northern Sarawak came to the area for a longhouse dialogue, during which there was heated discussion. The proposal was approved by the State Native Customary Rights (NCR) Land Development Taskforce in October. It was then sent to the powerful Ministry of Resource Planning (a portfolio held by the Chief Minister) for confirmation. This required the Department of Land and Survey to determine the boundary of the legally recognised customary land based on aerial photography from the 1950s (to conform to the 1958 cut-off date in the Land Code). This process took two years, during which the communities proceeded to sort out individual land claims on the ground. This involved households cutting survey lines (*ngerentis*) to indicate agreed boundaries of individual plots.

There were some disputes in this process, particularly in regard to individuals who had moved out of the longhouse territory but remained within the district. According to Iban customary law (*adat*), such people have 'migrated' (*pindah*) and thereby handed back their cultivation rights over secondary forest (*temuda*) to the longhouse community. However, some individuals continued to press claims to their original *temuda* and crops. This problem of 'overlapping claims' has plagued some other joint-venture schemes, notably Sungai Tengah in Sri Aman Division, where claimants have harvested fruit from disputed land and been arrested for theft; this dispute has been taken to court.

In the period since the 2006 approval, many of the applicants became concerned about the proposed joint venture, having heard about the 12 000 ha Kanowit Oil Palm Project, where landholders had blockaded the estate in protest over not receiving any dividends more than a decade after planting began. There was growing disquiet in the longhouses and an emerging reluctance to participate, despite initially

supporting the application. Nevertheless, final official approval for the Bakong-Bok joint-venture development was given in December 2008. A total area of about 23 000 ha was approved, of which 7913 ha was identified as Native Customary Land belonging to the applicant communities.<sup>5</sup> Perhaps half this area would not be available for planting, being already established with rubber. The remaining land, some of which had been cleared for farming in the 1970s, was deemed to be State land. This was also to be included in the development, but the profits would not be part of the joint venture. This was a relatively new arrangement that provided a strong guarantee to the investor that the project would be profitable, even without full participation from the customary landholders.

In response to the worsening problems with the Kanowit Oil Palm Project and other joint-venture schemes, in 2009, the State Taskforce approved some changes to the joint-venture agreements, including the payment of an advance dividend to landholders of MYR 150 per ha per year from Year 1, and the inclusion of a (non-voting) landholder representative on the board of each joint-venture company (previously the board was formed by two to three members appointed by the investor and one appointed by LCDA, notionally acting for the landholders). The Bakong-Bok participants were pushing for further changes. Some younger households in these communities owned no land, either close to the road or in the proposed scheme; they had to rent or borrow land from others in the community, or consider leaving. Hence, there was a push from community leaders for these landless households to be allocated 4 ha of the designated State land in the joint-venture scheme so they could be included as shareholders. In addition, they were asking for shares in the palm oil mill to be built as part of the scheme. Up to now, there has been no landholder equity in palm oil mills, whether in joint-venture schemes or managed smallholder schemes such as those of the Sarawak Land Consolidation and Rehabilitation Authority, yet it is recognised that this is a very profitable activity in the palm oil supply chain.

In 2009, the LCDA developed the joint-venture agreement with the approved developer, Cipta Sawit Sdn Bhd, a newly formed (May 2006) subsidiary of a successful Bintulu-based char-

coal producer and exporter. The joint-venture agreement was finally signed by representatives of LCDA and the developer at Beluru (the sub-district headquarters) on 30 March 2010, in the presence of the Minister for Land Development and the local State Assemblyman (both Iban), who 'urged locals to support the project'.<sup>6</sup> Following this signing, LCDA officers began the long process of seeking the formal agreement of individual landholders. Only plots of land for which a trust deed has been signed by the landholder, conveying the rights to the land to LCDA as trustee for a 60-year period, can be included in the project. However, the misgivings over the project, which had been brewing for several years (based on the ongoing problems at Kanowit), the desire to modify the terms of the agreement to obtain a share of the designated state land and the dispute over the demarcation between state and customary land, had made individuals reluctant to sign. As of March 2011, this reluctance was still evident and the investor had not commenced any field work.

## Conclusion

This case study demonstrates a number of aspects of contemporary agrarian change that have relevance elsewhere in the uplands of Southeast Asia. The first has to do with *flexibility*. The Iban communities in this study have 'shifted ground' in multiple senses over the past 80 years – from their origins in the Iban heartland to the frontier of Iban settlement in northern Sarawak, from the river to the roadside, from subsistence agriculture based on shifting cultivation to perennial cash crops and now they are on the verge of shifting from smallholders to shareholders. They have not been tied to culturally defined (and externally reinforced) notions of 'traditional agriculture', nor to official depictions of 'people from the interior' struggling with an 'outdated economy' and needing to be brought into the 'mainstream of modernisation' (Cramb, 2011b). Rather, they have continually sought to adapt, as individuals and communities, to new constraints and opportunities. Thus, while Majid Cooke (2006) is correct to argue that earlier policies based on the assumption that forest-fallow land was 'idle land' were in 'fundamental error', the clear perception of Iban landholders in what might be called the 'post-swidden era' (Cramb

et al., 2009) is that much of their land is indeed 'idle', in the straightforward sense of not currently used for agricultural production, whether cultivated or fallowed. Hence, they are seeking new ways to harness government programmes and private capital to get a commercial return from this land.

Related is the aspect of *complexity*. The rapid spread of oil palm in Sarawak, and the focus of NGOs and the alternative media on instances of enclosure and exclusion, has created an impression of a monolithic state unilaterally dispossessing customary landholders in favour of its commercial clients. While not downplaying the reality and seriousness of such dispossession (there are over 200 land cases pending in the High Court of Sabah and Sarawak, and intimidation of land rights activists and advocates appears to be increasing), the case study shows that the situation is often more complex than one of naked dispossession. The literal 'shifting ground' over time on the part of Iban communities, the layering of dissonant institutional arrangements (customary and statutory) and the sharp shifts in government policy (e.g. putting the onus of proof of customary ownership onto the claimants) have created very complex, and hence, often indeterminate land-use and land-tenure situations.

Within these complex, indeterminate contexts, there emerges clear evidence of *negotiability*, particularly during critical 'open moments' when the stakes for the actors are raised (the building of the Tinjar Road, the allocation of a lease to RH, the surge in profitability of small-holder oil palm, the push by sections of the community for a joint-venture scheme) and in the emerging 'grey zones' between property and access (continued access to customary land was negotiated with powerful state and commercial actors despite the lack of statutory property rights) and between authority and power (various sources of power were mobilised to counter the state-legitimised authority of outside actors).

As described above, the major modes of negotiation employed have been prolonged deliberation, debate, argument and compromise *within* communities, as well as *between* community, market and state actors, using both customary modes (notably, the open longhouse meeting (*aum*)) and the tools of modern government

bureaucracy (letters, maps, reports, meetings in offices, lobbying). The presence of educated professional members of the longhouse communities, with networks and expertise in both the private and public domains, has enhanced the interface with bureaucratic modes of negotiation. The importance of the strong cultural impulse within Iban communities for thoroughgoing debate and deliberation to arrive at clarity and consensus appears to have been seriously underestimated by land development agencies such as LCDA, eager to get targets achieved, documents signed and investment flowing (Cramb, 2007; Menua, 2009).

No doubt the state-business alliance in Sarawak as a whole is very powerful, and many Iban communities responding to such 'open moments' in emerging 'grey zones' have quickly encountered the *limits* to negotiability. Nevertheless, as the case study indicates, there has in fact been some 'shifting ground' on the part of government in response to the agency of landholders and their representatives. The growing list of court cases challenging unilateral government actions, and instances of commercially costly local-level resistance (e.g. prolonged blockading of the Kanowit scheme and protracted legal proceedings), have helped to convince some within the state apparatus and in the plantation sector that it is in their interests to negotiate better arrangements with landholders, not just in an ad hoc fashion but structurally. The Sungai Bok communities are actively contributing to these emerging structural changes and helping to push back the limits to negotiability, not only at the local scale but with state-wide implications.<sup>7</sup>

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## Notes

- 1 This is a widely-used Australian phrase expressing guarded optimism about one's current status.
- 2 Literally, Radin's house, it being the practice to name a longhouse community after its headman.
- 3 The area of the original RH lease accounted for more than half of the territory allocated to the Sungai Bok community in the 1930s.
- 4 Informants in the Saribas District described such unused secondary forest as *menoa puang* (literally, abandoned land) though, as in the case described here, there was no intention to give up rights to the land. In fact, in the Saribas too, neighbouring longhouses had grouped together to request that their land be developed as an oil palm estate, but by the Sarawak Land Consolidation and Rehabilitation Authority (SALCRA), not as a joint venture with a private company (Cramb, 2007: 343–344).
- 5 It subsequently emerged that the aerial photographs used by the Department of Land and Survey to make this determination were taken in 1951, well before the 1 January 1958 cut-off date in the Land Code. Hence, the Bok community feels it has been short changed and is in dispute with the Department.
- 6 'Ministry Mulls New NCR Land Development Model'. *The Borneo Post*, Thursday 1 April 2010, p. 8.
- 7 It is significant that at the signing ceremony for the Bakong-Bok joint-venture agreement, the Minister for Land Development, James Masing, commented on the need to change the joint-venture approach to developing oil palm on customary land. He said: 'The production is not as good as the potential and it needs a new model by the ministry [...] The intention of the NCR [Native Customary Rights] concept was correct but the modus operandi has to be changed.' He indicated a nucleus estate and smallholder model was under consideration, with soft loans and infrastructure grants to improve returns to smallholders ('Ministry Mulls New NCR Land Development Model'. *The Borneo Post*, Thursday 1 April 2010, p. 8).

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