



A Malaysian Land Grab?
**The Political Economy of Large-scale Oil Palm
Development in Sarawak**

Rob Cramb

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Abstract

The rapid expansion of oil palm cultivation in Sarawak, Malaysia, over the past 30 years has entailed a radical transformation of the agricultural economy from one based almost entirely on semi-commercial smallholdings to one dominated by large-scale, private estates. This paper contends that the dominant role of private estates has been driven not primarily by technical or market imperatives but by the exercise of state power to maximise opportunities for surplus extraction and political patronage. The result has been an internal or domestic land grab involving (a) the large-scale and irreversible conversion of environmentally valuable forestlands (including tropical peatlands) to an extensive oil palm monoculture and (b) the concentration of property rights to vast areas of both state and customary land in the hands of a small number of state-backed corporate actors and their patrons in the political-bureaucratic elite. The mechanisms by which this transformation of land use and property relations has been brought about include the four “powers of exclusion” identified by Hall et al. (2011) – regulation, the market, force, and legitimation. However, a Polanyi-like countermovement has challenged the powers employed by state and private actors and is slowly establishing a legal bulwark against unjust expropriation and land concentration, based mainly on judicial interpretations of customary land tenure.

About the Author

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Now I come to the question of the development of ... [Native Customary Land] It is the only way that can bring people within one generation into the main stream of the economy. People from the interior who are today struggling with outdated economy.... Do they have land? When I ask do they have land, my God, they have plenty. (Abdul Taib Mahmud, Chief Minister of Sarawak, 1994)¹

The Chief Minister believes a great deal of the money is available in Sarawak, but the short-coming of local investors is that they have no experience running plantations ... Datuk Taib is therefore inviting plantation owners in Peninsular Malaysia to invest in his state ... 'Why not come to Sarawak to invest? You can operate from Kuala Lumpur. Sarawak welcomes you,' Datuk Taib said.²

While the scarcity of plantation land in Malaysia had resulted in many local companies going to Indonesia in search of land, ... many are now zooming in on the native customary right (NCR) land development scheme in Sarawak.... Participation in the NCR scheme would open up opportunities to secure additional land bank.³

1 Introduction

The more than forty-fold expansion of oil palm cultivation in Sarawak, Malaysia, over the past 30 years constitutes the most rapid and radical transformation of the rural landscape ever seen in that state. From a mere 23,000 ha in 1980, the area planted with oil palm has increased to over one million hectares currently. Oil palm now accounts for about 8 per cent of the total land area of Sarawak (much of which is mountainous and uncultivable) and 70 per cent of the area under agricultural crops (Fig. 1). Almost half the planted area (46 per cent) is located in the highly suitable flat-to-undulating coastal belt between Bintulu and Miri in northern Sarawak, straddling the trunk road to a distance of up to 30 km either side. However, in the past decade, oil palm has expanded in every administrative division of the state, extending downstream onto Sarawak's extensive peatlands as well as far into the hilly interior. About 80 per cent of the oil palm has replaced primary forest and 30 per cent or more has involved clearing and draining peatlands.⁴ These largely unregulated land-use changes have raised serious environmental concerns within and beyond Sarawak.

More than land-use change, however, the expansion of oil palm has entailed a transformation of the agricultural economy from one based almost entirely on semi-subsistence smallholdings to one dominated by large-scale, private estates. Sarawak's agriculture was distinguished by the historical and geographical importance of swidden cultivation, practised by the indigenous, longhouse-dwelling Dayak population (Iban, Bidayuh, Kayan, Kenyah, and others) on their customary lands; the successful incorporation of smallholder cash crops, especially rubber and pepper, in these swidden farming systems, despite the prevalence of customary or community-based land tenure; and the absence of a large estate sector (Cramb 2011b).⁵ Government agencies were geared to supporting this widespread smallholder sector through research, extension, small grants, and infrastructure

¹ Chief Minister's Speech to Dewan Undangan Negeri (State Legislative Assembly) Sarawak, reported in *Sarawak Tribune* 11 November 1994, p. 10.

² K.C. Jong, "A year focused on an overwhelming problem," *Borneo Bulletin* 10 April 1982, p. 11.

³ Hanim Adnan, "IOI buying into Sarawak firms," *The Star Online* Wednesday March 19, 2008 <http://biz.thestar.com.my/news/story.asp?file=/2008/3/19/business/20687125&sec=business> (accessed 20/6/13).

⁴ See Cramb (2011a) for a justification of the 80 per cent figure. Wetlands International (2010) cites a figure of 300,000 ha of peatlands in Sarawak under oil palm in 2008.

⁵ There were only ever five rubber estates in Sarawak and these were all disbanded after the Pacific War (Cramb 2011b).

(Cramb 1990). Now nearly a million hectares (93 per cent of the total oil palm area) is in large, centrally managed estates (Fig. 2).

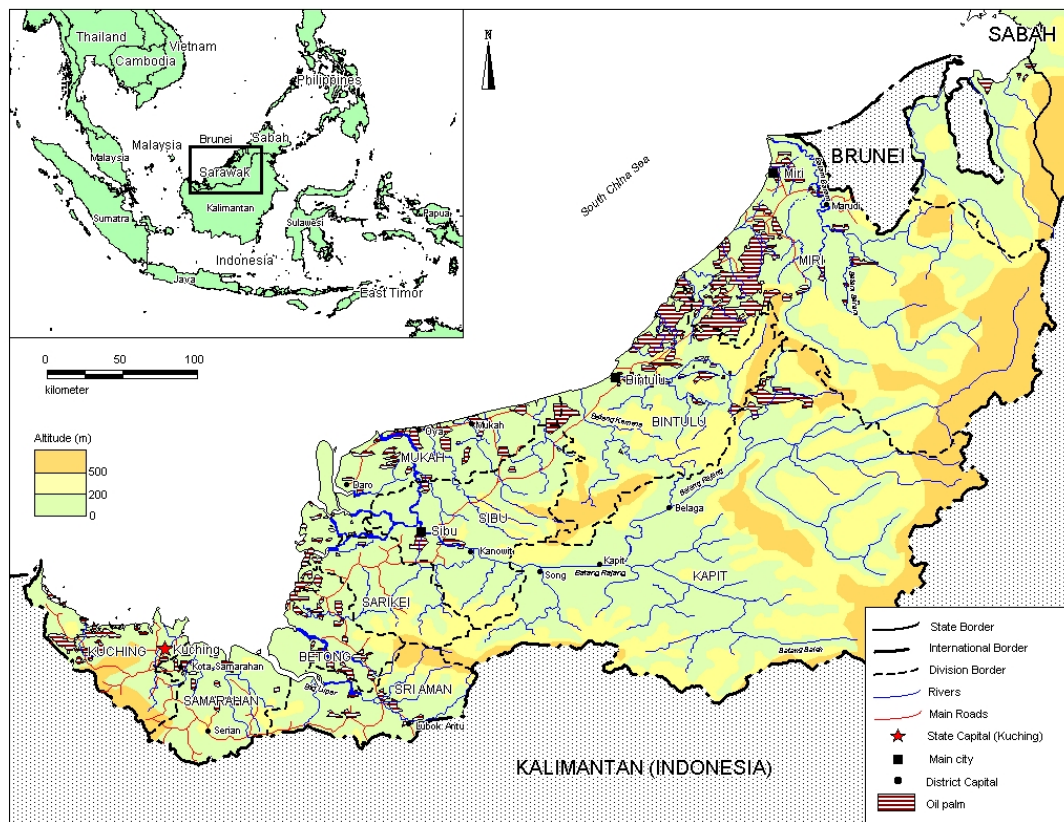


Figure 1 Distribution of oil palm plantations in Sarawak, 2005; names of Divisions (e.g., SAMARAHAN) shown in upper case; map drawn by J-F Bissonnette, University of Montreal, with data obtained from Malaysian Palm Oil Board.

It might be thought that the post-1980 expansion of large-scale oil palm plantations at the expense of the smallholder sector is merely an autonomous market response to the surge in global demand for palm oil and the superior efficiency of the estate mode of production. However, this would be to ignore the decisive role of government policy that has sought to limit smallholder development and deliver large areas of both public and customary land to a small but powerful clique of private plantation companies, thus actively creating a dualistic or bimodal agrarian structure where none existed before. In this paper I argue that the dominant mode of oil palm expansion in Sarawak has been driven not primarily by technical or market imperatives but by the exercise of state power to maximise opportunities for surplus extraction and political patronage. The result has been a domestic land grab of remarkable proportions.

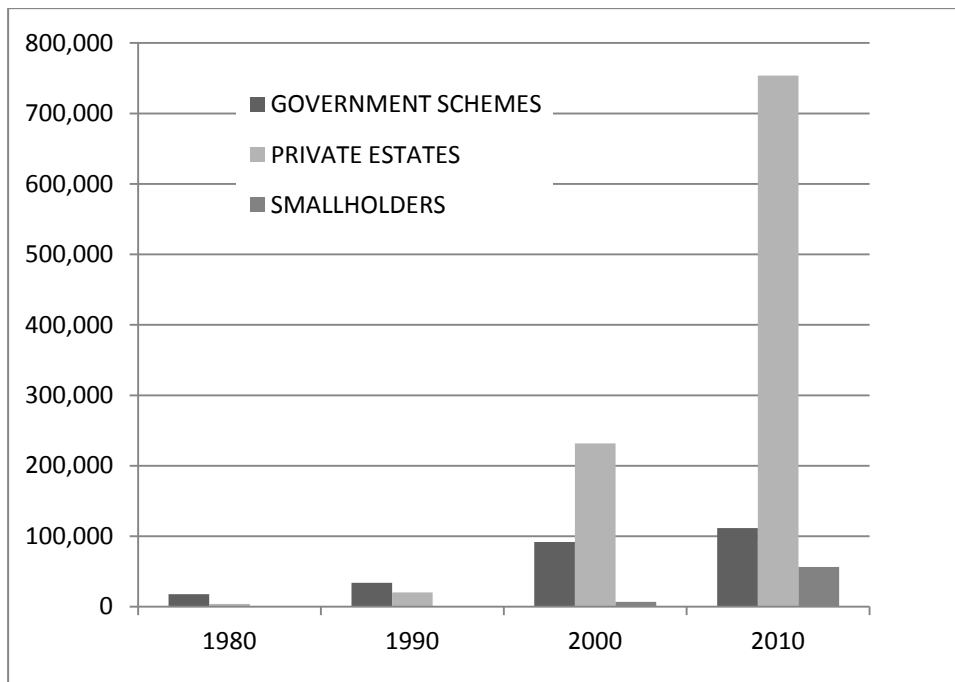


Figure 2 Decadal expansion in oil palm area by type of plantation, 1980-2010 (ha) (Source: Malaysian Palm Oil Board)

The term “land grab” is used advisedly. Borras and Franco (2012) argue for a more nuanced view of the concept than often expressed by the many activist groups that have mobilised to oppose this global phenomenon. As they point out, it is not always a straightforward matter of transnational interests unilaterally displacing the rural poor in countries with weak governance to satisfy their current and projected needs for food and biofuels. There is a range of land-use changes involved in what are grouped together as “land grabs” and a variety of property transactions that include national governments, local elites, domestic corporate actors, and rural households to varying degrees, with varying outcomes for rural livelihoods. Borras and Franco (2012) propose an initial two-dimensional framework that examines both the direction of changes in land use (e.g., from domestic food production to production of biofuels for export) and in property relations (e.g., redistribution of state-owned forest land to agricultural smallholders). Utilising this framework, I argue that the expansion of oil palm estates in Sarawak exemplifies an *internal* land grab with (a) a change in land use from forest and what are deemed to be marginal, idle, or waste lands (that is, swidden fallows) to the production of food (but not a staple food) and biofuel for export, combined with (b) a concentration of access to public and community land in the hands of a favoured set of domestic corporate actors and their patrons in the political-bureaucratic elite.

To characterise the mechanisms by which this transformation of land use and property relations has been wrought, I draw on the framework proposed by Hall et al. (2011), who identify four interrelated “powers” that shape the processes whereby some actors gain access to and others are excluded from land – regulation, the market, force, and legitimation. I argue that all these powers have been deployed, singly and in combination, in opening up land for large-scale oil palm development in Sarawak. In particular, the regulatory power of the state government (which has constitutional authority over land and forest resources in the Malaysian Federation) has been used to redefine land rights, reclassify land types, and facilitate the consolidation, privatisation, and commodification of all types of land. Market power has been exercised by the floating of an array of corporate entities and, through these, the mobilisation of financial capital to acquire and develop land for oil palm. Force has been employed by the state, to remove those deemed to be “squatters” on public land and to arrest and detain those whose actions have interfered with the development of contested tracts of land, and also by the agents of corporate actors themselves to intimidate and deter recalcitrant

landowners. The use of all these powers has been buttressed by the power of legitimation, through a policy narrative that casts the conversion and concentration of land as an unambiguously benign process designed only to bring development to otherwise backward and impoverished peoples.

A further concept is needed to make sense of the history of oil palm expansion in Sarawak – Polanyi’s (1944) notion of the “double movement.” In tracing the social and economic transformation brought about through the historical rise of the global market economy, Polanyi observes that “land” came to be regarded as merely a factor of production, as though it had been produced for sale like other traded commodities. However, “what we call land is an element of nature inextricably interwoven with man’s institutions ... The economic function is but one of many vital functions of land” (Polanyi 1944: 178). Hence its subordination to the market induced a countermovement on the part of society to protect those most immediately affected by the deleterious consequences. This response involved disparate actors and took many forms.

I argue that the land grab in Sarawak is a further example of treating land as a “fictitious commodity,” available to be combined with labour and capital in a large-scale corporate entity to produce profit. This has entailed a radical shift in outlook that has engendered a countermovement in society by those most affected, namely, customary landholders. While clearly open to the benefits of production for both domestic and global markets, and increasingly to non-agricultural bases of livelihood, the rural societies of Sarawak still remain deeply attached to land as shared territory, forming the basis of social and economic life and cultural identity (Cramb 2007, 2012). Hence it was inevitable that there would be a countermove to attempt to protect society from both the economic and social deprivations of the land grab.

With reference to the various means of social protection in nineteenth century Europe, Polanyi draws attention to the important but contradictory role of the legal system, remarking that “though common law and statute law speeded up change at times, at others they slowed it down. However, common law and statute law were not necessarily acting in the same direction at any given time” (1944: 181). I argue that the main instrument of social protection in the Sarawak case has been the system of common law, transferred to Malaysia by the British in the colonial era and incorporating the customary law of the local inhabitants. The common law has provided a direct counter to the state’s use of statute law to commodify and concentrate land. This has been a distinctive element in society’s reaction to the land grab in Sarawak that contrasts with the situation in neighbouring Indonesia.

2 The Policy Narrative

The policy narrative underpinning and legitimating the rapid expansion of large-scale, private, oil palm plantations in Sarawak is based on an outmoded dualistic conception of the agrarian transition such as prevailed in international development circles in the 1950s (Higgins 1956; Barber 1970; Cramb 2011). In this view, a dynamic, large-scale, capital-intensive, technologically advanced modern sector drives the process of economic development, drawing in and thereby transforming the resources (land and labour) of the small-scale, capital-constrained and technologically backward traditional sector. Subsequent research, however, has shown that dualistic conceptions of agrarian transition fail to capture the varied and complex processes by which local actors pursuing diverse livelihood strategies both respond to and resist globalising economic forces, and also obscure the political processes by which access to land, forests, business contracts, and other valuable assets are allocated and reallocated (De Koninck et al. 2011; Hall et al. 2011; Rigg and Vandergeest 2012).

Nevertheless, since acceding to office in 1981, the powerful and enduring Chief Minister of Sarawak, Abdul Taib Mahmud, who is also Minister for Resource Planning and Environment and thus tightly

controls the allocation of land and forests, has maintained a remarkably consistent policy narrative in support of large-scale plantation agriculture which has close affinities with dualistic development thinking. This policy narrative has formed the basis for major changes in the institutional arrangements governing agrarian development, particularly in the expansion of oil palm. It has been taken up and promulgated by political and business leaders and senior government officials as part of a program for radical agrarian reform, which Taib has characterised as part of a pragmatic and non-partisan “politics of development.” Hence to question it is to be condemned as not merely “anti-government” but also, more perversely, “anti-development.”

The policy narrative has been elaborated in numerous forums over the past 30 years. A 1982 article in the *Borneo Bulletin* reviewing Taib’s first year in office declared: “One of the biggest problems for the state’s leaders is how to increase the role of rural folk in the economy ... Datuk Taib believes large-scale land development holds the key to Sarawak’s future.”⁶ In a 1984 interview the Chief Minister proclaimed: “My vision for the next twenty 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.”⁷ In a major speech to the state legislature in 1994, in which he outlined his reasons for a joint-venture approach to large-scale plantation development on customary land, he concluded: “This is what will bring the natives into the main development. They may not realise immediately, they may not even be interested in all the mechanics of joint venture ... But the very fact that this is run by proper management, looked after by professional management, their business is as healthy as if they were doing their own business with the owner.”⁸ In 2001 he addressed a regional business conference, saying: “We have to transform our agriculture to large-scale agriculture for more controlled management, integrate research into production and [decide] how best to market our products.”⁹

This narrative draws, consciously or unconsciously, on three different strands of dualistic development theory – socio-cultural, economic, and organisational dualism.¹⁰ Notwithstanding Taib’s positive view of the role of the modern sector, there are elements of his analysis that echo Boeke’s pessimistic socio-cultural dualism, particularly with regard to the motivations and behaviour of farmers in the traditional sector (Boeke 1953). In Taib’s view this “economic irrationality” is depicted as a lack of “development consciousness” – a lack of awareness of what the government is trying to do in “bringing development” to the “natives,”¹¹ an irrational clinging to outmoded practices and customs, and an absence of the “discipline” and skills needed for a modern economy.

However, the narrative goes well beyond the behavioural assumptions of socio-cultural dualism. Taib’s unwavering and oft-repeated belief in the dynamism of large-scale, capital-intensive agriculture and its capacity to draw in and transform the traditional sector in desirable ways could be taken straight out of writings on economic dualism, epitomised in the work of W.A. Lewis (1954). Rather than emphasising an unlimited supply of labour, as in the Lewis model, Taib’s focus has been on Sarawak’s apparently unlimited supply of underutilised or “idle” land. The historical and ecological

⁶ K.C. Jong, “A year focused on an overwhelming problem,” *Borneo Bulletin* 10 April 1982, p. 11.

⁷ *Sarawak Tribune* 9 December 1984.

⁸ *Sarawak Tribune* 11 November 1994, p. 10.

⁹ *Sarawak Tribune* 21 June 2001.

¹⁰ It is tempting to recall Keynes’s well-known aphorism: “Practical men who believe themselves to be quite exempt from any intellectual influence, are usually the slaves of some defunct economist. Madmen in authority, who hear voices in the air, are distilling their frenzy from some academic scribbler of a few years back” (1936: 383).

¹¹ The term “native” was first introduced in Sarawak during the Brooke regime, mainly to contrast indigenous ethnic groups (Muslim and non-Muslim) with immigrant Chinese, whose access to land both Brooke and British colonial governments sought to restrict. Taib’s use of the term to refer to backward rural Dayaks is somewhat ironic and reminiscent of colonial prejudices.

reasons underlying Sarawak's sparse population and extensive systems of land use are largely ignored – it is assumed that land is idle because the people who occupy it are idle.

The key problem identified in Taib's diagnosis is that much of this resource is customary land (often referred to in Sarawak as "Native Customary Rights (NCR) land") which is "locked up" in the traditional sector and unavailable for modern, large-scale development. In this respect his analysis resembles the "organisational dualism" of Myint (1985), justifying a role for government intervention to overcome this institutional constraint and bring together the two sectors – notably through a joint-venture approach that marries modern sector dynamism (especially its capital and know-how) with the land and labour of the traditional sector.

The particular importance attributed to "unlocking" customary land in this dualistic narrative is clearly seen in Taib's 1994 speech to the State Parliament referred to above, on the eve of the state-wide campaign for joint-venture estate development. "Now I come to the question of the development of NCR [land] which is vital to the unity of Sarawak, to the social justice that may prevail in this country. It is the only way that can bring people within one generation into the main stream of the economy. People from the interior who are today struggling with outdated economy."¹² He continued: "I look around, how can we help the poorest in our midst to come up? We can do so according to economic laws. According to economic laws people can do better if they got three things." These he went on to identify as land, capital, and skilled labour. He concluded that the Dayaks generally lack capital and skills but the one resource they have is land: "Do they have land? When I ask do they have land, my God, they have plenty."¹³ Hence the apparent logic of devising ways to combine Dayak land with the capital and know-how of the modern estate sector in large-scale joint ventures, brokered by a government agency.

The problem with this powerful and persuasive narrative is that it is clearly inconsistent with the evidence regarding the century-long history of smallholder involvement in cash crops in Sarawak (Cramb 1990, 2007). The history of smallholder rubber and pepper not only demonstrates responsive and dynamic economic behaviour but that customary land tenure has not been an obstacle to the adoption and expansion of cash crops. It is true that, unlike rubber or pepper, oil palm cultivation displays economies of scale in first-stage processing, and the harvested product is not storable, hence there is a need for a minimum planted area within a maximum distance from a mill. This is the technical basis of the argument for large-scale, centrally managed production systems. However, private estates are only one such system. In particular, the adoption of oil palm by unassisted smallholders in those regions with access to mills is an unsurprising extension of Sarawak's long history of autonomous smallholder development (Cramb and Sujang 2013).

So what underlies the current dualistic narrative of agrarian development in Sarawak? Why its persistence? Michael Dove, in criticising distorted views of shifting cultivation in Indonesia, contends that official perceptions are "unconsciously deflected from empirical reality due to political and economic self-interest" so that negative stereotypes of shifting cultivation become "an article of faith, a dogma" (1986: 239). It can be argued that the dualistic narrative in Sarawak is also sustained because it accommodates the needs both of private plantation and timber interests within and outside Sarawak, and of the political elite in Sarawak's entrenched system of clientelist politics, with

¹² *Sarawak Tribune* 11 November 1994, p. 10. It is important to note that "people from the interior" do not occupy land suitable for oil palm estates. Rather, joint venture schemes are being proposed for communities in the midland zone where commercial smallholder agriculture is already well developed and hence the economy cannot be regarded as "outdated."

¹³ *Sarawak Tribune* 11 November 1994, p. 10.

Taib himself as the “super patron” (Leigh 1979; Dauvergne 1997; Cramb 2007).¹⁴ Whether embraced consciously or unconsciously, the narrative has certainly been deployed to legitimise official policy and obscure the underlying intention to open up vast areas of Sarawak’s land to this narrow clique of private interests.¹⁵

That the ultimate intention of government policy under Taib was to clear the way for private estate development was apparent from the outset. The *Borneo Bulletin* reported sympathetically in 1982 as follows: “[H]uge sums of money will be needed to resettle large numbers of villagers on land schemes. The Chief Minister believes a great deal of the money is available in Sarawak [referring to timber profits], but the short-coming of local investors is that they have no experience running plantations ... Datuk Taib is therefore inviting plantation owners in Peninsular Malaysia to invest in his state ... ‘Why not come to Sarawak to invest? You can operate from Kuala Lumpur. Sarawak welcomes you,’ Datuk Taib said.”¹⁶

However, potential investors with the capital and management expertise needed to develop land for oil palm faced two key constraints in Sarawak – “land” and “labour.” These were clearly identified by invited participants in a two-day Land Development Seminar held in Kuching in 1982, which Taib officially opened. A senior official from the Federal Land Development Authority (FELDA) indicated that the agency was running out of land in the Peninsula for estate development and was keen to utilise the underutilised or “idle” lands in Sarawak, but needed clear title to the land, unencumbered by the bothersome claims of customary landholders.¹⁷ On the other hand, a representative of Perlis Plantations, a large Peninsula-based company, indicated that a second key constraint was access to sufficient labour willing to work under the conditions and at the wage rates necessary to make estates profitable. In short, land was considered abundant and inherently cheap, but difficult and therefore costly to access, while labour was considered scarce, relatively costly, and “undisciplined,” as small-scale farmers had their own land and a range of on- and off-farm alternatives.

Rather than invest in labour-saving and labour-augmenting technologies and institutions, the problem of labour scarcity was solved by importing, on two-year contracts, low-wage, male Indonesian workers (known as *Tenaga Kerja Indonesia*, TKI) in large numbers, with little or no provision of social infrastructure. Currently there are estimated to be over 80,000 Indonesian plantation workers in Sarawak representing around 30 per cent of the agricultural and forestry workforce and 80 per cent of the oil palm plantation workforce.¹⁸ Whereas wages for local oil palm

¹⁴ While Auty (2001) specifically cites Malaysia, with its supposedly “consensual democracy,” as a rare exception to the tendency for resource-abundant economies to spawn predatory states, others such as Case (1993) have more accurately characterised Malaysia as a “semi-democracy” in which the state apparatus at the federal level is tightly controlled by the dominant party (UMNO) in pursuit of rents. In Sarawak, power is concentrated in the hands of a single “super-patron” (Taib Mahmud) and his party (PBB), enabling the implementation of land laws and policies that are adverse to the rural population, without effective opposition.

¹⁵ The psychology of those who perpetuate the official narrative would be a study in itself. Many individuals in the government and the bureaucracy appear to have been personally convinced by the narrative, or are genuinely conflicted, especially when things go wrong on the ground. Even then it is common for individuals to argue that these are merely implementation problems in what is otherwise a desirable program.

¹⁶ K.C. Jong, “A year focused on an overwhelming problem,” *Borneo Bulletin* 10 April 1982, p. 11.

¹⁷ By this time FELDA was focused on opening up “estates” rather than “settlement schemes” and was thus effectively a state-owned and managed plantation company rather than a settlement agency (Fold 2000).

¹⁸ This estimate is based on the following assumptions: one worker for every 10 ha planted (Abdullah et al., 2011); a total planted area of about 1,000,000 ha; four in every five oil palm workers are Indonesians; total employment in the agricultural and forestry sectors is 274,000 (Agricultural Statistics of Sarawak 2011, http://www.doa.sarawak.gov.my/modules/web/page.php?id=86&menu_id=0&sub_id=135, accessed 3/7/13). This estimate is supported by a Department of Labour figure for June 2012 of 98,092 (i.e., about 100,000) working in oil palm plantations; Philip Ho, Secretary of the Sarawak Oil Palm Plantation Owners’ Association

workers are MYR 30-40 per day, Indonesians are paid a minimum wage of MYR 22 per day if registered, whereas unregistered workers are paid as little as MYR 14 per day.¹⁹ Yet Indonesian workers are widely acknowledged to perform the same task much more efficiently, as well as being willing to work longer hours and six to seven days a week, while living in simple barracks on the estate. Hence the influx of Indonesian workers has held down rural wages and boosted the profits of the emerging estate sector. As this migrant population does not have access to land for farming, its presence in rural areas has not reduced the availability of land for estates.

The issues surrounding the use of this international “reserve army of labour” have been discussed by Li (2011) and Pye (2012). The focus here is rather on the institutional arrangements devised by the Taib Government to deliver cheap, “unencumbered” land to the newly created estate sector.

3 Delivering Land to the Estate Sector

3.1 The Land Code

The main “regulatory power” employed by the state to open up land for oil palm development has been statutory law. Land law in Sarawak, as embodied in the 1958 Land Code, reflects the legacy of a century of rule by the Brooke Rajahs (1841-1941) and the brief post-war period as a British colony (1946-1963). In this time, as noted, there was very little investment in agricultural estates. Rather, agriculture in Sarawak was dominated by Dayak shifting cultivators, who had progressively converted a portion of their fallow lands to rubber and pepper plots, and immigrant Chinese smallholders, who also grew rubber and pepper in more accessible locations near towns and along the few rural roads. Consequently the land laws that emerged sought both to protect and restrict the customary land rights of the Dayaks – by limiting the areas in which Chinese could acquire title to land and by excluding the Dayaks from remaining areas of primary forest (Cramb 2007, 2012).

Consequently, existing “native customary rights” were given a limited form of recognition in the Land Code, particularly the individual use rights created by clearing forest as part of the shifting cultivation cycle (Cramb and Wills 1990). However, no new customary rights could be created after the Code came into force in 1958 and, until a document of title was issued, customary land was held “by licence from the State.” In practice, then, native customary rights were viewed as an “encumbrance” on State land, which was defined as “all land for which no document of title has been issued” (Porter 1967: 84). Moreover, though the customary tenure systems of all indigenous groups in Sarawak (including the nomadic Penan) are based on the concept of individual use rights *within a community territory* (Lembat 1994; Bulan and Locklear 2008), the Land Code does not explicitly recognise the concept of territorial rights, giving priority to the registration of individual title to land. Hence forested land reserved by a community as part of its territorial domain (in Iban, *pemakai menoa*) is not recognised by the Sarawak Government. This has been the crucial difference between the Government’s perspective of customary tenure on the one hand and that of the landholders (and the courts) on the other (Cramb 2007).²⁰

(SOPPOA), estimated that 80 per cent of plantation workers are Indonesians (Jonathan Wong “Palm oil: bearish or bullish?” *The Borneo Post Online* 17 March 2013, <http://www.theborneopost.com/2013/03/17/palm-oil-bearish-or-bullish/>, accessed 3/7/13). The Indonesian Consulate in Kuching, however, estimates a much higher figure for Indonesian plantation workers in Sarawak.

¹⁹ Jack Wong, “Plantation firms in Sarawak to pay more to recruit new Indonesian workers”. *The Star Online*, February 25, 2011.

<http://biz.thestar.com.my/news/story.asp?file=/2011/2/25/business/8116788&sec=business> (accessed 15 May 2013). MYR 1.00 is equivalent to USD 0.30 as of 27 August 2013.

²⁰ The practical implications of this distinction can be very significant. For example, in a case brought by two Iban longhouse communities against Kanowit Timber Company Sdn Bhd, the company had argued that the

The Land Code defines a racially based system of zoning land, with the following categories: (1) Mixed Zone Land, in which there are no restrictions on who can acquire title to land; (2) Native Area Land, in which only “natives” of Sarawak can 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, which nevertheless accounts for the bulk of the state’s land (Porter 1967: 61). “Natives” are defined as those belonging to a number of indigenous ethnic groups, including Malays and Dayaks, but excluding Sarawakians of Chinese descent. In the 1980s Mixed Zone Land accounted for about 8 per cent of the total land area, Native Area Land for 7 per cent, Reserved Land for 16 per cent, and Interior Area land for 69 per cent (Foo 1987; Cramb and Dixon 1988).²¹ The category Native Customary Land overlaps the other categories. Around 20-25 per cent of the total land area and 60-70 per cent of agricultural land is claimed as Native Customary Land (Foo 1987; Cramb and Dixon 1988), though official estimates, based on unpublished maps, now put it at around half that area (13 per cent of the total land area), presumably because they explicitly exclude community territories and are based only on aerial photographic evidence of cultivation before 1958 (Cramb 2007).

The problem facing large-scale estate development is that there are still extensive areas that are “encumbered” with claims of native customary rights. Under the Land Code, Native Area Land and those portions of Interior Area Land subject to native customary rights are excluded from dealings with non-natives (including leasing). Even ostensibly unencumbered State land earmarked for land development has often turned out to be subject to native customary rights claims, especially in central and northern Sarawak where settlement was more recent. Even a longhouse-community that had been established, say, in the 1930s might still have been clearing old growth forest for shifting cultivation after 1958, and in any case would consider that remaining old growth forest within its original territorial domain was held under customary tenure (Cramb and Sujang 2011). Hence the Taib Government had to find ways to open up and streamline access to land for private estate development.

3.2 Tenure instruments

With regard to the allocation of State land for private plantation development (including land subject to customary claims), the mechanism for doing so was already available in Section 28 of the Land Code in the form of a tenure instrument termed a “provisional lease” (PL). This is a 60-year lease, allocated at (chief) ministerial discretion for a mere MYR 741 per ha (only a fraction of market land values), that gives a company the right to develop land for oil palm, provided it resolves any claims to land within the lease area.²² This might be done by offering compensation to the claimants in the

customary land in question was restricted to an area of 2,712 ha that had been used for shifting cultivation before 1958, whereas the landowners claimed their territory (*pemakai menoa*) was 5,512 ha. The High Court and the Court of Appeal upheld the validity of the landowners’ territorial claim. See “Sarawak loses appeal over NCR land decision”, *Hornbill Unleashed*, 23 June 2013

<http://hornbillunleashed.wordpress.com/2013/06/23/47345/> (accessed 28/6/13). It is easy to see how the official estimate of the extent of Native Customary Land in Sarawak is around half that of estimates based on the more inclusive concept of customary territorial rights (see next paragraph).

²¹ These percentages have changed incrementally over time as some Reserved Land is excised for development and some Interior Area Land and Native Area Land is reclassified as Mixed Zone Land, again as part of the process of commercial land development. Reclassifying as Mixed Zone Land confers an immediate capital gain on the landowner given the expanded market for such land.

²² Philip Ho, Secretary of the Sarawak Oil Palm Plantation Owners’ Association (SOPPOA), recently cited land values of MYR 12,000 per ha for unplanted land, compared with MYR 7,000-10,000 per ha in 2008 (J. Wong “Palm oil: bearish or bullish?” *The Borneo Post Online* 17 March 2013, <http://www.theborneopost.com/2013/03/17/palm-oil-bearish-or-bullish/>, accessed 3/7/13).

form of cash or shares in the development, or by excising the claimed land from the final area to be developed. In practice, such negotiated solutions have been the exception (Cramb and Sujang 2009), with the first recourse being to attempt the forcible exclusion of any communities found to be occupying land within a lease area, making use of intimidation, violence, and the state's police powers to do so. Plantation companies routinely claim (e.g., on their websites) to "own" the land described in a PL as part of their "land bank," and act accordingly.²³ This has been the most common source of conflict and legal dispute between companies and landholders.

However, to access areas where customary rights were in fact recognised by the state, a new mechanism was needed. Hence Taib established the Land Custody and Development Authority (LCDA or Pelita) in 1982 to initiate joint ventures between customary landholders and private developers in both urban and rural areas. The aim was to consolidate land held under customary tenure into extensive "land banks" suitable for plantation development, and to resettle scattered rural communities into large townships. During the 1980s it was assumed that establishing LCDA would be sufficient to bring customary land into the sphere of commercial land development. However, Dayak reluctance to be involved and the strength of political opposition at that time meant that LCDA made little progress in large-scale development of Dayak land (though it proceeded to engage in remunerative urban and rural projects on Malay land, as well as on State land, to which it had privileged access).

By the mid-1990s, however, with forest resources dwindling, oil palm plantations attracting good returns, increasing interest from both local and Peninsula-based investors, and the major Dayak opposition party (Parti Bansa Dayak Sarawak, PBDS) now incorporated in the ruling Barisan Nasional (BN) coalition, the government could refocus attention on the "problem of Native Customary Land." In 1995 Taib initiated his Konsep Baru (New Concept) policy, involving a state-wide campaign to promote the joint-venture approach to commercial land development for oil palm (Sarawak 1997). Taib called on his loyal clients in the Iban community to promote the concept. He informed the state legislature: "I have asked Datuk Jabu [Deputy Chief Minister] to convince all the leaders who are Ibans ... that the task is not partisan; it is a struggle to help our people and we got to learn to work together to make a success of it. ... I can see even by the year 2005 there will be a dramatic change among the Iban, Bidayuh, Orang Ulu because of the transformation brought about by the development of NCR."²⁴

To facilitate Konsep Baru, and estate development generally, extensive changes were made to the Land Code, with the overall effect of further restricting customary rights to land (Leigh 2001; Ngidang 2002; Cramb 2007). Thus the Code was amended in 1994 to enable the resumption of land for large-scale private development. In 1996, and again in 1998, the Code was amended to streamline the extinguishment of native customary rights and minimise compensation payouts. A new section was inserted in 1996, stating that "whenever any dispute shall arise as to whether any native customary rights exists or subsists over any State land, it shall be presumed until the contrary is proved, that such State land is free of and not encumbered by any such rights." A 1997 amendment allows the

²³ Section 28 of the Land Code states: "... when the immediate survey of any State land is impracticable, the Superintendent may order that a provisional lease ... be executed in favour of the person entitled. Every provisional lease shall specify the approximate extent and area of the land included therein but shall not entitle the holder to a grant or lease of the whole of the area specified." (Land Code, Chapter 81, Laws of Sarawak, National Printing Office, Kuching). The standard lease document itself states clearly in Section 1 (iii): "The holder of this provisional lease shall not be entitled to a lease of an area equal to the area above stated but only to such an area as the survey shows to be available." The document ends with the following statement: "NOTE: THIS IS NOT A TITLE TO LAND" (see copy of lease document in "Gangster State!" *Sarawak Report* 19 August 2012, <http://www.sarawakreport.org/2012/08/gangster-state/>, accessed 31/5/13).

²⁴ *Sarawak Tribune* 11 November 1994, p. 11.

government to amalgamate Native Customary Land within a “development area” into a single large parcel of land, and to grant a lease of up to 60 years over the land to a body corporate approved by the Minister. The body corporate is one which has been “deemed to be a native” by the cabinet. This provides the legal underpinning for the commercial use of Native Customary Land by a private plantation company owned by Malaysian Chinese.

Taib also moved at this time to open up Reserved Land for oil palm and timber plantations. Provisional Leases (PLs) are issued over what is deemed to be State land, including forested land *outside* the Permanent Forest Estate (so-called Stateland Forest, which is convertible to agricultural use). In 1996 and 1997 Taib introduced a mechanism whereby oil palm estates could be established *within* Forest Reserves. The Forests Ordinance was amended in 1996 and the Forests (Planted Forests) Rules introduced in 1997, providing for the issuance of Licences for Planted Forest (LPFs) within land zoned as Forest Reserves and allowing holders of LPFs to plant oil palm on 20 per cent of the plantable area for one cycle of 25 years “to allow flexibility in their cash flow management.”²⁵ In any case, the Chief Minister’s cousin, Hamed Sepawi, a major recipient of both PLs and LPFs, recently asserted to an Incorporated Society of Planters national seminar in Sibul that “oil palm plantation is reforestation and not the deforestation of tropical rainforest in both Malaysia and Indonesia as perceived by western non-governmental organisations.”²⁶

By 2012, 42 LPFs had been issued involving a plantable area of 1.3 million ha (over a quarter of the Permanent Forest Estate, not counting National Parks and Wildlife Reserves).²⁷ Forest Department figures indicate that, by June 2009, about 30 per cent of the allocated land had been planted, including 239,000 ha with timber species and 83,000 ha with oil palm (thus oil palm accounted for 26 per cent of the planted area). The Forest Department politely commented that “in some areas, investors may give priority to planting oil palm over tree planting. This is a challenge and demands regular monitoring and auditing by the Department.”²⁸ Among the other reasons given by the Department for what was considered relatively slow progress in establishing forest plantations was that LPFs (issued by the Forest Department) sometimes overlapped with PLs (issued by the Lands and Survey Department). More important, “claims of NCR by the natives in LPF areas are common which may result to some areas lagging in the progress of implementation.”²⁹

²⁵ Another mechanism for making forested land available for plantations has been to administratively excise areas from the Permanent Forest Estate, including Forest Reserves, Protected Forest, and National Parks, thus converting the area to State land. In some cases, customary land has been declared a Protected Forest, only to be excised a decade or so later as State land over which PLs have been issued without reference to the original customary owners. See “Razia raids Reserve Forest lands and Taib profits,” *Sarawak Report* 14 January 2011, <http://www.sarawakreport.org/2011/01/razia-raids-reserve-forest-lands-and-taib-profits-major-exclusive/> (accessed 28/6/13).

²⁶ “Oil palm cultivation is reforestation, planters’ national seminar told,” *Daily Express* 25 June 2013, <http://www.dailyexpress.com.my/news.cfm?NewsID=85804> (accessed 2/7/13). Emphasis added.

²⁷ “Licence holders told to quickly plant one million hectares of forests,” *The Star Online*, 2/10/2012 <http://thestar.com.my/news/story.asp?file=/2012/10/2/sarawak/12110249&sec=sarawak> (accessed 23/5/2013).

²⁸ “Planted Forest”, Forest Department Sarawak website, http://www.forestry.sarawak.gov.my/modules/web/page.php?id=1008&menu_id=0&sub_id=243 (accessed 23/5/13).

²⁹ In this respect, the Forest Department has less flexibility than the Lands and Survey Department as the Forests Ordinance stipulates that “no licence shall be issued until such rights by the natives have been settled or extinguished in accordance with the Ordinance or the Land Code.” Whether this is the case in practice is doubtful. *Planted Forest*, Forest Department Sarawak website, http://www.forestry.sarawak.gov.my/modules/web/page.php?id=1008&menu_id=0&sub_id=243 (accessed 23/5/13).

3.3 Forms of business arrangement

Using these various tenure instruments, the Taib Government facilitated the expansion of private oil palm estates at a rapid rate. The planted area in such estates increased from just under 4,000 ha in 1980 (14 per cent of the total, in one estate) to 936,300 ha in 2012 (87 per cent of the total, in many hundreds of estates),³⁰ a growth rate of 18 per cent, compared with the overall growth rate of 13 per cent (Table 1). There are three types of business arrangement for these estates – (a) sole ventures, (b) joint ventures with LCDA on State land, and (c) joint ventures with LCDA on Native Customary Land. These arrangements have been employed to harness the exclusionary power of the market to concentrate land in the estate sector.

(a) Sole ventures on State land

The most common arrangement is for a plantation company, whether established or newly-formed for the purpose, to apply for and be issued with a PL or LPF to a specified area. The land is invariably forested, though often already logged, so a permit is issued to extract the remaining valuable timber before clear-felling the area for planting with oil palm. Initially these leases were typically for at least 5,000 ha so the company could be licensed by MPOB to establish a mill, though as mills have become more widespread, leases to smaller areas have become feasible. By 2012, such sole-venture arrangements accounted for about 739,000 ha, or 70 per cent (PLs) and 9 per cent (LPFs) of the total private estate area.

(b) Joint ventures on State land

In other cases, at the discretion of the Chief Minister, the PL is issued to a joint-venture company (JVC) formed between LCDA and the private investor, with LCDA typically holding 40 per cent of the equity (though this varies). In such cases LCDA provides its share of the equity capital and is represented on the board of the JVC but plays little or no role in the management of the company, which is listed as a majority-owned subsidiary in the principal investor's group. Both Sarawak-based and Peninsula-based companies have engaged in this kind of arrangement. Presumably the only incentive for a private company to partner with LCDA in this way is to obtain the PL. In 2013, there were 24 such joint ventures with a planted area of about 104,000 ha, or 11 per cent of the total estate area.

(c) Joint ventures on customary land

The third arrangement, and the one that has received the most attention, emerged with the launch of the Konsep Baru policy in 1994 (Uning n.d.; MLD 1997). Under this policy customary landholders agree to assign their land rights to LCDA as trustee by signing a trust deed. In parallel, LCDA signs a Joint Venture Agreement and forms a JVC with a private-sector partner approved by the Ministry of Land Development, supposedly based on the investor's plantation experience and capital resources (Ngidang 2002; Bulan 2006). The JVC applies to be "deemed to be a Native" under the Land Code, so it can legally deal in Native Customary Land.

A PL, ideally covering a consolidated area of 5,000 ha or more, is issued to the JVC for a 60-year period. Following a picket survey of individual holdings within the lease area to determine the landowners' shares in the venture, the JVC pays the notional value of the land to the owners, which until 2009 was pegged at MYR 1,200 per ha (a fraction of market values).³¹ Of this, 10 per cent is paid up-front in cash, 30 per cent is invested in a government unit trust scheme, and 60 per cent is

³⁰ This figure includes estates established by FELDA, the privatised estates of the Sarawak Land Development Board, now owned by Sarawak Plantation Bhd, and joint-venture companies with LCDA on both State and customary land, but excludes SALCRA and FELCRA schemes on customary land.

³¹ Undeveloped land suitable for oil palm was valued at MYR 7-10,000 in 2008 (Wong 2013), hence the notional value of MYR 1,200 per ha was only 10-20 per cent of the market value.

invested as the landowners' equity in the company. The private-sector partner holds 60 per cent of the equity in the JVC, the landholders 30 per cent (though LCDA as trustee), and LCDA 10 per cent (in its own right). Hence, from the investor's point of view, the equity arrangement (60:40) is no different to that of a JVC on State land, except for the additional cost of meeting the landholders' share.

Landholders receive no title to their land but can expect to receive dividends according to the area of land contributed, once the JVC makes a profit. They can obtain employment on the estate or bid for contracts but are not involved in any management decisions or financing arrangements. The board of the JVC is dominated by the investor's representatives and, as with joint ventures on State land, the JVC is listed as a majority-owned subsidiary in the investor's group.

By 2011 there were 31 joint-venture projects underway on customary land, involving 12,600 participants – mostly from the Iban ethnic group that constitutes by far the largest proportion of Sarawak's Dayak population. A total of 58,000 ha had been planted with oil palm, averaging 4.6 ha per participant. This was only about 6 per cent of the total estate area.

(d) Shell companies

In practice, in each of these three types of business arrangement, the company that applies for and is awarded the PL can be a so-called "shell company," with no relevant business experience, assets, or activities, but with close links to the Chief Minister. Given that the market value of the lease is at least ten times the premium paid, the company can be immediately sold to prospective planters, providing a windfall gain to the original owners. For example, a PL to 5,000 ha of undeveloped State land would cost the shell company MYR 3.7 million (or even less, at the Minister's discretion). Given land values in 2008, the company could be bought for at least ten times that amount, giving a net return of MYR 33 million for merely registering the company and applying for the lease.

Such practices, though widely known, were starkly confirmed in a recent expose by Global Witness, where relatives and associates of the Chief Minister clearly outlined their use of this approach.³² Not only local companies such as Rimbuan Hijau but large Peninsula-based companies such as Tradewinds and Sime-Darby have been subjected (knowingly) to this sort of deal (see below). A variant approach is for the Sarawak-based company holding the lease to begin developing the plantation, whether on State land or Native Customary Land, and then, after running into financial difficulties or land disputes, to sell its stake, sometimes at an inflated price, to a large Peninsula-based company seeking to expand its land bank. Companies including IOI Corporation and TH Plantations have been caught in this trap (see below).³³

³² Global Witness, *Inside Malaysia's Shadow State: A Film by Global Witness*, <http://www.globalwitness.org/insideshadowstate/> (accessed 3 May 2013).

³³ An additional way to capture part of the economic rent from oil palm development, whether on State land or Native Customary Land, is for an agent of the Chief Minister or another political actor to demand an upfront payment (or facilitation fee) from the potential investor for approving a lease or setting up a joint venture agreement. Global Witness exposed this (alleged) practice with regard to the Chief Minister (Global Witness, *Inside Malaysia's Shadow State: A Film by Global Witness*, <http://www.globalwitness.org/insideshadowstate/>, accessed 3 May 2013). *Sarawak Report* revealed an astounding case in which the state representative for Begunan (a party colleague of the Minister for Land Development) issued a letter outlining the minimum fee to be paid by an investor to his agent for setting up a joint venture on about 28,000 ha of customary land in his constituency (the total fee amounting to at least MYR 70 million) and identifying three shell companies (with unintentionally ironic-sounding names such as "Noble Rewards") that were to be involved in any joint venture, the principal shareholders of which were relatives and associates of the Minister for Land Development and the Member for Begunan ("Depraved Datuks – new shocking evidence against Mong and Masing," *Sarawak Report*, 17 March 2012,

3.4 Landholder reactions

The concerted effort of the Sarawak state to make both State and Native Customary Land available to the private plantation sector has given rise to a countermovement on the part of customary landholders in many locations. Affected communities have used a variety of methods to draw attention to their claims and to seek to recover their land. These have included, variously, filing police reports, appealing to political representatives, blockading plantation roads, damaging plantation equipment, harvesting the oil palm on the disputed land, demonstrating outside government buildings, and enlisting the support of the few non-government organisations in Sarawak that have been able to take up their cause (e.g., through community mapping, information sessions, and legal advice). In some cases Iban communities have invoked traditional warrior customs to retaliate against the violent standover tactics of some companies. Most significant, landowners have taken plantation companies, government agencies, and the Sarawak Government itself to the High Court in Sabah and Sarawak.³⁴ More than 200 such cases are pending, some having been in process for more than a decade.

In a number of landmark judgements, the High Court has undermined the government's narrow statutory interpretation of customary land rights and called into question the legality of the tenurial and contractual arrangements for large-scale oil palm development. The crucial judgement was in 2001 in the case of *Nor anak Nyawai and others v. Borneo Pulp Plantation and others* that upheld the notion of prior territorial rights (*pemakai menoa*) as a legitimate form of customary ownership, regardless of any evidence of clearing for cultivation, and trumping any tenure instrument (such as a PL) issued by the state.³⁵ Some of the subsequent judgements are discussed in the analysis that follows, which traces the experience of the various plantation companies that took advantage of the Taib Government's policies.

4 The Plantation Companies

The post-1980s expansion of oil palm estates has been undertaken by two distinct types of companies – newly formed plantation companies based in Sarawak and established plantation companies based in Peninsular Malaysia (Table 1). As noted above, in 1982 Taib remarked that “a great deal of the money is available in Sarawak, but the short-coming of local investors is that they have no experience running plantations.” He was therefore “inviting plantation owners in Peninsular Malaysia to invest in his state.”³⁶ However, the invitation was taken up rather slowly and the experience of the Peninsula-based companies has been mixed. Hence the impetus came initially from local investors with close patron-client ties to Taib.

The patron-client pattern of resource allocation had become well-established during Sarawak's timber boom of the 1960s, 1970s, and 1980s (Dauvergne 1997). Timber licences were allocated over vast areas of valuable forest, mainly to Malaysian Chinese firms, in return for financial and other

<http://www.sarawakreport.org/2012/03/depraved-datuks-new-shocking-evidence-against-mong-masing/>, accessed 19 June 2013). The validity of this document has not been denied.

³⁴ In the Malaysian judicial system there are two High Courts, one for Peninsular Malaysia and one for Sabah and Sarawak, that sit below the Court of Appeal and the Federal Court. The High Courts have unlimited jurisdiction (except in criminal matters involving Islamic law). Cases are heard by a single judge. See “Judiciary of Malaysia”, *Wikipedia*, http://en.wikipedia.org/wiki/Judiciary_of_Malaysia (accessed 28/6/13).

³⁵ The Nor judgement was equivalent in import to the High Court of Australia's 1992 Mabo judgement that recognised common law native title for the first time, overthrowing the doctrine of terra nullius. The Mabo judgement was cited in the Nor judgement.

³⁶ K.C. Jong, “A year focused on an overwhelming problem,” *Borneo Bulletin* 10 April 1982, p. 11.

material favours, especially at election time. Hence the ruling Barisan Nasional (BN) coalition's hold on power in Sarawak, and its ability to deliver crucial parliamentary seats to the BN federally, were underwritten by the Chief Minister's unfettered control over Sarawak's forest wealth. These patron-client links were extended beyond timber to include privileged access to lucrative government contracts and, above all, to commercially valuable urban and rural land (Leigh 1979). Moreover, the key commercial actors came to include not only favoured Chinese businesses but an emerging class of so-called bumiputra ("indigenous") concerns, most of which were owned, directly or indirectly, by members of the political and bureaucratic elite in Sarawak.³⁷

4.1 Sarawak-based companies

(a) Sarawak Oil Palm

The first large-scale commercial planting of oil palm in Sarawak began in 1968 with the establishment of Sarawak Oil Palm (SOP) Sdn Bhd, a joint venture between the Sarawak Government and the Commonwealth Development Corporation (CDC), which planted just over 3,000 ha of State land in Miri Division in the state's Northern Region.³⁸ This functioned from the outset as a commercial estate with mainly Javanese labour. However, it was seen as a catalyst for an inclusive pattern of oil palm development in northern Sarawak, which was at that time still a sparsely populated and little developed region. The Miri-Bintulu Regional Planning Study (MBRPS) of the early 1970s recommended the allocation of State land for both commercial estates such as SOP and independent settlers, who would benefit from the "sites and services" provided by government agencies such as the Sarawak Land Development Board (see below) and the processing infrastructure established by the estates (Hunting Technical Services/Hoff and Overgaard 1974). The main concern of the MBRPS consultants was to avoid the "sociological ills associated with plantation monoculture" in other parts of the world.³⁹ However, the recommended mix of estates and smallholdings was not adopted in the subsequent development of the region (Cramb and Sujang 2013), unlike in Indonesia where the nucleus estate and smallholder (NES) model was widely used.

In the Taib era, SOP has grown into one of the largest private plantation companies in Sarawak, with a planted area in 2013 of over 70,000 ha.⁴⁰ In 1990, SOP became a public company (SOP Bhd) and, in 1995 CDC's share was bought over by Ling Chiong Ho, a timber tycoon and close ally of the Chief Minister, whose Shin Yang Group has attracted widespread criticism for its logging and oil palm activities in Sarawak's interior.⁴¹ Ling has been executive chairman of SOP Bhd since 2003; his brother and eldest son are also on the board, as is Rentap Jabu, son of Deputy Chief Minister, Alfred Jabu Numpang. Under Shin Yang's control, SOP has been at the centre of some of the major conflicts over customary land. In particular, in 1999, four thugs employed by a SOP Bhd contractor were killed by Iban landowners in Suai in retaliation for the standover tactics that were being employed (IDEAL 1999). The Ministry of Land Development reported in 2000 that 5,700 ha of SOP's Suai Estate were

³⁷ One of Taib's achievements, in the eyes of his supporters, has been to retain control of state patronage for Sarawakians, whether Chinese or bumiputra, and to keep at bay the voracious business machine established by UMNO in the Peninsula (and latterly in Sabah) (Gomez and Jomo 1999).

³⁸ Sarawak is now divided into ten administrative divisions which are, from south to north, Kuching, Samarahan, Sri Aman, Betong, Sarikei, Sibu, Kapit, Bintulu, Miri, and Limbang (see Fig. 1). Land development agencies also refer to three regions – Southern (including the first four divisions above), Central (the next two divisions), and Northern (the last three divisions).

³⁹ Clifford Sather, personal communication, 31 May 2011. Sather, an anthropologist who has completed detailed research on Iban and Bajau societies, was a consultant for the MBRPS, along with the late Stephen Morris, the foremost ethnographer of the Melanau. The Iban and Melanau were the major ethnic groups in the area considered by the MBRPS.

⁴⁰ The SOP website reports a planted area of 72,653 ha, including 1,559 ha in a joint-venture scheme on customary land at Ulu Undup in Southern Sarawak.

⁴¹ Pelita Holdings, a subsidiary of LCDA, owns a 28.5 per cent share.

subject to NCR claims, comprising 87 per cent of the approved area. Nevertheless, the Shin Yang Group continues to use SOP Bhd as a vehicle for its expansion.

Table 1 Major oil palm plantation companies in Sarawak

| Sarawak-based companies | Peninsula-based companies |
|--|---|
| Rimbunan Hijau Group (incl. Rimbunan Sawit Holdings Bhd, Jaya Tiasa Holdings Bhd, Subur Tiasa Holdings Bhd, Mafrika Corporation Sdn Bhd) | Tradewinds Plantations Bhd |
| Sarawak Oil Palm Bhd | Sime Darby Plantation |
| KTS Group (incl. BLD Plantation Sdn Bhd, Grand Perfect Sdn Bhd) | Tambunan Haji (TH) Plantations Bhd |
| WTK Holdings Bhd | Wilmar International Ltd (formerly PPB Oil Palms Bhd, Perlis Plantations Bhd) |
| Ta Ann Holdings Bhd (incl. Ta Ann Plantations Sdn Bhd, Grand Perfect Sdn Bhd) | Boustead Holdings Bhd |
| Sarawak Plantations Bhd (formerly Sarawak Land Development Board) | IOI Corporation Bhd |
| Shin Yang Group (incl. Sarawak Oil Palm Bhd) | FELCRA Bhd |
| Delta Bhd (incl. Delta Padi Sdn Bhd) | FELDA Bhd |
| Samling Group (incl. Glenealy Bhd, Grand Perfect Sdn Bhd) | |

Note: Berhad (Bhd) = Limited, denoting a public company; Sendirian Berhad (Sdn Bhd) = Proprietary Limited, denoting a private company. Companies are listed roughly in order of total planted area. Note that FELCRA has established both commercial estates on State land and managed smallholder schemes.

(b) The big six timber groups

Apart from SOP, the Sarawak-based companies have mainly comprised private, family-based plantation companies formed by local timber tycoons, many of them Foochow Chinese from Sibu Division, who had already acquired considerable wealth and political influence through their access to logging contracts and concessions in Sarawak's vast swamp and hill forests during the timber boom of the 1960s through to the 1980s (Leigh 1988; Dauvergne 1997; Faeh 2011). These were the "local investors" described by Taib as having "a great deal of money" but "no experience running plantations." There are six such companies that continue to dominate the timber industry in Sarawak, all with close links to the Chief Minister: Samling (founded in 1963 by Yaw Teck Seng), Rimbunan Hijau (founded in 1975 by Tiong Hiew King), WTK (founded in the 1940s by Wong Tuong Kwang), Ta Ann (founded in the 1980s by the above-mentioned Hamed Sepawi and others), KTS (founded in 1965 by Lau Hui Kang), and the above-mentioned Shin Yang (founded in 1983 by Ling Chiong Ho). Between them, these groups hold timber concessions over at least 4.5 million ha, a third of Sarawak's land surface (Samling has around 1.6 million ha and Rimbunan Hijau around 1.5 million ha), and around 700,000 ha of land banks (in the form of issued LPFs) for possible oil palm expansion (Faeh 2011). Most of the founders of these companies worked their way up from humble rural beginnings in the 1940s, 1950s, and 1960s, made their fortunes from logging in the 1960s, 1970s, and 1980s, and then diversified into a range of other pursuits in the 1980s and 1990s, establishing large family-owned conglomerates.⁴² One or more companies within each of these conglomerates

⁴² Ta Ann stands out as having been established by a Melanau, Hamed Sepawi, a professionally-trained forester who is also Taib's cousin and close business associate.

was then publicly listed in the 1990s and 2000s to raise share capital for global expansion; apparently, only Shin Yang remains focused on Sarawak.⁴³

As timber resources were progressively depleted (log volumes peaked around 1990) and the profitability of oil palm increased, these companies obtained PLs to establish oil palm plantations. Though inexperienced in agricultural plantations, they had the adaptability, financial resources, and field staff to make this transition (though not necessarily the motivation or skills required to negotiate constructively with customary landowners). The KTS Group was the first timber group in Sarawak to venture into oil palm in its own logged-over areas with a plantation started in 1987 at Niah, south of Miri, by an associate company, Bintulu Lumber Development, which was listed on the Bursa Malaysia (formerly the Kuala Lumpur Stock Exchange) in 2003 as BLD Plantation Bhd (Faeh 2011). KTS now has a planted area of about 45,000 ha, of which BLD has 24,000 ha, mostly within the prime Miri-Bintulu oil palm belt.

Rimbunan Hijau followed soon after with a plantation and mill in the Bakong region near Miri in 1988 that required a negotiated compromise with customary landholders before it could go ahead (Cramb and Sujang 2011). The group has since expanded to hold 16 estates with a gross area of over 90,000 ha. After the introduction of the Planted Forest Rules in 1997, Rimbunan Hijau, through its subsidiary Jaya Tiasa, has used LPFs to expand onto the peatlands of the lower Rejang in Sibul Division. Through other subsidiaries, Rimbunan Sawit Berhad and Mafrica Corporation Sdn Bhd, it is also involved in seven Konsep Baru projects on customary land from Lundu in the Southern Region to Ulu Teru in the Northern Region. Together these involve 3,766 participants (30 per cent of the total) and a planted area of 17,234 ha (30 per cent of the total), making Rimbunan Hijau the largest investor in Konsep Baru projects. However, none of these projects has issued dividends to the landholders (though some “incentive payments” have been made), suggesting that the JVCs involved are being squeezed in the interests of the holding company (Cramb 2013). At least two of the projects are subject to land disputes, with Iban landowners claiming that their land has been included in the schemes fraudulently. In mid-2011, Palmraya Pelita Meruan Sdn Bhd in Sibul Division (a Mafrica investment) had reportedly lost MYR 2.33 million in revenue due to the theft of fruit from its estate by aggrieved landholders, while in mid-2012 it was reported that 26 landholders in the Palmraya Pelita Sikat Sdn Bhd estate, also in Sibul Division, had refused to surrender their 3,000 ha to the company and were allegedly being subjected to violence by company workers; they had organized a *sandau ari* (a daytime ceremony to which neighbouring longhouses are invited) to invoke the support of the Iban gods and ancestral spirits in their land battle.⁴⁴

The other four large timber groups have also expanded their oil palm holdings, both by establishing new plantations and acquiring existing plantations. Samling now has around 19,000 ha planted, WTK has 40,000 ha, Ta Ann Plantations has 35,000 ha, and Shin Yang has at least 23,000 ha. Shin Yang has defied most observers’ expectations by pushing into the Upper Rejang in Kapit Division, within the catchment of the Bakun Dam, in forested lands claimed by semi-settled Penan groups. A recently formed company, Grand Perfect Sdn Bhd, jointly owned by Samling, KTS, and Gasijaya (which is in turn owned by Hamed Sepawi of Ta Ann) holds the first and largest LPF (LPF001), covering 490,000 ha in Bintulu Division, of which 150,000 ha is being planted with a mix of *Acacia mangium* (for

⁴³ It can be noted that the evolution of this kind of “personal capitalism” has been characteristic of the rise of the corporate economy in Southeast Asia as a whole (Brown 2006).

⁴⁴ Jack Wong, “Planters hit by illegal harvesting,” *The Star Online*, 5 August 2011, <http://biz.thestar.com.my/news/story.asp?file=/2011/8/5/business/9239556> (accessed 28/6/13); Joseph Tawie, “Guns, threats won’t scare us, say natives,” *FMT News*, 6 July 2012, <http://www.freemalaysiatoday.com/category/nation/2012/07/06/guns-threats-wont-scare-us-say-natives/> (accessed 28/6/13).

pulpwood) and oil palm.⁴⁵ A trial is pending in the High Court over Grand Perfect's oil palm plantation in Sebauh, which is being contested by customary landholders.

(c) Other Sarawak Chinese companies

Other Sarawak-based companies have followed the lead of the "big six" – including Chinese-owned companies with links to Taib and bumiputra companies owned by Taib family members or nominees or other political and business figures close to Taib. Some of these were merely shell companies, established to acquire a PL and then be bought over, bestowing a capital gain on the original shareholders, but some were genuine plantation concerns (though these too have sometimes been bought over by larger Peninsula-based companies). In many cases, the companies are linked via complex and fluid shareholding arrangements.

Delta Bhd, founded by another Foochow timber tycoon and businessman, Hii Yii Peng, conforms to the pattern set by the "big six", though it has ventured into oil palm more recently. In 1997 Delta's subsidiary, Rinwood Plantation Sdn Bhd, formed a joint-venture company with LCDA to establish a plantation on supposedly State land along the Tinjar River in Miri Division, but resistance from Kayan and Kenyah customary landholders created financial and legal problems for the venture and it subsequently sold its stake to the Peninsula-based IOI Corporation (see below). A Delta subsidiary – Delta Padi – was allocated 27,600 hectares of State land in the Rejang Delta in Sibul Division for MYR 225 per ha, supposedly to establish rice plantations, but the Melanau customary landowners, who had welcomed the rice proposal, were surprised to find that Delta Padi had established mostly oil palm plantations instead. Delta Padi is of particular interest because it is part-owned by Mesti Bersatu Sdn Bhd, of which Taib himself (rather than a family member or nominee) is a director and major shareholder.

Similarly, Double Dynasty Plantations Sdn Bhd, established in 1997, has been another more recent entrant to the oil palm industry that has expanded rapidly under Taib's patronage. Double Dynasty (DD) is jointly-owned by Yee Ming Seng (linked to the Hii family and the Delta Group) and Ling Chiong Sieng (co-owner and CEO of Shin Yang Holdings).⁴⁶ The company also has close links to Mutiara Hartabumi Sdn Bhd, of which the Chief Minister's brother, Ibrahim Mahmud (a retired policeman), was executive chairman and a major shareholder until his death in 2011, and to Nirwannah Muhibbah Sdn Bhd, owned by Naroden Majais, Assistant Minister for Resource Planning and a close confidant of Taib.⁴⁷ With these connections, DD has in the past 15 years established 44,000 ha of oil palm plantations in joint ventures with LCDA in Bintulu and Samarahan Divisions on both State land and Native Customary Land.

Double Dynasty's joint-venture company in Bintulu Division, DD Pelita Sebungan Sdn Bhd, has planted 4,300 ha out of a gross area of 10,000 ha and is said to be one of the more successful joint ventures on customary land. In June 2012, in a ceremony attended by politicians and local officials, the company announced that "dividends" of MYR 8.7 million had been paid to the 750 participants.⁴⁸ However, this figure included the MYR 2.1 million paid up-front as part of the standard Konsep Baru package, of which one quarter was in cash and three quarters invested in a government unit trust,

⁴⁵ "Taib's cousin Sepawi lashes out at Baru over corruption allegations," *Hornbill Unleashed*, 14 September 2011, <http://hornbillunleashed.wordpress.com/2011/09/14/23347/> (accessed 28/5/13).

⁴⁶ Presumably this linking of two Foochow family conglomerates is the inspiration for the name "Double Dynasty."

⁴⁷ Mutiara Hartabumi was approved in 2007 to develop 30,000 ha in Sebauh (Bintulu Division) as a Konsep Baru joint venture with 780 landowners.

⁴⁸ "DD Pelita Sebungan Plantation ngungkupka RM8.7 miliun dividen," *Borneo Post Online (Berita Iban)* 22 June 2012 <http://www.theborneopost.com/2012/06/22/dd-pelita-sebungan-plantation-ngungkupka-rm8-7-miliun-dividen/> (accessed 24/5/2013).

Amanah Saham Sarawak (ASSAR). This payment is in fact a charge against the JVC and hence a deduction from future dividends (Cramb 2013). A further MYR 1.4 million was in interest payments from the ASSAR investment and not a return to the oil palm development. Another MYR 2.2 million had been paid as “incentive payments” – again, a charge against future dividends and a dubious form of payment in accounting terms that had been instituted in all the Konsep Baru schemes to allay landholder discontent following the failure of the Boustead Pelita Kanowit project to deliver dividends (see below). This leaves MYR 3 million of dividends, which may have been in fact “advance dividends,” also introduced in the wake of landholder protests at Kanowit. Allowing that the last figure represented actual dividends (which would have made this company one of only two companies out of 31 to issue genuine dividends to landholders), this represents MYR 300 for each hectare included in the project after seven years of operation, or the equivalent of about 10 days’ farm wages.

(d) Bumiputra companies

As mentioned above, Sarawak Chinese companies often have close formal and informal links to bumiputra companies, both through shareholdings and shared use of human and other resources. The connection between Double Dynasty and Taib-linked bumiputra-owned companies can be seen in a case from Samarahan Division, which encompasses the Sadong basin where the above-mentioned Naroden Majais has concentrated his oil palm activities. Sadong Plantation Sdn Bhd was formed in 1998 as a joint venture between Naroden’s Nirwana Muhibbah Sdn Bhd (70 per cent) and LCDA (30 per cent) to establish oil palm on an area of 3,880 ha known as Lot 2979, for which it was issued a PL in 2000. The land in question was rezoned from Interior Area Land to Mixed Zone Land in 1998, thereby conferring an immediate capital gain on the lessees. Having logged the area, the joint-venture partners brought in Double Dynasty through its wholly-owned subsidiary, Kee Wee Plantation Sdn Bhd, which acquired a 65 per cent stake while Nirwana Muhibbah retained 5 per cent. The company was renamed DD Pelita Sadong Sdn Bhd and proceeded to plant almost the entire area with oil palm.

However, this ignored the fact that Lot 2979 formed part of the ancestral lands of the Remun Iban, one of the longest-settled Dayak groups in Sarawak, whose occupancy of this territory predated the arrival of James Brooke in 1839 and had involved paying regular tribute to the Sultan of Brunei. Despite numerous letters to the authorities and police reports, no action was taken against the company, so in 2002 the landowners from one of the Remun villages, Kampung Merakai, filed a class action suit in the High Court. The trial started in 2008 and in 2011 Justice Linton Albert declared the lease null and void with respect to the disputed area as it was part of the territorial domain of the plaintiffs, thus again upholding the legality of customary territorial rights as established in the 2001 Nor judgement. The PL was to be rectified to exclude the customary land, and damages paid.⁴⁹ In a second case, a neighbouring Remun village, Kampung Lebor, also challenged the validity of the lease in the High Court and in 2012 Justice Clement Skinner too found in their favour in a lengthy and closely reasoned judgement which again reasserted the validity of their prior territorial rights to the land, regardless of whether it had been cultivated or otherwise met the stipulations of the Land Code. The practical outcome of these judgements was that the landowners obtained exclusive control of the established oil palm plantation on their land and were exploring options for cooperative management with an alternative plantation agency.

⁴⁹ Joseph Tawie, “Court orders company to pay natives,” *FMT News*, 23 February 2011

<https://www.freemalaysiatoday.com/category/nation/2011/02/23/court-orders-company-to-pay-natives/>

(accessed 29/5/13); Judgment of Linton Albert, J., Suit No. 22-43-2002-1, High Court of Sabah and Sarawak at Kuching, 21 February 2011.

http://www.highcourt.sabah.sarawak.gov.my/apps/highcourt/v3/modules/highcourt_web/

(accessed 30/5/2013).

Again, as with Delta, after encountering such problems with local landholders, Double Dynasty managed to sell its oil palm interests in Samarahan Division to a Peninsula-based company seeking to expand its land bank. It first negotiated with IOI Corporation in 2008, though this deal fell through, but then subsequently managed to sell its stake to TH Plantations in 2012 (see below). Notwithstanding these setbacks in Samarahan, another company linked both to Naroden and to Awang Tengah Ali Assan (Minister for Resource Planning and Environment II, and a potential successor to Taib), United Teamtrade Sdn Bhd, has pushed ahead with oil palm development in an adjacent lot of 7,300 ha, also owned by Remun Iban, using gangster-like tactics reminiscent of Sarawak Oil Palm in the 1990s to intimidate the protesting landholders.⁵⁰

Another important Taib-linked bumiputra company that has expanded its operations in Sarawak's Southern Region in recent years is Tetangga Akrab Sdn Bhd. This company is controlled by Sepawi Ariffin, a former Assistant Director of the Department of Land and Survey who subsequently established his own surveying firm and who, from 1992 to 2006, was Executive Secretary of Parti Pesaka Bumiputera Bersatu (PBB), the dominant party in the state BN coalition. Tan Thian Siang is the company's managing director and driving force, as well as being a key player in two other companies operating in the region, United Teamtrade and Memaju Jaya. These three companies, operating out of the same office in Kuching, have carved up the Balai Ringin area of Samarahan Division, a long-settled and fully occupied Dayak region along the Serian-Sri Aman road, using monetary inducements and violent intimidation to enforce their access to the land they have leased. Landholders have instituted legal proceedings in a number of these developments.

In addition, Tetangga Akrab was the joint-venture partner in a Konsep Baru project on Iban land in Pantu District, Sri Aman Division. The JVC, Tetangga Arkab Pelita Sdn Bhd, had proceeded with the partial development of the land even though many of the customary landowners had had their land included in the consolidated lease without their knowledge or consent. It appeared that the government-appointed regional leader (*penghulu*), who was in favour of the development, had intentionally obscured the land rights of those who did not want to participate.⁵¹ Over 100 of these claimants eventually took LCDA, Tetangga Akrab, and the Sarawak Government to the High Court. In 2009, while these proceedings were in train, Tetangga Akrab managed to sell its stake in the loss-making and dispute-riddled JVC to a middle-sized Peninsula-based company, Kim Loong Resources Bhd, from Johor. When this sale was being mooted there was widespread consternation among the landholders that their customary land was being sold illegally.⁵² However, there is in fact provision in the legislation governing Konsep Baru projects for an investor to sell its 60 per cent share in a joint-venture company to another approved investor, provided the Minister of Resource Planning authorises the transaction; in such cases the land rights remain with the trustee, LCDA. Hence the sale to Kim Loong went ahead and the JVC was renamed (without irony) Winsome Pelita (Pantu) Sdn Bhd.⁵³

⁵⁰ Joseph Tawie, "Farmer slashed by Taib-linked men," *FMT News*, 17 March 2013

<https://www.freemalaysiatoday.com/category/nation/2013/03/17/farmer-slashed-by-taib-linked-men/> (accessed 29/5/13).

⁵¹ Interview with Nicholas Mujah, landholder advocate with Sarawak Dayak Iban Association (SADIA), following a village meeting in Kampung Sungai Tenggang, Pantu District, August 2008.

⁵² "NCR Landowners' biggest dilemma," *Broken Shield*, December 2009,

<http://thebrokenshield.blogspot.com.au/2009/12/ncr-land-owners-biggest-dilemma.html> (accessed 24/6/13).

Initially, IOI Corporation was the intended purchaser, but as with the proposed transactions with Double Dynasty, it eventually thought better of it. No doubt, landholder discontent and the prospect of further defeats in the High Court were a factor in the decision to pull out.

⁵³ "Kim Loong buys plantation firm for RM25m," *The Edge Malaysia*, 2 December 2009

<http://www.theedgemaalaysia.com/highlights/154766-kim-loong-buys-plantation-firm-for-rm25m.html> (accessed 2/7/13).

In February 2011, Justice Linton Albert found in favour of the Pantu Iban plaintiffs who had claimed their land was incorporated in the project against their wishes. In a significant new development, the judge ruled that any joint-venture agreement between a non-native and native for an oil palm plantation contravenes Section 8 of the Land Code. He said that neither Tetangga Akrab nor the JVC had been declared a native at the time of the joint venture agreement and it did not matter that the company was subsequently declared a native because it was “a principle of antiquity that things invalid from the beginning could not be made valid by a subsequent act.”⁵⁴ The judge also said the principal deed and the joint-venture agreement had deprived the plaintiffs of their land and property, hence their livelihood, and thus violated the Malaysian Constitution. In a remark that sent shock-waves through the land development bureaucracy, he observed that “irrespective of the cleverly devised legal mechanisms and legalistic language that constituted the principal deed and the joint-venture agreement, they are mere fig leaves, too scanty to conceal their violations of Articles 5 and 13 of the constitution because the sum total of the rights of the landowners, to put it crudely and for want of a better word, is zero.” In particular, the judge noted that “the parasitic role of [LCDA], which had nothing to begin with, has relegated the landowners into absolute obscurity under the principal deed.”⁵⁵ He ruled that the landholders were to be given vacant possession of the disputed land and the company restrained from occupying or harvesting the estate. However, in March 2011 the Court of Appeal granted a stay of execution of the High Court’s judgement and Kim Loong Resources subsequently filed an appeal. A verdict was still being awaited at the time of writing.⁵⁶

(e) Overview

Because of the complex web of companies involved in each timber and plantation group, some of them public and some of them private, and the fluidity of their equity ownership, it is not easy to get a clear picture of the share of oil palm area held by the different types of Sarawak-based companies. The aggregate planted area of the companies listed in Table 1 is about 326,000 ha, of which companies in the Rimbunan Hijau Group have the biggest share (almost a third).

However, there are many smaller companies, often directly linked to Taib, which have acquired substantial leases in the past decade and then been quickly sold or transferred to nominees. According to Land and Survey Department records, Titanium Management Sdn Bhd, which is majority-owned and directed by Taib’s son, Mahmud Abu Bekir, has received PLs to 10,500 ha of State land in Kuching, Samarahan, and Sri Aman Divisions for no charge. Lambang Sinar Mas Sdn Bhd, owned by Taib’s sister, Raziah Mahmud, and her husband, Robert Geneid, was issued PLs to around 16,000 ha in Samarahan Division in 2004, before being handed over or sold in 2005 to Yu Chee Lieng and Yu Chee Hoe, close business associates of the Taib family. (These leases are being challenged by Bidayuh and Iban landholders.) Saradu Plantation Sdn Bhd, of which Robert Geneid and Raziah Mahmud are majority shareholders, has been given PLs to 15,000 ha in Balingian District, Sib

⁵⁴ Within a few months the State Legislature passed the Land Custody and Development Authority (Amendment) Bill 2011, providing that any party entering a joint-venture agreement with LCDA will automatically be designated a “native.” See Keruah Usit, “Taib changes definition of ‘native’ after NCR defeat,” *Suara Sarawak* 24 June 2011, <http://www.barubian.net/2011/06/taib-changes-definition-of-native-after.html> (accessed 2/7/13). The Amendment was also designed to make it more difficult for landowners to take legal action that might lead to joint-venture companies being ejected from the plantation.

⁵⁵ High Court in Sabah and Sarawak, Case No. 22-1-2005, *Masa anak Nagkai and others v. Land Custody and Development Authority and others*, Judgement by Justice Linton Albert, 18 February 2011.

⁵⁶ Stephen Tiong, “Judgment on ‘illegal’ Sarawak oil palm estate stayed,” *Malaysiakini* 9 March 2011, <http://www.malaysiakini.com/news/158150> (accessed 20 June 2011); Kim Loong Resources, Interim Financial Statement to Bursa Malaysia, January 2013 [http://announcements.bursamalaysia.com/EDMS/edmswebh.nsf/all/D7C33018DBD1960F48257AF8005D72C4/\\$File/KLR-Notes%20-%203Q-FY2013.pdf](http://announcements.bursamalaysia.com/EDMS/edmswebh.nsf/all/D7C33018DBD1960F48257AF8005D72C4/$File/KLR-Notes%20-%203Q-FY2013.pdf) (accessed 28/5/13).

Division. In fact, the Bruno Manser Fund identifies 33 companies in which Taib family members have an interest, with PLs to a total area of 199,000 ha.⁵⁷ Only a few of these have been discussed above.

A reasonable estimate is that the aggregate planted area in the hands of Sarawak-based companies of all types (large or small, Chinese- or bumiputra-owned, on State or customary land) was about 690,000 ha in 2012. This was 64 per cent of the total planted area and 73 per cent of the area in oil palm estates (that is, excluding independent, supported, and managed smallholders).⁵⁸

4.2 Peninsula-based companies

The second type of company spurring the expansion of oil palm estates in Sarawak has comprised established companies from Peninsular Malaysia (Table 1). These were already large companies, mostly with considerable plantation experience in rubber, oil palm, sugarcane, and other crops, and often part of large, diversified conglomerates (Tan 2008). Some, such as FELDA, Sime Darby, Tradewinds, and TH Plantations, are effectively government-owned and/or closely linked to UMNO, the dominant party in the ruling BN coalition. Apart from FELDA, these arose from government-engineered takeovers during the New Economic Policy (1971-1990), which sought to increase bumiputra equity in the economy at the expense of foreign ownership, and subsequent privatisations in the Mahathir era in favour of UMNO-linked bumiputra business interests (Crouch 1996; Gomez and Jomo 1999). Others, notably Perlis Plantations (now part of Wilmar International) and IOI Corporation, are large publicly-listed Malaysian Chinese concerns that (like their Sarawak counterparts) grew out of the entrepreneurial activities and political connections of outstanding individuals and the family businesses they pioneered.⁵⁹ Thus, as with the timber-based conglomerates that have emerged in Sarawak, they are manifestations of the rise of “personal capitalism” in Southeast Asia as a whole (Brown 2006).

These companies were initially hesitant to expand into Sarawak, despite Taib’s plea in 1982: “Why not come to Sarawak to invest? ... Sarawak welcomes you.”⁶⁰ As the oil palm boom continued and land in the Peninsula became increasingly scarce, they looked to the Borneo states and to Indonesia to increase their plantation land banks, with the aim of increasing their share price in the short term as well as their long-term profitability. However, Sabah was in many ways more attractive than Sarawak, with larger concentrations of more suitable land and seemingly fewer institutional impediments. Moreover, as Varkkey (2012) has argued, the mode of doing business in Malaysia by bringing in influential members of the politico-bureaucratic-military elite was readily transferred to Indonesia (where this approach was already firmly entrenched), such that Malaysian (and Singaporean) joint ventures in the Indonesian oil palm sector now account for over two thirds of the total planted area, especially in Sumatra and Kalimantan.

A good example is Genting Plantations Bhd, formerly Asiatic Plantations Bhd, founded by Lim Goh Tong (once Malaysia’s richest person), which is among the top ten listed plantation companies in Malaysia in terms of market capitalisation and has a total land bank of 186,000 ha. From the 1980s, recognising the shortage of available land in Peninsular Malaysia, the company looked to the Borneo

⁵⁷ Illegal Logging Portal, “Shocking new evidence of Taib corruption,” 30 January 2012 http://www.illegal-logging.info/content/shocking-new-evidence-taib-corruption?it_id=6261&it=news&printer=1 (accessed 19/7/13).

⁵⁸ The 689,000 ha is derived from company websites and from data compiled by Faeh (2011). Much larger figures are often quoted for company “land banks” or plantation land “owned.” However, care has been taken to include only planted area in this estimate.

⁵⁹ The classic example is Robert Kuok, founder of Perlis Plantations, who was a classmate of Tunku Abdul Rahman and Lee Kuan Yew at the Raffles Institution (Tan 2008).

⁶⁰ K.C. Jong, “A year focused on an overwhelming problem,” *Borneo Bulletin* 10 April 1982, p. 11.

states to expand. It now has numerous estates and four palm oil mills in Sabah but no estates in Sarawak (just a share in the Serian Palm Oil Mill). In 2003 it acquired a 70 per cent stake in Kenyalang Borneo Sdn Bhd, which had a PL to 5,000 ha in Limbang Division, but by 2004 the land had been surrendered to the Sarawak Government and the subsidiary company remains dormant. Instead, Genting has expanded into Indonesian Borneo through two large joint ventures, giving it an Indonesian land bank of 121,000 ha.⁶¹

Eventually, however, the repeated invitations to invest in Sarawak bore fruit. When in 2008 IOI Corporation announced its intention to buy Sarawak plantations (see below), *The Star* newspaper quoted an analyst who said that “while the scarcity of plantation land in Malaysia had resulted in many local companies going to Indonesia in search of land, ... many are now zooming in on the native customary right (NCR) land development scheme in Sarawak.” The article also cited a report that said “participation in the NCR scheme would open up opportunities to secure additional land bank. [Hence] IOI’s proposed acquisition of the Sarawak plantations could result in a potential re-rating given the group’s continued focus on upstream activities.”⁶²

However, it seems that the Peninsula-based firms may have initially underestimated the distinctive and extensive nature of customary land tenure in Sarawak, perhaps being convinced by the reassurances of Taib and his State Attorney General from 1992 to 2007, J.C. Fong, who drafted the draconian amendments to the Land Code and provided the legal arguments to back up the government’s expansionary policy (Fong 2000, 2011), though most of these have been refuted by successive High Court judgements. In 2010, CB Industrial Product Holding Bhd (a palm oil equipment maker) announced it would sell its 30 per cent shares in three oil palm companies controlled by Tradewinds in order to expand its plantings in Indonesia or PNG. According to a news report, Managing Director Lim Chai Beng “brushed off factors such as native land rights issues and soil conditions when asked if there are other reasons why CBIP plans to sell the stakes. ‘No, land rights issues are common. Almost every plantation will have this problem,’ he says. The report continued: “A Miri-based planter agrees that native land rights issues are part and parcel of life for Sarawakian planters, especially on new developments.”⁶³

(a) Early ventures – FELDA and Perlis

The Federal Land Development Authority (FELDA) was the first Peninsula-based company to move into Sarawak. FELDA was established in Malaya in 1956 and began to develop land for settlers from 1960, primarily by opening up forested land for rubber and oil palm, especially in less populated states such as Pahang, Johor, and Terengganu. Lots were allocated to individual settlers, mostly ethnic Malays who met the selection criteria, including being landless or near-landless. However, the working of these lots was tightly controlled by a well-resourced hierarchical management structure; settlers could only receive titles once development costs had been met through periodic deductions from their accounts. Most of FELDA’s settlement schemes were part of large integrated rural development projects such as the Jengka Project in Pahang (1,217 sq. km incorporating 24 settlement schemes) that included timber, commercial plantations, and urban development. From 1967 it established a Settlers Social Development Division to support and organise the growing number of settlers. It also extended into downstream activities including the bulking, processing, and marketing of palm oil and rubber. By 1990 FELDA had settled 119,300 families or 715,800 people. It

⁶¹ Genting Plantations website, <http://www.gentingplantations.com/> (accessed 3/7/13).

⁶² Hanim Adnan, “IOI buying into Sarawak firms,” *The Star Online* Wednesday March 19, 2008 <http://biz.thestar.com.my/news/story.asp?file=/2008/3/19/business/20687125&sec=business> (accessed 20/6/13).

⁶³ Jenny Ng, “CBIP to sell stakes in plantation associates and JVs,” *The Edge*, 16 August 2010, http://www.theedgemaalaysia.com/index.php?option=com_content&task=view&id=173156&Itemid=121 (accessed 8 June 2013).

managed 475 schemes, not all of which had settlers in place, with a crop area of 823,720 ha, of which 75 per cent was under oil palm production (Sutton 2001). It was widely regarded as the most successful example of planned agricultural resettlement world-wide.

Halim Salleh (1991) outlined some of the internal contradictions of the FELDA schemes as they operated in the 1970s and 1980s, particularly between the agency's espoused intention to create a class of independent smallholders while at the same time tightly controlling the production system. This was particularly evident in FELDA's attempt in the 1980s to replace land titles with shareholdings, which met with strong resistance from settlers, for whom land ownership was a prime motivator (Sutton 2001). FELDA schemes have also encountered second-generation problems, with high unemployment in remote areas or movement of family labour off the schemes to take up non-agricultural employment in more industrialised areas (Guinness 1992). However, from the early 1990s FELDA ceased recruiting settlers and shifted to developing and managing its schemes as commercial estates through FELDA Plantations Sdn Bhd, which was incorporated in 1992 (Sutton 2001). The parent company, FELDA Holdings Bhd, became a public company in 2003 and is the largest producer of palm oil in the world, accounting for about 7 per cent of global output.

As noted above, at the 1982 Land Development Seminar launched by Taib, FELDA had already indicated its interest in expanding its operations to Sarawak, operating as a commercial plantation company rather than a settlement agency, provided it could obtain clear title to the land it was allocated. Perhaps hoping to replicate its large estate complex that was being developed in eastern Sabah in the 1980s (Sutton 2001), FELDA negotiated a PL to what was ostensibly unencumbered State land in Lundu, Kuching Division, in the south-western corner of the state.⁶⁴ However, in an early indication that the Taib Government's confident assumptions about the status of State land were flawed, FELDA encountered local resistance from Bidayuh claimants. This resistance was initially met with force but eventually resulted in a negotiated settlement; the General Manager of LCDA remarked ruefully at the time: "We cannot send the police in around the clock."⁶⁵ Likely because of these difficulties, the operations of FELDA in Sarawak have been confined to this one estate of 7,680 ha.

The first of the private companies to venture in was Perlis Plantations, originally a sugar company established by Robert Kuok, another self-made Foochow Chinese businessman, this time from Johor Bharu, who has since become Malaysia's richest person (Tan 2008). Perlis first acquired a stake in Saremas Sdn Bhd (a company linked to Alfred Jabu Numpang, Deputy Chief Minister (Jayum 1994: 251)) in 1986, which had a proper lease (not a PL) to develop a 9,000 ha oil palm plantation in Suai, Miri Division, in the heart of the prime oil palm belt. This was Perlis's first oil palm venture anywhere, but it subsequently acquired oil palm estates in Sabah and in 1997 merged these with its Sarawak holdings to form PPB Oil Palms Bhd, which was listed on the Bursa Malaysia. In 2007, a merger between the Kuok Group and the Singapore-based multinational Wilmar International Trading meant that PPB Oil Palms Bhd came to be part of Wilmar, of which Robert Kuok's nephew, Kuok Khoon Hong, is the CEO. The enlarged entity has a land bank of 570,000 ha, making it the second largest oil palm company globally, behind Sime Darby. Now PPB Oil Palms Bhd operates two mills and six estates of 20,858 ha in Sarawak. In 2010 it became the first plantation company in the state to receive RSPO certification.⁶⁶

⁶⁴ FELDA had developed 59,000 ha in the Sahabat Complex in eastern Sabah by 1987, which increased to 121,000 ha by 1998, almost all under oil palm and managed on conventional estate lines (Sutton 2001).

⁶⁵ Interview with Hamid Bugo, General Manager of LCDA, April 1985.

⁶⁶ "Wilmar becomes the first plantation company in Sarawak to be RSPO-certified," *CSR Tribune*, July 2010 <http://www.wilmar-international.com/wp-content/uploads/2012/11/WilmarCSRtribune3.pdf> (accessed 27/5/2013).

From the mid-1990s, at the urging of senior figures in the Sarawak Government, other large Peninsula-based companies have expanded to Sarawak, including Boustead Holdings Bhd, Sime Darby Plantation Sdn Bhd, Tradewinds Plantation Bhd, TH Plantations Bhd, and IOI Corporation Bhd, but these have had less satisfactory experiences than Perlis.

(b) Boustead

Boustead Bhd is one of Malaysia's oldest companies, beginning as a small trading concern in 1828 and moving into rubber plantations in the second decade of the 20th century. In 1976 it became a wholly Malaysian-owned conglomerate through acquisition of shares by Perbadanan Nasional (PERNAS, the National Trading Corporation) as part of the New Economic Policy. Its major shareholder is now Lembaga Tabung Angkatan Tentera, a statutory body established in 1972 within the Ministry of Defence as the superannuation fund for the Malaysian Armed Forces. Boustead moved into Sarawak in the mid-1990s and has two estates totalling 19,000 ha. One is a joint venture with LCDA along the Tinjar River in Miri Division (Boustead Pelita Loagan Bunut) that has had problems with flooding, low yields, and land conflicts. The other, at Kanowit in Sibu Division, was the first and is still by far the largest of the Konsep Baru projects on customary land, and one of the most controversial.

The Kanowit project commenced in 1995 (though the Principal Deed between LCDA and the landholders was not signed until 2002) and includes 1,685 Iban households in 111 longhouse communities, representing a population of over 10,000, with a planted area of 12,600 ha. During the launching of the plantation by Taib in August 1996, it was hailed as the best-planned project between a private investor and customary landowners with the potential to lift the latter out of poverty. However, there were many early landholder concerns and by 2005 the JVC – Boustead Pelita Kanowit Sdn Bhd – was incurring an annual loss of MYR 28 million, hence no dividends could be paid to landholders. It had an accumulated debt of MYR 293 million, estimated to rise to MYR 344 million by 2019 such that the company would in fact never be able to declare dividends. It appeared that the JVC was being poorly managed, with high costs, heavy borrowings, and low yields, and that part of the reason was that the investor was using the JVC to make profits elsewhere in the Boustead Group (Cramb 2013).

In 2008 this led to protests and blockades (Thien 2008). The Ministry of Land Development responded to the crisis and “interim dividends” or “advances” were offered to the landholders. Some landholders accepted the payments and others refused but, in general, the view was that the amount offered was a poor return on a 13-year investment. In 2009 five longhouse leaders filed a writ of summons in the High Court on behalf of themselves and 163 other landowners from the Kelimut Estate (the first and largest of the six estates in the Kanowit project). The action was not initially against Boustead (with whom the landholders had no contractual agreement) but against LCDA, the Superintendent of Lands and Survey for Sibu, and the Sarawak Government for failing to protect their interests in the land against the investors. They asked to be awarded “exemplary and aggravated damages” because of the loss they had suffered as a consequence of LCDA’s “negligence and/or breach of trust.”⁶⁷ In 2011, Boustead Plantations Bhd (the holding company) and Boustead Pelita Kanowit Sdn Bhd (the JVC) were added as fourth and fifth defendants.

In 2012 the High Court ordered the Kanowit joint venture agreement to be cancelled and the land returned to the Kelimut landowners, with no compensation to be paid to the company for the investment undertaken to that point. The judge declared that the agreements on which the project had proceeded – the Principal Deed and the Joint Venture Agreement – were illegal and therefore

⁶⁷ Reported in *The Broken Shield*, www.thebrokenshield.blogspot.com, October 11, 2009.

“null and void.”⁶⁸ The landowners’ representatives were looking for “a good plantation company to replace Boustead.”⁶⁹ See Chee How, a land rights lawyer, remarked that companies needed to work more closely with landowners rather than leaving this task to government agencies, remarking that “if you do it alone, you may win all or lose all. In the case of Boustead as well as in Gedong [which TH Plantations had acquired] and other cases, the companies lose all.”

(c) Sime Darby

Sime Darby, a largely Malaysian Government-owned conglomerate, is the result of the merger of three large and long-established Malaysian companies – Kumpulan Guthrie Bhd, Golden Hope Plantations Bhd, and Kumpulan Sime Darby Bhd – each of which had been acquired by the Malaysian Government in the late 1970s and early 1980s under the New Economic Policy.⁷⁰ The merger was the largest in Malaysian corporate history and created the world’s largest plantation company, which was listed in November 2007 on the Bursa Malaysia. Its wholly-owned subsidiary, Sime Darby Plantation Sdn Bhd, is the world’s largest producer of certified sustainable palm oil with more than 60 per cent of its output RSPO-certified. Sime Darby Plantation Sdn Bhd has established about 48,000 ha of oil palm in Sarawak, mainly in 1997 and 1998 on State land in the main oil palm belt between Miri and Bintulu; about 12 per cent of the planted area is on peatland. No significant land disputes have so far been reported regarding these Sime Darby leases.⁷¹

However, in 2008-9, Sime Darby was invited by the Sarawak Government to take part in two Konsep Baru joint ventures on Iban customary land – one in Julau and one in Kapit – totalling 26,200 ha. This was hailed at the time by the Ministry of Land Development as a significant breakthrough, given Sime Darby’s status and the poor performance of the projects with previous investors. However, it emerged that the projects had in fact been awarded by the Ministry of Land Development to two newly-formed shell companies with no track record in plantations – Nature Ambience Sdn Bhd and Vertical Drive Sdn Bhd – both of which were owned by a young and previously unknown local businessman, Chew Chiaw Ann, through several layers of proxy companies. Sime Darby paid a total of nearly MYR 102 million to acquire these two companies, announcing this would enable it to enter into the development of customary land in Sarawak.⁷² However, the Sime Darby CEO at the time, Ahmad Zubir Murshid, who stepped down in 2010, was arrested in 2012 and charged in the Kuala Lumpur High Court by the Malaysian Anti-Corruption Commission (MACC) for criminal breach of trust over this highly dubious plantation deal. There can be little doubt that Chew, who is the CEO of a construction company called Metro Sedia Sdn Bhd and has already been awarded the title of

⁶⁸ High Court in Sabah and Sarawak, Case No. 21-7-2009, Kadam ak Embuyang and 3 others vs. Pelita Holdings Sdn Bhd and 4 others, Judgement by Justice Datuk Yew Jen Kie, 30 April 2012.

⁶⁹ Joseph Tawie, “Court rulings strengthen native rights on NCR,” *FMT News* 10 May 2012,

<https://www.freemalaysiatoday.com/category/nation/2012/05/10/court-rulings-strengthen-native-rights-on-ncr/> (accessed 4 June 2013).

⁷⁰ Sime Darby is majority-owned by several Malaysian Government funds and agencies. As at 31 December 2012, the equity was 52.3 per cent held by Permodalan Nasional Bhd (PNB), both directly and through unit trust schemes managed by PNB, and 11.9 per cent by Employees’ Provident Fund (EPF).

⁷¹ A relatively minor dispute over its Semarak Estate near Bintulu was settled in court with 20 ha being managed on a joint venture basis with the Iban claimants. Molly Tugan, “Longhouse folks all for Tiong in the election,” *New Sarawak Tribune* 28 April 2013,

<http://www.newsarawaktribune.com/news/4011/Longhouse-folks-all-for-Tiong-in-the-election/> (accessed 24/6/13).

⁷² “The acquisition will enable the Sime Darby group to develop oil palm plantations in Sarawak NCR development scheme,” *Palm Oil News* December 2009.

<http://www.palmoilhq.com/PalmOilNews/sime-darby-acquires-sarawak-company/> (accessed 21/5/13).

“Datuk,” was acting as the proxy for someone higher in the political food chain, allegedly the Chief Minister’s son, Mahmud Abu Bekir Taib.⁷³

(d) Tradewinds

In the 1970s, Tradewinds, originally a hotel development group, became a wholly-owned subsidiary of Perbadanan Nasional Berhad (Pernas), one of two investment funds set up by UMNO to build up bumiputra equity as part of the New Economic Policy (Crouch 1996). Tradewinds was used as a vehicle to acquire foreign-owned plantation, mining, and property interests. In 1996 the company underwent partial privatisation through a management buyout but it was returned to government ownership soon after and then progressively sold to Mokhtar Al-Bukhary, an UMNO crony and one of Malaysia’s richest men. In 2006, Tradewinds’ plantation arm was merged with Johor Tenggara Oil Palm Bhd (also controlled by Mokhtar) and the combined entity was listed on the Bursa Malaysia as Tradewinds Plantation Bhd.

The company has leases to about 90,000 ha of oil palm estates in Sarawak spread from Samarahan Division in the south to Limbang Division in the north, much of it on peatlands, giving it the largest landholding of the Peninsula-based companies. Its Sarawak holdings account for the majority of its overall land bank, though it is now also expanding in Indonesia. The Sarawak estates were obtained between 1996 and 2001 by acquiring control of existing companies that had been issued with PLs,⁷⁴ some of them linked to the aforementioned Naroden Majais, the Member for Simunjan and Assistant Minister for Resource Planning. Claims have been made by Malay and Iban landowners against the companies acquired by Tradewinds in Samarahan Division, notably, Kumpulan Kris Jati Sdn Bhd and Melur Gemilang Sdn Bhd, which between them hold provisional leases to around 24,000 ha in the Simunjan-Gedong area, but Tradewinds has managed to avoid the damaging judgements handed out to other Peninsula-based companies. The claims against these companies were struck out in the High Court in January 2012 because of procedural delays due to lack of sufficient funds for legal representation.⁷⁵

Among Tradewinds’s acquisitions in 2008 was an area of 770 ha in Sungai Retus, near Sibu, that had been leased only weeks before to Masretus Plantations, owned by Taib’s brother, Ibrahim Mahmud, and the latter’s sons. Ibrahim’s company received MYR 7.5 million from Tradewinds for its MYR 0.5 million outlay to acquire the lease. The Iban claimants to this land were not initially aware that a PL had been issued and when it came to court they too were told they were too late to take action.⁷⁶

(e) Tabung Haji

TH Plantations Berhad (THP) is the plantation arm of Lembaga Tabung Haji (TH), the Pilgrimage Fund Board of Malaysia (a quasi-government body to assist Muslims in saving and investing in order to undertake the Hajj). THP has been engaged in oil palm and rubber plantations since 1972, has been a public company since 2005, and was listed on the Main Board of Bursa Malaysia in 2006. It currently has a total plantation land bank of about 91,000 ha in 37 estates in Peninsular Malaysia, Sabah, and Sarawak, as well as operating six palm oil mills. About half of this area (45,500 ha) is in Sarawak. THP also now manages TH’s oil palm operations in Indonesia, totalling about 84,000 ha. The company

⁷³ Keruah Usit, “Sime Darby scandal implicates youthful Datuk,” *1Christians Malaysia*, 1 August 2012, <http://1christians.blogspot.com.au/2012/08/sime-darby-scandal-implicates-youthful.html> (accessed 27/5/13).

⁷⁴ Tradewinds Plantations Bhd Annual Report 2011, <http://www.tpb.com.my/download/ar/TPB2011.pdf> (accessed 3/7/13).

⁷⁵ According to the website *Hornbill Unleashed*, “some of the Malays in Gedong, including Naroden’s relatives, are suing Melor Gemilang for taking away their land. Naroden is alleged to have shares in the company.” <http://hornbillunleashed.wordpress.com/2010/09/28/10039/> (accessed 24/6/13).

⁷⁶ “Taib steals for brother Ibrahim,” *Movement of Change Sarawak*, 19 January 2011 <http://mocsarawak.wordpress.com/2011/01/19/taib-steals-for-brother-ibrahim/> (accessed 24/6/13).

specialises in oil palm plantations on peatlands. While a member of the RSPO, it is not seeking RSPO certification for any of its oil palm estates.⁷⁷

THP's first foray into Sarawak was in 1996 with Ladang Sawit Bintulu Sdn Bhd, which was given a PL to land along the Bintulu-Bakun Road in Sebauh District, Bintulu Division.⁷⁸ As with the Rimbunan Hijau case in Bakong (Cramb and Sujang 2011), the construction of a road through the hinterland of formerly riverine longhouse-communities had opened up land considered part of the customary territories of long-established communities, even though this land had not necessarily been utilised for shifting cultivation before the introduction of the Land Code in 1958. Hence several Iban longhouses in Sebauh challenged the validity of the PL, claiming it encroached on their customary land. In one case (brought by Rumah Usah), the claim was denied by the High Court in 2009 and again by the Court of Appeal in 2012. This case was complicated by the fact that seven of the claimants had been paid MYR 164,000 in compensation in 1999 and that the claimed land had been inside a forest reserve (from which it had presumably been excised to issue the PL). In a second case (brought by Rumah Agi in 2001), the claim was upheld by the High Court in a decision in 2010 which declared that the PL over a disputed area of 1,214 ha was null and void.⁷⁹

THP subsequently moved into peatlands in the lower Saribas basin in Betong Division. In 2006, THP paid MYR 51 million for an 80 per cent stake in Kenyalang Resources Sdn Bhd, renamed THP Saribas Sdn Bhd, from Zecon Bhd, a large bumiputra engineering company chaired by Hamid Bugo, former General Manager of LCDA, former Sarawak State Secretary, and a close associate of the Chief Minister. THP Saribas holds a PL to about 10,000 ha of peatland near the town of Pusa. In the same year THP entered into a joint venture with LCDA (16 per cent) and SGOS Capital Holdings Sdn Bhd, a Sarawak Government fund (24 per cent), to form TH Pelita Meludam Sdn Bhd, with a PL to a further 6,000 ha of peatland. In 2008, then Deputy Prime Minister Najib Razak visited Pusa to declare open the two plantations and foreshadowed a much larger commercial land development in the region. At the same function, the Chief Minister said the government "would try to resolve problems pertaining to land faced by the people in a just manner and give them adequate compensation."⁸⁰ However, the THP Saribas lease has continued to be subject to disputes over customary tenure, with three Iban groups filing cases in the High Court in 2010, 2011, and 2012 to a combined area equal to 9 per cent of the total lease. In February 2013, THP announced it was considering pursuing out-of-court options, including purchasing the rights to the land or arranging a joint venture with the claimants. The company had already invested MYR 82 million to develop the land. THP has also entered into a joint venture with LCDA on 1,577 ha of Malay customary land at Beladin, downriver from Pusa, with a 55 per cent share in TH Pelita Beladin Sdn Bhd. However, the land title had not yet been issued as of March 2013.

As well as its Saribas investments, THP has a significant plantation area in the peatlands of the Sadong basin in Samarahan Division, alongside the companies acquired by Tradewinds mentioned above. These include a joint venture on nearly 10,000 ha of customary land through a 60 per cent share in TH Pelita Simunjan (for which DD Plantations was the original investor). THP also acquired a 70 per cent share in each of TH Pelita Gedong (7,400 ha) and TH Pelita Sadong (4,600 ha). This stake was originally held by DD Plantations and Nirwana Muhibbah Sdn Bhd, owned by Naroden Majais, and had been the subject of negotiations with IOI Corporation in 2008. As outlined above, the High

⁷⁷ TH Plantations Bhd Annual Report 2012, http://www.thplantations.my/ir_annual_rpt.asp (accessed 3/7/13).

⁷⁸ In fact, Ladang Sawit Bintulu Sdn Bhd was owned by TH itself. With restructuring of the Group, LHP formally took over the management in 2005.

⁷⁹ "Oil palm firm told to return land to Ibans," *The Star Online*, 22 January 2010 <http://thestar.com.my/news/story.asp?file=/2010/1/22/courts/5525543&sec=courts> (accessed 1/6/13).

⁸⁰ Bernama, "Pusa poised to be nucleus of commercial land development," 4 March 2008 http://www.bernama.com/bernama/state_news/bm/news.php?id=318451&cat=ut (accessed 3/7/13).

Court in 2011 and 2012 upheld the claims of the Remun Iban to large parts of these estates, raising questions about how well informed was the THP management when it entered into these purchase agreements.

Nevertheless, in November 2011 THP bought a 70 per cent stake in Hydroflow Sdn Bhd, another controversial company linked to Naroden Majais.⁸¹ Hydroflow, established in 1992, has PLs to 5,600 ha around Gedong in Simunjan District issued in 2004 and 2007, of which 700 ha had been planted with oil palm by 2011. About 100 Malay landowners were adversely affected by the leases, but 90 of them had made a deal with Hydroflow whereby they had a 30 per cent stake in the company via shares in a landholder company, Punggor Wibaha Bhd, also linked to Naroden. However, nine of the landholders had refused and, according to a 2009 report, employees of Hydroflow were engaged in violent intimidation of these holdouts (a tactic that has been used by other Naroden-linked plantation companies in Samarahan Division; see above).⁸²

In August 2011, Hydroflow paid “interim dividends” to the landholder company at a function at the Chief Minister’s residence; a “mock cheque” for the amount was handed over by Naroden.⁸³ As noted above, interim dividends, which become a charge against future dividends, have been paid in a number of troubled joint-venture projects in recent years to limit landholder discontent. However, the payments in this case amounted to less than MYR 80 per ha and the average area per shareholder was only 3.2 ha, hence they had received only about MYR 5 per ha per year for their land. THP bought over this politically-charged operation at the end of 2011 for MYR 73.5 million. Allowing a market value of MYR 10,000 per ha for the undeveloped land, Maybank IB Research estimated that THP had paid MYR 80,000 per ha for the newly planted land (in its fourth year), which was at least twice its market value.⁸⁴ See Chee How, a land rights lawyer, seems to have been correct when he observed that “Sime Darby is not the only investor to have been ripped off by the web of (state) BN politicians’ and cronies’ companies. It is believed that other big companies such as Tabung Haji Plantations are also falling prey to such corrupt practices.”⁸⁵

(f) IOI Corporation

IOI Corporation Bhd, owned by Lee Shin Cheng, another self-made businessman who is now one of Malaysia’s wealthiest individuals, has 170,000 ha of oil palm estates in Malaysia (mostly in Sabah) and is one of the largest palm oil producers in the world, with oil palm estates in Malaysia and Indonesia as well as mills, refineries, and oleochemical plants (Tan 2008). It is a founding member of the RSPO and 39 per cent of its oil palm estates are RSPO-certified. According to the company’s website, “since inception, IOI has an entrenched policy on agri-sustainability and non-encroachment of natural forests in its quest to expand its plantation areas. None of IOI’s existing oil palm plantation

⁸¹ THP bought the 70 per cent stake from Sawit Green Sdn Bhd, a dormant company established in 2002, with two directors, Kong Goon Siong and Kong Goon Khing, whom Sarawak Report has shown are proxies for Naroden Majais.

⁸² C.K. Chew Blog, March 21, 2009, <http://ckcounterpunch.wordpress.com/2009/03/21/native-land-grab-samseng-from-bn-on-the-prowl-in-sarawak-man-with-kebal-power-survives-knife-attack/> (accessed 31/5/2013).

⁸³ “RM784,750 Raya windfall,” 25 August 2011, Official Website of the Chief Minister of Sarawak <http://www.cm.sarawak.gov.my/en/media-centre/news/view/rm784-750-raya-windfall> (accessed 4/6/13).

⁸⁴ Maybank IB Research, 14 November 2011, <http://upload.xinhua08.com/2011/1114/1321248632230.pdf> (accessed 3/6/13). THP continued its expansion in 2013, acquiring a 100 per cent stake in Bumi Suria Ventures Sdn Bhd (with 5,710 ha in Sibu and Bintulu Divisions) and Maju Warisanmas (810 ha) from Weida Bhd, a large Malaysian engineering company that had acquired the companies in 2007. In this case it paid MYR 39,100 per ha for land which was 80 per cent planted, considered a more reasonable purchase than its Simunjan acquisitions.

⁸⁵ Keruah Usit, “Sime Darby scandal implicates youthful Datuk,” *1Christians Malaysia* 1 August 2012, <http://1christians.blogspot.com.au/2012/08/sime-darby-scandal-implicates-youthful.html> (accessed 27/5/13).

estates are developed new from alienated land or forest, but mostly acquired from third parties over the years with a generation or more of replanting.”⁸⁶

In 2006, as part of an expansion phase, IOI bought its way into the Sarawak oil palm sector when it was invited by LCDA to acquire 70 per cent equity in the financially struggling Rinwood Pelita Plantation Sdn Bhd, which has PLs to a 9,000 ha plantation along the Tinjar River in Miri Division. As noted above, Rinwood is a timber company within the Delta Group, owned by Foochow timber tycoon Hii Yii Peng, who has close business connections to Taib. IOI bought Rinwood’s share, while LCDA retained its 30 per cent stake. However, Kayan claimants to some of the lands over which the original leases were issued had been engaged in a legal battle since 1997 to establish their customary rights to an area of about 3,280 ha (over a third of the estate), asserting they had been given the land by the Berawan of Long Jegan in 1964 and had been utilising it since then.⁸⁷

In 2010 the High Court found in the claimants’ favour and declared the leases over two of the lots “null and void” and that compensation should be paid (though, confusingly, the judge did not issue injunctions against the company as it had already “undertaken the development of the claimed area”). This left IOI in an embarrassing position, given its declared aspirations for sustainability. However, it appealed the decision, along with LCDA and the Government, arguing it had received legal advice that the basis for granting the leases was sound. RSPO attempted mediation between the parties to this dispute but without success. Meanwhile the Kayan claimants began harvesting the oil palm planted on the land they believed the High Court had declared was theirs. In February 2013, the Court of Appeal overturned the High Court’s decision on the dubious basis that there was no evidence for the acquisition of customary rights by transfer from one group to another. The Court ordered the Kayan to pay costs to the company and the government as they had harvested fruit bunches from the disputed area to the value of MYR 26 million.⁸⁸

Two years after its acquisition of Rinwood Pelita, in 2008, IOI entered into a purchase agreement with Double Dynasty Sdn Bhd and Nirwana Muhibbah Sdn Bhd, Sarawak-based companies mentioned above as having close links to Taib, to buy a controlling interest in 44,000 ha of oil palm plantation land (of which an area of 13,500 ha was planted) in Samarahan and Bintulu Divisions, for MYR 440 million.⁸⁹ Business analysts commented on this announcement that it was a logical extension of IOI’s declared intention to expand its upstream investments in Malaysia and that, given it had a cash balance of MYR 1.64 billion, it could easily acquire the companies from its internal funds. Nevertheless, IOI decided to pull out of these negotiations, presumably because, as already described, these lands were also subject to customary land claims which were eventually upheld by the High Court. The Samarahan companies were subsequently bought by TH Plantations at an inflated price. As of 2012, IOI Corporation listed its landholdings in Sarawak at only 9,000 ha, that is, the original Rinwood Pelita acquisition.⁹⁰ This compares with its 107,000 ha in Sabah.

⁸⁶ IOI Group website, http://www.ioigroup.com/business/busi_millsestates.cfm (accessed 4/6/13).

⁸⁷ The Berawan are recognised as an ancient group in the area, whereas the Kayan had moved in more recently from upriver. There are in fact many precedents in Sarawak’s history for territories being transferred from one group to another or divided between two groups (Cramb 2007).

⁸⁸ “Government, IOI-LCDA win appeal,” *Borneo Post Online*, 5 February 2013, <http://www.theborneopost.com/2013/02/05/government-ioi-lcda-win-appeal/> (accessed 5/6/13); Khor Reports 22 March 2013, <http://khorreports-palmoil.blogspot.com.au/2013/03/sarawak-controversies.html> (accessed 30/5/13).

⁸⁹ Hanim Adnan, “IOI buying into Sarawak firms,” *The Star Online* Wednesday March 19, 2008 <http://biz.thestar.com.my/news/story.asp?file=/2008/3/19/business/20687125&sec=business> (accessed 20/6/13).

⁹⁰ IOI Group website, http://www.ioigroup.com/business/busi_millsestates.cfm (accessed 4/6/13).

(g) Overview

Again, it is difficult to estimate the precise area of oil palm planted by these Peninsula-based companies, given their tendency to buy varying shares in existing concerns which may or may not change names along the way. However, given that they are all public companies, these transactions are much more transparent than for many of the Sarawak-based concerns, being recorded in announcements to the Bursa Malaysia, company annual reports, and detailed evaluations by investment analysts. A reasonable estimate is that the aggregate planted area attributable to companies from the Peninsula was about 255,000 ha in 2012, which was 24 per cent of the total planted area and 27 per cent of the area in oil palm estates. Two companies – Tradewinds Plantations Bhd and TH Plantations Bhd – accounted for about half this area.

5 Large-Scale Schemes for Smallholders

In the decade before the post-1981 push for private estate development, two state government agencies had been established specifically to develop oil palm estates for smallholders using a “managed smallholder” approach. The Sarawak Land Development Board (SLDB) focused on developing State land for resettlement schemes while the Sarawak Land Consolidation and Rehabilitation Authority (SALCRA) was set up to develop Native Customary Land for landholders in situ. In the Taib era, the activities of these agencies have both been subordinated to the policy favouring large-scale private estates, but in different ways.

5.1 Resettlement schemes

The SLDB was established in 1972 to carry out projects “for the development and settlement of land in the State of Sarawak,” analogous to FELDA’s initial approach in the Peninsula (Fold 2000). SLDB proceeded to develop extensive areas in the Northern and Central Regions for oil palm, primarily on “unencumbered” State land, though it did resume Native Customary Land in the Mukah District (Awang Zain 1986; Cramb 1992). The original policy was that these land schemes would be subdivided following crop establishment, with titles issued to individual settlers drawn from the three major ethnic groups – Malays, Iban, and Chinese. In particular, it was intended to relocate Hakka Chinese and Iban farmers from border areas in Samarahan and Sri Aman Divisions in southern Sarawak who were subject to influence from the then-active Sarawak Communist Organisation (SCO). While some land-scarce Iban communities were keen to move, the designated Malay and Chinese communities resisted and their political representatives lobbied to have the resettlement policy overturned. As the Government did not want the scheme to be an exclusively Iban affair, in 1974 it was decided to place a freeze on settler recruitment and the issuing of titles; the promises made to the Iban settlers was not upheld.⁹¹ From that point the schemes were run on conventional estate lines.

By 1980, just before Taib became Chief Minister, SLDB had established over 15,500 ha of oil palm and cocoa (Awang Zain 1986). However, it was making substantial losses and carried major liabilities (Cramb 1992). King (1986) attributed the Board’s financial problems to poor management, inadequate accounting procedures, poor field supervision, frequent breakdowns in machinery and plant, and inadequate infrastructure. The Board itself identified the shortage and high turnover of local labour as a prime constraint.

The Taib Government moved by stages to privatise SLDB’s assets. In 1986 the management of SLDB was contracted to Sime Darby, and it soon reported improved financial performance (mainly by relocating from Kuching to Miri and thereby shedding staff). In 1993 it was corporatised, with management now in the hands of Sarawak Plantation Services (SPS), a group of Sarawakian business

⁹¹ Personal communication, Sidi Munan, 24 May 2007. Sidi was Secretary of SLDB at the time.

professionals. In 1997 the government approved a proposal for the privatisation of SLDB's assets (estates and mills) and in 2000 its assets were transferred to Sarawak Plantation Sdn Bhd, a company set up to facilitate a management buyout, in return for which the government acquired the majority of the company's shares. It was listed on the Bursa Malaysia in August 2007 as Sarawak Plantation Bhd (SPB). At that time the Sarawak Government owned 38 per cent of the shares through various foundations, and Cermat Ceria Sdn Bhd, a company owned by Taib's cousin, Hamed Sepawi, and Hasni Hasnam, had 37 per cent. The general manager announced plans to secure 30,000-50,000 ha of land in Indonesian Borneo for further expansion of oil palm. This has not eventuated, though there has been some expansion in Sarawak. Hamed Sepawi is now chair of the board.⁹²

By 2012 SPB had 27,700 ha under oil palm in 14 estates, mainly the legacy acquired from SLDB. This included a joint venture project with LCDA on 1,885 ha of customary land owned by Penan landholders at Jambatan Suai (SPB Pelita Suai). The average yield for the group was still only 13 t/ha, attributed (as it was in 1986) to disputes with landholders in Mukah (still aggrieved by the initial acquisition of their customary land by SLDB and the subsequent expansion of the planted area onto surrounding land) and the inability to harvest the Jambatan Suai estate due to ongoing landholder disputes.

Thus the SLDB, originally set up as a land development and settlement agency for smallholders, had been transformed into a large-scale commercial plantation company, controlled by Hamed Sepawi. In an apparent attempt to justify its role as the inheritor of SLDB's now valuable assets, SPB declares on its website that "the primary functions of SLDB are the development of large-scale agriculture in the form of oil palm plantations in Sarawak with the objective of creating employment opportunities, increase income and improve the standard of living of the rural community."⁹³ It is instructive to compare this with SLDB's original purpose – the development of land for settlers has been erased from the official narrative. Whereas in the 1970s SLDB created some employment for Sarawakians, it has for some time depended largely on Indonesian workers for its plantation labour force.

5.2 In Situ Schemes

While SLDB was developing oil palm schemes *without* smallholders in the Northern and Central Regions, an alternative approach was initiated in the longer-settled and more densely populated areas of the Southern Region. SALCRA was established in 1976, primarily to develop Native Customary Land "for the benefit of the owners." That is, its focus was on in situ development rather than resettlement. SALCRA's mode of operation was to borrow public and donor funds for the capital costs of oil palm development. The costs were charged to the participants who progressively paid back the amount and in time received the net proceeds from the sale of their fruit. 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 develop the land. However, the inclusion of land within such a development area helps to confirm existing customary rights, as the SALCRA Ordinance requires it to survey the land and, on completion of the development, the right-holders are to be issued with titles.

In the 1970s and 1980s SALCRA initiated land development projects in some of the poorer and more remote parts of Sarawak's Southern Region, with oil palm the dominant crop (Cramb 1992). Its earliest and largest project was the Lemanak Oil Palm Scheme in Sri Aman Division, which began

⁹² The entity SLDB still exists under the Ministry of Land Development. In 2012 it managed three oil palm mini-estates totalling 1,006 ha.

⁹³ From Sarawak Plantation Berhad website (<http://www.spbgroup.com.my/history.htm>, accessed 3 October 2007).

producing a return in 1985 after considerable delay in getting the palm oil mill operating. Despite concerns about SALCRA's capacity, in the mid-1980s it was given responsibility for oil palm development in the Kalaka-Saribas Integrated Agricultural Development Project (IADP) in Betong Division. The controversy surrounding land issues at this time made it difficult for SALCRA to negotiate with the Iban landholders, hence development was delayed and the oil palm area was fragmented. Eventually over 10,000 ha were planted, titles issued, and net proceeds paid to the landholders.

By 2011 SALCRA had established nearly 50,000 of oil palm, involving over 12,500 participants. While initially the labour was provided by the landholders, in most cases Indonesian workers are now employed. The Authority is now managed by a team drawn from the Sarawak Plantation Services (SPS) group that had managed SLDB prior to its privatisation. Though the agency continues to be plagued by allegations of inefficiency and corruption and criticised for its role as a political vehicle for Deputy Chief Minister, Alfred Jabu Numpang (Thien 2005), high palm oil prices and the steady payment of "net proceeds" have eased many of the participants' concerns and there is unmet demand from some upriver Iban communities. However, SALCRA's growth beyond the Southern Region has been blocked by Taib, with priority being given to joint venture projects under the Konsep Baru policy.⁹⁴ Hence the agency is consolidating and replanting its current areas.

The Federal Land Consolidation and Rehabilitation Authority (FELCRA) also undertakes in situ schemes for smallholders in Sarawak and had established nearly 27,000 ha by 2011. This is mostly in downriver (Malay) areas on titled land; only a quarter involves customary land. In total, the area of land developed as group or managed smallholdings by SALCRA and FELCRA totalled over 75,000 ha by 2011.

6 The Rise of Independent and Supported Smallholders

Notwithstanding the rapid expansion of oil palm estates, smallholders have managed to insert themselves into the interstices of the extensive plantation landscape, particularly in the Northern Region, creating a more diverse social, economic, and environmental outcome than the Taib Government's intended "rows of plantations and villages well organised in centrally managed estates." These smallholders mostly obtain lower yields than the estates but achieve good returns to their limiting resources of labour and capital, while maintaining a degree of livelihood diversity (Cramb and Sujang 2013). Two kinds of smallholders can be distinguished – independent and supported.

Independent smallholders have grown up at a rapid rate in the past decade, particularly near the large-scale estates and mills in Miri and Bintulu Divisions. In this case, landowners are developing their own land using their own labour and capital, without assistance from a government agency. However, some have obtained credit from local traders to establish their plantations, and in some cases wage labour is employed. Some of this planting was initially pre-emptive, that is, to prove to government agencies who wanted to allocate the land for a private estate or joint venture estate that it was being productively used (Majid-Cooke 2006). However, the good returns to labour and capital provided by even low-input, low-yielding smallholder operations have encouraged genuine investment and had a significant impact on rural livelihoods (Cramb and Sujang 2013).

Subsidised or supported smallholders are those who plant on individual lots, perhaps in a contiguous area, with varying degrees of support from government agencies. Under the Eighth Malaysia Plan (2001-2005) the Department of Agriculture (DA) ran two schemes for smallholders: the Smallholder

⁹⁴ This block had been partly lifted by 2008, though only for the remote Kapit Division, which was unattractive to commercial investors.

Oil Palm Planting Program (for up to 5 ha per participant) and Oil Palm Mini Estates (centrally managed in a contiguous block). Only 130 ha were planted under the former scheme and 1,525 ha under the latter and the results were mixed. It was proposed to expand these schemes under the Ninth Malaysia Plan (2006-2010) to a total of 8,000 ha. However, the Mini Estates scheme was blocked higher in the state bureaucracy because it was seen to be in competition with potential joint venture projects under Konsep Baru (Cramb and Sujang 2013).

In 2005 the Malaysian Palm Oil Board (MPOB), a Federal Government agency, also introduced a scheme to support smallholders in the vicinity of existing mills (Cramb and Sujang 2013). This involved the provision of good quality planting material, fertiliser, and technical advice, very similar to the DA's Smallholder Program. Where the land was customary land, verification of ownership had to be provided by the community headman. The Board was overwhelmed with applications. By February 2006 it had received 8,970 applications, of which 94 per cent were for customary land. The average area per application was just over 4 ha, giving a total area of about 36,000 ha – double the total area for smallholder oil palm at the time. However, only 161 applications were approved, covering 390 ha, all titled land. The issue of verifying customary land claims proved too difficult and controversial for the Board. In addition, many of the applications came from within areas that had been “earmarked” by LCDA for joint venture projects. Hence there was again pressure not to undermine the consolidation of customary land for large-scale development.⁹⁵

By 2011 independent and supported smallholders accounted for a planted area of 72,000 ha, representing an average of 5 ha per household. Though this was only 7 per cent of the total planted area, the growth has been rapid, increasing by a factor of eight in the past 10 years or a growth rate of 23 per cent. Supported smallholdings accounted for only about 10 per cent of the total area in these two categories. Hence the growth in smallholdings has largely occurred without government support, and despite opposition from sections of the government favouring estate development. Nevertheless, targeted support for these smallholders in the form of group-brokered credit for key inputs, technical advice, and coordinated provision of infrastructure, especially farm access roads and fruit collection centres, could help to raise their incomes still further and spread the benefits of the oil palm boom more widely and equitably (Cramb and Sujang 2013).

It is interesting to compare the growth of oil palm smallholdings with the growth in area of oil palm planted through the three agencies that offer the alternative of large-scale, centrally managed development of smallholders' (customary) land – SALCRA, FELCRA, and LCDA (Fig. 3). Whereas SALCRA dominated in 2001, its containment has allowed LCDA's joint venture schemes to increase steadily throughout the decade, surpassing SALCRA in 2009. Yet the area in smallholdings has increased even more rapidly, overtaking LCDA-brokered schemes by 2011. This has occurred despite the clear prioritisation of the joint-venture schemes, the major political campaign to persuade landowners to participate, and the availability of private capital to invest in such schemes.

⁹⁵ Interview with Manager, Malaysian Palm Oil Board, Sarawak Branch, 15 August 2008.

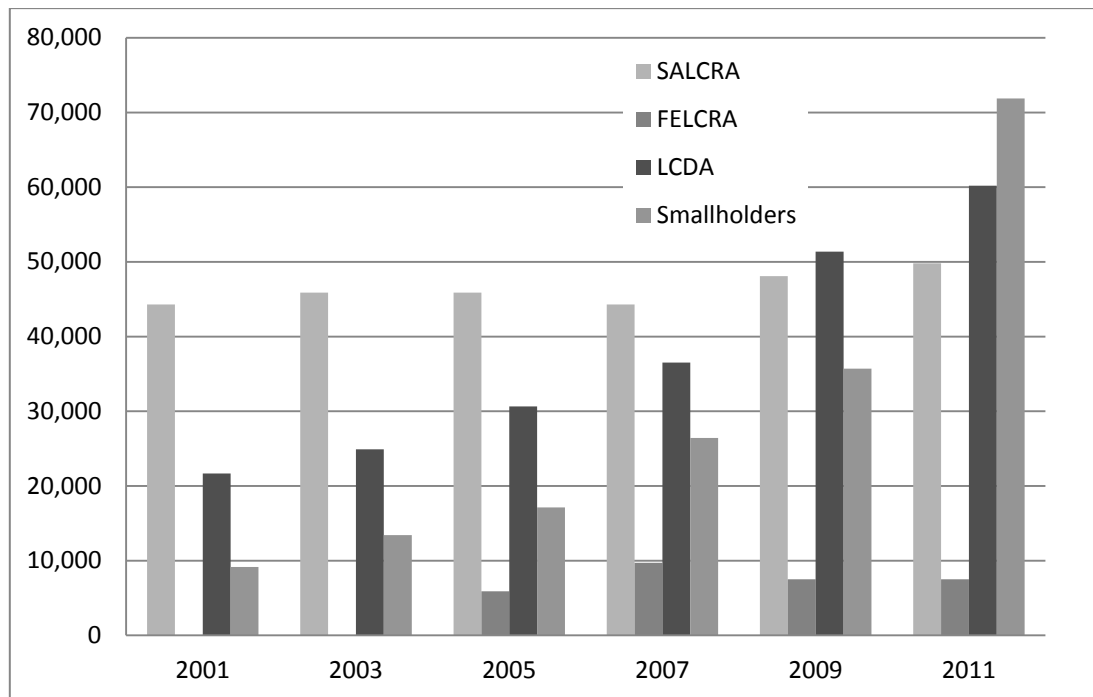


Figure 3 Area of oil palm in government schemes (SALCRA, FELCRA, LCDA) and independent smallholdings, 2001-2011 (ha)

It is significant that, in 2011, the Minister for Land Development, James Masing, declared that the government was exploring alternative models for land development on customary land: “After more than 10 years of implementing the concept [Konsep Baru], it has brought unsatisfactory result. So we are considering the alternative models because we want it to benefit all the stakeholders in the land development. The ministry is serious in eradicating rural poverty and this can only be done if the land is productive.” The Minister said the alternative models were being considered because the response from landowners to Konsep Baru had been “lukewarm”, mainly due to the low dividends.⁹⁶ The alternatives were (a) leasing, (b) profit-sharing, presumably similar to the current joint-venture approach, (c) nucleus estates with outgrowers (all three involving private plantation companies), and (d) a management approach with profit-sharing, whereby a government agency such as FELCRA would manage the estate for a fee and the landholders would hold 90 per cent of the equity. Some of these alternative approaches were examined by Cramb and Ferraro (2012). The last approach had reportedly been initiated in a pilot project in Sibu Division in 2011.⁹⁷ It remains to be seen whether these new initiatives prove sufficiently attractive to landholders and to plantation companies and their political patrons.

7 Conclusion

Large-scale capitalist plantations or estates have played a minor role throughout most of Sarawak’s agrarian history. Rather, the local agricultural economy has been based largely on village-based smallholdings throughout the colonial period and for several decades after the formation of Malaysia. Customary land has provided the basis for a mixture of subsistence activities and

⁹⁶ “Masing introduces another new land development concept to cheat Iban of their NCR lands,” *Bukit Tinggi* 8 October 2011, <http://bukittinggal.com/2011/10/masing-introduces-new-way-to-cheat-iban.html> (accessed 3/7/13).

⁹⁷ “Felcra-like new land management model to develop Sarawak’s NCR land,” *Malaysian Digest* 29 August 2011, <http://www.malaysiandigest.com/ge13news/30233-felcra-like-new-land-management-model-to-develop-sarawaks-ncr-land.html> (accessed 3/7/13).

smallholder export crops, notably rubber and pepper. Whereas something resembling the concept of a “dual economy” could be discerned in Peninsular Malaysia and Sabah, dating from the colonial era, this was not the case in Sarawak before the 1980s. From 1981, in response to the global demand for palm oil, pressure from private plantation and timber interests, and the associated opportunities for surplus extraction and political patronage, Taib Mahmud set out to *create* a dual agricultural economy in Sarawak where none existed. To do so he promulgated a policy that has focused on delivering extensive tracts of state and customary land to private estates and importing low-wage Indonesian labour, while minimising the potential for various modes of smallholder expansion, including independent, supported, and managed smallholdings.

The policy narrative legitimating this transformation has focused on the “new concept” of using joint ventures to bring the “natives” (with unlimited supplies of idle land) into the modern sector or “mainstream of development.” In fact, this mode of expansion has contributed only a small part of the total oil palm area, less than the area in various forms of smallholding. The main game has been to use regulatory and market powers, backed up on occasion with force, to facilitate the transfer of land to the rapidly expanding private estate sector, which accounts for the vast majority of the oil palm area. This strategy creates the maximum opportunities for surplus extraction and patronage through the allocation of land leases, timber licences, business contracts, directorships, consultancies, and shareholdings. Smallholder oil palm, while helping to reduce rural poverty, provides insufficient incentives for private capital and therefore insufficient opportunities for rent-seeking politicians, bureaucrats, and the *ersatz* business class (comprising relatives and associates of the first two sets of actors). The policy narrative trumpets the role of the state in unleashing the dynamism of the modern sector on behalf of its backward citizens while concealing the true nature of the agrarian transformation underway.

Can we characterise this transformation as a land grab? First, it must be said that this is not a case of transnational investment exploiting weak land governance and removing large areas of land from domestic food production, as has been documented in parts of sub-Saharan Africa and Southeast Asia (Borras and Franco 2012; Deininger 2011). Second, the expansion of oil palm has included independent, supported, and managed smallholders who have gained economically from the change in land use, as well as some private estates that are operating sustainably (for example, as certified by the RSPO) or at least have not caused major environmental impacts nor encroached on customary land. Even among the Indonesian migrant workforce, while many endure a precarious existence, there is evidence that a proportion of workers benefit economically from their period of employment and enhance their livelihood options on return (Cramb and Curry 2012; Pye 2012).

Nevertheless, the overwhelming features of the transformation are (a) the large-scale and irreversible conversion of environmentally valuable forestlands (including peatlands) to an oil palm monoculture and (b) the concentration of property rights to vast areas of both state and customary land in the hands of a small number of state-backed corporate actors. This corresponds broadly to Borras and Franco’s Scenario H, which they describe as the “worst possible scenario – and the most protested change in land-use or land property relations, either real, imagined, or predicted” (2012: 56). While the corporate actors are domestic firms, whether Sarawak-based (around 75 per cent by planted area) or from Peninsular Malaysia (25 per cent), they are mostly significant transnational actors in their own right, with investment in Sarawak merely part of a global expansion strategy to Indonesia and beyond. For them, land is indeed a fictitious commodity to be incorporated in ever-increasing land banks, thus adding to the company’s market value.

That a genuine land grab is underway is also evident from the countermovement that has emerged. This is clearly more than isolated protests manipulated by opposition politicians and western NGOs “for their own selfish ends.” It is a widespread response on the part of those most directly affected,

transcending ethnic and political allegiances. By making use of a relatively robust legal system, the countermovement has challenged the “powers of exclusion” employed by state and private actors and is slowly establishing a legal bulwark against unjust expropriation and concentration, based on judicial interpretations of both common and statutory law and the Malaysian Constitution. However, the process has been long and tortuous, and has generated its own concerted response on the part of a political elite determined to remove all institutional “encumbrances” to its vision of endless “rows of plantations and villages well organised in centrally managed estates.”⁹⁸

⁹⁸ Abdul Taib Mahmud, quoted in *Sarawak Tribune* 9 December 1984.

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A convergence of factors has been driving a revaluation of land by powerful economic and political actors. This is occurring across the world, but especially in the global South. As a result, we see unfolding worldwide a dramatic rise in the extent of cross-border, transnational corporation-driven and, in some cases, foreign government-driven, large-scale land deals. The phrase 'global land grab' has become a catch-all phrase to describe this explosion of (trans)national commercial land transactions revolving around the production and sale of food and biofuels, conservation and mining activities.

The Land Deal Politics Initiative launched in 2010 as an 'engaged research' initiative, taking the side of the rural poor, but based on solid evidence and detailed, field-based research. The LDPI promotes in-depth and systematic enquiry to inform deeper, meaningful and productive debates about the global trends and local manifestations. The LDPI aims for a broad framework encompassing the political economy, political ecology and political sociology of land deals centred on food, biofuels, minerals and conservation. Working within the broad analytical lenses of these three fields, the LDPI uses as a general framework the four key questions in agrarian political economy: (i) who owns what? (ii) who does what? (iii) who gets what? and (iv) what do they do with the surplus wealth created? Two additional key questions highlight political dynamics between groups and social classes: 'what do they do to each other?', and 'how do changes in politics get shaped by dynamic ecologies, and vice versa?' The LDPI network explores a range of big picture questions through detailed in-depth case studies in several sites globally, focusing on the politics of land deals.

A Malaysian Land Grab? The Political Economy of Large-scale Oil Palm Development in Sarawak

The rapid expansion of oil palm cultivation in Sarawak, Malaysia, over the past 30 years has entailed a radical transformation of the agricultural economy from one based almost entirely on semi-commercial smallholdings to one dominated by large-scale, private estates. This paper contends that the dominant role of private estates has been driven not primarily by technical or market imperatives but by the exercise of state power to maximise opportunities for surplus extraction and political patronage. The result has been an internal or domestic land grab involving (a) the large-scale and irreversible conversion of environmentally valuable forestlands (including tropical peatlands) to an extensive oil palm monoculture and (b) the concentration of property rights to vast areas of both state and customary land in the hands of a small number of state-backed corporate actors and their patrons in the political-bureaucratic elite. The mechanisms by which this transformation of land use and property relations has been brought about include the four "powers of exclusion" identified by Hall et al. (2011) – regulation, the market, force, and legitimation. However, a Polanyi-like countermovement has challenged the powers employed by state and private actors and is slowly establishing a legal bulwark against unjust expropriation and land concentration, based mainly on judicial interpretations of customary land tenure.



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