



## **Malaysia's Case Study** A Community Initiative: Mapping Dayak's Customary Lands in Sarawak

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## Introduction

Sarawak, with a total land area of 124,449 sq. km (12.4 million hectares) is the largest of the 13 states in Malaysia. Located on the North-western sector of Borneo, it shares its boundary with its sister state, Sabah and two neighbouring countries namely Brunei Darussalam and Kalimantan (Indonesia). The State capital is Kuching, with Sibu, Miri and Bintulu being the major cities and town in the State. Sarawak is divided administratively into 11 divisions with each division sub-divided into districts and sub-districts.

Sarawak's population is estimated to be at about 2.2 million people, the majority being the indigenous Dayak<sup>1</sup>, which makes up 50% of the whole population. However, 80% of the total Dayak population in Sarawak are rural dwellers, which consist of self-subsistent agriculturists, hunters and gatherers. Other populations include the Malays, Chinese and a small number of Indians.

The nature of the land tenure system of the Dayaks is complex and yet intriguing. Land has always been the most crucial of all resources for the Dayaks. The land provided the Dayaks with their basic sustenance and have a deep significance in the spiritual lives of the people. The right of the Dayaks to use the land is enshrined in the *adat*, and this system of land tenure was the bedrock upon which the social, economic and cultural system rested.<sup>2</sup>

The Dayak's native customary rights<sup>3</sup> (NCR) to land and its resources were recognised during the period of the Brooke Government and the British Colonial Administration, and continued when Sarawak gained independence and joined the Federation of Malaysia. It was never abolished by any legislation up to the present day. However, large portions of the native customary lands of the Dayaks are not demarcated officially.

## Background on Issues of the Dayaks

Gaining recognition and respect of NCR to land has always been in the forefront of the indigenous Dayaks' struggle in Sarawak. Presently, the State's legislation actually recognises the NCR of the Dayaks to their customary land, but too often this has been ignored and violated upon by the State Government and the private enterprises for economic interests. These economic interests include logging, large-scaled mono-crop plantations, infrastructure development and other extractive industries.

Logging has been the main source of revenue for the State. To date, the State Government has already licensed out logging concessions to private companies out of 70% of the total land area of Sarawak. With the forest fast becoming depleted, due to over exploitation, the State Government is currently planning and promoting the

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<sup>1</sup> An umbrella term for the various ethnic groups in Sarawak

<sup>2</sup> Evelyn Hong, *Natives of Sarawak: Survival in Borneo's Vanishing Forests*, Institut Masyarakat, Malaysia 1987, p.14

<sup>3</sup> Native customary rights (NCR) is defined in Section 2 (a) of the Sarawak Land Code Chap. 81, 1958 which reads, "land in which native customary rights, whether communal or otherwise, have lawfully been created prior to the 1<sup>st</sup> day of January, 1958, and still subsists as such.

development of large scale plantations throughout Sarawak where 3 million hectares of the state for oil palm plantations and 1.5 million hectares as planted forest.

These industries are also constantly encroaching into the customary land territories of the Dayaks with blatant disregard of the Dayak's NCR, culture and the environment. The Dayaks who were once a thriving self-sustained community living on their customary land now have to face the threat of losing their customary land thus undermining their livelihood.

The Dayaks have taken various actions in their efforts to defend their customary rights. In some cases, the Dayaks have resulted to taking direct action by stopping the intruders from encroaching into their customary land by erecting blockades. However, the authorities have come down hard on them by way of arbitrarily arresting and in some cases assaulting them. The authorities have also labelled the Dayaks that oppose the State Government's policies as 'anti-development' or 'anti-Government'.

Human rights abuses have also occurred among activists advocating for indigenous peoples rights and the environment by Government authorities such as detention without trial under the draconian Internal Security Act (ISA), restriction of travel outside of the country by revoking their passport and barring them from entering into the State.

### **Brief History and Objectives of Community-based Mapping**

Contrary to the conventional view, community mapping in Sarawak is not a new phenomenon. In the 1930s, the Brooke<sup>4</sup> Government assisted the Dayaks and Malays to map their customary land boundary. However, this effort could not be implemented throughout the State as the Government then did not have the resources to do it. The effort was temporary halted during the Second World War and resumed briefly during the British Colonial Administration only to see the effort shelved aside when Sarawak gained its independence in 1963.

It was not until 1992 that the community mapping effort began to resurface with several community activists discussing the need to record and demarcate the native customary lands of the Dayaks. In 1996, BRIMAS organised a training session on community-based mapping for non-governmental organisations (NGOs)<sup>5</sup> and community-based organisations (CBOs)<sup>6</sup> in Sarawak with support from mapping trainers from the Borneo Project<sup>7</sup>, so the communities could produce their own maps. From 1997 onwards, BRIMAS has been in the forefront in community-based mapping activities in Sarawak, receiving overwhelming requests from the community to map their customary land and to train the community to map their own land.

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<sup>4</sup> The Brooke family ruled Sarawak from 1841 – 1941 before the onset of World War II and subsequently ceding Sarawak to the British Colonial Administration in 1945

<sup>5</sup> Local NGOs involved in community mapping are BRIMAS and Sahabat Alam Malaysia (SAM or Friends of the Earth, Malaysia)

<sup>6</sup> CBOs involved in community mapping are Keruan, Sarawak Penan Association (SPA), Uma Bawang Residents Association (UBRA) and Bong Iban Community Association (BICA)

<sup>7</sup> The Borneo Project is an NGO based in Berkley, California, USA has actively supported the development of participatory community-based mapping efforts of indigenous peoples in Sarawak and (to a lesser extent) Sabah

The main objective of community-based mapping in Sarawak is to delineate and document the native customary land boundary and thus helping preserving the community's traditional knowledge to their customary land. Threats of encroachment into the customary lands led to the demand by indigenous peoples to have the State Government delineate their boundaries. The State Government has been slow in responding to these requests, and do so only if the Dayaks would submit to the State's land development policies - policies which actually violate the NCR of the Dayaks.

The second objective is to apply the community map as a tool for negotiation and resolving disputes between the community with outside parties or within the community itself. An example of community maps used as a tool for dispute resolution can be seen in a landmark 2000 case pitting the longhouse community of Rumah Nor<sup>8</sup> against a pulp and paper company and the State Government. The court favoured the community - in part because the community map had strengthened the community's claims.

The third objective of community maps is to apply it as a tool for community-based resource management. To date, the community have used their community map to plan for their community socio-economic projects and utilisation of the land and resources.

### **BRIMAS' Community-based Mapping Efforts**



Since 1997, BRIMAS has been assisting and training the Dayak community to conduct field surveys and producing their community maps. Initially, BRIMAS had conducted the community mapping activities using survey equipment such as the compass and tape measurer. As BRIMAS progresses, Global Positioning System (GPS) units were used to collect field data and out of this, scaled hand-plotted maps

were produced with the information given by the communities and topographic maps as the based maps. After 2002, BRIMAS started to use Geographic Information System (GIS) to produce community maps.

Currently, the bulk of the maps produced by BRIMAS were tendered as evidence in support for the communities' NCR land claims in court. Usually, communities with customary land disputes would approach BRIMAS to discussed their problems and seek redress to their dispute. BRIMAS would in turn investigate their problems, assess the situation and discuss together with the community on their next course of action.

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<sup>8</sup> The case of Nor Ak Nyawai & 3 ors v Borneo Pulp Plantation Sdn. Bhd. & 2 ors, at the Kuching High Court, Sarawak

If there is a need for a community map to be done, a meeting would be held with the community to gather information and to plan for the activity. During the meeting, BRIMAS would conduct interviews on community members about the goals of the having a community map and identify what information should be collected and mapped. From the result of this meeting, a participatory sketch map would be produced by the community showing their customary land area as reference for the field mapping survey and scaled community map that is yet to be produced.

Field mapping survey would be conducted either by BRIMAS' staff or by BRIMAS' team of community surveyors or by members of the community trained by BRIMAS on field surveying techniques. GPS sets are used to gather waypoints of specific features on the ground based on the information given by the community. In some cases (to a lesser extent), the compass and tape measurer are used in field surveys. Normally, members of the community who are knowledgeable of their customary land would accompany the surveyors in the field to guide the surveying works which is done through community self-help basis.

Once the field survey has been completed, the field data would be inputted into BRIMAS' GIS database. Layers of data from the field survey would then be overlaid over base maps, usually topographic maps and the draft map would be printed out for a critical review from the community. Additional changes would be made, if any to the map and a final copy would be printed once the community is satisfied that the information



on the map is correct. The map would then be submitted to the community with copies stored with BRIMAS. Future revisions to the map would be made whenever necessary.

Community maps that are submitted back to the community belongs to them. The community has every right to use the map as they sit fit. If another party wants access to the community maps via BRIMAS, BRIMAS would have to get the community's prior informed consent before it could release the map and its data.

### **Impacts of Community-based Mapping Efforts**

Community-based mapping efforts in Sarawak have indeed empowered the indigenous Dayak community, NGOs and CBOs involved in it. Community mapping has helped to mobilise the community to assert and defend their NCR to land. The equipment used to conduct field mapping survey are getting more accessible to the communities nowadays and it is also fairly easy for the communities to understand and use. For the first time, the Dayaks could see and tell accurately the extent of customary land boundary from the community maps produced to other parties thus giving them a better bargaining power.



The greatest impact of community maps has been in its acceptance as evidence in court for the community's NCR land claims. In May 2001, the community of Rumah Nor won their land dispute case in the Kuching High Court brought about from their representative suit against Borneo Pulp Plantation Sdn. Bhd.<sup>9</sup> In the landmark ruling, the judge was satisfied with the evidence brought forward by the two longhouse communities that claim the disputed area as their native customary land by virtue of practicing their NCR. In this case, the community map tendered as evidence showed the area of dispute between the longhouse community and the pulp and paper plantation company. This case showed the value of community maps in asserting NCR, and led to other communities to demand for community-based mapping of their territories.

As it is apparent that community maps are getting more useful as a powerful tool for the Dayaks to assert their NCR land claims, the Sarawak State Government reacted by condemning community-based mapping activities in Sarawak as a subversive activity. In November 2001, the State Government enacted the Land Surveyors Ordinance 2001 to regulate land surveying practices and activities in the state thus making the community-based mapping efforts in Sarawak illegal.

In the Land Surveyors Ordinance 2001, community mapping activities are made illegal from the provisions of Section 20 and Section 23 of the said Ordinance. Section 20 states – no cadastral land survey<sup>10</sup> or survey plan thereof shall be accepted or adopted for the purpose of the Code or any other written law unless it has been approved by the Director of Land and Surveys or by other officer authorised by him to approve survey plans on his behalf. Section 23 on the other hand states - any person who, not being a land surveyor, wilfully and falsely pretends or takes or uses any name or title implying that he is a land surveyor, or being a land surveyor or a Government surveyor certifies as to the accuracy of any cadastral land survey or signs or initial any survey plan, or not being a surveying assistant acting under the immediate personal direction and supervision of a land surveyor, carries out or undertakes to carry out any work, in connection with a cadastral land survey, shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand Ringgit or to imprisonment not exceeding three years or to both for each offence, and to a further penalty of one thousand Ringgit for each day during the continuance of such offence.

### **The Challenges of Community-based Mapping**

The demand for community mapping are increasing all over the State, thus it puts tremendous strain on NGOs and CBOs who are already heavily burdened with their current workload to meet these demands. They are very few skilled and knowledgeable personnel within the NGOs who work with community maps and due to this fact once the person leaves it is difficult for the organisation to find and train a replacement.

Each community mapper have different levels of capacity. Some groups still lack the capacity in terms of knowledge and skills to produce maps in line with the standards

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<sup>9</sup> Borneo Pulp Plantation Sdn. Bhd. (BPP) is a joint venture company between Asia Pulp and Paper (APP) and the Sarawak Government owned the Sarawak Timber Industry Corporation (STIDC)

<sup>10</sup> Section 2 of the Land and Surveyors Ordinance 2001 states – “cadastral land survey” means any survey undertaken to mark, identify or determine the extent or boundary or the measurement of any parcel or area of land, and includes title survey

required for the maps to be filed in court. More trainings are needed to upgrade their capacity, however, funding from donor agencies to implement these activities are isolated and difficult to obtain.

The usage of GIS further limits the participation of the communities in producing their maps. Only a select few who have the skill and knowledge in information technology could participate in the GIS trainings, however, there is still the issue of obtaining the funding for the software and hardware.

Accessing secondary information from base maps such as the Government 1:50,000 scaled topographic maps and aerial photographs proves to be problematic with the State Government restricting the distribution of these documents by law. The State Government needs a valid reason in order to release these documents and clearance needs to be obtained from the Superintendent of Police for approval. Very often applications from NGOs were rejected. Alternatives to topographic maps and aerial photographs are satellite imagery, but to obtain satellite imagery cost too much.

The major challenge to BRIMAS is the legitimacy of the court in accepting participatory community maps in light of the enactment of Land Surveyors Ordinance is still uncertain. There are more than 40 cases filed in court with regard to NCR land claims, about half of them after the enactment of the said Ordinance. However, until now the court has yet to decide on the admissibility of the maps filed. In addition, the NGOs and community surveyors could be arrested, charged and convicted in court as the law has been enforced by the State Government.

## **Conclusion**

Community maps have proven to be a powerful tool in empowering the Dayak communities in Sarawak to demand from the Government due recognition and respect of their NCR to land. Delineation of the Dayaks customary land boundary has been made easier with the advancement of mapping technology. More and more communities are wanting to have the customary land territories mapped in view of the success it had in the court.

To date BRIMAS has already mapped out more than 40 communal customary land territories of more than 100 indigenous communities in Sarawak and continue to do so as more requests are made by the communities. The community needs more capacity building trainings/workshops to obtain the knowledge and skills of making their own community maps. Field survey equipment and hardware for GIS applications and training in the use of GIS are also needed for the organisations assisting the communities in producing community map.

Support from organisations involve in community-based mapping are vital for the continuation of the community mapping initiative in Sarawak. A network of community mappers in the region would facilitate in the exchange of information and expertise to further enhance this initiative.