

# The Experiences of Bidayuh in the Development of Native Customary Rights LAND IN Singai

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## ABSTRACT

The objectives of this study are twofold. Firstly, the study identifies locally specific native customary land tenure in Singai, Sarawak. Secondly, based on this land tenure system, the study examines how the natives respond to land development policies. This paper discusses the Bidayuh concept of native customary land tenure and how the concept is being used to reject state initiated NCR land developments. Methodology of this study was done in a qualitative and quantitative manner whereby structured questionnaires coupled with interviews were conducted. Literature review and secondary data were also employed. Data, analysis was done using the SPSS software (version 17) by applying descriptive statistic as well as drawing findings from empirical evidences. The findings, among others, suggest that native customary rights land in Singai has been preserved by the practise of traditional land tenure. The native customary rights to land covers what the natives themselves refer to as *damun*, *obut*, *purau*. Their perseverance to practise their native customary rights on their NCR lands has seen many of them rejecting often used model of NCR land development, preferring instead to an alternative method of self development. This alternative method has also spawned a community based organisation called REDEEMS (Research and Development Movement of Singai) which the native Singai hoped to use in order to ride the waves of unpredictable development for the future. The finding is pertinent as it will shed some light to the relevant authorities and other ethnic native group on how to avoid conflicts and at the same time to assert their native customary rights to land.

Keywords: Common development, Land Code, land tenure, law, native customary rights

## INTRODUCTION

The pursuit of development by the government and companies has increased the demand for native customary land in Sarawak. This demand has seen tremendous impact on the natives of Sarawak. The impact has seen the State claiming that the development of native customary rights land (hereinafter refer to as "NCR land") is for the general good of the natives whereas the natives on other hand claim otherwise. The demand has also created tensions between the natives, the state and the company. The relationship between these three stakeholders of NCR lands is, at best, testy which resulted in conflict. NCR land development has spawned many controversies and a myriad of issues. Common controversial issues centre around, but not limited to, ownership, encroachment of land and water sources, environmental destruction and human rights abuses of the natives. Natives in asserting their rights have turned to the Courts by filling legal actions albeit with mixed results. The State and logging and/or

plantation companies meanwhile continue with their respective method of development, which the natives detest, while trying at the same time to avoid controversies where possible.

Current health of tense relationship however is not felt by all the natives of Sarawak. In Bau, Singai, the subject of this research, the Bidayuh are able to avoid the controversies usually associated with NCR land developments and seems to be able to withstand the onslaught of NCR development as well as preserving their NCR lands at the same time. How the Bidayuh Singai is able to this will be the backbone philosophy of this research paper.

## **LITERATURE REVIEW**

Native customary rights (hereinafter refer to NCR) to land issues have generated a lot of controversies in the face of government's pursuit of development in Sarawak. Numerous literatures have critically commented, analysed, discussed and argued about the issues each from their own respective lenses. Issues centre on, but not exhaustive to, evidentiary proof of claimants, method of development (Ngidang 2002, 2005; Perera 2009), social and environment impact, human rights and legal ownership (Bulan 2009). It has been argued that the native customary rights to land in Sarawak were defined by the Brooke and English administrations with paternalistic and autocratic rule. In today's post independence Sarawak, nothing has changed except that the Torrens system of land ownership through registration has further impinged on the natives land inheritance system, cultural identity and dignity (Ngidang 2005). There were also arguments that in some parts of North Borneo the natives were able to resist the domineering position of the colonialist and negotiated a native reserve (Doolittle, 2001). On land development, Ngidang (2002) argues that joint ventures arrangements between the natives and other stakeholders to develop NCR lands were not profitable. In countering Ngidang's argument, a study was conducted to show that the natives and timber companies can coexist peacefully which benefited both parties. (Pedersen et al 2005). There are also arguments that the Courts, as the final option to seek redress, should be creative and vigilant in protecting native land rights (Bulan 2001) and that the State should be more responsible in protecting and empowering natives land rights protection by way of the legal mechanism called "trust" (Bulan 2006). Ensuring that natives share the fruits of development, there are suggestions that that stakeholders should work together in that a proper joint venture mechanism or even a small holding venture, properly administered, be set up by the State and private companies (Cramb and Ferraro 2010). Notably, it has long been propagated by Cramb and Wills (1990) that traditional institutions should be viewed as the building blocks of a modern, development-oriented institutional structure. They should not be viewed as a stumbling block for development. The issues raised above therefore justify a study of native customary land use in Singai, more so, in order to face the unpredictable pace of development.

## **METHODOLOGY**

Likert-type scale was used to capture the qualitative data from respondents. Secondary data analysis (based on documents, records and journals) were conducted to understand native customary land tenure concept, and their perceptions on land initiatives and development schemes. The data for the study were collected via questionnaires and personal interviews with heads of the selected households of the four villages namely Kampong Segong, Kampong Atas, Kampong Bobak Sajong and Kampong Bowang. The research instrument has four sections: (i) background information; (ii) issues on native customary right land (NCR); (iii) opinion about NCR land development strategies; and (iv) suggestions and comments. The data captured from the

respondents was analyzed using SPSS version 17. The respondents' profiles were cross-tabulated with issues on native customary land (NCR) whilst the internal consistency of the research instrument on land development plans were assessed using Cronbach Alpha. Descriptive statistics was also applied to data obtained to produce summary of frequency observation.

## NATIVE CUSTOMARY RIGHTS TO LAND

*Adat* to the indigenous Dayak communities is all encompassing that includes all activities customarily practises in the communities which also covers the individual's behaviour and habits (Sather 1980). *Adat* is not exclusively restricted to the notion of "customary law." *Adat* has been transformed into "customary law" by virtue of the formation of the State of Sarawak. The alteration of *adat* affected land use system, result of which, the Land Order was introduced in 1863, changed in 1920 and amended today as the Sarawak Land Code 1958(Cap 81). There are six classification of land as provided in the Sarawak Land Code 1958 (hereinafter "the Land Code") namely as follows:

- Mixed Zone land ( land held by private registered title-could be held by any legal person)
- Native Communal Reserve (area declared by the government for use by a native community regulated by the personal customary laws of the native community)
- Native Area Land ( only natives may hold)
- Reserved land (land reserved for the government purposes)
- Interior Area Land (no title may be issued – natives allowed to acquire NCR but rights and uses yet to be clearly defined)
- Native customary land (where NCR is lawfully created but subject to narrow interpretation of Land Code)

The term "native customary right" or native title in this paper describes the interest of the native of Sarawak in their traditional land. This term is used in a broader sense and is not limited to the narrow definition as stated in Section 5 of the Sarawak Land Code consistent with (Bulan and Locklear 2008). This approach is equally consistent with current trend established in the leading Federal Court case of *Superintendent Of Land & Surveys Miri Division & Anor v. Madeli Salleh* [2007] 6 CLJ 509. The jurisprudence of NCR law is considered generally new in Sarawak as compared to other commonwealth jurisdiction such as Canada, Australia and New Zealand. However, from various courts' decision we have seen developments consistent with other commonwealth jurisdiction. Current established principles of native customary rights law in Sarawak can be summarized as follows:

- Natives not only have a right over the land but also an interest in the land. (The view aforesaid was upheld by the Court of Appeal as reported in *Kerajaan Negeri Johor & Anor v. Adong bin Kuwau & Ors* [1998] 2 CLJ 665).
- This is a right acquired in law and not based on any document of title. It does not require the conduct of a person, legislative, executive or judicial declaration to complete it. This is a right enforceable by the courts (see the High Court decision in *Sagong bin Tasi & Ors v. Kerajaan Negeri Selangor & Ors* [2002] 2 CLJ 543 and upheld by the Court of Appeal in *Kerajaan Negeri Selangor & Ors v. Sagong Tasi & Ors* [2005] 4 CLJ 169).

- Although the natives may not hold any title to the land and may be termed licensees, such licence cannot be terminable at will. The native customary rights which can only be extinguished in accordance with the laws and this is after payment of compensation. (see Court of Appeal decision in *Superintendent of Lands & Surveys, Bintulu v. Nor Anak Nyawai & Ors and Another Appeal* [2005] 3 CLJ 555).
- That common law respects the pre-existence of rights under native laws or customs ( As held in *Adong bin Kuwau & ors v Kerajaan Negeri Johor*[1997] 1 MLJ 418 affirmed by the Court of Appeal and *Superintendent of Lands & Surveys, Bintulu v. Nor Anak Nyawai & Ors and Another Appeal* [2005] 3 CLJ 555).
- It is not necessary to establish actual physical occupation of NCR provided there exists sufficient measure of control to prevent strangers from interfering in it (*Superintendent Of Land & Surveys Miri Division & Anor v. Madeli Salleh* [2007] 6 CLJ 509)
- In the celebrated case of *Nor Anak Nyawai & Ors v. Borneo Pulp Plantation Sdn Bhd & Ors* [2001] 2 CLJ 769, Ian Chin, J encapsulates what are the main essential characteristic of a NCR claim. It is necessary to quote in toto:

“ A **pemakai menoa** (also spelt pemakai menua), is an Iban term that refers to "a territorial domain of a longhouse community where customary rights to land resource was created by pioneering ancestors" (Dr Dimbab Ngidang on *Ethical Values of Sarawak Ethnic Groups*, p 33). Another description of it is in these words: "The family groups (bilek) join together to make a longhouse which, with the surrounding contiguous territory, make up the menoa. It includes besides farms and gardens, the water that runs through it and the forest round about it to the extent of half a day's journey" (AJN Richards on the *The Land Law and Adat*, p 24). Such a territory is chosen because of the presence of arable land, of rivers and forests from the which life sustaining resources like water, fish, animals and forest products (including timber, wild vegetables, edible ferns, palm shoots, rattans, herbs or medicinal plants, fruit trees and bamboo) can be obtained. The evidence of the plaintiffs supports this and I need not go into them since that is not disputed. The pioneers of a longhouse community are usually relatives who banded together in search of a new territory and when this is found, the pioneers would build a longhouse with sufficient rooms arranged in a row, all joined together to accommodate the families. The longhouse will just expand with new families. It is within this territory, called the pemakai menoa, that each longhouse community has access to land for farming, called the **temuda**, to rivers for fishing and to jungles, called **galau or pulau galau**, for the gathering of forest produce. It has boundary separating it from that of another longhouse. The boundary is reckoned by the reference to mountains, ridges and rivers or other permanent features on the earth ...”

Even though the Court of Appeal overturned the High Court's decision on appeal, the above pronounciataion is considered good law.Despite the above well-established characteristics and pronunciation of good law, tensions still exist between the State, the companies and natives. Conflict of laws and practices that resulted in conflict includes but not exhaustive to interpretation of NCR, issuance of provisional leases, notice of extinguishment of NCR lands and the setting up of land banks

## INTERPRETATION OF NCR

Section 2 of the Sarawak Land Code 1958 (Cap 81) defines Native Customary land as “land in which native customary rights, under communal or otherwise, have lawfully been created prior to 1st day of January 1958 and still subsist as such.” Section 5(1) of the Land Code for example recognizes that NCR that has been created before 1 Jan 1958 and thereafter any fresh NCR claims on Interior Area Land must be obtained through permit under s 10 of the Land Code and; Land under communal reserve under Section 6 of the Land Code Accordingly, a native could only claim and prove NCR before 1 January 1958. Current statutory law as stated in the Land Code 1958 provides certain recognition of NCR with certain qualifications. Creation of NCR to land under Section 5(2) of the Land Code 1958, are permitted by the following methods:

- felling of virgin jungle and the occupation of the land thereby cleared;
- the planting of land with fruits;
- the occupation of cultivated land;
- the use of land for a burial ground or shrine;
- the use of land for rights of way; and
- by any lawful method (this was deleted in 2000).

The issue of interpretation being one of the most contentious remain the bedrock of all NCR claims as it is relevant to the issue of ownership. Nonetheless, NCR to land recognized by the State government stand oppose to NCR land recognized by the natives. The State has steadfastly relying on the black letter of the Land Code and refused to accept “*pemakai menoa*” and “*pulau galau*” as part of NCR (Sarawak State Attorney-General Chambers for Human Rights Commission(2004) –updated on 15.1.2007) whereas the natives relied doggedly on the unwritten source of law which are not stated in the Land Code. Through common law the natives has made some significant inroads towards asserting their rights despite far reaching amendments of the Land Code limiting their NCR claims. Fong (2011) has argued that common law principle should not be applied in NCR cases because the cases are common only in England and that local law and customs would suffice. However, it is submitted that even with current native customs readily available there are still persistent denial of these rights by its non - recognition to date in the Land Code of *pemakai menoa* and *pulau*. Further, the Federal Court in *Madelli* has held that common law is not only a source of judicial precedence but of substantive law which has the same effect as the written law. The pronouncement by Federal Court is more than enough for the State to accept as a matter of substantive law that native custom has to be recognized to avoid further conflict. (For further criticisms and discussions of the amendments to the Land Code see Bulan, (2006). The Courts has for instance recognize the concept of “*pemakai menoa*,” and “*pulau*” as part of NCR and that common law respects the pre-existence of rights under native laws or customs. In general, what constitute NCR and attempts to prove them continues to be the bone of contention between the State and the natives.

## **PROVISIONAL LEASES**

The State government via the Land and Survey has issued provisional leases to private companies without consent of the natives. Most provisional leases overlap with NCR claims. There are no provisions that natives are to be consulted before the issuance of provisional leases. Under the provisional lease, private companies are given permission to quarry, extract timber, implement aquaculture project, plant cash crops such as palm oil on NCR lands generally without the prior approval of the natives. The natives were generally caught unaware and taken by surprise by the issuance of such leases. Feeling threatened, it is of no surprise that they rise up against the State and companies in protecting their NCR lands. The insistence of provisional leaseholders and the natives to hold to their respective stance resulted in land conflicts, which at times has turned violent. Instances, such as that which has occurred in Niah, Miri where natives clashed with hired rogue elements that have encroached into their NCR land; and in Serian, where natives burned company's tractors and machineries in protecting their NCR land for alleged encroachment by company workers are not uncommon.

## **EXTINGUISHMENT**

The method of extinguishment by way of notice in the gazette, on notice boards of the District Officers of disputed areas and notice in Sarawak newspapers as provided under Section 48(2)C Land Code 1958 are clearly insufficient, ineffective and impractical. By the time natives are aware of the notice, period of termination would have lapsed. Period of objection over with no or very little recourse to alternative remedies. Languages either in Bahasa Malaysia or English used in the newspapers are highly legalistic in nature are not easily understood. Not all natives are able to read and understand such notices be it in the newspapers or notice boards even if they are notified.

## **LAND BANKS**

It is said that Section 18 A of the Land Code 1958 were made to fit the new concept of NCR whereby vast tract of native land can be turned into land banks with new forms of ownership in that rural land could be developed into a large scale commercial plantation (Fong 2011). Under this new concept, native land will be developed into two models via direct shareholding model and commercial nucleus model. By the former, land banks can be created by the amalgamation of NCR land with government agency such as LCDA and SLDB appointed as agent for native land owners. The agents would then form a joint venture company with an established plantation company to develop oil palm. The land bank, issued with a 60 year title, would then be subleased by the agents to the joint venture company. The natives would be paid rental payment amounting to 30% payment for equity in the joint venture company and (ii) cash for investment unit trust. The natives are to be paid cash on the onset on development of his land. By the later model, the land bank would be vested to agency like LCDA or SLDB as trustee and managing agent for native land owners. The agents would enter into an agreement with a plantation company which owns a plantation next to the land bank. The agent will secure financing for the first 5 years. It is claimed that with this arrangement the land owner retains 100 % ownership but will not receive cash until there are returns from sale of produce. Under both models natives are said to benefit (Fong 2011).

Despite the purported benefits many natives complained that they were not consulted of the new concept. Instead of a dialogue it was a monologue. Many joined the land banks out of pressure and that the landowners instead of becoming a major shareholder automatically become minority shareholders. Landowners have also become labourers on their own lands without any role in management. There are also claims of highhandedness where the projects are being implemented. There were also instances where the companies and managing agents totally disregard native culture and differences in values regarding land use.

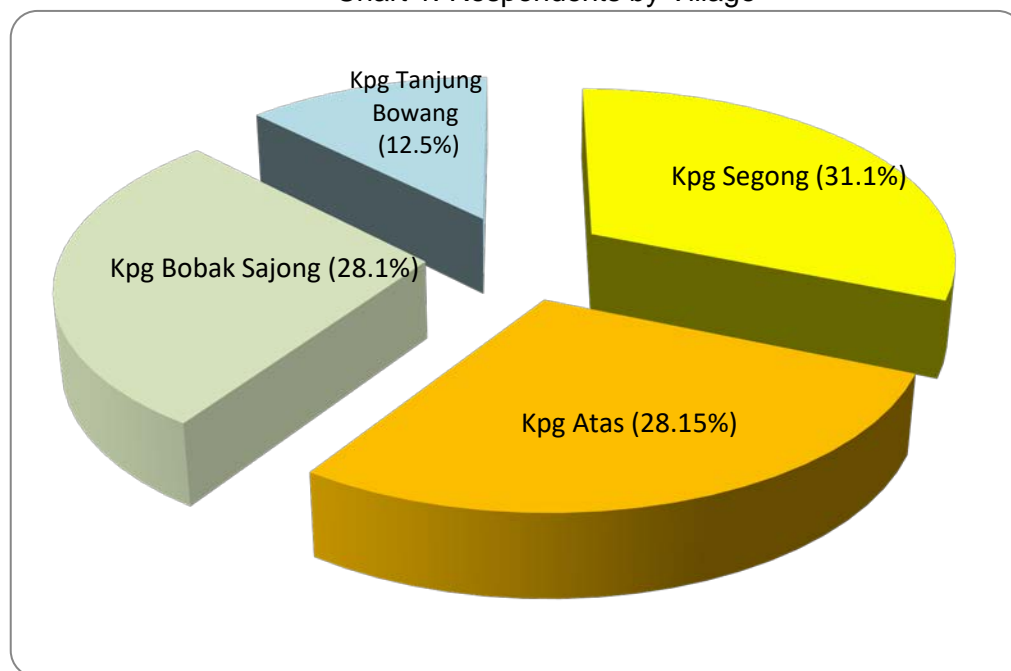
## DATA ANALYSIS AND DISCUSSION OF RESULTS

This section discusses the data analysis and research findings regarding the following issues: period of ownership of NCR land, the size of the land, and the approach of land development most preferred by the respondents. NCR areas in this study focus on the NCR land at the Singai mountain, Berendang Mountain, and the surrounding Moi mountain. It also presents the profile of the respondents in brief.

### Profile of the Respondents

The respondents under study were from Kampong Segong (31.3%), Kampong Atas (28.1%), Kampong Bobak Sajong (28.1%) and Kampong Bowang (12.5%) as depicted by Chart 1 below.

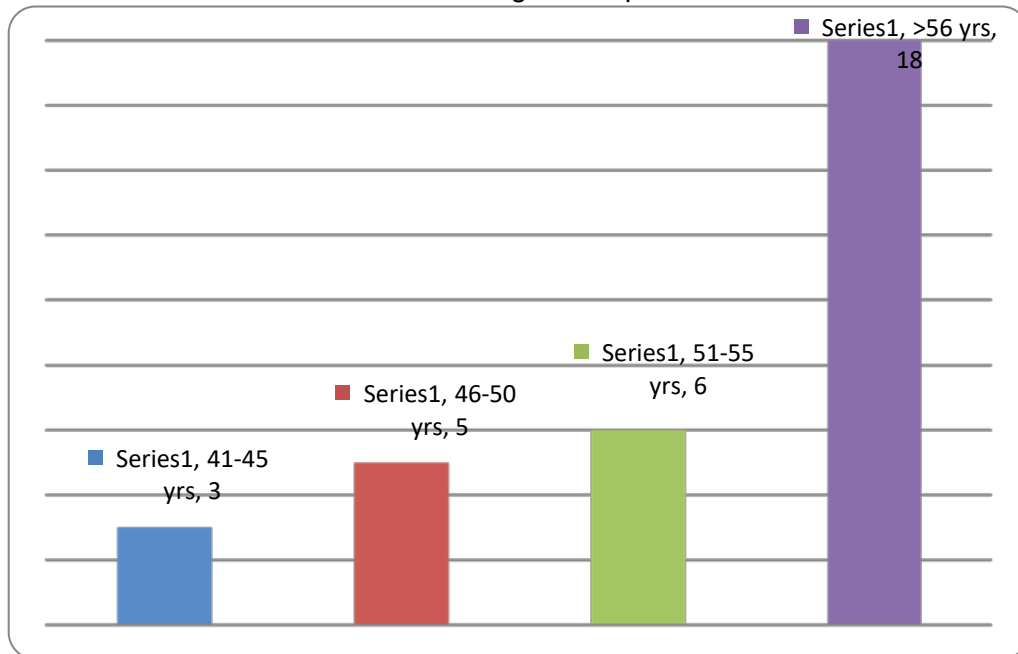
Chart 1: Respondents by Village



For respondents at Kampong Tanjung Bowang, the research team was unable to interview and capture the intended number of 10 respondents due to some pressing family matters that need their urgent attention at that village. Majority (87.5%) of them was male and they normally represented the heads of the family units which is typical of the Dayak community. Respondents were mostly married (87.5%). Majority (56.3%) of

them were more than 56 years of age followed by those between 51-55 years age category (18.8%). The 46-50 years old made up of 15.6% of the sample. This finding is interesting as it affirms the validity of their ownership claims on the NCR land. They were able to describe and explain the physical metamorphosis taking place at their areas over the years. This profile is shown in Chart 2 below.

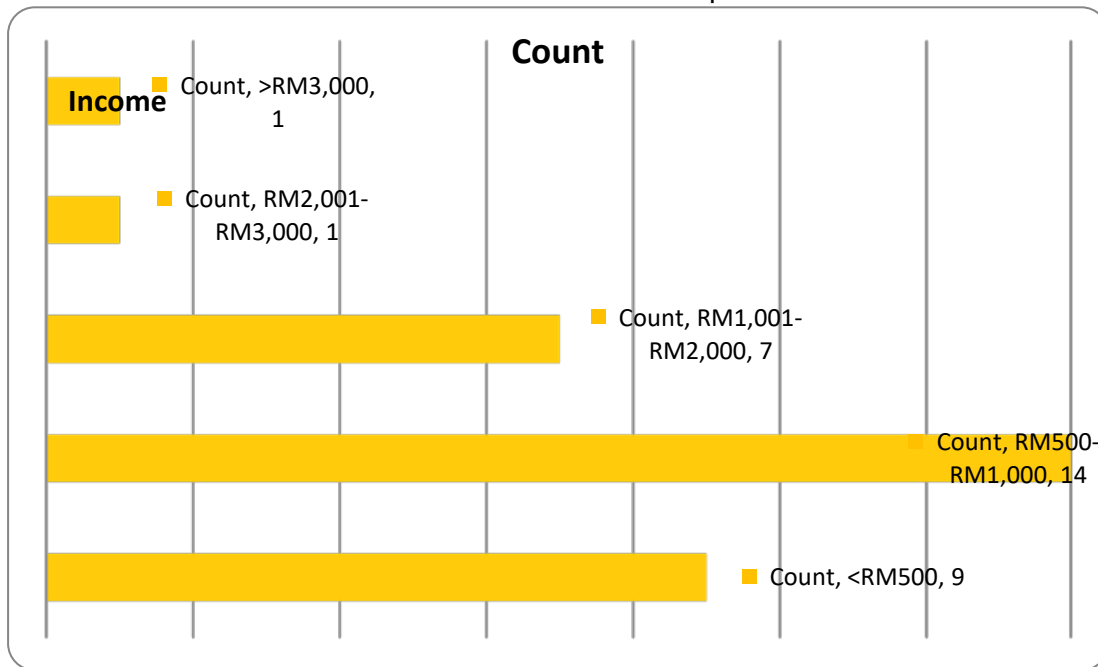
Chart 2: Age of respondents



About 31.3% had more than four (4) dependants. Some (34.4%) of these respondents attended secondary school for formal education whilst 46.9% just attained the primary school level. A total of 53.1% of those sampled were traditional farmers and self-employed. Farmers comprise of 28.1% and self-employed, 25%. Other sizable number was those retired or pensioners. One glaring drawback of people living at villages and other outskirts is that it is difficult to earn a handsome household income of more than RM3, 000 if they just depend on traditional way of generating income. Inability to earn a good income working in village environment where there is almost no competition is not a new phenomenon in our society. It is therefore not surprising though to know that majority (45.2%) of the respondents around Singai, Bau area earning a household income of RM500-RM1, 000. About one-quarter earn less than RM500 per month. Slightly more than one-fifth (22.6%) managed to earn household income of RM1, 001 – RM2, 000. This statistics strengthen the notion that those living at kampongs should all be awarded the BR1M of RM500. The respondents' household income is shown in Chart 3.



Chart 3: Household income of respondents



The better side of their life at respective villages is that they do collect jungle produce to complement what they lack. The monthly value of jungle produce collected for family consumption is quite substantial. If they were living in the urban setting, they would have to fork out that much of money to buy such essential items. In reality, their household income could easily be more by RM200 per month as reported in their profile above.

### **NATIVE CUSTOMARY RIGHTS AND BIDAYUH LAND TENURE SYSTEM**

NCR land within village analysis revealed that most (70%) of the respondents at Kampong Segong were found to have personally-owned NCR lands in Berendang and Moi mountains. More than half (55.6%) of the respondents at Kampong Atas share the communal land at Singai mountain. Similar observation was also noted for Kampong Bobak Sajong. About 44.4% the NCR lands were communally-owned by the people at Berendang Mountain. For Kampong Tanjong Bowang, the percentage of ownership was fairly distributed across the four types of NCR: Communal land; personally-owned; family-owned; and personally and communally-owned land. The findings however for Kg Tanjong Bowang require some verification as the number of respondents captured for this study was not representative as well as not reflective enough of the overall situation.

In an interview conducted with Temenggong Datu Stephen Jussem, Paramount Chief of the Bidayuh Community Kuching Division on 11.11.2011. This land tenure system is area specific to the Bidayuh Singai community from Singai-Jagoi group. The Bidayuh people is generally subdivided into six dialectical groups namely the Bukar-Sadong, Biatah, Singai-Jagoi, Bra'ang-Pinyawa, Sepug-Emperoh & Gumbang, Selako-

Rara. Each group has a similar land tenure concept but with different names. *Pemakai Menoa* equivalent in Bidayuh (Singai-Jagoi) is *Topat Pimuung*. *Topat Pimuung* is an area or land where the naïve community can collect, rattan, wood, bamboo for domestic purposes and carry out daily subsistence like hunting, farming, and include source of water, surrounding forest and mountains. In the Singai area for example, this include Singai, Berendang and Moi mountains.

*Temuda* also known in Bidayuh as *Tiboie*. There are two (2) classifications of *Tiboie* in Bidayuh. The farming land left to fallow together with secondary growth between 10-15 years is known as *Damun Muda* whereas for the land left to fallow between 16-25 years and above is known as *Damun*.

*Pulau* is an island or corpse of trees within the *pemakai menoa* and its Bidayuh equivalent to *Pulau* is called *Obut*. *Obut* is also an area of primary forest or *Tana Tuan* and is located within *Topat Pimuung* owned by the native community. For example *Obut pikatang* is located at the Singai Bidayuh *Topat Pimuung*. In the *Obut*, other villagers may hunt, collect wild vegetables such as young bamboo shoots, mushrooms and other uncultivated jungle produce, creepers, plants and any other plants edible or of medicinal value but they may not climb or take any fruits from the fruit trees or to extract or cut timber from it. *Pulau buah* known in Bidayuh (Singai-Jagoi) as *Rois* meaning traditional orchard cultivated and cleared by previous ancestors' e.g *Rois Mikadak*, *Rois Koram*, *Rois Koba* at *Darod Moi* (Moi Mountain) which is a *Topat Pimuung* for the Bisngai Bidayuh.

*Tembawai* known in Bidayuh as *Tibawang*. There are two classifications of *Tibawang*. Communal and individual *Tibawang*. The former refers to old longhouse site which have been abandoned but contains various kind of fruit trees, plants, vegetables and medicinal herbs and plants which are easily accessible to the community. Whereas the later, refers to an old site of a family house, this *Tibawang* belongs to him/her or to the family and not to the community. Fruit trees planted thereon by him belong to him and his family members.

*Pendam* known in Bidayuh as *Tinungan* or *Rubang Abuong* which is a community burial ground where they cremate or *ninuh* the dead. It is normally located in the *Topat Pimuung*. Distinct from other Bidayuh or Dayak group the native Singai Bidayuh cremated their dead at Singai Mountain's *tinungan*.

In *Agi Bungkong & Ors v Ladang Sawit Bintulu Sdn Bhd* [2010] 4 MLJ 204, the court held that *pemakai menoa* is a recognised Iban custom even though it is not listed in the Adat Iban – a codification of Iban customs and practice. Similarly the same is applied here in that *Topat Pimuung* which is the equivalent to *pemakai menoa* is a recognized Bidayuh custom and practice even though it is not listed in the Adat Bidayuh 1994 or the Land Code.

## LAND SIZE AND OWNERSHIP

Overall, the land size for the four villages under study was mostly between the range of 1-10 acres each family or respondent. For Kampong Segong, most (70%) of the respondents reported that they have been cultivating the land at Berendang mountain

and Moi Mountain for 94 years or more. This can be observed by 30% of the respondents indicated that their families (past and current generation) have worked on the land for 94-104 years. About 40% narrated that their ancestors and the current generation have farmed the land for more than 104 years. Respondents from Kampong Bobak also made similar claim. For Kampong Atas, all of the respondents claimed that they have cultivated the land at Singai Mountain for more than 104 years. Respondents living at Kampong Tanjung Bowang admitted that they had worked ancestral land for more than 65 years. Meaning, all the respondents have been working on their pieces of land well before 1957 when the land code was legislated in the State Assembly.

An overall picture of period of ownership by kampong revealed that 81.3% of the respondents and their ancestors have lived at their respective villages and have worked on their land for at more than 94 years. One respondent reported that his family has been cultivating their land for less than 55 years. A cross-tabulation of Native Customary Right (NCR) land ownership by kampong is depicted in Table 1 below.

Table 1: Period of ownership by Kampong

Ownership Kampong	Period of ownership						Total
	<55 yrs	55-64 yrs	65-74 yrs	75-84 yrs	95-104 yrs	> 104 yrs	
Kampong Segong	3.1	3.2	0	3.1	9.4	12.5	31.5
Kampong Atas	0	0	0	0	0	28.1	28.1
Kampong Bobak Sajong	0	3.1	0	0	21.9	3.1	28.1
Kampong Tanjung Bowang	0	0	6.3	0	3.1	3.1	12.5
Total	3.1	6.3	6.3	3.1	34.4	46.8	100

It is understood that there were no proper boundaries bordering their lands. However, a few landmarks in the form of huge tree left uncut, fruit trees planted in their farm land, other trees like palm trees planted at their land are used as an imaginary and traditional boundary in cases of future land disputes. This communal understanding among the indigenous is not written but well-understood by the community. Currently most of the land owners of the NCR land still do not have legal title over the abovementioned land under study.

## LAND CULTIVATION

Most of the NCR land is personally cultivated by the respondents. This is depicted in Table 2 below.

Table 2: Land Cultivation by Kampong

Kampong	(%)
Kampong Segong	100
Kampong Atas	22.2
Kampong Bobak Sajong	100
Kampong Tanjung Bowang	100

It is observed in Table 2, 77.8 % of the respondents at Kampong Atas do not currently plant any commercial crop on their land due to the following reasons:

- (i) Not enough manpower due to some family members working elsewhere in Kuching and some other places. Few have admitted that they have physiologically retired from hard work due to age;
- (ii) Ill-health; and
- (iii) Their lands have become inaccessible due to overgrown shrubs and trees.

Crops planted on their NCR land include rubber, durian, paddy and a combination of durian, duku, langsung, rambutan and some other combination of local fruit.

### **The Reliability Analysis using Cronbach Alpha**

The internal consistency of the research instrument used is reasonably good as reported in the reliability analysis as shown in Table 3

Table 3 Reliability Analysis using Cronbach Alpha

<b>Land Development Plan</b>	<b>Number of items</b>	<b>Cronbach Alpha</b>
Reasons for developing own NCR land	7	0.920
Reasons for joint venture plan with interested party	6	0.965
Reasons for not interested in joint venture plan	5	0.954

From the table above, it can be observed that the coefficients for the reasons of all the approaches were well over 0.9 which is very good and thus reflects the validity and reliability of the instruments used.

### **Self-develop NCR Land**

The Cronbach Alpha for this 7-item questions is very good, that is, 0.920 as can be seen in Table 4.3 above. Out of 32 respondents, 22 of them responded favourably to this NCR land development mode. About 82% which is made up of 40.9% 'agreed' and 40.9% 'strongly agreed' that self-developing their land would generate more income for their family. This favourable opinion was from respondents living at Kampong Segong and Kampong Bobak Sajong which comprised of 16 out of 22 respondents. The respondents from other villages such as from Kampong Atas and Kampong Bowang, their opinion was split and unclear due to the small number of respondents answering this section as per research instrument, that is, 5 out of 22, (22.72%). About 63.7% also at least agreed that employment opportunities could be created too. It also revealed that majority (40.9% 'agreed' and 54.5% 'strongly agreed') of the respondents would be more satisfied if they could develop their own land. Further investigation revealed that one of the reasons why they plan to self-develop their own land is that they were not in favour of consulting the higher authority regarding their land issues. This opinion was supported by 54.6% of the respondents. Unfortunately, less than half (40.9%) of them believe that they have sufficient resources to self-develop their land. If they have sufficient resources in term of capital, knowledge and commercial farming skills the percentage of those willing to self-develop their NCR land would increase. Even with limited resources that they have, there were still sizable proportions of them willing to take up the challenge to self-develop their NCR lands. When probed further on

availability of infrastructure like road, bridges and mill-processing plants for palm oil, about 40.9% strongly disagreed that such infrastructure and facilities exist. For those respondents whose lands were located by the road side 27.3 % agreed that such infrastructure was available to them. It was also captured that 22.7 % respondents 'agreed' and 40.9% 'strongly agreed' that they were not in favour of joint venture mechanisms with another party to develop such land.

### **Leasing**

Another approach to generate income from the NCR land is to lease it to the interested party. Six research items related to why leasing should be considered in optimizing the use of the NCR land were explored in the research instrument. They were:

- (i) To generate a fixed income;
- (ii) More free and quality time for family;
- (iii) No need to worry about manpower needs;
- (iv) No need to think of managing the estate;
- (v) Not enough capital to self-develop the land; and
- (vi) Insufficient expertise of the owner

Despite the income-earning potential of leasing, twenty-nine, that is, 90.9% of the respondents resoundingly rejected the idea of leasing as the possible approach of maximizing the use of that land. Most, if not all of the respondents were gripped by fear of losing the most valued property left by their ancestors if they were to do so. Leasing approach of generating a fixed income is a non-issue to the kampong people. They rejected the idea of making money via leasing. It is suggested that some explanations about leasing is needed here as to allay the fear of losing land. In the event, title is obtained by the natives the issues of ownership and loss of land are should not arise.

### **Joint Venture**

Similarly, joint venture approach is also lowly-rated and thus rejected by most of the respondents. So far only three respondents, two from Kampong Segong and one from Kampong Tanjung Bowang responded to this land development approach. One respondent 'agreed' and the other one 'strongly agreed' whilst the last one was 'neutral'. Further analysis as to why the respondents did not prefer a joint venture with another interested party was noted in Table 4. The percentage of respondents who agreed with stated reasons are stated in the Table 4 below.

Table 4: Reasons for not preferring joint venture

<b>Reasons for against joint venture approach</b>	<b>Percentage (%) of respondents</b>	
	<b>'Agree'</b>	<b>'Strongly Agree'</b>
Insufficient land for joint venture	-	80
Land only for personal use	-	85
Too long to get cash benefits	25	30
Fear of losing the land	15	65
Insufficient land for future generation	-	90

Insufficient land for future generation might be true to some of them as can be seen by the small land size (1-10 acres) owned by the people here. The issue of fear of losing land remains legitimate as the relevant authority would need to explain the right to receive title after 60 years in the event of SALCRA backed palm oil joint venture. Good and acceptable agreement is the main concern of the people.

Respondents cited a few reasons for currently not having a joint venture mechanism in developing their NCR lands: (i) no proposal made by land owners and another interested party; (ii) landowners' requests not entertained; (iii) no family approval; (iv) land mostly for rubber scheme; (v) small land size; (vi) untitled land; (vii) and land meant for family future use; and (viii) no means to execute joint venture development scheme. Small land size (19.2%) and no proposal yet (34.6%) were identified as the top two reasons for not having joint venture currently. This observation is validated by a cross-tabulation table by number of dependants and land size. It was found that 87.5% of the respondents were having the land size of 1-10 acres only and most of them were having more than four dependants' family members. This is obviously most alarming as there is not enough land to be equally subdivided among them. It was also discovered that respondents from Kampong Segong and Kampong Atas are reportedly to own more land compared to their counterparts at Kampong Bobak Sajong and Kampong Tanjung Bowang.

Table 5: Land Size by Village (Kampong)

Land size Kampong	Land Size			Total
	1-10 acres	11-20 acres	31-40 acres	
Kpg Segong	31.3%	0%	0%	31.3%
Kpg Atas	25.0%	3.1%	0%	28.1%
Kpg Bobak Sajong	18.8%	6.3%	3.1%	28.1%
KpgTanjung Bowang	12.5%	0%	0%	12.5%
Total	87.5%	9.4%	3.1%	100%

When the respondents reported that they do not have financial means to execute solid joint venture approach of developing their NCR land, it understandable as majority (45.2%) of the respondents only earn a household income of RM 500 –RM1,000 only. About 19.4% earn RM1, 001 – RM2, 000 per month whilst 16.1% earn less than RM500 household income per month. This household income group actually own 1 -10 acres of land only. This is one of the fear factors as to why they do not favour joint venture or any other means of developing their land. They fear of losing it to “unseen hands”.(as per one respondent).

### **NCR Title**

Out of 32 respondents captured for the study, 93.8% has no title for their land over the mountainous region. Only two respondents, one respondent living at Kampong Segong and another one at Kampong Tanjung Bowang currently have the land titles at the foothills of Birondang Mountain. The untitled NCR land, reported by the villagers, has made it difficult to participate or join in any development agreement with outsiders. Most of the NCR land at Singai area is planted with rubber, durian, paddy and combination of durian, duku, langsung and other local fruits. Out of 31 respondents answering this item, only two were found to have land disputes concerning land boundary and ownership. The

affected respondents nonetheless prefer to resolve these issues by negotiations and out of court solution.

### **Community based organisation**

Incidentally one of our indirect findings that has partly contributed to the native Singai refusal to participate in the most often quoted land development model is partly due to their active participation in a self help community based organisation called REDEEMS (Research and Development Movement of Singai). REDEEMS is a community based non governmental organisation which represent the people of Singai. REDEEMS was officially formed in 1997 by a group of prominent Bisingai leaders to, among others, create a progressive and orderly society in Singai. Largely manned by volunteers from Bidayuh politicians, government servants, pensioners, professionals and ordinary villagers, REDEEMS has grown strength to strength and has been very active of late in raising awareness of self help development programmes through its numerous activities and projects. To name but a few, self awareness projects include but not inclusive to the followings:

- The completion of a modern RM 4 million community hall in May 2011 funded directly by the Prime Minister of Malaysia. The Community hall is equipped with conference room, ICT rooms, squash and badminton courts, and a sports hall.
- REDEEMS annual Gawai activities which are organised in a grand manner every June are able to attract top state leaders and participation of various communities from other ethnic groups. The annual event has become a tourist attraction and have been elevated to a state level organisation. The annual event is able to unite the Bisingai people in celebration and the same time to showcase Sarawak's unique culture to the world.
- The establishment of a small scale bamboo industry and a Bamboo Botanical Park with the assistance of UNDP, CIMB foundation and Hopoh Association of Sarawak. The bamboo industry is preferred because the bamboo has always been part an integral part of the Bidayuh traditional life i.e from building traditional houses to cooking) and the potential bamboo modern uses or products.
- Tagang system is a fish rearing and river preservation project successfully implemented in Sabah which has generated successful money spinning venture. A similar tagang system is now being implemented in four (4) kampongs namely Kampong Segong, Kampung Barieng, Kampung Apar and REEDEEMS Botanical Bamboo Park. This project aims to enhance and preserve river fishes, river quality and the environment.

### **Conclusion and recommendations**

Specific customary land tenure such as *topat pimuung*, *obut*, and *danum*, are intrinsic part of the Bidayuh Singai's native customary rights. These native customary rights have been passed down from time immemorial through their ancestors till present and still exists and subsist as such. These are Bidayuh Singai equivalent to the well established concept of Iban's '*pemakai menoa*' and '*pulau*'. As in *pemakai menoa*, *topat pimuung*, *obut* and *danum*, ought to be expressly recognised in the Sarawak Land Code (Cap 81). Failing which, there will be more litigation filed by natives for their recognition

through the common courts. Indeed the common courts are more willing to recognize their common law rights. As the recognition of this customary practise is integral part of NCR, it would also assist the state and the companies to identify lands NCR lands with ease in order to avoid NCR controversies.

Singai natives are not in favour of the NCR land development schemes in their mountainous NCR lands with, among others, reason being the NCR lands are either too small or no proper consensus for all owners to enter into a joint venture agreement. If any NCR land developments of joint venture nature are to be taken, then the natives should be consulted as equal partners with proper dialogue taking place as opposed to a mere monologue, a fact that other natives experienced when dealing in a joint venture project or land development schemes in other parts of Sarawak .

The State should provide transparency in the issuance of provisional lease i.e natives must be consulted or prior informed consent must be obtained from natives affected by the plan, scheme, and project. The Superintendent of Land & Survey is empowered to issue a lease under Section 18A Land Code 1958 however on the basis of transparency, it is suggested therefore that Section 18A should be amended accordingly.

In some instances permit under Section 10 of the Land Code to apply for NCR title is seldom, if not, never approved, while at the same time it is quicker for private companies to be issued provisional lease over the same disputed land. The procedure to issue provisional lease meanwhile is inadequately flawed. Too much power is given to Superintendent of Land & Survey when natives' customary lands are at risk. There is some irony in the new Section 18 A of the Land Code in relation to the issuance of provisional lease. Implicit prior to the issuance, the state recognized NCR over unsurveyed lands and yet at the same time the burden of proving NCR rest on the native. On top of this, there is no stopping the issuance of provisional lease to a private company or an outsider. On the issue of notification of NCR extinguishments, natives objectors must be given at least 60 days as oppose to the current 21 days to assert their NCR claims. Notice must be given or handed personally with full explanation of consequences in their respective native language. Natives must be seen to accept and acknowledge the notice practically and justly. Failing which, notice should not be deemed served. Period of objections should include that natives be given reasonable time and opportunity to defend their claims with documents and witnesses and to be represented by legal aid/lawyers as their livelihood will be affected. On land banks, neither consultation nor prior consent was obtained or made from the natives in regards to land banks or on the new concept of NCR. Natives must be made aware of the impact of the new concept as to their land in the context of volatile commodity prices and current economic instability worldwide. Issues over land ownership such as in the event of a collapsed joint venture agreement should be addressed as well as advantages and disadvantages of schemes or joint venture agreement in context of financial and ownership implications.

Finally on the issue of NCR's interpretation, the State should respect the Courts decision by amending the Sarawak Land Code(Cap81) to include "*pemakai menoa*", and "*pulau*" or its equivalent in other communities as native customary rights. This is consistent with affording natives rights under their own native customary law and recognising the law of native custom to address native issues. This is also consistent with common law decisions which recognize such customs as laws. The State has not been forthcoming in



protecting natives' rights. Current amendments to the Land Code 1958 are steps backward. For a robust and sustainable criticism of the Land Code amendments see Dimbab, G (2006) G and also Bulan & Locklear (2008). In the alternative, there is a growing sentiment that communal title should be preferred as compared to individual title as problems associated with individual titling in an indigenous people context include loss of lands, land grabbing by elites, fragmentation and fractionalisation, internal and external conflict, high transaction cost and loss of cultural identity as suggested by Yogeswaran, S (2011). One of the way forward is for the State law to adopt United Nation Declaration of the Rights of the Indigenous People (UNDRIP). Since Malaysia is a signatory of the UNDRIP, it is strongly recommended that the State law should reflect, adopt and apply not only the spirit of, but also, the black letter of UNDRIP. The formation of NCR law reform committee to ensure natives' rights to their NCR land are protected should also be considered. The natives must also be consulted on any new amendments, concept affecting their rights to the land.

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