

Indigenous Rights in Sarawak

サラワクにおける先住民族の権利

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ニコラス・ムジャ

December 2, 2015

INDIGENOUS PEOPLES IN SARAWAK LAND

サラワクの先住民族



マレーシアの先住民族: オランアスリ(半島)、カダサン・ドゥスン(サバ)、
ダヤック(サラワク)

Indigenous Peoples of Malaysia: Orang Asli (Peninsular), Kadasan-Dusun- (Anak Negeri Sabah),
Natives (Dayak Sarawak)

NATIVES (ORANG ASAL) OF SARAWAK サラワクの先住民;

[Bukitan, Bisayah, Dusun, Dayak Laut/Iban, Dayak Darat/Bidayuh, Kedayan, Kelabit, Kayan, Kenyah,
Sabup, Sipeng, Kajang, Sekepan, Kejaman, Lahanan, Punan, Tanjong, Kanowit, Lugat, Lisun, Murut, Penan,
Sian, Tagal, Tabung, Ukit and cross mixture among natives. (26)

INTERPERTATION ORDINANCE



**サラワク内陸部の先住民族は森林に生活の糧を依存
Indigenous people in the interior of Sarawak are dependent
on the forests for their livelihood**

サラワク土地法2条 先住慣習地を規定

Section 2 of the Sarawak Land Code defines Native Customary Land as

(a)先住民族の慣習的権利のある土地は、それがコミュニティレベルか否かに関わらず、1958年1月1日以前に合法と認められた土地であること。

land in which native customary rights, whether communal or otherwise, have lawfully been created prior to the 1st day of January 1958 and still subsist as such;

(b)第6条の適用により先住民族の暫定的土地利用権が認められる(1958年以降)

land from time to time comprised in a reserve to which section 6 applies; and

(c)内陸部の先住慣習地は地方政府の許可を得れば、第10条の下で利用が合法化される(1958年以降)

Interior Area Land upon which native customary rights have been lawfully created pursuant to a permit under section 10.

先住民族の慣習的権利のある土地は、それがコミュニティレベルか否かに関わらず、1958年1月1日以前に合法と認められた土地であること。

Land in which native customary rights, whether communal or otherwise, have lawfully been created prior to the 1st day of January 1958 and still subsist as such.

- i. 1958年以降に先住慣習権(土地)を設定する場合、第5条の規定に従い、第10条の下で許可を得る。

If a native claims NCR over land after 1958, it must be with a permit under section 10, as provided for under section 5 of the Code;

- ii. 先住慣習地では、コミュニティや個人が権利を主張することができる

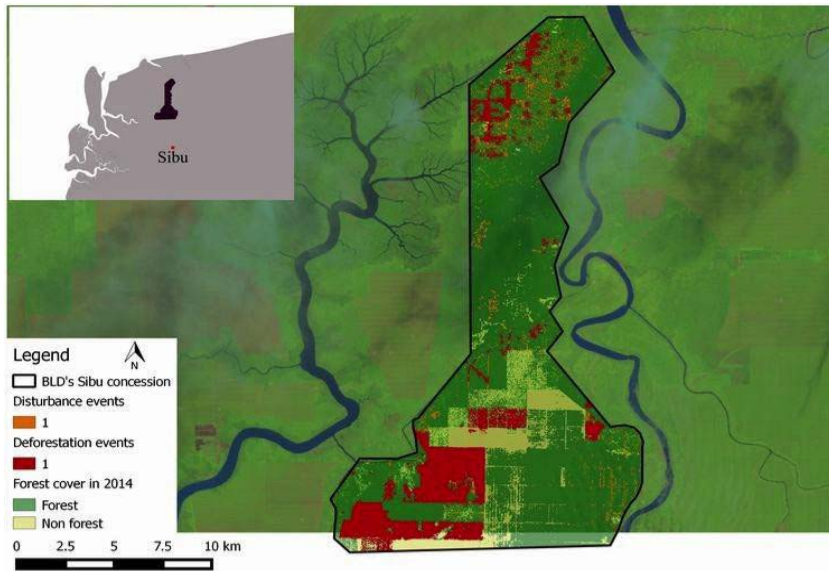
That the said NCR over land in can be created and could be claimed either by a community or an individual; and

- iii. 先住慣習地は今日まで継続している。

That the NCR Land subsists as such until today.



**ペリタ社による先住慣習地であるカイン・カピット村
の河川バッファゾーンでの伐採
Logging in Sg Kain Kapit along the river buffers in
Native Customary Land by Pelita company**



先住慣習地における、KTS社によるアブラヤシ農園への転換
 Conversion into oil palm by KTS in NCR land



Sand mining at Ulu Mukah
Ajah ak LinganVr Shima sdn bhd. 24 November 2015

Tr JambaTung Huat Oil Palm Plantation.



墓地 Burial site

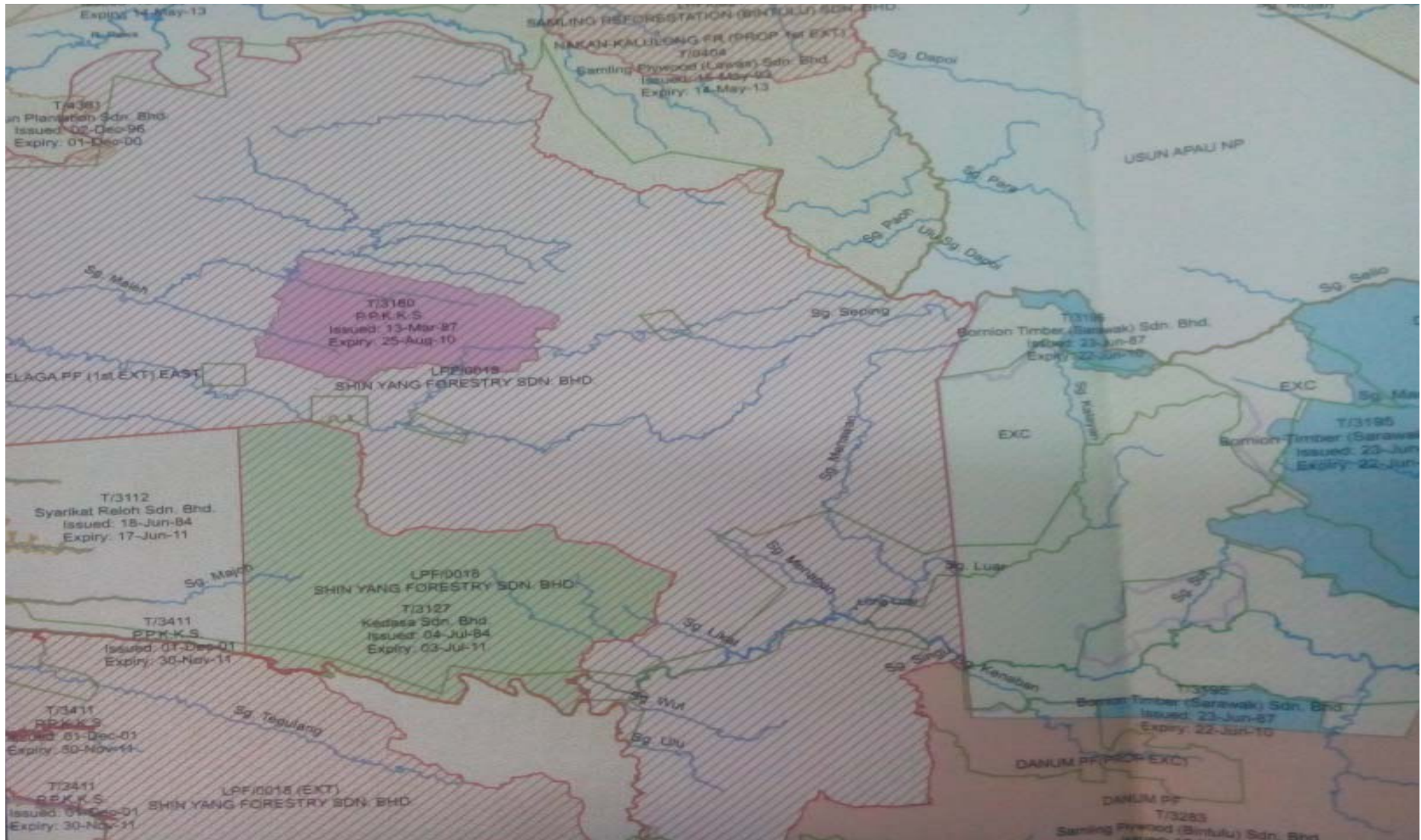


影響 IMPACTS

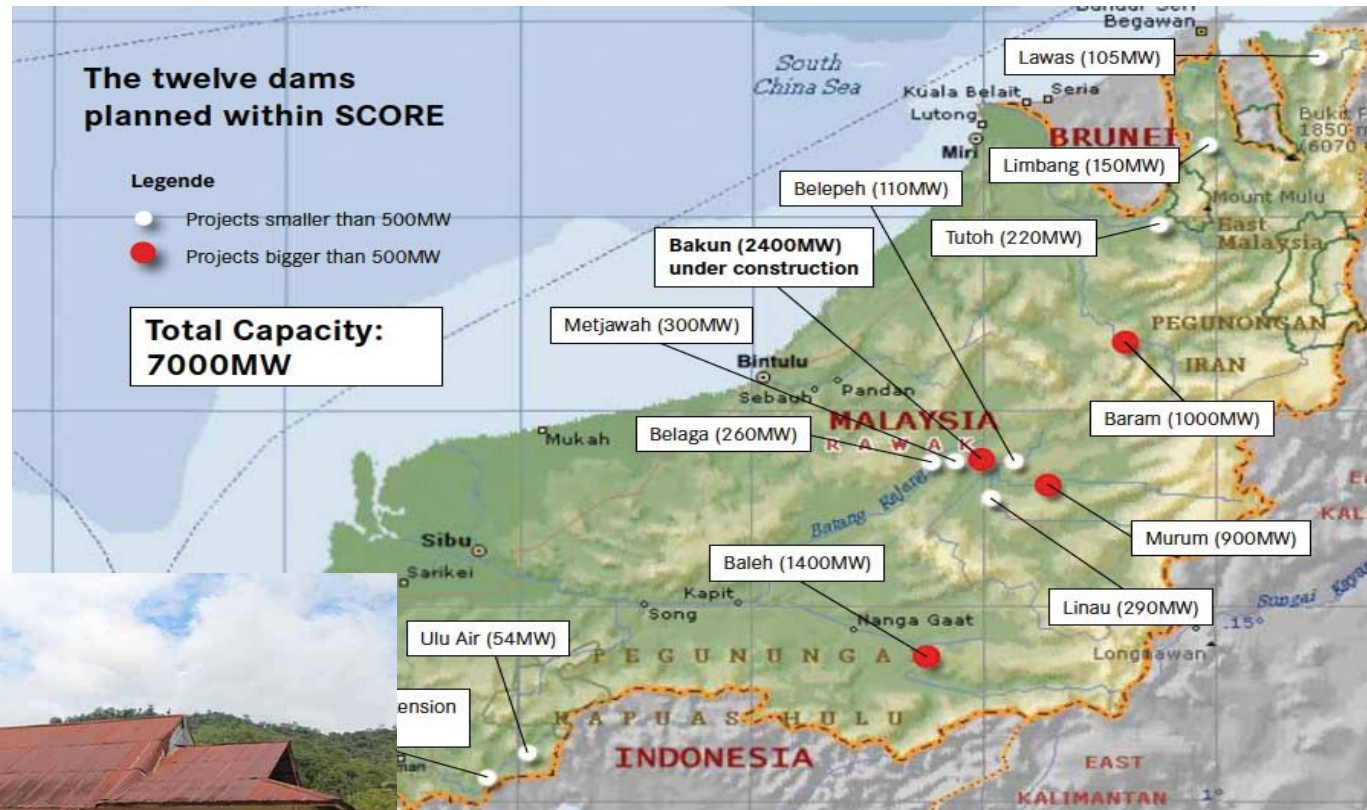
企業は軍隊を使って脅迫
Company using Military to intimidate



汚職がサラワク州での土地リースを容易にしている
Corruption makes it easy to secure a Land lease in Sarawak



シンヤン社植林コンセッション(LPF)0018-木材の移動パターン
 Shin Yang LPF 0018 - Wood's migration pattern



How to secure Land Leases in Sarawak
Dams are another cover for more logging in the area

What are causes?

原因は？

- 不適正/不正な手続きによる土地リース(伐採、植林)権の発行
例: コミュニティの主張を確認するための現地調査をせずに発行されるリースなど
- leases issued without proper /abuses of procedures (Eg. leases issued from office without field surveys to identify claims by communities)
- 政治的意思の対立
- Conflict Political will.
- 判例や裁判所の判決がなかなか認められない
- Reluctant to recognize legal precedents or court Judgments .
- 社会との紛争に対処するための国際法(FPIC, UNDRIP, CBD等)への配慮/義務の欠如
- no consideration/obligation of International Laws (Eg. FPIC, UNDRIP, CBD) for addressing disputes with communities
- 法律は良く、現場での施行は悪い
- Good laws, Bad implementation on the ground.
- 先住民族の慣習が尊重されない
- no respect of Native's Custom and practices of Indigenous peoples .

COMMUNITIES REACTIONS コミュニティの対応



政府への請願 Petition to Government



抵抗運動 Protesting



恥をかかせる Shameing with posters etc

LEGAL ACTIONS 法的措置

COURT ROUNDUP



TO BE HEARD: Ng shows a map of the land to villagers after the hearing. — Photo by Jeffery Mostapa

Sibu company files no-entry injunction

KUCHING: A company in Sibu which was granted a provisional lease over a land in Simunjan has filed an application for injunction to stop villagers from entering the property.

The case was heard at a High Court here yesterday. The plaintiff tendered the application at the High Court on Oct 27 claiming that the land, about 15,580 hectares, is under its licence for planted forests.

The 54 defendants from Kampung Sungai Raya, Kampung Temiang and Kampung Keniong Lama were represented by Dominique Ng.

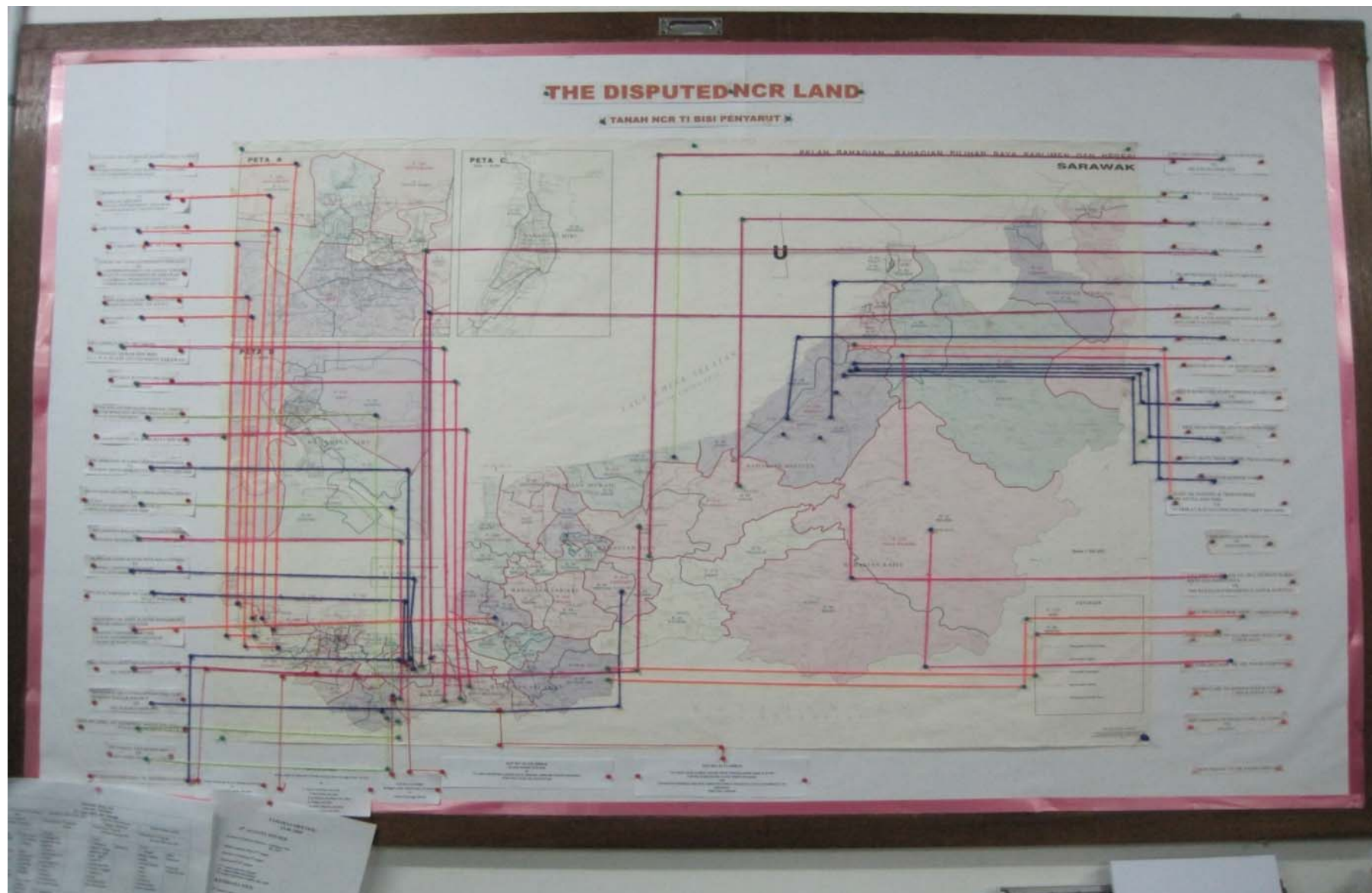
The company was issued a 60-year licence to plant forest on the disputed land four years ago. The licence will expire on March 21, 2064.

The court will hear the case again on Dec 9. When met by journalists, Ng said the case "is still at the early stage and we need to prove that it is Native Customary Right (NCR) land."

Quoting a provision stated in the licence issued, he said the company should not acquire any native customary land.

Woman charged... The... RM1,500...



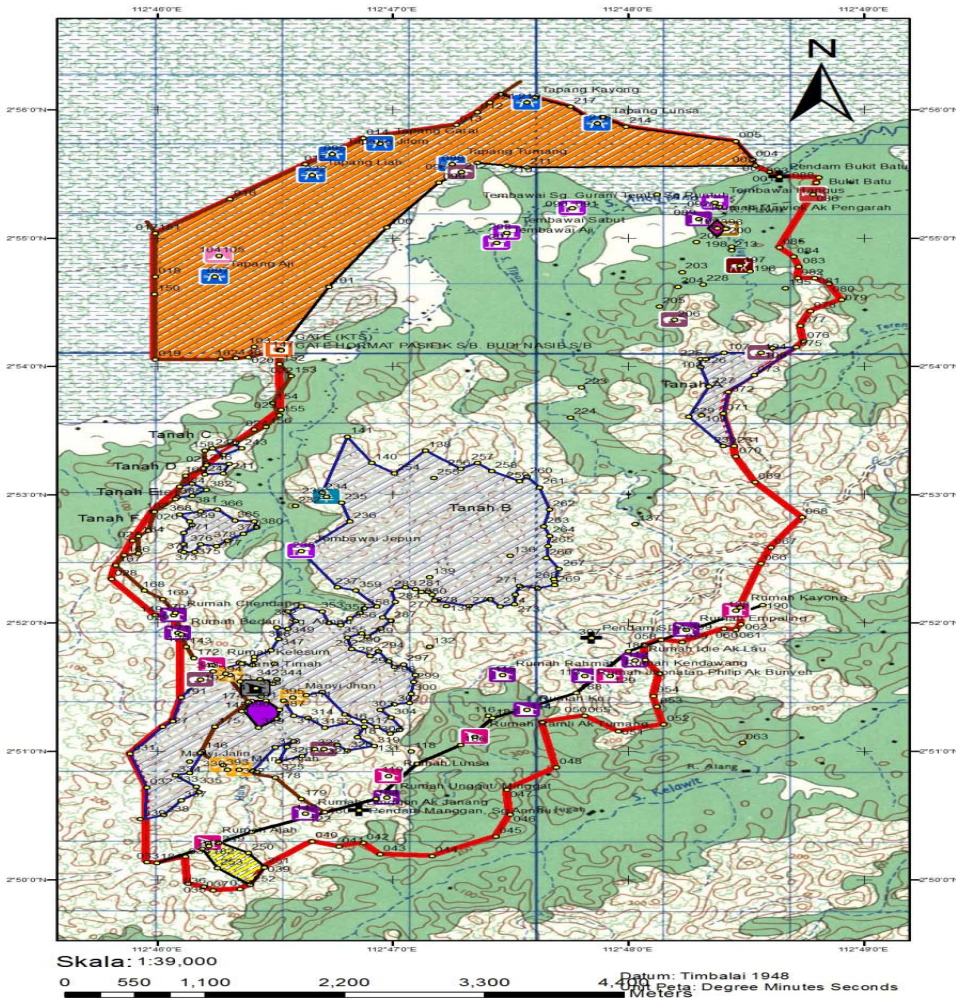


サラワクの先住慣習地に関する裁判(464件2015年)

Native's land cases in Sarawak

464 cases as of 2015

PETA MENUNJUKKAN TANAH HAK ADAT RUMAH EMPALING AK MAWIE, RUMAH ADAM AK LINNGAN, RUMAH IDIE AK LAU, RUMAH JHONATAN AK PHILIP AK BUNYEH, RUMAH RAHMAT AK JEMAT DAN RUMAH DINGGON AK JANANG, SUNGAI ANNAU, DAERAH TATAU, BAHAGIAN BINTULU



NOTA:

Peta ini diukir hasil dari kerjasama masyarakat Dayak Rumah Empaling Ak Mawie, Rumah Adam Ak Linngan, Rumah Idie Ak Lau, Jhonatan Philip Ak Bunyeh, Rumah Rahmat Ak Jemat, Rumah Dinggon Ak Janang, Sungai Anau, Daerah Tatau, Bahagian Bintulu dan Perubahan Dayak Iban Sarawak (SADIA) untuk tujuan pemetaan komuniti

Kerja-kerja survei lapangan dilaksanakan pada 14-21 Mei 2014 dengan menggunakan peralatan Global Positioning System (GPS)

Peta ini siap diukir pada 23 Mei 2014

Keluasan Kawasan Tanah Hak Adat Sungai Anau: 4357.02 Hektar

Keluasan Kawasan Tanah Hak Adat Yang Diceroboh oleh Syarikat Cipta Group: 15.35 Hektar

Keluasan Kawasan Tanah Hak Adat Yang Diceroboh oleh Syarikat Budi Nasib Sdn Bhd: 563.04 Hektar

Keluasan Kawasan Tanah Hak Adat Yang Diceroboh oleh Planted Forest Sdn Bhd:

Tanah A: 40.22 Hektar

Tanah B: 622.76 Hektar

Tanah C: 1.84 Hektar

Tanah D: 2.38 Hektar

Tanah E: 2.78 Hektar

Tanah F: 21.21 Hektar

Temasa Sedau Ak Ungu: 6.55 Hektar/ Ekar

Sumber:

- 1. Maklumat penduduk setempat
- 2. Data GPS

PETUNJUK:

- Tak Koordinata Global Positioning System (GPS)
- Hakmil (© 1993)
- Manyi
- Pulau Ulu
- Takat
- Semen Rusa
- Semen Bati
- Makab Borong Pub Paper
- Rumah
- Bukit
- Kuaran, Pascaja' Ram Sarak
- Gale
- Tanjung
- Pendam (Dulur)
- Tembawai (Pematangan Lama)
- Rumah Panjang (Rumah Panjang)
- Trak Jalan Lejang
- Trak Jalan 20K
- Temasa
- Kawasan Yang Diceroboh oleh Cipta Sawit Sdn Bhd
- Kawasan Yang Diceroboh oleh Planted Forest
- Kawasan Yang Diceroboh oleh Syarikat Budi Nasib Sdn Bhd
- Pematang (Munca, Sungai Anau (Sempadan Tanah Hak Adat))

yellow:Cipta Sawit Sdn Bhd
White: Planted Forest(KTS)
Grey: Budi Nasib Sdn Bhd.

Peta ini dikeluarkan oleh SADIA (Sarawak Dayak Iban Association):



コミュニティ・マッピング Community Mapping

MALAYSIA

IN THE HIGH COURT IN SABAH AND SARAWAK AT KUCHING

SUIT NO 22-118-2007-I

Between

NICHOLAS MUJAH AK. ASON
(WN KP 591009-13-5989) ... 1ST PLAINTIFF
Kampung Ensika Sebangon,
94800 Simunjan, Sarawak.

LAI AK. NYAMBONG
(WN. KP 511106-13-5427) ... 2ND PLAINTIFF
Kampung Entanggor, Sebangon,
94800 Simunjan, Sarawak.

PILI AK. MIT
(WN. KP 540712-13-5227) ... 3RD PLAINTIFF
Kampung Tungkah Dayak, Sebangon
94800 Simunjan, Sarawak

[Suing on behalf of themselves and all other proprietors,
Occupiers, holders and claimants of Native Customary Rights
Land and Stika and Bukit Beduri,
94800 Simunjan, Sarawak].

AND

HOCK TONG HIN SAWMILL CO. BHD ... 1ST DEFENDANT
(Company No. 173728-H)
No. 72 - 74, Market Road,
96000 Sibu, Sarawak.

ROUNDTREE TIMBER SDN. BHD. ... 2ND DEFENDANT
(Company No. 590513-X)
No. 49, 3rd Floor, Jalan Kampung Nyabor
96000 Sibu, Sarawak.

29 MARCH 2011 (TUESDAY) AT 9.30 A.M.

For decision.

Mr. Desmond Kho standing in for Mr. See Chee How for the Plaintiffs.

Ms. Esther Wong for the 1st and 2nd Defendants.Ms. Marjanah standing in for Ms. Dewi Rahmaz for the 3rd to 5th Defendants.

Court:

Judgment delivered as follows:

- (i) The Plaintiffs have inherited Native Customary Rights over the Bukit Bediri Forest Reserve and the Stika Forest, the boundaries of which are as delineated and show in the maps produced by the Forestry Department Sarawak and Lands and Survey Department Sarawak appearing at pages 1 and 2 of Exh. D4.
- (ii) The construction of the rail line across these two forests constitutes an encroachment and a trespass of the land.
- (iii) The Defendants are jointly and severally liable to pay damages, to be assessed by the Deputy Registrar, to the Plaintiffs (except those from Kampung Stika) for the said trespass.

Since Counsels handling the case is not present, I would fix this case for further mention on 4.4.2011 at 9.00 a.m. for parties to address me regarding their agreement on costs.

- Sgd. -
(Y. A Puan Rhodzariah Bte. Bujang)
Judicial Commissioner

9.35 a.m.

先住慣習権を考慮した判決

Court Judgment recognizes NCR rights

SARAWAK DAYAK IBAN ASSOCIATION
HEADQUARTERS
 Lot 3176, 2nd Floor Sentosa Sentral,
 7th Miles, Jalan Penrissen,
 93250 Kuching
 Tel. No./ Fax No.: 082-612585
 E-mail: sadihq@gmail.com

19 NOVEMBER 2015

Ketua Menteri Sarawak
 YAB Datuk Patinggi Tan Sri (Dr) Haji Adenan bin Haji Satem
 Jabatan Ketua Menteri Sarawak
 Wisma Bapa Malaysia
 93502 Kuching
 Sarawak

PER: MENYERU AGAR KERAJAAN NEGERI SARAWAK MENGIKTIRAF PEMAKAI MENUA, PULAU GALAU DAN TANAH HAK ADAT

Merujuk perkara di atas,

2. Kami masyarakat tempatan, menyeru agar kerajaan Negeri Sarawak mengiktiraf Pemakai Menua, Pulau Galau dan Tanah Hak Adat Orang Asal Sarawak yang telah menang di Mahkamah Tinggi (Civil Suit No. 21-2-2009, TR Sandah Ak Tabau & 7 Others).
3. Kami juga merayu sebagai Kerajaan yang mesra rakyat agar tanah tertakluk kepada tuntutan hak adat bumiputera dalam kawasan yang dikeluarkan dengan surat hak milik sementara, kawasan penanaman semula hutan dan kawasan lesen balak hendaklah dikeluarkan dari kawasan tersebut.
4. Sebelum melaksanakan pembangunan, pihak Kerajaan haruslah mendapat persetujuan daripada masyarakat tempatan yang terkena oleh pembangunan tersebut secara kolektif.
5. Bersama dengan surat ini dilampirkan surat memorandum dan sokongan masyarakat tempatan terhadap pengiktirafan pemakai menua, pulau galau dan Tanah Hak Adat Bumiputera.

SARAWAK DAYAK IBAN ASSOCIATION HEADQUARTERS
 Lot 3176, 2nd Floor Sentosa Sentral, 7th Miles, Jalan Penrissen, 93250 Kuching

6 THE BORNEO POST Friday, October 2, 2015 HOME

International and local NGOs call on Chief Minister for

KUCHING: Chief Minister Datuk Patinggi Tan Sri Adenan Satem received a courtesy call from a delegation of overseas and local non-governmental organisations (NGOs) at his office in Wisma Bapa Malaysia yesterday.

Led by Glenn Hurotowitz, a senior fellow of the Washington-based Centre for International Policy, the delegation participated in a frank discussion with the Chief Minister, who kept true to his promise of being open to discussions with NGOs.

A wide range of issues regarding deforestation, sustainable development, forest and wildlife conservation, peatland, Native Customary Rights (NCR) land development and development of hydro dams were discussed during the meeting.

The delegation also comprised Rainforest Foundation Norway Policy and Campaign Department head Nils Hermann Ranum, Friends of the Orangutans director Upreshal Singh, local environmentalist and lawyer Harrison Ngau, Calen May-Tobin from the Union of Concerned Scientists, and local activist Nicholas Mujah.

Also present were Sarawak Environment and Forestry Director Idris Sarawak and Tropic director and

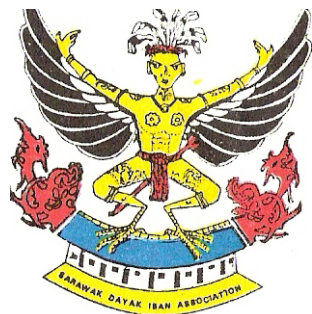


Adenan (fifth right) is seen with (from left) May-Tobin, Harrison, Hurotowitz, Ranum, Mujah, Upreshal, Sudarsono, Sapuan, Lulie and Sajeli.

cc - Administration

先住慣習権を守るよう求める主席大臣への手紙
 対応は取られず

Letter sent to Chief Minister to protect NCR rights but no action taken



LAND IS OUR **BLOOD** , LIFE, HERITAGE.
土地は、私たちの**血**、命、遺産

Nicholas Mujah Ason
Secretary General
Sarawak Dayak Iban Association
[SADIA]
sadiahq@gmail.com

ありがとうございました
THANK YOU