Biodiversity Conservation and Its Social Implications:

The Case of Indigenous and Community Conserved Areas in Sabah, Malaysia

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[*Abstract*]

With natural resources—terrestrial or coastal—fastly diminishing, governments are now resorting to biodiversity conservation, fast-tracking the introduction of new legislations, as well as the amendment of existing ones, and laying out programs that interpret existing practices and research agendas. This paper examines how biodiversity conservation—in addition to eco-tourism—has become an important symbol of the modernizing state of Sabah, Malaysia. It further examines the effects of biodiversity conservation on state and community management of natural resources, with particular reference to the management of natural resources by the indigenous peoples of Sabah. Citing case studies and focusing on a forest community at Kiau Nuluh, in the district of Kota Belud,

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Sabah, this paper evaluates strategies used by indigenous groups to maintain access and control over the management of natural resources—and by implication to livelihoods—via ecotourism, making creative alliances with non-government organisations as well as forging cooperation with government agencies which act as custodians of these resources. For a majority of indigenous groups however, the practice of biodiversity conservation has meant reduced and controlled access to natural resources, considering the fundamental issue of the lack of security of tenure to the land claimed under customary rights. New initiatives at recognizing Indigenous and Community Conserved Areas (ICCAs) by international conservation groups provide a means for tenure recognition, for a price, of course. The recognition of ICCAs also faces obstacles arising from developmentalist ideology which upholds that forests are valuable only when converted to other land use, and not left to stand for their intrinsic value.

Keywords: Community Conserved Areas, Customary Rights, Land Tenure, REDD+

I. Introduction

Biodiversity conservation is a phenomenon that has found its place in policy making, implementation, and social advocacies. In many developing countries, "fortress conservation", the preservation of pristine forests—and by extension, "keeping people out"— had been in place from colonial times. Nevertheless, "fortress conservation" is said to be changing as it is becoming more inclusive, a) recognizing the needs of local communities living in protected areas; and b) acknowledging the role of indigenous peoples in managing their own territory, as well as their rights. In 2003, the International Union for the Conservation of Nature (IUCN) acknowledged the role of indigenous peoples in managing natural resources in their own territories. It declared such territories as indigenous and community conserved areas (ICCAs), adding that ICCAs thrive in community governance, a category of "governance types", which include state, private, and shared governance (Dudley 2008). Community

governance, or Type D in the IUCN Protected Area matrix, achieves long-term conservation objectives with associated ecosystem services and cultural values (Dudley 2008), and is largely in place in some communities in Sabah.

A recent but limited review of ICCAs in Sabah (Majid Cooke and Vaz 2011) shows that at the community level, biodiversity conservation is driven by a desire to preserve not only livelihood, but also community well-being and territory. Well-being, according to Holmes and Brockington (2013), is a measure of development beyond economics, which include matters of culture, community, and identity—all embedded in landscapes and territory. In short, nature and culture are connected. Specifically, indigenous groups see and understand nature in particular ways and produce culture in context with shaping the relationship of nature and culture from within the community and external to the community (West, et. al. 2006). Areas protected and used by local communities are not preserved landscapes, or living spaces for unchanging societies and economies, but are dynamic spaces as new regulations affect how people utilize natural resources. Such areas also experience unforseen long term effects, as in eco-tourism.

The ICCA review in Sabah contained a range of case studies of effective community governance, but this paper will only examine one. The case study of the village of Kiau Nuluh is chosen for the characteristics the area holds in terms of community livelihood and well-being, as well as for the dynamic changes in nature and culture in an economic and political context. However, within the context of political economy, most ICCAs in Sabah are affected by market and state factors, and suffer from the lack of security of tenure (Majid Cooke and Vaz 2011; Majid Cooke and Toh 2012).

The insecurity of tenure, this paper argues, is further driven by a particular ideological position. This ideological position states that only when forests are ‘improved’ (for example through timber production or commercial agriculture production or eco-tourism) are they considered developed. This paper uses as an example of such an ideological position, the amendments made to Section 76 of the Sabah Land Ordinace 1930. By contrast, IUCN highlights

that regardless of tenure arrangements—that is with or without legal titles—as long as the area is managed by a community or communities, such an area could be designated as an ICCA.

Ⅱ. Contextualising Biodiversity Conservation And Community Well Being In Sabah[1)]

Biodiversity conservation and community well-being started early on in Sabah. They are embedded in legislations guiding state management of natural resources, as well as in natural resource policy guidelines. The selection presented below shows achievements as well as challenges.

The Fisheries Department in Sabah has played a role in strengthening the indigenous practice of *tagal* (fisheries conservation) in inland waters. The Department's activities are prescribed in the Fisheries Act of 1985, and more recently, in the Inland Fisheries and Aquaculture Enactment of 2003. Section 35 of the latter legislation specifically mentions recognition of the indigenous system of resource management.

The Sabah Forestry Department (SFD) has found a way to use provisions in its Forest Enactment of 1968 to engage the Orang Sungei community of Batu Puteh in the lower part of the Kinabatangan River to participate in the rehabilitation of degraded alluvial forest and to manage an eco-lodge within the Pin Supu Forest Reserve. However, the 1984 Amendment to the 1968 Forest Enactment, which enabled the consolidation and establishment of new forest reserves, consequently left some ambiguities for those already living in the newly created forest reserves in other parts of Sabah. In these localities, they are now viewed as "illegal settlers" in the newly created forest reserves. Such a confusion in terms of status was similarly shared by communities in other

1) This section of the paper draws largely from an unpublished report: Fadzilah Majid Cooke and Justine Vaz (2011) A review of Indigenous and community conserved areas in Sabah, Global Diversity Foundation for the Sabah Biodiversity Centre, Bornean Biodiversity and Ecosystem Conservation Project II, Kota Kinabalu.

Southeast Asia countries like Thailand and Indonesia (Peluso and Vandergest 2001). Despite this, most provisions from the 1968 Sabah Forest Enactment, as expounded in the Forestry Rules of 1969, emphasize the joint management of the SFD and the community forestry projects. Moreover, SFD's interest in acknowledging community use by way of setting aside compartments within areas licensed for timber production—known in the industry as Forest Management Units or FMUs—has recently been strengthened by official directives for FMU license holders to prepare for obtaining timber certification by the year 2014. The certification is expected to uphold the equity and welfare issues of forest dependent communities, especially since timber certification processes, require among others, the acknowledgement of the rights and needs of communities living within the timber licensed areas.

Away from the SFD, Sabah Parks was able to amend its Enactment to enable the creation of a community use zone (CUZ) in the Crocker Range Park (CRP) at Ulu Papar. Sabah Parks is the state statutory body responsible for the management of all State as well as national parks located in the state. An exercise to demarcate the CRP's boundary on the ground which began in 1984 was completed by 2000. The boundary stretches from the northeast to southeast axis around the Crocker Range, a mountainous range that stretches along the West coast of Sabah. The CRP incorporates eight Districts (Sabah Parks 2006). This mountain range is rich in biological diversity and endemic plant species, among them the *Rafflesia*. It is also home to numerous Kadazan-Dusun-Murut communities, many of which have inhabited the area long before the formation of the Park.

Initial guidelines in the Zoning Plan for the CRP indicate that CUZs should take up no more than 3% of the total Park area (Sabah Parks, 2006). More important is the serious attempt made by Sabah Parks at involving the communities in the lengthy practical and administrative process of establishing the CUZ. Realizing the important relationship between villagers and their environment, Sabah Parks has generally adopted a soft approach where some amount of subsistence activities inside the Park is tolerated. Tolerance is shown through peaceful means and respect, and not

making evictions nor burning dwellings or crops (A. Agama, interview, September 1, 2011). Though benevolent, the tolerant approach is a far cry however from the villagers' wish for security of tenure.

The interest in indigenous or traditional management systems is driven in Sabah by an active, albeit small, civil society presence. The interest of indigenous communities in making a claim to natural resources or in maintaining access to them finds affinity in environmental NGOs who want to promote conservation. Thus through this partnership, NGOs produced useful assessments about Sabah's environmental conditions in the Sabah Biodiversity Conservation Project (SBCP) in the 1990s. The identification of the protected area component of the SBCP dealt with advancing proposals for new protected areas based on recommendations in the Sabah Conservation Strategy of 1992. As all these areas were occupied or used by local communities, socio-economic assessments were made to ascertain their position on conservation.

The message from the assessments is clear. Firstly, social institutions are already in place to facilitate the distribution of community access to land, forest food, medicinal plants, wild meat, river and streams. Secondly, communities consider the lack of security of tenure as an important factor preventing them from participating in conservation. The phenomenon of the lack of tenure is explained in the next section. However, as long as their livelihoods are not threatened and they retain rights to land and resources, local communities are generally welcoming of proposals to conserve natural resources (Towell 1997; Wong, G. 1998; Lye 1998 cited in Majid Cooke and Vaz 2011: 29). Support for ICCAs is also seen in the recently completed drafting of an updated *Sabah Biodiversity Strategy 2012–2022* (Vaz and Agama 2013).

The role of leadership at the local community level in advocating for indigenous rights is well articulated by Vaz and Agama (2013: 154):

> "Sabah has a fairly mature network of community-based organisations that have been influential in articulating the needs of communities

> to government authorities, and educating and empowering local people with knowledge of their rights under the Federal Constitution, state laws and ordinances, and also international laws. In recent years, the state government, recognising the skills and resources present within such organisations, has begun working closely with them to connect with grassroots concerns. This has also been influenced by the progressive leadership of members of the civil service, many of whom have traditional roots themselves. The pull factor has come from high-profile international initiatives such as BBEC [Bornean Biodiversity and Ecosystem Conservation Project] which has insistently nudged the government towards working more closely with local communities in alignment with landscape and ecosystem approaches to conservation."

Nevertheless, complications arise when resource governance remains dependent on the need to generate state revenue, and by the ideology that natural resources are only of value when converted into commodities such as timber, or as income generating eco-tourism products. The contour of that ideology is evident in the amendment made in 2009 to Section 76 of the SLO 1930 (henceforth, the Amendment). The Amendment was ostensibly introduced to solve backlog problems experienced by the Department of Land Survey in processing applications for individual land titles, amounting to an excess of 30,000 per year. In this regard, Section 76 of the SLO 1930 allowed for communal titles to be awarded to local communities on land claimed under customary rights, for their own needs. Subsequent analysis concerning the Amendment, however, shows that there are other reasons for the "fast tracking" of the land application process. Such reasons include, among others, the opening of lands under communal title—originally meant for community use—to commercial agriculture since the approval of communal title application is conditioned on the use of such lands for commercial purposes. In Sabah, commercial use means large-scale plantations of oil palm, and to a lesser extent, rubber, depending on the location and available local infrastructure. The issue regarding the "fast-tracking" process is that lands under customary tenure—and by extension ICCAs—are not covered by security of tenure unless they are titled. From the perspective of the State such lands are 'unowned" and it has

authority to make decisions about land use change. There are other forces at play that contribute to lack of tenure security but there is no room to explore this issue futher (see Majid Cooke and Toh 2012).

Ⅲ. Kiau Nuluh Village, Kota Belud, Sabah: Seeking State Recognition[2)]

Kiau Nuluh is a village bordering Kinabalu Park in the District of Kota Belud. This is a Dusun community with a population of 740. Close links are continually maintained with family members working in nearby towns. Agriculture remains an important activity, although hill rice is now mainly grown only for family consumption. Pineapple is cultivated on a commercial basis and rubber trees are grown on the hill slopes. Because of the proximity of the village to Kinabalu Park, many among the community work in the Park or are linked to Park activities in some way. The village voluntarily maintains and manages a village forest reserve which they refer to as "*hutan simpan komuniti Kiau Nuluh*" (HSKKN), or the community forest area of Kiau Nuluh. The HSKKN borders Kinabalu Park at the north. Within HSKKN is a network of trails and five designated camping spots. Ecotourism activities in the community forest provide supplementary income for part-time forest guides from the community. The community homestay programme is also a source of income to those who are equipped to share their homes to visitors. This community forest managed area is potentially being considered as an ICCA.

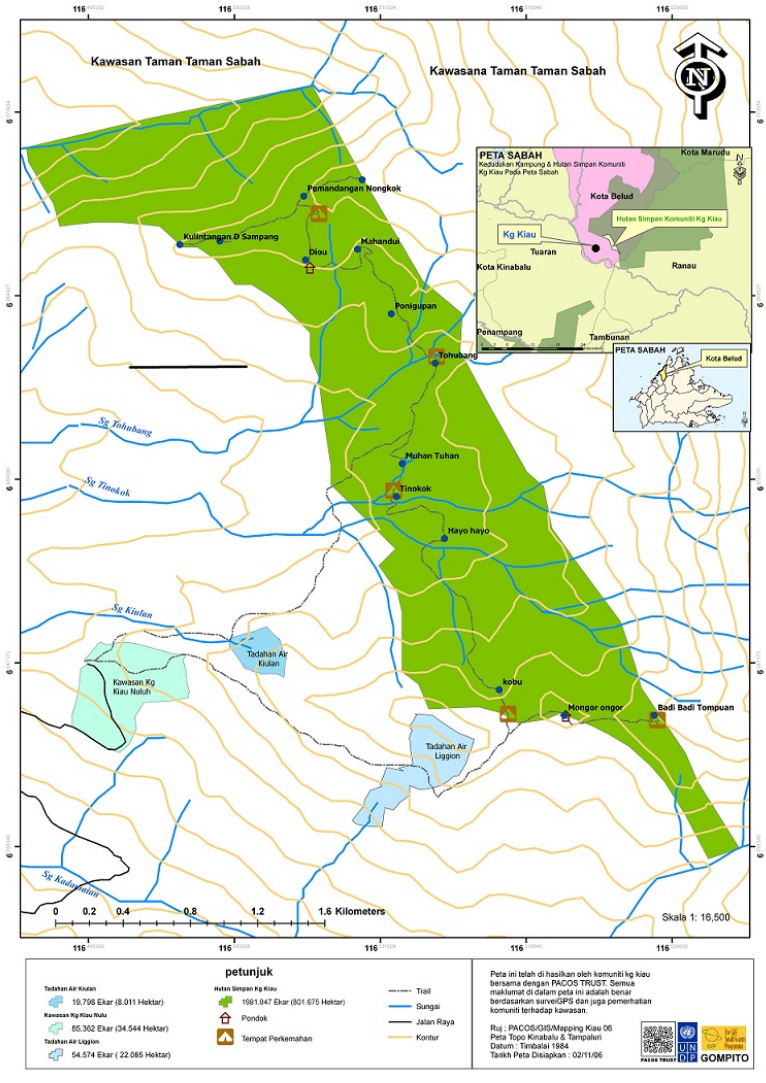
3.1. The Kiau Nuluh Community Conserved Forest (HSKKN)

The Kiau Nuluh Community Forest (HSKKN) occupies an area of 801 hectares stretching to the east of the village centre, running north to the Park border. Two main rivers, Sungai Tahubang and Sungai Tinokok, traverse the community forest area. Together with a network of tributaries, these rivers form the headwaters of

2) Parts of this section has been adapted from Majid Cooke and Vaz (2011)

the Kadamaian River, the primary water system for the Kota Belud District, Sabah's main rice growing region.

MAP 1: Kiau Nuluh Community Forest and Water Catchment Areas



Source: PACOS – GOMPITO mapping, with permission from GOMPITO

The HSKKN comprises a combination of lower and higher montane forest types featuring both oak and pine trees. It is significant for conservation as it provides a valuable extension to Kinabalu Park and an important reserve for biodiversity. The community manages the forest for a variety of purposes, including water catchment protection and the cultivation of forest products like medicinal plants. The forest also houses gravesites, historical footpaths, and rest stops. Farming is not allowed within the community forest area. Given that they are not allowed to use the HSKKN for agriculture, villagers cultivate fruits, especially pineapples, which are sold commercially, as well as rubber.

3.2. Community Organization

Kiau Nuluh vilage has a well-established village organization—Gugumpi Sinakagan Tokou (GOMPITO). The organization was registered with the Registrar of Societies in 2001 and has a committee in charge of the HSKKN. The village has a history of interaction with the tourism industry: a village leader who has links with a local tour agency and influential players in the nascent ecotourism sector such as TYK Tours, played a role in raising community awareness on the value of retaining forest cover for tourism.

The local community is also educated about the importance of retaining ownership and access to their customary lands. The village organization has earned assistance from linking itself with a local non-government organization - the Partners for Community Organizations (PACOS) in developing its management and planning capabilities. In view of the community's commitment and interest in conserving forest and sustainably managing its resources, GOMPITO has received three successive grants from the GEF Small Grants Programme—the first in 2004-2005, the second in 2009-2010. It yielded a third for 2013-2014. The grants generally support project activities in the following areas:

i) land use management and zoning;
ii) sustainable management of the watershed catchment and

its forests;
iii) capacity building and training for efficient natural resources management and sustainability;
iv) revival and strengthening of traditional knowledge on natural resource management and biodiversity; and
v) joint initiatives to further increase community participation, cooperation and solidarity for better conservation of biodiversity and natural resources.

As outputs from these grants, the community has worked with PACOS on community mapping to draw up the village boundaries and forest areas, as well, desigining a three-dimensional models of the village land use. In addition, GOMPITO has developed a more explicit framework for natural resource management now beng implemented by two village conservation committees: one for forests (*tagal hutan*) and another for river conservation *(tagal sungai*). Consequently, local management of community-conserved areas is getting the recognition and support that the community is seeking.

3.3. Tenurial Status of HSKKN

Ensuring recognition (*pengiktirafan*) of HSKKN is something that has long preoccupied the local community. The institutionalization of legal pluralism in Sabah has been evident since the 1930s with the adoption of the SLO. The first and by far the most inclusionary aspect of the SLO 1930 is the recognition of access for use and ownership of natural resources under *adat* (customary system). The second is the imposition of rules of access and ownership through *adat* via various sections of the SLO 1930. Nevertheless, while recognizing some aspects of *adat*, the SLO 1930 was initially introduced with the underlying aim of opening up the state to commercial agriculture (Cleary 1992). For this major activity, customary rights need to be confined to specific areas, so that the rest of the areas could be freed up for commercial use. Territorialization—which subsequently followed the introduction of the SLO 1930—meant that only lands awarded titles are recognized as being owned. The process of applying for

land titles and consequently earning them can take long, and in some extreme cases may take two generations to accomplish (Majid Cooke and Toh 2012). Without titles, there is a risk of these areas being lost to external interests at the discretion of the state.

Consequently, there is an active, ongoing dialogue within GOMPITO concerning how best to achieve the goals of getting title and general state acknowledgement of community role in natural resource management. GOMPITO has been fairly proactive in this regard and has held discussions with the Department of Land and Survey, Kota Belud, the District Office and their elected representative (*Wakil Rakyat*), on how to best proceed in obtaining security of tenure for the community forest (interviews at Kiau Nuluh village, January 2012 and May 2014).

The community forest area is presently a combination of lands claimed under customary rights, but as yet untitled. Included as well are lands under Native Title that are owned by several households or individuals. GOMPITO has evaluated the provisions in the SLO 1930 and has generally surmised that applying for a Native Reserve under Section 78 is the preferred option as it represents the best intentions for the communally managed area in conservation and sustainable use (interview GOMPITO facilitator, Encik Justin Dalansu, 16 May 2014). To date, technical issues delay the process of making the application. Internally, compensation for villagers who hold Native Titles and have been consequently affected by conservation efforts (e.g. zoning for watershed), needs to be addressed. In addition there was an issue regarding overlapping claims of land with a neighboring village, which has reportedly been resolved.

Village leaders view the ICCA concept and practice as a possible opportunity for getting some form of official endorsement and support for their conservation efforts. Support for the HSKKN has also been expressed in the 2007 Study on the Sabah Highlands undertaken by the Economic Planning Unit. Yet, ICCA although acknowledged by some state government departments as a viable category for promoting inclusive conservation, is not a category

legally recognized in the several State natural resource Enactments and Ordinances mentioned earlier.

A new, internationally initiated conservation process has also presented itself. GOMPITO could see an avenue of opportunity for seeking recognition through a new initiative supported by Sabah Parks known as the Eco-Link initiative. The initiative is part of Sabah's effort for participation in REDD+ (Reduceing Emission from Environmental Degradation and Deforestation), an international program which allows developing countries access to funds provided by developed countries for reducing deforestation in their own countries. Efforts at reducing deforestation are bound to affect the livelihoods of those most reliant on natural resources, in this case, indigenous peoples. REDD+ stipulates that such efforts must be established based on the inclusive principle of free and consensual relationship. Enforcement duties associated with REDD + on the ground imply the need for a "local welfare" approach that ensures a win-win solution where local communities and other local stakeholders are fully informed and appropriately involved in the protection of the targeted areas (Yani Saloh 2013).

In Sabah, HSKKN is part of a string of 10 villages under Sabah Parks' Eco-link project covering a stretch of forests containing a number of community-managed areas to form an ecological corridor containing important ecological and cultural landscapes deserving special attention (Alim Buin , n.d.). GOMPITO and Kiau Nuluh village leaders are quick to see that if successful, Eco-Link could provide another avenue for the recognition of their role in protecting natural resources and for maintaining control over Kiau Nuluh's cultural landscape (Kiau Nuluh, interview, May 17, 2014).

Ⅳ. Conclusion

The case of Kiau Nuluh is a success story of the local governance of community-conserved areas. Although it appears that there is still a need for some internal village level discussions to satisfactorily

build consensus, it is most likely that efforts would lead to the awarding of Native Reserve status to the community under Section 78 of the SLO. Such awards carry benefits (like security of tenure) as well as restrictions (such as land use decisions to be guided by the appointed trustees usually State-appointed officials). In principle, the presence of a self-identified community conserved area, the existence of a community management plan, and management framework, clearly demonstrate that the Kiau Nuluh community forest is a good candidate for recognition under the ICCA category. However, ICCA as a conservation area has not been acknowledged as a legal category by state government enactments or ordinances covering natural resource use. Leadership strength at the community level needs to be maintained and further enhanced if it were to continue negotiations for recognition under existing legislations such as Section 78 of the SLO 1930. Leadership strength is also needed for monitoring new opportunities, like Eco-Link or REDD+ programmes.

An external threat at Kiau Nuluh was encroachment by a neighbouring village. An equally serious threat to community conserved areas are overlapping claims by state agencies (e.g. for forestry development in the creation of forest reserves with prior claims to land under customary rights)[3] or commercial or state-linked interests (e.g. for oil palm development). In a report for the Malaysian Human Rights Commission of Malaysia (*Suruhanjaya Hak Asasi Manusia* or SUHAKAM) as part of the National Inquiry into the Rights of Indigenous Peoples (Majid Cooke and Toh 2012), a total of 779 complaints was recorded from 2001 to 2010, a majority (70%) involving complaints over land. The lack of security of tenure due to the marginalization of indigenous peoples in natural resources management and customary claims brought about such encroachments.

Under such circumstances, initiatives such as Eco-Link, the recognition of community use zones, or community managed forests within forest reserves, would first and foremost have to

3) Overlapping claims of a portion of land under Native Reserve at Bundu Tuhan village in Ranau District with the Tenompok Forest Reserve, has remained unresolved despite negotiations since 1984.

address the fundamental issue of the lack of tenure security.

A key element that Kiau Nuluh shares with other "successful" ICCAs in Sabah is strong organizational capacity at the community level (Majid Cooke and Vaz 2011). The role of civil society organizations and visionary leadership has been essential in this regard. However, many ICCAs which do not benefit from the presence of strong community leadership and supportive NGO networks, continue to suffer from developmental pressure and insecurity of tenure.

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