
INTRODUCTION

This special issue of the Journal of Malaysian and Comparative Law is devoted to the proceedings of the conference, "Legal Pluralism: The Role of Customary Law in Preserving Indigenous Heritage", sponsored by the Faculty of Law, University of Malaya in conjunction with the Majlis Adat Istiadat of Sarawak and the Office of the Chief Registrar, Native Courts Sarawak, held in Kuching, Sarawak on November 11-12, 1997.

The conference grew out of discussions held among staff members at the Faculty of Law exploring the tension between the seemingly irreconcilable goals of economic development and preservation of indigenous culture. This tension is keenly felt in Malaysia, a country of rich cultural diversity which has been developing rapidly over the last three decades. The question posed in these discussions was not whether development was beneficial. The potential benefits of greater integration into the post-industrial age are vast and in any event development to a large extent is inevitable. The question was whether the loss of indigenous culture was also inevitable, or is there a way to manage the tension between development and cultural diversity so as to prevent the irremediable destruction of the diverse cultural heritage of indigenous peoples while at the same time affording members of indigenous communities the opportunity to participate more fully as equal members of a post-industrial Malaysian society. As lawyers and law teachers, we were particularly interested in the potential role law and in particular customary law could play in this process.

The conference was designed from the outset to provide a forum for the exchange of views of knowledgeable people from both law and the social sciences, academic as well as those in the field. The con-

ference was constructed around six panels, each of which focused on a series of specific issues covering a wide spectrum. A majority of the papers presented at the conference are reproduced here.

In the introductory session, Professor Lakshman Marasinghe of the Faculty of Law, University of Windsor gave a general statement as to what customary law is and how it has evolved in the colonial context. His paper, "Customary Law: An Aspect of Legal Pluralism" draws on Professor Marasinghe's considerable experience in post colonial Africa.

In the second session, the panel was asked to focus on the role customary law plays in the life of indigenous peoples and the role it could play in preserving their language and oral traditions. Jayl Langub, Secretary of the Majlis Adat Istiadat, Sarawak, discussed the ritual aspects of the customary law of the Iban people of Sarawak and the importance *adat* continues to play in maintaining a sense of justice and balance among the modern Iban. Professor Barker, Department of Anthropology-Sociology, University of British Columbia, drew on his work with the Maisin people of New Guinea. His paper focuses on how the Maisin have been able to incorporate through their shared oral tradition major changes in their local law while maintaining a sense of continuity with their past. Professor Salleh, Chair of Malay Studies, Victoria University, Wellington, New Zealand addressed the relationship of customary law to oral tradition, culture and language with a focus on the Orang Asli of Peninsula Malaysia. His paper looked at the sources of Orang Asli customary law and the formidable obstacles facing the Orang Asli in their attempt to preserve their heritage.

Session three was devoted to issues surrounding the administration and enforcement of customary law. Professor M.B. Hooker, Faculty of Law, Australian National University dealt with the nature of customary law during the colonial era, drawing examples from British, Dutch and French colonial experience and the implications. Dato' Dr. Rais Yatim, former senior Cabinet Minister wrote a paper on the enforcement of present day *adat perpatih* in Negeri Sembilan while Empeni Lang, Chief Registrar of the Native Courts of Sarawak whose paper is reproduced here presented a comprehensive overview of the structure of the native courts of Sarawak, their place in the Malaysian legal system and the procedures by which they operate.

The fourth session dealt with indigenous identity. Ramy Bulan, Lecturer, Faculty of Law, University of Malaya explored the relationship between indigenous identity and the law within the Malaysian context. Her paper discusses the legislative definition of native, specifically the statutory definition of native as found in Sabah and Sarawak. Mr. Cal Martin of the Aboriginal Studies Centre, University of New South Wales gave a paper entitled "Indigenous Identity: a Crisis Point for Government in Australia". Reproduced here is the paper presented by Professor Dr. Wan Ahmad Zawawi Ibrahim, now Professor of Sociology and Dean of the Faculty of Creative Arts, University Malaysia, Sarawak. In his paper Professor Zawawi discusses the question of Orang Asli identity in relation to the evolving Malaysian nation-state.

Session five was devoted to issues involving customary law and indigenous land rights. The panelists were Francis John, Senior State Counsel, State Attorney General's Chambers, Sarawak, Professor Douglas Sanders of the Faculty of Law, University of British Columbia, Juprin Wong-Adamal, Senior State Counsel, State Attorney General's Chambers, Sabah, and C. Michael Hare of Cades Schutte Fleming & Wright, Honolulu, Hawaii. Both Mr. John and Mr. Adamal provided detailed analyses of customary land rights within the Malaysian legal system. Mr. John's paper discusses customary land rights under the Sarawak Land Code, while Mr. Adamal's paper covers native customary land rights in Sabah. Professor Sanders approached the issue of indigenous land rights from an international perspective. In his paper Professor Sanders surveys the evolution of indigenous land rights in the settler states of Australia, Canada, New Zealand and the United States. Mr. Hare focuses on Hawaii and discusses how the common law doctrine of custom has been used in the courts of Hawaii to preserve native Hawaiian access to land for customary purposes.

The final session of the conference focused on the legal devices used to manage and develop customary land. The panel comprised Tanira T. Kingi, Lecturer, Department of Agribusiness & Resource Management, Massey University, Palmerston North, New Zealand, Judith Sihombing, Senior Lecturer, Faculty of Law, University of Hong Kong, and C. Michael Hare. Mr. Kingi introduces us to the mechanisms being employed by the Maori people enabling them to develop their land as an economic resource while still preserving it as a key

element of their identity and a source of spirituality. Mr. Hare's paper looks at the use of charitable trusts established by members of the Hawaiian royalty as a means of aiding the Hawaiian people and preserving their heritage. Ms. Sihombing's paper provides an overview of the development of customary land in Hong Kong.

The conference was well attended by participants from throughout Malaysia and abroad. In addition, it drew the interest of many from the diverse indigenous communities of East Malaysia.

Institutionally, the conference also represented the reaffirmation by the University and, in particular, the Faculty of Law of longstanding commitment to the study of customary law and legal pluralism. In 1971 the University established a distinguished committee of scholars, judges and lawyers to consider the establishment of a Faculty of Law at the University of Malaya. Prior to this time legal education was not available in Malaysia and all Malaysian lawyers were trained abroad. The committee's report became the founding document of the Faculty of Law. Prominent among the reasons cited in the report for establishing a law faculty was that the training in customary law and Islamic law available overseas was inadequate. To redress these deficiencies the report recommended that the Faculty offer instruction in Islamic law and customary law as part of its standard curriculum.

Over the years the Faculty of Law has attempted to fulfil the mandate given to it by the committee. The Faculty has from the beginning offered Islamic Law as an optional subject. Beginning in 1995 Islamic Law has been made a compulsory subject for all students at the LL.B level. However, with regards to research and instruction on indigenous law, the Faculty has been frustrated by a lack of knowledgeable instructors and researchers. The fifteen months spent organizing the conference brought renewed attention to these deficiencies.

To remedy this longstanding deficiency and to promote the goals of a truly pluralistic society, the Faculty proposed to the University the establishment of a centre for the study of legal pluralism and indigenous law. The proposal for the creation of the Centre for Legal Pluralism and Indigenous Law at the Faculty of Law was announced at the opening ceremony of the conference, and was later formalised by the University in early 1998. The Centre represents the first co-ordinated effort by a Malaysian law faculty to study indigenous legal issues.

Much as the conference brought together lawyers, legal academicians, anthropologists, economists and government officials, we hope the Centre will be a place where all those who are interested in research on issues of indigenous law and legal pluralism can further their study. In addition to becoming a focal point for research into indigenous law, a repository of information on the subject, we also hope to work with those who are doing actual research among the indigenous people. In this way we hope that we can make meaningful contributions towards preserving cultural vitality within the rapidly changing Malaysian society. The publication of papers from the conference is the first step toward this goal.

At the outset it must be noted that while the paper writers worked separately on their papers, interestingly, many of the issues dealt with overlap, reflecting parallel experiences relating to customary law and legal pluralism in different settings. Given that the writers come from varied backgrounds and disciplines they adopt different styles of writing. We have tried wherever possible to edit the papers to conform to the journal house style without changing the substance.

The editors would like to thank the contributors for allowing their papers to be reproduced here.

We would also like to thank M. Kalavathy and A. Vijayalakshmi Venugopal for their help in reading the manuscripts and a big thankyou to Zaini Ahmad Arif, Publications Department for her patience and cheerfulness in the course of editing and publication of this volume.

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