

## Towards "Good" Native Land Governance An Evaluation in Sarawak, Malaysia

Tan Liat Choon, Toh Ming Liang, Looi kam Seng, Tan Wee Vern, Muhamad Uznir bin Ujang, Thoo Ai Chin, Nor Suhaibah binti Azri and Shanmugapathy A. L. Kathitasapathy

Volume 14, Number 1, 2023

URI: <https://id.erudit.org/iderudit/1100237ar>  
DOI: <https://doi.org/10.18584/iipj.2023.14.1.13873>

[See table of contents](#)

Publisher(s)

Scholarship@Western (Western University)

ISSN

1916-5781 (digital)

[Explore this journal](#)

Cite this article

Liat Choon, T., Ming Liang, T., kam Seng, L., Wee Vern, T., bin Ujang, M., Ai Chin, T., binti Azri, N. & Kathitasapathy, S. (2023). Towards "Good" Native Land Governance: An Evaluation in Sarawak, Malaysia. *The International Indigenous Policy Journal*, 14(1), 1–25. <https://doi.org/10.18584/iipj.2023.14.1.13873>

Article abstract

Sarawak is the largest state in Malaysia, where two-thirds of the population are Indigenous. This study aims to evaluate, through the lens of good governance principles, the current practice of the Sarawak State's formal land governance of lands associated with Native Customary Rights (hereafter known as Native land governance). Being quantitative in nature, this study conceptualises an evaluation framework for good governance principles as applied to Native land governance. Next, this study empirically tests out the framework by adopting a multi-criteria decision-making tool known as The Technique for Order of Preference by Similarity to Ideal Solution (TOPSIS). TOPSIS analysis enables the integration of perceptions between State/private groups and Indigenous groups. The output of the TOPSIS analysis is summarised in a strength, weakness, opportunity, and threat (SWOT) format according to the TOPSIS closeness value. Unfortunately, results show that the weaknesses outnumber the strengths in Sarawak's Native land governance. Among these issues, Indigenous respondents highlight major issues with the Sarawak land registry's efficiency in delivering outcomes that are equitable for Indigenous land rights. This study ends with recommendations on how the state of Sarawak can move towards compliance with good governance principles in relation to lands associated with Native Customary Rights.

Copyright © Tan Liat Choon, Toh Ming Liang, Looi kam Seng, Tan Wee Vern, Muhamad Uznir bin Ujang, Thoo Ai Chin, Nor Suhaibah binti Azri and Shanmugapathy A. L. Kathitasapathy, 2023



This document is protected by copyright law. Use of the services of Érudit (including reproduction) is subject to its terms and conditions, which can be viewed online.

<https://apropos.erudit.org/en/users/policy-on-use/>

Érudit

This article is disseminated and preserved by Érudit.

Érudit is a non-profit inter-university consortium of the Université de Montréal, Université Laval, and the Université du Québec à Montréal. Its mission is to promote and disseminate research.

<https://www.erudit.org/en/>



April 2023

## Towards "Good" Native Land Governance: An Evaluation in Sarawak, Malaysia

Tan Liat Choon

*Universiti Teknologi Malaysia, Malaysia, tlchoon@utm.my*

Toh Ming Liang

*Universiti Teknologi Malaysia, Malaysia, mltoh217@gmail.com*

Looi kam Seng

*Department of Survey and Mapping Malaysia, Malaysia, looi@jupem.gov.my*

Tan Wee Vern

*Universiti Teknologi Malaysia, Malaysia, wvtan2@live.utm.my*

Muhamad Uznir bin Ujang

*Universiti Teknologi Malaysia, Malaysia, mduznir@utm.my*

Thoo Ai Chin

*Universiti Teknologi Malaysia, Malaysia, acthoo@utm.my*

Nor Suhaibah binti Azri

*Universiti Teknologi Malaysia, Malaysia, suhaibah@utm.my*

Shanmugapathy A. L. Kathitasapathy

*Universiti Teknologi Malaysia, Malaysia, pathyjr@hotmail.com*

---

### Recommended Citation

Auger, J., Nath, N., & Greene, C. (2023). "Wisdom Seeking Together": Circling around research ethics. *The International Indigenous Policy Journal*, 14(1). <https://10.18584/iipj.2023.14.1.13873>

---

# Towards "Good" Native Land Governance: An Evaluation in Sarawak, Malaysia

## Abstract

Sarawak is the largest state in Malaysia, where two-thirds of the population are Indigenous. This study aims to evaluate, through the lens of good governance principles, the current practice of the Sarawak State's formal land governance of lands associated with Native Customary Rights (hereafter known as Native land governance). Being quantitative in nature, this study conceptualises an evaluation framework for good governance principles as applied to Native land governance. Next, this study empirically tests out the framework by adopting a multi-criteria decision-making tool known as The Technique for Order of Preference by Similarity to Ideal Solution (TOPSIS). TOPSIS analysis enables the integration of perceptions between State/private groups and Indigenous groups. The output of the TOPSIS analysis is summarised in a strength, weakness, opportunity, and threat (SWOT) format according to the TOPSIS closeness value. Unfortunately, results show that the weaknesses outnumber the strengths in Sarawak's Native land governance. Among these issues, Indigenous respondents highlight major issues with the Sarawak land registry's efficiency in delivering outcomes that are equitable for Indigenous land rights. This study ends with recommendations on how the state of Sarawak can move towards compliance with good governance principles in relation to lands associated with Native Customary Rights.

## Keywords

Native, Native Customary Rights, Land Governance, Good Governance, TOPSIS

## Acknowledgments

Our sincere gratitude to all who have participated in the study, particularly the respondents from Land and Survey Department Sarawak, various licensed land surveyors, community leaders, Indigenous communities, as well as various NGOs. Also, we appreciate the constructive comments & critiques from the peer reviewers and journal editorial staff in making this publication a success.

## Creative Commons License



This work is licensed under a [Creative Commons Attribution-NonCommercial-No Derivative Works 4.0 License](https://creativecommons.org/licenses/by-nc-nd/4.0/).

---

Indigenous peoples from the interior of Sarawak typically dwell in longhouses and practise their own unique customary law, also known as the Native Customary Rights (NCR). Of course, not all Indigenous Peoples in Sarawak live in rural areas; they are scattered across the State, where some live in urban areas, and some still live in those traditional ways of life associated with NCR. In these traditional ways, land is sacred, land is life, and land is a crucial part of Indigenous lifestyles. For the Indigenous people in Sarawak living traditional lifestyles, land can be a space to dwell, to farm, to collect forest products, to hunt, to bury the dead, and something to be inherited (Nasser & Salleh, 2011; Fong, 2011). NCR entails the norms perceived as traditionally correct social behaviour, rules for ceremonies and religious rites, lands, and methods of dispute resolution (Bulan, 2007).

Sarawak is the largest state in Malaysia, and two-thirds of its population are Indigenous (Department of Statistics Malaysia (DOSM), 2010). In Malaysian governmental language and policy, the term “Native” is used interchangeably with Indigenous people, or *bumiputera* of Sarawak.<sup>1</sup> Generally, “Native” refers to certain races in Malaysia as specified in Article 161A Clause (7) of the Federal Constitution of Malaysia 1957. Malaysia is a multi-ethnic, multi-religious, and multi-cultural country with a total of thirteen states. According to the Federal Constitution of Malaysia 1957, land matters fall under the jurisdiction of State government. As such, Sarawak exercises its own jurisdiction over land matters, including governance on Indigenous lands. This study focuses on Sarawak’s context because it is the largest state with the highest population of Indigenous People in Malaysia. In this study, Native land governance refers to the formal governance of land which is associated with NCR. Simply put, it refers to the practical implementation of land policies by the Malaysian government on lands where NCR has been established by Indigenous communities prior to the formation of the country.

Some of the common grievances expressed by Indigenous community leaders during visits by the authors to their longhouses include Indigenous lands being continuously encroached upon by outside companies, multiple levels of government not listening to Indigenous communities, and the government’s failure to issue land title to Indigenous villagers even though they applied long ago. As reflected by these narratives, there are many issues faced by Indigenous communities in Sarawak which pose enormous threats to them, especially in terms of their land rights. Various publications have shed light on the violation of NCR on land, causing insecurity of customary land tenure (Sahabat Alam Malaysia (SAM), 2019), ineffective development on Indigenous land (Ngidang, 2002), lack of Indigenous title (Azima, Sivapalan, et al., 2015; Bian, 2007), and inadequate compensation during land acquisition (Suruhanjaya Hak Asasi Manusia Malaysia (SUHAKAM), 2013). The failure of statutory law in protecting NCR over land gave way to the encroachment of customary land in Sarawak (SAM, 2019). As stated by Ngidang (2002) and Andersen et al. (2016), the lack of transparency and participation processes for state and private dealings with Indigenous land has victimised Indigenous communities. In addition, Indigenous communities who are not willing to be involved in a development scheme, or who have tried to protect their rights, may be labelled as “anti-development” or “anti-government” (Andersen et al., 2016; Ngidang, 2002; SACCESS, 2012). Critical to rectifying Indigenous land disputes is the issuance of Indigenous titles that guarantee customary land ownership (Azima, Sivapalan, et al., 2015). However, Sarawak State Government claims they are not issuing titles due to a lack of funds to survey these lands (Bian,

---

<sup>1</sup> The term “Native” can be found in the Federal Constitution of Malaysia 1957. Section 161A (6) of the constitution reads: “In this Article ‘native’ means: (a) in relation to Sarawak, a person who is a citizen and either belongs to one of the races specified in Clause (7) as Indigenous to the State or is of mixed blood deriving exclusively from those races.”

2007). Also, there were cases reported by SUHAKAM (2013) on cases where either no compensation or insufficient compensation was paid to the Indigenous people in the event of land acquisition for development purposes. The issue pertaining to NCR over land is not new in Sarawak. It has always been a debated issue since the private colony of the Brooke's family settled in 1841. In simplified terms, Indigenous Peoples in Sarawak traditionally viewed land as a gift from the Almighty, which contrasted with an encroaching view that all untitled land belongs to the government.

Formalisation of customary tenure seems to be inevitable in Malaysia, especially in this era where the superimposition of statutory laws on customary laws is common. A formalisation process is described as a process to identify, adjudicate, and register interests in land for whoever owns the land (Meinzen-Dick & Mwangi, 2009). The formalisation process of customary land tenure is not simple task due to the contradictory nature of statutory and customary law (Freudenberger et al., 2013; Williamson, 2001). This formalisation process is also extremely complicated for a country like Malaysia, with a diverse population of multiple ethnic, cultural, social, and religious backgrounds. The formalisation process is still ongoing to this day, and it remains a part of the land governance in Sarawak. Good governance is the key to a successful formalisation process that is equitable to Indigenous Peoples. Here, our research question arises: to what extent does Native land governance in Sarawak meet good governance principles? Good governance principles for our purposes refers to governance that is well managed through the principles of equity, efficiency, transparency, accountability, sustainability, subsidiarity, civic engagement, security, and results in desirable outcomes (Food and Agriculture Organization of the United Nations (FAO), 2007). This research question is crucial in understanding the current status of Native land governance in Sarawak through comprehensive evaluation, especially with the aim to improve Native land governance and to protect the rights of Indigenous Peoples.

This study is crucial since the issues pertaining to NCR over land in Sarawak are not getting any better based on the data collected on the ground, various published news, articles, as well as informal interviews and talks with Indigenous community leaders. Steps must be taken to rectify the root issues in NCR land. The study addresses knowledge gaps in Native land governance in three aspects. First, it provides an evaluation framework to appraise Native land governance through the lens of good governance principles. Second, it applies that framework to Native land governance in Sarawak. Third, it enables the prioritising of issues and solutions through the unique methodology adopted. The authors believe that the findings of this study are useful for Sarawak's context specifically and also for postulating further research to be done in the field of Native land governance in Malaysia and internationally. To achieve that aim, this study advances with the following discussions: first, the conceptualising of an evaluation framework to assess Native land governance. Second, the methodology to implement the evaluation framework in the context of Sarawak. Third, the empirical findings on the ground. Fourth, the lessons learnt.

### **Native Customary Rights and Land Governance**

Native Customary Rights (NCR) is linked with the culture, traditions, and beliefs of Indigenous communities. In Sarawak, NCR are the customary laws that encompass the norms perceived as correct social behaviour, rules for ceremonies and religious rites, lands, and method of dispute resolutions (Bulan, 2007). Notably, customary laws become an integral part of Malaysia legal system when they were formally codified by the statutory body in Sarawak known as the Council for Native

Customs & Traditions. The rights derived from customary laws are to maintain the cohesiveness of the society, to seek balance and justice, and to ensure life goes on. Among these rights, the one related to land is known as “NCR over land” or “Native customary tenure,” which is the most problematic area for Malaysian government’s land administration. This is mainly due to the different perceptions of land held by the Indigenous communities and the formal Malaysian government. The concept of NCR is more comprehensible by providing the historical context of customary land tenure in Sarawak.

### **A Chronological Evolution of Native Customary Tenure in Sarawak**

The historical categories of Indigenous land legislation in Sarawak can be divided into three eras for our purposes: pre-Brooke Sarawak Era, the Brooke Era (1841-1946), and the British Crown Colony Era (1946-1963). The era of Pre-Brooke Sarawak refers to the sovereignty of Brunei, which is before the year 1841. NCR over land is a traditional system of land tenure that existed prior to the arrival of the first of the British Brooke Family, James Brooke. As noted by Porter (1967), prior to the arrival of James Brooke in Sarawak, the pre-existing system of land tenure was based on Native customary laws. Such laws confer ownership to whoever cultivates “virgin land” (Richard, 1961).

In 1841 the Sultan of Brunei, Pangeran Muda Hashim, handed the government of Sarawak to Sir James Brooke by an Instrument of Transfer. This event marks the beginning of the Brooke Era. At first, the Brookes did not interfere with the customary tenure system (Osman and Kueh, 2010). Instead, the Brookes allowed the Dayaks and Malays to govern their own customary land in accordance with their own customary laws (Nasser and Salleh, 2011). With the increasing value of land and rampant land disputes caused by the settlers, the Brookes had promulgated a series of land legislations, ostensibly to administrate the land efficiently. In short, the laws restricted the practice of shifting cultivation and the movement of Dayak communities from one district to another. If an Indigenous person moved from one river system to another, their rights over Indigenous land would be lost (Fong, 2011; Nasser & Salleh, 2011). Also, the laws classified land into different categories, including “Native holdings” to formally recognise the customary land rights, and most importantly, the plan to formal codify customary laws to record and protect these customary rights.

However, these legislative plans were interrupted by the outbreak of World War II (Ngidang, 2005), and records of boundaries were lost because of the Japanese Occupation (Richards, 1961). After the cession of Sarawak to the British Crown, land administration in Sarawak continued reform. Land Ordinance No.3 had been introduced by the British Crown to control and prohibit the creation of NCR (Nasser & Salleh, 2011). This marked the first time the Rajah exercised his power to rebuke the creation of customary rights on state land (Ngidang, 2005). To date, as inherited by the previous land legislations, the Sarawak Land Code 1958 continues to recognise NCR to an extent. Specifically, the government only acknowledges farmed areas (*temuda*) instead of the territorial domains (*pemakai menoa*) and communal forests (*pulau galau*). According to Bulan (2007), *pemakai menoa* is defined as the geographical location of the long house community within a *garis menoa* (territorial boundaries between villages). *Temuda* includes the farming land within a *pemakai menoa* and is divided by the boundary called *antara umai*; meanwhile *pulau galau* refers to the jungle or land that is left uncultivated for the purposes of communal use such as hunting, collecting natural resources, fishing, and burial. Initially, the Land Code inherited the land claim systems which are rooted in customary law traditions. However, the various amendments of the Land Code continuously weakened the customary-oriented rights (Ngidang, 2005). The Land Code

was drafted by a New Zealander, J. Caradus in 1954 (Nasser & Salleh, 2011). To date, it has been amended several times and functions as the primary land legislation to govern all land matters, including NCR in Sarawak.

### **Native Land Governance: A conceptual evaluation framework**

To develop a firm grasp on this topic, this section reviews various publications involving the assessment frameworks, recommendations for improvement, or the development of best-practices in the field of Native land governance. An evaluation framework was drafted based on some previous studies from both Indigenous and non-Indigenous perspectives, namely, Arko-Adjei et al. (2010), Deininger et al. (2012), FAO (2012), Freudenberger et al. (2013), Hull & Whittal (2018), SAM (2019), and SUHAKAM (2013). Generally, these inputs to draft the framework emanated from three broad categories.

The first category is individual or personal studies from regional contexts outside Malaysia. Arko-Adjei et al. (2010) present a framework for assessing customary tenure institutions in Ghana based on good governance principles. Customary tenure institutions involve both customary institutions and statutory institutions which deal with land administration. Unlike Ghana, the power to administrate land in Sarawak, including Indigenous land, is vested solely under the formal government via statutory institutions. However, some indicators were adopted by this study despite the different context, especially in matters to improve tenure security. Next, through the lens of human rights, good governance, and pro-poor policy, Hull & Whittal (2018) proposed a conceptual framework to assist in land reform projects, especially for customary land tenure in Mozambique, southern African. The framework encompasses four levels of specificity which covers five evaluation areas: (i) underlying theory, (ii) change drivers, (iii) change process, (iv) land administration system (LAS), and (v) review process. This study provides the insights to draft the evaluation framework for Sarawak, especially in terms of the review process. Notably, both above studies adopted good governance as the guiding principle in developing the framework.

The second category is studies from international organisations such as the World Bank (WB), United States Agency for International Development (USAID), and the Food and Agriculture Organisation of The United Nations (FAO). Deininger et al. (2012) developed a diagnostic tool known as the Land Governance Assessment Framework (LGAF) to monitor and evaluate governance in land sectors from five aspects: (i) legal and institutional frameworks; (ii) land use planning, management, and taxation; (iii) management of public land; (iv) public provision of land information; and (v) dispute resolution and conflict management. Despite the fact that the LGAF is developed to cater for modern land administration systems, some indicators are still relevant and applicable in the field of Native land governance. Next, Freudenberger et al. (2013) discussed the lessons learned from recognising, formalising, and transforming customary tenure systems, which is insightful for drafting the evaluation framework. These lessons emanated from the past USAID projects which deal and work with customary tenure systems around the world (Freudenberger et al., 2013). Lastly, FAO (2012) published Voluntary Guidelines to improve tenure governance of land, fisheries, and forests, which is applicable to all countries for all forms of tenure, including public, private, communal, Indigenous, and customary. Most of the principles used in the guidelines are directly related to good governance principles.

The third category is studies from local Malaysian organisations. National Human Rights Commission of Malaysia (SUHAKAM) and Sahabat Alam Malaysia (SAM) are the organisations in Malaysia which support the Indigenous rights in Malaysia and deal with complaints launched by Indigenous communities. The findings and recommendations by SUHAKAM (2012) and SAM (2019) were incorporated into the evaluation framework.

Through theoretical analysis and coding process, the key findings from the above publications were grouped and categorised into five main themes with ten sub-themes. Coding enables the central issues of the publications to be identified and described with short phrases. Similar codes are grouped together to form concepts, and similar concepts are grouped into categories. These themes serve as the foundation for the evaluation framework. On top of that, the evaluation framework was established based on six good governance dimensions: (i) efficiency and effectiveness, (ii) transparency and access to information, (iii) accountability, (iv) equity and fairness, (v) participation, and (vi) rule of law. These principles are interconnected and act as a whole. Good governance means that the process of governance is associated with the principles of equity, efficiency, transparency, accountability, sustainability, subsidiarity, civic engagement, and security, which resulted in desirable outcomes (FAO, 2007). It forms the core of good land administration (Williamson et al. 2008). We believe that the principle of good governance should not be merely confined to the context of modern land administration. Instead, it is also a crucial guiding principle for Traditional land administration (the governance of Indigenous land). One of the perceptible effects of good governance is the protection of vulnerable groups such as Indigenous people through proper land registration and tenure security (FAO, 2007; SAM, 2019. Arko-Adjei et al. (2010) argue that good governance principles are needed to assess customary land institutions. The key to rectify problems in customary land governance, such as abuse of power by customary authorities, fluidity of customary laws, customary tenure insecurity, land-grabbing by outsiders, and unfair distribution of land resources by customary authorities. Said otherwise, the problems associated with Native land governance could be significantly reduced with proper implementation of good governance principles in Native land governance. Hence, these principles are embedded into the evaluation framework. Table 1 describes the evaluation aspects used in this study. Further explanations on the content for each theme are provided in the following sub-subsections.



**Table 1. Conceptualised Evaluation Framework**

Theme	Sub-theme (Item)	Items	Associated good governance principle
Policy and Legal Framework	Comprehensive Land Policy (1.1)	Land institutional reports on land policy implementation are publicly accessible	Transparency and access to information
	Comprehensive Land Policy (1.2)	Collaboration between statutory land agencies and the customary authorities	Participation
	Recognition of Rights (2.1)	Existing legal framework recognises Native customary land rights	Rule of law
	Recognition of Rights (2.2)	Minimal overlapping rights and contradiction rules between customary law and statutory land law	Rule of law
	Recognition of Rights (2.3)	Clear definitions on the concepts of customary tenure.	Rule of law
	Enforcement and Safeguard of Rights (3.1)	Existing of documentation that register communal land rights and map the boundaries of Native communal lands	Efficiency and Effectiveness
	Enforcement and Safeguard of Rights (3.2)	Existing of documentations that register and map the boundaries of individual Native land.	Efficiency and Effectiveness
Enforcement and Safeguard of Rights (3.3)	Initiative to avoid infringing on Native customary land rights	Accountability	
Customary Land Development	Joint Venture/ Investment (4.1)	Detail investigation into the status of the land before any alienation, reservation or issuance of licence take place.	Accountability
	Joint Venture/ Investment (4.2)	Transparency in all forms of transactions in tenure rights as a result of investments in Native customary land	Transparency and access to information
	Joint Venture/ Investment (4.3)	Agreements are documented and understood by all who are affected	Participation
	Joint Venture/ Investment (4.4)	There are measures to ensure the fairness of profit distribution according to the agreement.	Equity and fairness

Theme	Sub-theme (Item)	Items	Associated good governance principle
	Other Land Development Scheme (5.1)	Appropriate consultation with Native landholders before initiating any investment project	Participation
Customary Land Information and Survey Practice	Completeness of the Land Registry (6.1)	The procedure of service delivering adopts simplified and locally suitable technology to reduce the costs and time.	Efficiency and Effectiveness
	Completeness of the Land Registry (6.2)	Records in the registry such as information on customary land are accessible to community members	Transparency and access to information
	Effectiveness of Cadastral Survey Practice (7.1)	The survey of Native customary tenure involves Indigenous land owners.	Participation
	Effectiveness of cadastral survey practice (7.2)	Strict key performance indicators for monitoring the survey process.	Accountability
Dispute resolution and conflict management	Judicial System (8.1)	Clear assignment of responsibility for conflict resolution between the communities	Efficiency and Effectiveness
	Judicial System (8.2)	Conflict resolution mechanisms are adequate for handling Native land related issues.	Efficiency and Effectiveness
	Judicial System (8.3)	There is an informal or community-based system that resolves disputes in an equitable manner.	Equity and fairness
	Judicial System (8.4)	There is a process for appealing dispute rulings	Equity and fairness
	Compensation from Land Acquisition (9.1)	Fair valuation and prompt compensation in accordance with national law and land policy	Equity and fairness
	Compensation from Land Acquisition (9.2)	Legal provision of the right to appeal for any unfair compensation	Equity and fairness
Review Process	Improvement (10.1)	Appropriate educational and training programs for Indigenous Peoples to enhance their management skill on land.	Accountability

**Theme 1: Policy and Legal Framework.** As stated by Williamson et al. (2010), land policy is the main mechanism in a land administration system for setting the objectives of land tenure, land value, land use, and land development. Likewise, in Native land governance, land policy shapes the legal outcomes and political decisions which may affect the Indigenous communities directly or indirectly. A total of three sub-themes are placed under the first theme. The first sub-theme focuses on the comprehensiveness of the land policy. It is imperative to ensure the land policy objectives are aiming to eradicate poverty and supporting Indigenous peoples' own goals and action (Enemark & Molen, 2008). Good governance indicators like participation as well as transparency and access to information are mandatory in the formulation of a land policy that can accommodate the needs of the Indigenous communities. The second sub-theme shed light on the formal recognition of Native customary rights through the codification of customary laws into the statutory framework. The legal recognition of Native customary land rights according to the customs of Indigenous people is the ideal outcome. Smith & Mitchell (2020) categorised this indicator under land and natural resources as one of the indicators to measure the State compliance with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Hence, the principle of rule of law shall be the guiding principle for the second sub-theme. Next, the third sub-theme evaluates Native land governance in terms of the practical enforcement and safeguarding of such rights. It is unfortunate to have strong legal provisions in the statute but weak implementations on the ground. In light of this, the existence of documentation that registers Indigenous land rights and map the boundaries of Indigenous lands are vital (Deininger et al., 2011, FAO, 2012). At the same time, such efforts to safeguard Indigenous land rights must be done in an efficient and effective way.

**Theme 2: Native Land Development.** Based on the aforementioned theoretical analysis, land development is a crucial aspect and shall be included in the evaluation framework for Native land governance. In Sarawak, it is the government's goal to bring Indigenous people into development for the sake of the national economy (Osman & Kueh, 2010, Cramb, 2011). The government seeks to convert "idle" land into agricultural land. Every land development involves land dealings, and it is pertinent to have at least three principles of good governance reflected in every land dealing involving Indigenous people. First, accountability to reduce corruption in every land transaction. Second, transparency and access to information so that Indigenous people have full understanding of any projects they are involved in. Third, participation and consultation to ensure the consensus between the involving parties in every land development on Native land. There are two sub-themes that can be placed under the second theme: first, the joint venture or investment scheme between third parties and Indigenous communities; second, other land development schemes on Native land. As stated by Hull & Whittal (2018), every project involving Native land must be accompanied by a detailed investigation into the status of the land before any alienation, reservation, or issuance of licence takes place. Similarly, there shall be appropriate consultation with Indigenous communities before initiating any investment project which may override their rights to the land (Arko-Adjei et al, 2010; FAO, 2012; Smith & Mitchell, 2020).

**Theme 3: Customary Land Information and Land Survey Practice.** Cadastre is the core of a land administration system, registering land rights and mapping the land boundaries through cadastral surveying (Williamson, 2001). Despite the fact that cadastre is constantly undergoing changes, its basic function as "bookkeeping" for land records is important, especially in the context of Native land administration. In light of this, the third theme focuses on the land registry and survey practice of Native land with two sub-themes. The first sub-theme evaluates the completeness and reliability of the land registry, while the second sub-theme sheds light on the effectiveness of land survey

practice. Service delivery shall adopt simplified and locally suitable technology to reduce costs and time (Arko-Adjei et al., 2010; FOA, 2012). In other words, the principle of efficiency and effectiveness must be embedded in every land registry. As for the land survey practice, the principle of participation is vital to ensure the survey process involves Indigenous land owners. Very often, the lack of inclusion for Indigenous people impedes the survey process, causing disputes to happen (SAM, 2019). The issuance of Native title through the appropriate survey method is the remedy to the rampant Native land disputes in Sarawak (Azima, Sivapalan, et al., 2015; Bian, 2007). This reflects the need to incorporate the functionality of the land registry in the evaluation framework.

**Theme 4: Dispute Resolution and Conflict Management.** Dispute resolution is an indispensable aspect of Native land governance to restore justice and balance through both formal legal institutions and informal customary justice systems (Bulan, 2014). In general, Native land disputes in Sarawak can be categorised as either internal disputes or external disputes. Internal disputes happen among Indigenous family members or the neighbors next to their land; external disputes involve the encroachment of Native land by outside companies (Azima, Sivapalan, et al., 2015). There are minor disputes which could be resolved by a village headman, and major land disputes involving multiple villages and private companies which could only be solved by the formal court system. As stated by FAO (2011), dispute resolution mechanism should be accessible in terms of location, language and procedures. As stated by Bulan (2014), effective dispute resolution and conflict management are catalysts for social cohesion and harmony between Indigenous communities and the State Government. Hence, the fourth theme evaluates Native land governance from the perspective of dispute resolution and conflict management with two sub-themes: (i) the judicial system and (ii) compensation from land acquisition. The first sub-theme assesses the functionality of the dispute resolution system while the second sub-theme focuses on the remedial action, i.e. adequate compensation. The principle of equity and fairness is the guiding principle for the fourth theme.

**Theme 5: Review Process.** Review processes are pertinent for any system to ensure the objectives of the system are either met or need to be adapted (Steudler, 2004). One of the notable issues in Native land governance is the different interpretation or understanding of NCR between the Malaysian government and Indigenous people (Bian, 2007). Also, Native customary system are dynamic in nature and adaptable to changes as society evolves (Arko-Adjei et al, 2010; Bulan, 2007). Thus, modern land administration and traditional customary systems have to be reviewed from time to time to possibly bridge the gap between the two. Thus, this fifth theme is drafted to incorporate all the items related to review processes, and thus encompass a very wide scope. For the purpose of this study, only one sub-theme is placed under the fifth theme, focusing on improvement in these processes.

## Methodology

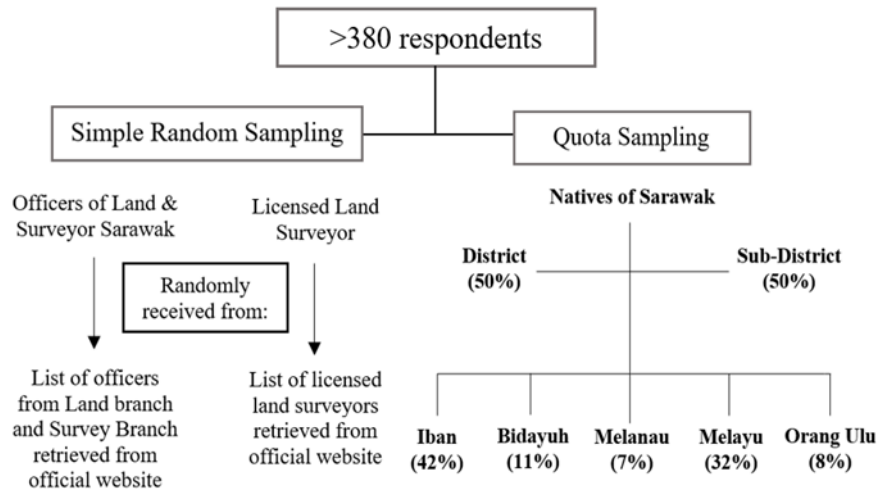
In Sarawak, NCR naturally involves political institutions, and it is presumed a sensitive issue by some of the respondents in governmental departments. Hence, to ensure comprehensiveness, our evaluation encompasses the perceptions of various actors such as community leaders (*Tuai rumah, Penghulu*), Indigenous groups (Iban, Bidayuh, Melanau, Melayu, and Orang Ulu), officers from the Land and Survey Department Sarawak (L&S), and licensed land surveyors (LLS). L&S is the main government agency for dealing with all the land matters in Sarawak, while LLS consists of private firms which provide surveying and mapping services. Being quantitative in nature, a questionnaire

with three different languages (English, Malay, and an Indigenous dialect, Iban) was distributed to the mentioned respondent groups. The questionnaire was drafted according to the five themes as conceptualised by the study (Table 1). It was based on a 5-point Likert scale, with 1 as “Strongly Disagree” and 5 as “Strongly Agree.” As listed in Table 1, each of the indicators is associated with a good governance principle. In short, these indicators were translated into questions to be answered by the respondents as discussed in the next paragraph. Thus, the questionnaire was designed to evaluate the implementation of good governance principles in the Native land governance.

### Sampling Technique

This study utilises different sampling techniques for different respondent groups. Simple random sampling is adopted for the state and private organization group (L&S and LLS), while a quota sampling method is adopted for Indigenous group. In terms of precision, this study complies with  $\pm 5\%$  precision level and 95% confidence level in calculating the sample size based on the formula by Krejcie & Morgan (1970). With the increasing population, the sample size increases at a stable rate, slightly higher than 380 cases (Krejcie & Morgan, 1970). A total of twenty-two officers from L&S (43% response rate) and fifteen LLS (42% response rate) participated in this study through simple random sampling methods. The sampling frame was based on the listed contacts available at the official website of the department as shown in Figure 1.

On the other hand, a total of five hundred and twelve Indigenous respondents participated in the study through quota sampling methods. The quota for each of the Indigenous groups (*Iban*, *Bidayuh*, *Melanau*, *Melayu*, and *Orang Ulu*) are selected based on their respective populations against the total Indigenous population in Sarawak. This resulted in 42% of *Iban*, 11% of *Bidayuh*, 7% of *Malanau*, 32% of *Melayu* and 8% of *Orang Ulu* (DOSM, 2010). Additionally, Indigenous respondents are categorised into “district” and “sub-district,” with the quota of 50% each. Aforementioned Indigenous communities dwell in both town areas (district) and rural areas (sub-district). Undoubtedly, their perceptions on land have been shaped by their environment. Thus, the main reason of quota sampling is to ensure the comprehensiveness of the evaluation by incorporating different respondents with different background. Notably, consents were obtained from the Indigenous communities prior to any visitation. Also, clear clarification is stated on the questionnaires where the information gathered is strictly confidential and only for the purposes of academic study.



**Figure 1. Sampling method**

### Data analysis

This study adopts the multi-criteria decision-making tool known as The Technique for Order of Preference by Similarity to Ideal Solution (TOPSIS). TOPSIS utilises quantitative data and consists of seven steps. First, the creation of a decision matrix made up of alternatives and criteria. To put it simply, the alternatives refer to the measurement of good governance principles according to the themes whilst the deciding criteria are based on the arithmetic mean of feedback gathered from each of the groups. Said otherwise, the ranking of the alternatives (A1 to A24) is determined based on the criteria (C1 to C7). The decision matrix is a 24x7 matrix as shown in Table 2.

Table 2. Mean Ratings of Governance Principles by Group

Criteria		Land & Survey Department	Licensed Land Surveyor	Iban	Bidayuh	Melayu	Melanau	Orang Ulu
<b>Theme 1:</b> Policy and Legal Framework	<b>Aspect 1.1:</b> Publicly accessible reports	3.545	3.267	2.841	3.000	3.127	3.200	2.103
	<b>Aspect 1.2:</b> Land agencies' collaboration	4.000	3.200	2.864	3.259	3.343	3.286	2.333
	<b>Aspect 2.1:</b> Recognition of rights	4.545	3.933	3.140	3.466	3.548	3.400	2.538
	<b>Aspect 2.2:</b> Non-overlapping of rights	2.864	2.400	3.093	3.121	3.542	3.171	2.000
	<b>Aspect 2.3:</b> Clear concepts of rights	4.273	3.333	2.598	2.690	3.054	2.914	1.667
	<b>Aspect 3.1:</b> Safeguard of communal land rights	4.000	3.133	2.785	2.776	3.048	3.114	2.282
	<b>Aspect 3.2:</b> Safeguard of individual land rights	3.864	3.200	2.743	2.862	2.795	2.914	1.846
	<b>Aspect 3.3:</b> Infringing prevention	3.273	3.733	2.322	2.000	1.825	2.571	2.897
<b>Theme 2:</b> Customary Land Development	<b>Aspect 4.1:</b> Land status investigation	4.227	3.600	3.051	3.741	3.488	3.000	3.026
	<b>Aspect 4.2:</b> Transparency of tenure transaction	4.000	3.467	2.785	3.052	2.873	2.857	2.308
	<b>Aspect 4.3:</b> Apprehensible agreement	4.045	3.600	2.748	3.034	3.060	2.857	2.026
	<b>Aspect 4.4:</b> Fair profit distribution	3.762	3.600	2.724	3.172	3.205	2.829	2.077
	<b>Aspect 5.1:</b> Proper consultation process	3.773	3.600	2.958	3.345	3.175	2.657	2.436
<b>Theme 3:</b> Customary Land Information and Survey Practice	<b>Aspect 6.1:</b> Effective service delivering	3.762	3.333	2.238	2.379	2.608	2.457	1.538
	<b>Aspect 6.2:</b> Accessible records	3.364	3.333	2.991	2.966	3.319	3.314	2.077

Criteria		Land & Survey Department	Licensed Land Surveyor	Iban	Bidayuh	Melayu	Melanau	Orang Ulu
Alternatives (Refer Table 1)								
	<b>Aspect 7.1:</b> Participatory survey practice	4.182	3.733	3.388	3.690	3.446	3.229	2.692
	<b>Aspect 7.2:</b> Key performance indicators	4.227	3.533	2.575	2.621	2.777	2.886	1.641
<b>Theme 4:</b> Dispute Resolution and Conflict Management	<b>Aspect 8.1:</b> Responsibility of conflict resolution	4.000	3.600	3.061	3.414	3.151	2.943	2.359
	<b>Aspect 8.2:</b> Adequate conflict resolution mechanisms	3.273	3.533	2.612	2.828	3.169	2.943	1.872
	<b>Aspect 8.3:</b> Informal conflict resolution system	4.045	3.200	2.519	2.897	3.102	2.571	2.385
	<b>Aspect 8.4:</b> Appeal of dispute rulings	4.000	3.333	3.290	3.569	3.771	3.057	3.231
	<b>Aspect 9.1:</b> Fair compensation	4.227	3.600	2.631	2.690	3.030	2.800	2.000
	<b>Aspect 9.2:</b> Appeal of unfair compensation	4.182	3.467	3.196	3.448	3.398	3.171	2.615
<b>Theme 5:</b> Review Process	<b>Aspect 10.1:</b> Education and training programs	3.500	3.333	2.607	2.552	3.157	2.686	1.718
<b>Average (Mean)</b>		<b>3.872</b>	<b>3.419</b>	<b>2.823</b>	<b>3.023</b>	<b>2.951</b>	<b>3.126</b>	<b>2.236</b>

Note: This table provides the data input for TOPSIS analysis

We divided each of the elements by the sum of all the elements to form a normalised decision matrix. Entropy weight is employed to derive the weights for each criterion. Huang (2008) concludes that the method of combining entropy weight and TOPSIS analysis provides a more flexible and practical way to determine the weight vector of the criteria. Next, the fourth step is to compute the positive ideal solution (PIS) and negative ideal solution (NIS). PIS is the maximum value in the weighted normalised decision matrix, while NIS represents the minimum value. After that, the distance of each alternative from PIS and NIS is computed respectively in step five. We calculate the closeness coefficient of each alternative by using the inputs from PIS and NIS values. Closeness coefficient ranges between 0 (worst condition) to 1 (best condition). Lastly, the alternatives are ranked based on their respective closeness coefficient value.



TOPSIS analysis is utilised for the integration of different perspectives regardless of the degree of acceptancy. There is a lack of quantitative study in this field of research, and TOPSIS analysis utilises quantitative data, is able to address the huge perception gap between Indigenous communities and the state and private groups, and enables the ranking of problems based on their seriousness. TOPSIS analysis is processed by using Matlab 2019, which yielded the final output as the ranking of alternatives with their respective closeness coefficient value. The ranking of the alternatives indicates the seriousness of a particular issue in Native land governance. Ultimately, root issues in Native land governance can be identified based on the lowest ranking of the alternatives.

### **Results and Discussions**

The output of the TOPSIS analysis is summarised as strength, weakness, opportunity, and threat (SWOT) format according to the TOPSIS closeness coefficient value as shown in Figure 2. The combination of TOPSIS and SWOT analysis enables a better interpretation of the evaluation. Each of the SWOT category is explained in the following section.

	<b>Closeness value</b>	<b>Ranking</b>

<b>STRENGTH</b>				
✓	There is a process for appealing dispute rulings.	0.9286	1	
✓	Detail investigation into the status of the land before any alienation, reservation or issuance of licence takes place.	0.8741	2	
✓	The survey of Native customary tenure involves Native land owners.	0.7276	3	
✓	Legal provision of the right to appeal for any unfair compensation.	0.6780	4	
✓	Existing legal framework recognises Native customary land rights.	0.6546	5	
<b>WEAKNESS</b>			<b>Closeness value</b>	<b>Ranking</b>
✗	Fair valuation and prompt compensation are not always implemented.	0.3489	18	
✗	Conflict resolution mechanisms are inadequate for handling Native land related issues.	0.3118	19	
✗	Lack of effort in documenting, registering, and mapping of the boundaries of individual Native land.	0.2876	20	
✗	Unclear definitions on the concepts of customary tenure.	0.2538	21	
✗	Lack of appropriate educational and training programs for Indigenous people to enhance their management of land.	0.2474	22	
✗	Lack of strict key performance indicators for monitoring the survey process.	0.2242	23	
✗	The procedure of service delivering does not adopt simplified and locally suitable technology to reduce costs and time.	0.1574	24	
<b>OPPORTUNITY</b>			<b>Closeness value</b>	<b>Ranking</b>
✓	Appropriate consultation with Native landholders before initiating any investment project.	0.5749	6	
✓	Initiative to avoid infringing on Native customary land.	0.5720	7	
✓	Clear assignment of responsibility for conflict resolution between the communities.	0.5504	8	
✓	Collaboration between statutory land agencies and the customary authorities.	0.5348	9	
✓	There is an informal or community-based system that resolves disputes in an equitable manner, and decisions made by this system have some recognition in the formal judicial system.	0.5141	10	
<b>THREAT</b>			<b>Closeness value</b>	<b>Ranking</b>
✗	Lack of transparency in all forms of transactions in tenure rights as a result of investments in Native customary land.	0.4876	11	
✗	Lack of effort in documenting, registering, and mapping of the boundaries of communal Native land.	0.4651	12	
✗	Lack of measures to ensure the fairness of profit distribution according to the agreement.	0.4170	13	
✗	Records in the registry such as information on customary land are inaccessible to community members.	0.4086	14	
✗	Land institutional reports on land policy implementation are not publicly accessible.	0.4085	15	
✗	Overlapping rights and contradiction rules between customary law and statutory land law.	0.3967	16	
✗	Agreements are not documented and obscure to those who are affected.	0.3842	17	

Figure 2. TOPSIS-SWOT analysis

## Strength of Native Land Governance in Sarawak

In this study, items that fall within the top 35% range of the highest closeness value is categorised as a strength. In other words, the items with closeness value of more than 0.65 are defined as a strength in the Native land governance. Ranked first in our evaluation is the existence of processes for appealing dispute rulings. The judgements and decisions for land disputes involving Indigenous communities among each other or between third parties are appealable. Indeed, the Civil Courts of Malaysia and the Native Courts of Sarawak are hierarchical systems, with Federal court as the highest court for Civil Courts and Native Court of Appeal as the highest court for Native Courts. In Sarawak, Native Courts Ordinance 1992 is the statutory framework for the establishment of Native Courts. Under Section 13 of that ordinance, an appeal shall go from the Headman's Court to the Chief's Court, from the Chief's Court to the Chief's Superior Court, and subsequently to District Native Court, Resident's Native Court, and finally, the Native Court of Appeal. Likewise, for the case of Malaysian Civil Courts, all the appeals from the subordinate courts undergo final verdict at the Superior Courts. Ranked second is the implementation of detailed investigations into the status of the land before any alienation takes place. However, an issue of debate is that the government only acknowledges farmed areas (*temuda*) instead of territorial domains (*pemakai menoa*) and communal forests (*pulau galau*) (Bian, 2007). This resulted in the issuance of provisional lease (PL) for companies to utilise the land which is associated with NCR. In fact, the issue of the concept and coverage of NCR land is commonly found in court cases.

Ranked third is the participation of Indigenous landholders in the process of surveying and mapping of customary tenure. Although the principle of free, prior, and informed consent (FPIC) is not legally required (Sarawak, 1958), the State is seemingly practising effective communication with the affected Indigenous landholders through dialogue sessions. As stipulated in Section 5.1 of the Survey Circular 3/2010, it is mandatory to conduct dialogue sessions with Indigenous communities before the commencement of any cadastral field work to facilitate the survey process. FPIC is a relational process where government agencies must first become aware of the Indigenous rights, cultures, and their responsibilities in ensuring proper communications with the Indigenous communities and obtaining consent from them prior to any activities which may affect their rights (Mitchell et al., 2019). Ranked fourth is the right to appeal for any unfair compensation in the event of extinguishment of NCR. The provisions related to adequate compensation is clearly stated in Section 212 of the Land Code and Section 5(3)(a) of the Native Courts Ordinance 1992. Last but not least, ranked fifth is the formal recognition of NCR land under the statutory framework. For instance, Section 5 of the Land Code articulates the method for creating NCR over interior area land after January 1958. However, such recognition is argued to be vague because most of the NCR land owners without any documentary title are merely perceived as a licensee by the State (SAM, 2019). In this case, there is a lack of recognition that NCR is a form of proprietary interest in the land itself. Therefore, many respondents in the study preferred recognition under Section 18 of the Land Code instead of Section 6. Section 18 of the Land Code confers individual Native title, while Section 6 confers communal land rights under Native communal reserve. Similar phenomena happens in Peninsular Malaysia, where despite the existence of the Aboriginal Peoples Act 1954 which provides for the protection of Indigenous peoples (*Orang Asli*) of Peninsular Malaysia, the Orang Asli communities are facing huge challenges in defending their customary land (Mohd et al., 2021).

## Weakness of Native Land Governance in Sarawak

We define a weakness in this evaluation as the bottom 35% range of the closeness value. This is to say, the items with closeness value of less than 0.35 are defined as a weakness in Native land governance. Unfortunately, weaknesses outnumber the strengths. Ranked eighteen is the fairness of compensation given to the Indigenous landholders in the event of land acquisition. As much as 45% of the Indigenous respondents claimed the compensation is unfair. The unfairness can be seen from a *de jure* perspective. Based on Section 47 of the Land Code, land value is determined on the date where the authorised surveyors enter the land for preliminary surveys. However, this process may take up to 20 years for the government to finalise the project and impose Section 48 for the compensation. Thus, the value of the acquired land lags far behind the market value after 20 years. Also, existing literatures have shed light on the unfair compensation given to Indigenous people (Azima, Sivapalan, et al., 2015; Colchester et al., 2007; Holland, 2013; Phoa, 2009; SAM, 2019; SUHAKAM, 2013; Weinlein, 2017). This perspective perhaps illustrates the gap between the stance of the Indigenous groups and the state and private groups. The next weakness is the inadequateness of conflict resolution mechanisms in handling disputes on Native land, especially for the external disputes which involve the third parties. In this case, 41% of the Indigenous people said the dispute resolution mechanisms are inadequate. The efficiency and effectiveness of such mechanisms are questionable with the serious backlog of NCR cases being filled in the court (Colchester et al., 2007; SACCESS, 2012).

With the further decline in the closeness value, the existence of documentations that register and map the boundaries of individual Native land is ranked at the 20th place. Only 33% of the Indigenous respondents agreed that their lands are documented, registered, and issued with individual Native titles. Azima, Sivapalan, et al., (2015) concludes that issuance of individual Native titles that guarantee customary land ownership is a key to rectify land disputes. Similar in Peninsular Malaysia, the granting of land ownership is the key to resolve land disputes among Indigenous communities (Samsudin et al., 2021). In fact, the issuance of Native title in perpetuity for residential or agricultural purposes is stipulated under Section 18 of the Land Code. However, the Sarawak State is reluctant to survey and issue title, ostensibly due to lack of funding (Bian, 2007). Another weakness in Native land governance is the vague and unclear definition of the concepts of customary tenure. As much as 44% of the Indigenous respondents claimed that the definition and concept of NCR given by the government is unclear. Contrastingly, up to 65% of the respondents from the state and private group assert that the definition and concept are clear. Apparently, a mutual understanding between the Indigenous people, private groups, and the State is lacking in this important policy relating to Indigenous rights. In most cases, the interpretation of customary tenure by the State is limited to the farmed land only, but Indigenous people believe NCR claims should or do go beyond the farmed land to include territorial domains and communal forests. One finding our evaluation produces is that the State should be accountable to Indigenous people's knowledge building. More than half of the Indigenous respondents had never attended any knowledge building activities on land matters, which suggests educational and training programs to equip Indigenous people with essential skills on land management is missing. The educational programs may also bridge the perception gap between the State and Indigenous people.

Ranked last and second last are the items from the third theme, which is related to the customary land information and survey practice. In terms of agreement percentage, only 24% of the Indigenous respondents believe that the survey process is done in a timely matter, and only 16% believe the

procedure of title application is simple. The lack of strict key performance indicators to monitor the survey process and ineffective service delivering procedure have resulted in delays processing the applications for Native title (SUHAKAM, 2013). The absence of Native title causes tenure insecurity and leave Indigenous people vulnerable to the encroachment of land by outside interests (SAM, 2019, Azima, Sivapalan, et al., 2015; Bian, 2007). Encroachment of land resulted in land disputes and a backlog of NCR cases pending in the courts (SACCESS, 2012, Colchester et al., 2007). Therefore, this paper learned that the root issue in Native land governance lies with the capability of the land registry in delivering titles.

### **Opportunity of Native Land Governance in Sarawak**

This study defines “opportunities” as items with closeness value that fall in between 0.5 and 0.65. Opportunity can be used to determine whether a measurement is on the right track and the potential to be converted into a strength of Sarawak Native land governance. Ranked sixth is the existence of consultation with Indigenous landholders before the commencement of any investing project. As much as 38% of the Indigenous respondents and 65% of the state and private organization respondents agreed that proper explanations are given to the affected Indigenous landholders together with their consents before initiating any projects on their land. Appropriate consultation and participation are remedies for encroachment on NCR land, and clearly, more Indigenous landholders seek better consultation. Ranked next is the initiative to avoid infringing NCR over land. In fact, this item shared a similar closeness value with the previous item; both relate to encroachment on NCR land. Initiatives to avoid infringing on NCR can be determined by the number of encroachments on the ground. 64% of the Indigenous respondents claimed that there is encroachment of NCR land by plantation companies. Aforementioned in the introduction, during informal interviews conducted at their longhouses, some Indigenous community leaders emphasized their concerns regarding the encroachment of land. It is worth noting that different places have different experiences in encountering encroachment on NCR land; community leaders in some of the villages visited by the authors say they are free from any land encroachment. Nevertheless, the principle of participation and fairness are mandatory for good Native land governance.

Ranked eighth is the clear assignment of conflict resolution between Indigenous communities. Around 39% of the Indigenous respondents know who to seek during an internal dispute on land matters. They acknowledged the roles of the community leader or headman in solving their problems. Next, the collaboration between statutory land agencies and the customary authorities is ranked ninth. In Sarawak, customary authorities refer to the community leader, headman, or chief appointed by the head of State as stipulated in the Community Chiefs and Headmen Ordinance, 2004 (Cap. 60). Additionally, the Village Security and Development Committee (JKKK) is established under the Resident and District Office in every village and longhouse with the involvement of headmen and the village communities. JKKK and the headmen are known as the “eyes and ears” of the government at the grassroots level (Ngidang, 1995). Only 34% of the Indigenous respondents and 54% of the state and private respondents agreed that the statutory land agencies and customary authorities collaborate well. Apparently, the principle of participation needs to be more effectively implemented. Ranked tenth is the opportunity to establish an informal or community-based system to resolve land disputes with some recognition in the formal judicial system. Currently, a land dispute can either be solved informally through the help of a mediator or formally through the civil or Native court. 42% of the Indigenous respondents believe that most of the land disputes need to be solved with the formal court. It seems formally recognised decisions are

the only way to conclusively solve disputes. However, due to the effectiveness and accessibility of the formal court, a community-based system to resolve land disputes which is supported by the formal judicial system is needed.

### **Threats in Native Land Governance in Sarawak**

Items with closeness value ranged from 0.35 to 0.5 are categorised as a threat in Native land governance. A threat is perceived as the grey zone that might be positively turned into an opportunity or negatively deteriorate into a weakness. We identified a total of seven threats based on the results from our TOPSIS analysis. First is the lack of transparency in all forms of transaction involving customary tenure in an investment project. Only 27% of the Indigenous respondents claimed that the agreement contract is accessible by those who participated in a development project. Here, the principle of transparency and accessibility to information is missing, leading to more misunderstandings amongst Indigenous landholders. The second threat is the lack of effort in documenting, registering, and mapping of communal rights. Despite the latest amendment of the Land Code which enables the issuance of Native communal title over a Native territorial domain, only 28% of Indigenous respondents and 59% of state and private respondents claimed that the communal boundaries are well surveyed and mapped. A respondent from L&S stated that the registration of Native land is problematic especially with the new section 6A on Native territorial domain (Sarawak Land Code Cap. 81). This new initiative is hopefully beneficial to Indigenous people, but more efforts are required to boost its efficiency. Third, in relation to joint venture projects, there is a lack of measures to ensure fairness of the profit distribution to involved Indigenous landholders. For instance, in a *konsep baru* (New Concept) scheme, SAM (2019) stated that despite the pre-determined rate of the dividends, the final rate of dividend paid to Indigenous landholders is subjected to factors like the market value of the Native land, ratio of debt and equity, and the cost associated with the plantations. Human Rights Commission of Malaysia (SUHAKAM) has been receiving many complaints from Indigenous landholders on matters pertaining to non-payment of dividends by companies (SUHAKAM, 2013). Also, there was a case in Kanowit where unfair dividends have led to protests and blockades by Indigenous landholders (Cramb, 2011).

The fourth threat is how customary land-related records in the registry are inaccessible to Indigenous communities. Less than half of the Indigenous respondents (41%) and state and private respondents (49%) agreed that the information on customary land is accessible by Indigenous people. In Sarawak, the “under one roof” principle enables the public to get all the land-related information from the Sarawak Land and Survey Department. In this information era, the records are also accessible via the Land and Survey Information System (LASIS) by using internet and mobile application platforms (Liang et al., 2019). However, certain information on customary land is confidential. Also, there must be consideration for multiple aspects in serving the needs of different communities, especially for those who live in rural areas with no access to internet. The fifth threat is that land institutional reports on land policy implementation are not publicly accessible. An Indigenous community leader claims that formal reports on progress of land policy implementation pertaining to NCR are not readily available, but that there is regular verbal reporting mainly by politicians. The sixth threat is the degree of overlap and contradiction between customary land law and statutory land law. As mentioned earlier, one of the critical issues in Native land governance is the different perceptions between Indigenous people and the State on the extent of customary land. Harmonising of customary law and statutory law is not a simple task. Codification of customary law is an on-going process in Sarawak, and this process is impeded by numerous court cases on NCR

land remaining unresolved. Lastly, the agreement contracts from an investment project are not understandable by the participating Indigenous landholders. Only 25% of the Indigenous people are aware of the terms and conditions in a contract agreement. This threat has similar impacts as the first and third threat, causing confusion, despair, anger, and worry amongst Indigenous landholders. As discussed by Andersen et al. (2016), villagers often have no access to a contract document as it was read and signed only by a community leader and the *temenggong* (Head of community leader). Clearly, this violates the principle of participation.

### **Good Governance Implementation Gap: Lesson Learnt**

Based on the results obtained, it is clear that the weaknesses outnumber the strengths in context of Sarawak Native land governance. The authors believe that the problematic areas in Native land governance could be significantly rectified through the proper implementation of good governance principles. The following paragraphs provide recommendations to achieve good Native land governance. Most of the lessons learnt are applicable to an international context.

First, we emphasize the principle of rule of law. It is found that the Land Code does not explicitly recognise NCR land, especially the land including territorial domains and communal forests. Compared to the status of recognition, it is more vital to achieve mutual understanding between the State and Indigenous People. As noted by Azima, Lyndon, et al., (2015) Indigenous communities in Sarawak want their rights to be understood in line with their culture and customs, instead of a way that is defined by the government. Thus, steps must be taken to increase the efforts in harmonising the statutory framework with customary land law by providing clear definitions on the concepts of customary tenure, types of customary tenure that are recognised, and the current way to legally form these rights. The second principle we recommend receive greater focus by policymakers is the principle of equity and fairness. In line with the existing literature (Azima, Sivapalan, et al., 2015; Colchester et al., 2007; Holland, 2013; Phoa, 2009; SAM, 2019; SUHAKAM, 2013; Weinlein, 2017), one of the weaknesses of Native land governance is the unfairness of the compensation given to Indigenous landholders in the event of land acquisition. As one L&S respondent claimed there are cases where a second compensation was demanded, aside from the critical importance of paying adequate compensation, there must be proper documentation of compensation paid to the Indigenous communities to both prevent demands of additional compensation demand, as well as records for that compensation's appeal or review. The third important principle of good governance relevant to this study is accountability. The government is tasked with the protection, education, and welfare of Indigenous communities. There must be strict procedures in issuing permits or licences to any companies that operate on Native land. Logging and oil palm plantation licences were issued on Indigenous territories without proper investigation on the status of the land (SAM, 2019). Also, we recommend that regular campaigns, seminars, and workshops should be conducted to train and educate Indigenous communities on matters pertaining to farming techniques, land management, leadership development, and protection of their own rights in formal processes. For instance, in Indonesia, a neighboring country of Malaysia, there were workshops conducted by the Indigenous People Alliance of the Archipelago (AMAN) to train and educate Indigenous communities on the rights of FPIC (AMAN, 2014a) and community mapping processes to protect their land (AMAN, 2013; 2014b).

The fourth important principle we highlight for policymakers is transparency and access to information. There are cases where the information about a development project is inaccessible to

Indigenous landholders. Indigenous Peoples are often unaware of the procedures and fully depend on their representatives (usually the headmen). There were cases in the Philippines where information provided regarding the development project over-emphasised the potential benefits and was not in a language comprehensible to the community members (Castillo & Alvarez-Castillo, 2009). Thus, there must be measures to ensure the accessibility of agreement contracts by all participating Indigenous communities. It is the mandate of private companies to draft the contract in appropriate languages, and to aid further explanation by customary leaders to the rest of the community members. Similarly, there is still plenty of NCR land that remains unrecorded in the land registry. Efforts must be taken towards the establishment of an online system to record Native land transactions, and information related to Native land development at district and sub-district level. The fifth principle that is important to our evaluation is that of participation. Many Indigenous respondents claimed that the government has been turning a deaf ear to their complaints, opinions, and suggestions. Most of the decisions are made without the direct participation of the affected. It is recommended that the principle of free, prior, and informed consent (FPIC) should be fully implemented in Native land governance. The concept of FPIC has emerged and as a means of protecting the territories of Indigenous people (Mitchell et al., 2019). The sixth and final principle important to improving good governance in Sarawak is the principle of efficiency and effectiveness. Many respondents complained about delays in the issuance of Native title. The absence of Native title leads to disputes among Indigenous communities, disputes between the Indigenous communities and private companies, as well as disputes between Indigenous communities and the government (Azima, Sivapalan, et al., 2015). This reflects the need to expedite the survey process by the land registry by imposing strict Key Performance Indicators (KPI) for the survey of Native land. Also, more funds must be allocated to expedite the titling process of Native land. Instead of being stand-alone, the principles of good governance are interconnected and come together as a whole.

### Conclusion

Good Native land governance is defined as a process to govern the land associated with Native customary right through the lens of good governance principles, particularly in respect to (i) policy and legal framework, (ii) customary land development, (iii) customary land information and survey practice, (iv) dispute resolution and conflict management and, (v) review process. To date, there are limited evaluation frameworks to monitor Native land governance. In Sarawak, Malaysia, Native land governance is an under-researched area, and there is lack of study on this particular matter, especially studies that are quantitative in nature. In light of this, this study aims to evaluate the Native land governance in Sarawak through the lens of good governance principles. However, this research did not take into account the political malaise of Native land governance. We are aware that this subject is highly influenced by several different agendas. Thus, the findings were constructed merely from an academic perspective which might not fully represent the actual scenario on the ground. We recommend that further research be conducted specifically on any one of the themes as conceptualised by this study, particularly with Indigenous participation. Further research should include the anthropological and historical perspectives of Indigenous communities. Also, input from political science is needed for a better description of this subject. In achieving the designated aim, this study concludes that the good governance principles are not fully implemented in the Native land governance of Sarawak. However, the findings from this study could be a stepping-stone to rectify problematic areas in Sarawak's Native land governance, and at the same time postulate more research to be done in the field of Indigenous land governance more broadly.



## References

- AMAN. (2013). Komunitas AMAN Kalteng Fasilitas Pelatihan Pemetaan Partisipatif. *AMAN KALTENG*. <https://aman.or.id/news/read/komunitas-aman-kalteng-fasilitas-pelatihan-pemetaan-partisipatif>
- AMAN. (2014a). Lagi, Tumbang Bahane Iikuti Pelatihan FPIC. *AMAN KALTENG*.
- AMAN. (2014b). Pelatihan PPWA Di Komunitas Bundar. *AMAN KALTENG*.
- Andersen, A. O., Bruun, T. B., Egay, K., Fenger, M., Klee, S., Pedersen, A. F., Pedersen, L. M. L., Vallanueva, V. S. (2016). Negotiating development narratives within large-scale oil palm projects on village lands in Sarawak, Malaysia. *The Geographical Journal*, 182(4), 364-374. <https://doi.org/10.1111/geoj.12181>
- Arko-Adjei, A., Tuladhar, A., De Jong, J., & Zevenbergen, J. (2010). Customary tenure institutions and good governance. *FIG Congress 2010*. 11-16 April. Sydney, Australia.
- Azima, A. M., Sivapalan, S., Zaimah, R., Suhana, S., & Mohd Yusof, H. (2015). Boundry and customary land ownership dispute in Sarawak. *Mediterranean Journal of Social Sciences*, 6(4). <https://doi.org/10.5901/mjss.2015.v6n4s3p17>
- Azima, A. M., Lyndon, N., & Akmal, M. S. (2015). Understanding of the meaning of Native Customary Land (NCL): Boundaries and ownership by the Bidayuh community in Sarawak, Malaysia. *Mediterranean Journal of Social Sciences*. [https://doi: 10.5901/mjss.2015.v6n5s1p342](https://doi.org/10.5901/mjss.2015.v6n5s1p342)
- Bian, B. (2007). Native Customary Rights (NCR) over land in Sarawak, Malaysia. <https://www.salvaleforeste.it/documentazione/Bian2.pdf>
- Bulan, R. (2007). Native title in Malaysia A 'complementary' sui generis right protected by the federal constitution. *Australian Indigenous Law Review*, 11(1), 54-79.
- Bulan, R. (2014). Dispute resolution: restorative justice under native customary justice in Malaysia. In L. Wilton and S. Elsa (Eds.), *Indigenous people access to justive, including truth and reconciliation process* (pp. 319-343). Institute for the Study of Human Rights Columbia University.
- Castillo, R. C. A., & Alvarez-Castillo, F. (2009). The Law is not enough: Protecting Indigenous Peoples' rights against mining interests in the Philippines. In D. S. Rachel Wynberg, Roger Chennells (Ed.), *Indigenous Peoples, consent, and benefit sharing: Lessons from the San-Hoodia Case* (pp. 271-284). Springer Science & Business Media.
- Colchester, M., Pang, W. A., Chuo, W. M., & Jalong, T. (2007). *Land is life: Land lights and oil palm development in Sarawak*. Forest Peoples Programme and Sawit Watch.
- Cramb, R. A. (2011). Re-Inventing dualism: Policy narratives and modes of oil palm expansion in Sarawak, Malaysia. *The Journal of Development Studies*, 47(2), 274-293. <https://doi.org/10.1080/00220380903428381>

- Deininger, K., Selod, H., and Burns, A. (2012). The land governance assessment framework: Identifying and monitoring good practice in the land sector. The World Bank.
- Department of Statistics Malaysia (DOSM). (2010). Total population by ethnic group, sub-district and state, Malaysia, 2010. <https://www.mycensus.gov.my/index.php/census-product/publication/census-2010/659-population-distribution-and-basic-demographic-characteristics-2010>.
- Enemark, S., & Molen, P. (2008). *Capacity assessment in land administration*. The International Federation of Surveyors (FIG).
- Fong, J. C. (2011). *Law on Native Customary Land in Sarawak*. Thomson Reuters Malaysia Sdn Bhd.
- Food and Agriculture Organization of the United Nations (FAO). (2007). *Good governance in land tenure and administration*. <https://www.fao.org/publications/card/en/c/ec5fd5dc-4254-501d-b8bb-4cb8c5ac7e52/>.
- Food and Agriculture Organization of the United Nations FAO. (2012). *Voluntary Guidelines on the responsible governance of tenure of land, fisheries and forests in the context of national food security*. Committee on Food Security. <https://www.fao.org/tenure/voluntary-guidelines/en/>.
- Freudenberger, M. S., Bruce, J., Mawalma, B., Wit, P. D., and Boudreaux, K. (2013). *The future of customary tenure. Options for policymakers*. Agency for International Development.
- Holland, C. A. (2013). *The naked truth about how land acquisition deals in Sarawak are a gateway to violence*. Radboud University Nijmegen.
- Huang, J. (2008). Combining entropy weight and TOPSIS method for information system selection. *Proceedings of the IEEE Conference on Cybernetics and Intelligent*. 21–24 September. Chengdu, China. <https://doi.org/10.1109/ICCIS.2008.4670971>
- Hull, S., & Whittal, J. (2018). Filling the gap: Customary land tenure reform in Mozambique and South Africa. *South African Journal of Geomatics*, 7(2). <https://doi.org/10.4314/sajg.v7i2.1>
- Krejcie, R. V., & Morgan, D. W. (1970). Determining sample size for research activities. *Educational and Psychological Measurement*, 30, 607-610. <https://doi.org/10.1177/001316447003000308>
- Liang, T. M., Choon, T. L., Vern, T. W., Ujang, M. U. B., and Chin, T. A. (2019). A Preliminary Study on The Formation of Land Legislation and Cadastre System in Sarawak, Malaysia. *International Journal of Engineering and Advanced Technology*, 8(5C), 788-797. <https://doi.org/10.35940/ijeat.E1112.0585C19>
- Meinzen-Dick, R., & Mwangi, E. (2009). Cutting the web of interests: Pitfalls of formalizing property rights. *Land Use Policy*, 26(1), 36-43. <https://doi.org/10.1016/j.landusepol.2007.06.003>

- Mitchell, T., Arseneau, C., Thomas, D., & Smith, P. (2019). Towards an Indigenous-informed relational approach to free, prior, and informed consent (FPIC). *International Indigenous Policy Journal*, 10(4). <https://doi.org/10.18584/iipj.2019.10.4.8372>
- Mohd, K. W., Hassan, F. M., Khan, I. N., G., & Wook, I. (2021). Customary land rights of orang asli: A case study in Kampung Parit Gong, Negeri Sembilan, Malaysia. *UUM Journal of Legal Studies*, 12(1), 199-217. <https://doi.org/10.32890/uumjls2021.12.1.9>
- Nasser, H., & Salleh, B. (2011). *Land law in Sarawak*. Gavel Publications.
- Ngidang, D. (1995). The politics of development in longhouse communities in Sarawak, East Malaysia. *Development in Practice*, 5(4), 302-312. <https://doi.org/10.1080/0961452951000157324>
- Ngidang, D. (2002). Contradictions in land development schemes : the case of joint ventures in Sarawak, Malaysia. *Asia Pacific Viewpoint*, 43(2), 157-180. <https://doi.org/10.1111/1467-8373.00171>
- Ngidang, D. (2005). Deconstruction and reconstruction of native customary land tenure in Sarawak. *Southeast Asian Studies*, 43(1), 47-75.
- Osman, S., & Kueh, H. U. (2010). Land Administration, Land Management and Spatial Information in Sarawak, Malaysia. *Proceedings of the FIG Congress 2010*. 11-16 April. Sydney, Australia, 1-16.
- Phoa, J. (2009). Protecting Native Customary Rights: Is legal recourse viable alternative? *Akademika*, 77, 69-89.
- Porter, A. F. (1967). *Land administration in Sarawak: An account of the development of land administration in Sarawak from the rule of Rajah James Brooke to the present time, 1841-1967*. US Government Print Press.
- Richard, A. J. N. (1961). *Sarawak land law and Adat: A report*. U.S. Government Printing Office.
- Sarawak Land Code. (1958). Cap. 81.
- SACCESS. (2012). *Guidebook on reclaiming Sarawak NCR lands in courts*. <http://www.forestpeoples.org/sites/fpp/files/publication/2012/12/guidebook-reclaiming-sarawak-ncr-lands-courts1.pdf>
- Sahabat Alam Malaysia (SAM). (2019). *The land we lost: Native Customary Rights (NCR) and monoculture plantations in Sarawak*. <https://foe-malaysia.org/articles/the-land-we-lost-native-customary-rights-and-monoculture-plantations-in-sarawak/>
- Samsudin, S., Ibrahim, N. A., Suratman, R., & Adnan, M. Z. (2021). Land for Indigenous people: Ownership conflicts and government interventions in Kampung Bawong, Perak, Malaysia. In *IOP Conference Series: Earth and Environmental Science*, 683(1). <https://doi.org/10.1088/1755-1315/683/1/012124>

- Smith, J. & Mitchell, T. (2020). Development of an UNDRIP compliance assessment tool: How a performance framework could improve state compliance. *The International Indigenous Policy Journal*, 11(2), 1–23. <https://doi.org/10.18584/iipj.2020.11.2.10713>
- Stuedler, D., Rajabifard, A., and Williamson, I. P. (2004). Evaluation of land administration systems. *Land Use Policy*, 21(4), 371-380. <https://doi.org/10.1016/j.landusepol.2003.05.001>
- Suruhanjaya Hak Asasi Manusia Malaysia (SUHAKAM). (2013). *Report of the National Inquiry into the land rights of Indigenous people*. National Human Rights Commission of Malaysia. [http://www.suhakam.org.my/wp-content/uploads/2014/01/REPORT-OF-THE-NATIONAL-INQUIRY-INTO-THE-LAND-RIGHTS-OF-INDIGENOUS-PEOPLES-IN-MALAYSIA\\_5-Aug-2013.pdf](http://www.suhakam.org.my/wp-content/uploads/2014/01/REPORT-OF-THE-NATIONAL-INQUIRY-INTO-THE-LAND-RIGHTS-OF-INDIGENOUS-PEOPLES-IN-MALAYSIA_5-Aug-2013.pdf)
- Weinlein, E. (2017). Indigenous People, development and environmental justice: Narratives of the Dayak People of Sarawak, Malaysia. *EnviroLab Asia*, 1(1), 1-8. <https://doi.org/10.5642/envirolabasia.20170101.06>
- Williamson, I. P. (2001). Land administration “best practice” providing the infrastructure for land policy implementation. *Land Use Policy*, 18(4), 297-307. [https://doi.org/10.1016/S0264-8377\(01\)00021-7](https://doi.org/10.1016/S0264-8377(01)00021-7)
- Williamson, I. P., Enemark, S., Wallace, J., and Rajabifard, A. (2008). Understanding land administration systems. Proceedings of the International Seminar on Land Administration Trends and Issues in Asia and the Pacific Region. 19-22 August Kuala Lumpur, Malaysia, 1-11.
- Williamson, I. P., Enemark, S., Wallace, J., & Rajabifard, A. (2010). *Land administration for sustainable development* (1st ed.). ESRI Press.