

## WOOLLEY AND THE CODIFICATION OF NATIVE CUSTOMS IN SABAH

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Between 1936 and 1939, the North Borneo Company Administration published a series of six booklets describing various aspects of the customs of three of North Borneo's main non-Muslim ethnic groups: the Dusuns, the Muruts and the Kwijaus. All six booklets, published as Native Affairs Bulletins No. 1–6, covered the customs of these people. The bulletins were written and compiled by G. C. Woolley, who for many years was the Government Commissioner of Lands. The publication of these bulletins marked the only successful attempt by the Chartered Company to codify the customs of the indigenous people in Sabah. Until that time, the native customs, which varied from one place to another, had been the preserve of the native chiefs and had existed only in oral form. Though there were earlier efforts towards this end, none of those attempts were successful. This paper will investigate the role of Woolley in putting the customs into writing, and hence codifying them. It will also discuss how Woolley was supported by some native chiefs, including Pangeran Osman bin OKK<sup>2</sup> Pangeran Omar, who were instrumental in providing impetus and support to Woolley in his endeavours. The paper will also examine how these codified customs have fared since the publication of the bulletins. Underlying this question is whether native chiefs, while exercising their customary authorities, prefer to be guided by 'local influence and more or less irrelevant considerations' or by strict procedures, as in the case of the Western legal system.

Prior to the publication of these six bulletins, the Chartered Company had published a booklet on the *adat* (native customary laws) of the Putatan Dusuns in 1932. This booklet was compiled by Pangeran Osman bin OKK Pangeran Haji Omar; Woolley was responsible for translating it into English and getting it published. This publication raised questions concerning the Company's policies towards the governing of native peoples in North

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<sup>2</sup> OKK denotes 'Orang Kaya Kaya', literally 'a wealthy man', an honorific conveying a person of high status.

Borneo. At the same time, it also demonstrated the concern of individuals like Pangeran Osman and Woolley who wanted to place native customs on a more structured, if not permanent, footing.

### **The Chartered Company and Native Customs**

Prior to Sabah coming under European rule through the Chartered Company, the lives of the indigenous people were governed by *adat*. These laws, which vary from one place to another depending on locality and ethnic group, have been part and parcel of the way of life of the indigenous people since time immemorial. Owen Rutter, an early authority on native affairs of Sabah writing in 1929 commented that: ‘The native common law varied in the details of its application in the different districts of the country, ... but these variations were, and still are, but only a matter of degree.’<sup>3</sup> They had immense influence on local communal tribes and guided the daily lives of the natives.<sup>4</sup> When the Chartered Company took over the territory of what constitutes present-day Sabah, government officials were quick to recognize the need to acknowledge the significance of native customary laws to the life of the people. This was incorporated into Article 9 of the Royal Charter granted by the British Government to the Company on 1 November 1881. The said Article specifically provided that:

In the administration of justice by the Company to the people of Borneo, or to any of the inhabitants thereof, careful regard shall always be had to the customs and laws of the class or tribe or nation to which the parties respectively belong, especially with respect to the holding, possession, transfer and disposition of land and goods, and testate or interstate succession thereto, and marriage, divorce and legitimacy, and other rights of property and personal rights.<sup>5</sup>

In its efforts to adhere to the Royal Charter, the Chartered Company placed great emphasis on incorporating matters pertaining to native landholdings into laws as understood in the European legal terminology and spirit. Hence the formulation of the Poll Tax Proclamation of 1886 which had elements dealing with native lands, followed by the Native Rights to Land Proclamation of 1889. In 1902, the Abolition of Poll Tax Proclamation abolished the 1886 proclamation on poll tax. This proclamation was also a

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<sup>3</sup> Owen Rutter, *The Pagans of North Borneo*, Kuala Lumpur: Oxford University Press, 1985 (first published in London by Hutchinson in 1929), p. 135.

<sup>4</sup> Juprin Wong-Adamal, ‘Native Customary Land Rights in Sabah’, *Journal of Malaysian and Comparative Law* (JMCL), Vol. 25, 1998, pp. 233-240 (p. 233)

<sup>5</sup> Article 9, Royal Charter Granted to the British North Borneo Company.

code of native land tenure which enabled the registration of native land rights and provided for the practice of cultivation. These laws defined the manner in which a native could lay claim to land and the various items governing the transfer and procuring of land.

However, several issues pertaining to native customary land were omitted in the new European legal framework. These were customs relating to the inheritance of properties, including land. These customary practices were retained as part of the *adat* of the various communities and were left to the wisdom of the various native chiefs to interpret. It was only in 1891 that the legality of these other aspects of the native customs was recognized by the introduction of the Village Administration Proclamation. The proclamation made legal the position of the Village Headmen. And it was through these Headmen that judicial matters relating to customs were administered.

In 1907, the Chartered Company began to pay attention to these other aspects of the native customs. Acting on the orders of the Court of Directors in London who had expressed concern over the need for rules to be established for the Native Court in the Interior, the Chartered Company instructed its officers in the interior to furnish their views about incorporating the various customs as established legal documents and code. The project received some very encouraging response from officers on the ground. H. W. L. Bunbury, who was then the district officer for Keningau, even put forward a set of rules and customs of the natives of his district, which was populated by Dusuns, Kwijaus and Muruts. However, these rules and customs did not receive support from the Judicial Commissioner, the government's main legal expert who 'condemned these rules from a legal point of view'. The collected rules, therefore, were printed as a circular to serve 'merely as a guide to officers in the interior, to assist them in revising or dealing with cases tried by the chiefs under native law, in some parts of the districts as are not reached by the Penal Code and the Village Administration Proclamation'.<sup>6</sup>

The outcome of this exercise was the publication of Circular 1482/07, 'Native Law and Custom in the Interior' as guidelines to the district officers. The focus of the circular was on articles governing marriage, divorce and adultery. It took the generalized approach that no longer differentiated between the variants that existed among the different tribes. The preamble reads: 'The following definitions of Native Law and Custom of the Interior have been collected and revised by the Residents and officers of the Interior districts after consultation with the various chiefs.' The circular, however,

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<sup>6</sup> 'Government Secretary AC Pearson to HWL Bunbury, District officer of Keningau', January 1908, CO966/1.

insisted that, though it codified the native law and custom it remained nothing but a guide.<sup>7</sup>

However, in 1913, Native Courts had been established for the purpose of giving credence to the administration of justice by the native chiefs in accordance with the customs of different localities. It came into being through the promulgation of the Village Administration Proclamation V of 1913. According to Clause X of the Proclamation:

In every district, a Native Court shall be constituted which shall consist of all the chiefs within the District and such Headmen as may, from time to time, be empowered by the Resident to attend and adjudicate in a Native Court beyond the limits of his District.<sup>8</sup>

Despite the terms of reference laid down in the proclamation, there was no clear indication of the authority responsible for the Native Courts. The Chartered Company administration, while recognizing the complexity of the different customs practised by different ethnic groups in different localities, also allowed village headmen or native chiefs to attend and adjudicate in districts outside their own, thus compromising its own principle of exclusive knowledge of native chiefs from within the same area or district. To add to the confusion of authority, both in terms of executive power as well as actual knowledge of the local customs, the de facto authority actually rested with the European administrative officer, usually the district officer or his assistant. While these officers were required to pass the magistrate laws in order to advance their career, they were not instructed about the native customs. Yet these same officers were required to preside over the Native Court proceedings along with the native chiefs.

The second problem arising from the Chartered Company-sanctioned Native Courts related to the problem of accuracy and consistency. Even with the setting up of the Native Courts in 1913, there was no attempt by the Chartered Company to codify the customs to ensure that they resembled a code of written laws. Hence the interpretation of the so-called Native Laws depended solely on the manner in which the respective native chiefs understood the customs of their respective tribes and localities. Thus the situation in 1913 did not result in an improvement on the 1907 attempt to codify the native customs.

These two problems compounded the manner in which the customs of the natives could be effectively practised; hence there was doubt about the actual fairness in the proceedings of these Native Courts. Authority was concentrated in the hands of European officers and native chiefs, including

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<sup>7</sup> 'Circular 1482/07' in CO966/1.

<sup>8</sup> Village Administration Proclamation, 1913, Clause X.

those not of the same district and without proper understanding of the customs of the district in which the Court was constituted. Even without external intervention and interruptions, the absence of a written code for the customs resulted in judgements meted out by different local native chiefs varying from case to case with no clear procedure to allow precedents to be followed. The absence of written customs often resulted in what were deemed to be 'inconsistent', if not 'unfair', judgements being meted out by the Native Courts. On several occasions, such judgements were suspected of being influenced (or even governed) by personal considerations and even vested interests. In the 1930s, the regularity of such occurrences in the Native Courts was being brought to the attention of the governor, who was concerned with the number of such cases, which often resulted in appeals to his office. As the highest-ranking officer in the state, the governor was the highest authority for appeals against Native Court decisions.

In 1917, the matter of codification was once again raised. As in the 1907 attempt, the matter was raised in the meeting of residents and district officers. The prime mover of this new effort was Governor A. C. Pearson, who had been the government secretary in 1907. He was supported by the Court of Directors. The 1917 attempt, which lasted into 1918, focused on the more salient points in Dusun and Murut law and customs, including the law of inheritance. The idea was to codify the customs as it was believed that such effort will be of great help to the district officers.<sup>9</sup> Like the 1907 attempt, the new effort did not differentiate between (or provide for) the various tribes and sub-tribes of the two main ethnic groups. Instead, the natives were conveniently grouped as non-Mohammedan natives. In issuing the directive, the Government of North Borneo felt that for the guidance of the district officers, the laws relating to native custom should be codified; with this object in view, District officers were instructed to draw up a list of offences and punishments in their own districts. While doing this, the Government did recognize, to some extent, the differences that existed in various districts:

It is probable that Native Custom, and the penalties for a breach thereof, will not be the same in every villages; at the same time it will probably also be found on careful investigation that any variations that may have grown up are due to some individual opinion or action which in due course of time has been accepted as custom for one particular village or group of villages, and officers are requested to bear this in mind when making these enquiries.<sup>10</sup>

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<sup>9</sup> HE Governor Pearson's Despatch No. 977 (22 December 1917) GSO. 2123/17, CO966/1.

<sup>10</sup> 'Government Secretary to Residents', 9 July 1918, CO966/1.

As a result of this exercise, collections of native customs, based on 14 items as requested by the Government Secretary were made by the respective district officers of Papar, Ranau, Pensiangan, Tenom (Murut Tagal), Lahad Datu (Tungku), Kinabatangan (Penangah and Kuamut), Labuk and Sugut, Marudu and Kudat, Tuaran, Ulu Tuaran, Tenghilan, Menggatal and Inanam; even Tawau responded. The amount and accuracy of the information given depended, naturally, on the thoroughness and efficiency of the administrative officer in the districts concerned.

As a result of this exercise, an entire set of native customs from the different districts were collected. Some were done meticulously where differences in practice by people from different localities within the same district were highlighted. Others were less complete probably reflecting the attitude of some of the officers who were less enthusiastic about the entire exercise. What was clear is that the information obtained were, as in the words of the governor, ‘carefully sifted information with regard to all Native customs and law which are commonly accepted in their respective districts or sub-districts’.<sup>11</sup> In other words, the information collected was selective in nature and does not reflect the totality of the body of customs as understood by the natives. It was such compiled customs that the governor was proposing to the Court of Directors in London to recognize and make part of the legal sources governing natives.

The wide coverage of this collection of native customs was not lost on those who recognised its value. In 1923, Owen Rutter and A.B.C. Francis, both former officers of the Company, wrote to the Chartered Company seeking permission to use the native customs and laws collected by the various district officers in 1918–19 as reference for their book project on the natives of North Borneo.<sup>12</sup> It was mainly by studying these papers that Rutter was able to include a very useful general discussion on what he termed ‘pagan law’ in his celebrated *The Pagans of North Borneo*, published in 1929. This was the last attempt to document and to codify the native customs in North Borneo before Woolley made his six compilations of native customs.

It was the lack of consistency and clear procedures in the function of the Native Courts as a result of the lack of proper documentation/codifying that prompted individuals such as Woolley to attempt to document the native customs, thus moving towards the codification of these customs.

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<sup>11</sup> ‘Governor to Chairman’, 22 July 1918, CO966/1.

<sup>12</sup> ‘Owen Rutter to Government Secretary’, 17 March 1923, CO966/1.

## Woolley

George Cathcart Woolley came from a very distinguished English family. Born in 1876, Woolley had a brother, the Reverend Geoffrey Harold Woolley who won the Victoria Cross for bravery in 1915, while serving in the British Army during World War I (1914-18). Another brother, Sir Leonard Woolley, won worldwide fame for his archaeological finds at the City of Ur in present-day Iraq. George Woolley was educated at Queen's College, Oxford University where he took a Bachelor of Arts degree in 1897. Eager for adventure, he joined the North Borneo Company as a cadet in 1901, attached to the Land Office.

Almost from the beginning, Woolley had a great passion for native things. In one of his earlier diary entries, he mentioned how immediately upon his arrival in Sandakan, he bought three Malay *keris* (dagger) and was attempting to buy a native chain mail battle vest. In fact, due to his vast collection of items on North Borneo, Woolley was often sought out by visitors to North Borneo who came to admire his collections. His collection of native weapons grew over the years to become one of the most complete collections found in pre-war North Borneo. After Woolley's death, some of these weapons later went to the Pitt Rivers Museum in Oxford University. Later, some were acquired by the Sabah State Museum.<sup>13</sup>

Woolley's contributions to the study of Sabah are most significant in two areas: ethnography and the numerous photographs taken by him. Benefiting from his long service as an administrator and later as Commissioner of Lands, Woolley travelled extensively to various parts of Sabah to carry out surveys as well as to solve land disputes. All this travel brought him closer to the people, especially the Muruts of the Interior. His tenure as district officer for Jesselton, Beaufort, and Province Clarke, followed later as Resident of Interior in 1921, also contributed to his better grasp of the ways of life in the interior. This resulted in the publication of several notable papers before and after his retirement.<sup>14</sup>

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<sup>13</sup> In 1946, just before he died, Woolley willed his collections of photographs and artefacts to be offered, at a moderate price, first to the North Borneo Government for the Government House or the North Borneo Museum, secondly, to the Pitt Rivers Museum, then to the Cambridge Fitzwilliam Museum and lastly to the Liverpool Museum. Finally, the collections went to the Pitts River Museum before returning to Sabah in the 1960s to become the part of the Sabah Museum Collections. See 'Wills of G. C. Woolley', 12 March 1946.

<sup>14</sup> Woolley contributed a total of 12 articles to the *Journal of the Malayan Branch of the Royal Asiatic Society*. They included 'Keris Measurements' (Vol. 16, Part 2, 1938), 'Origin of the Malay Keris' (Vol. 16, Part 2, 1938), 'Malay Cannon' (Vol. 20, Part 2, 1947) and five on the Muruts.

Woolley retired from the North Borneo Company service in 1932.<sup>15</sup> He went back to England briefly before deciding to return to Sabah in 1934. Woolley did not sit idle in retirement, but busily engaged in research on various subjects related to the natives of Sabah. He also taught at the All Saints' School. During the Japanese occupation, he was interned at the Batu Lintang Prisoner of War Camp in Kuching.<sup>16</sup> Woolley survived the war, but died in 1947 in Jesselton. He was buried at the old Christian cemetery behind the present-day Istana.

### **The six Natives Affairs Bulletins published by the North Borneo Company, 1936 –1939**

1. *The Timoguns: A Murut Tribe of the Interior*, North Borneo Native Affairs Bulletin No. 1, Sandakan: Government Printing Office, 1936 (Reprinted by the North Borneo Government Printing Office, 1962. 32 p).
2. *Tuaran Adat: Some Customs of the Dusun, North Borneo*, Native Affairs Bulletin No. 2, Sandakan: Government Printing Office, 1937. (Reprinted by the North Borneo Government Printing Office, 1953).
3. *Murut Adat: Customs Regulating Inheritance amongst the Nabai Tribe of Keningau and the Timogun Tribe of Tenom*, Native Affairs Bulletin No. 3, Sandakan: Government Printing Office, 1939, 27 p.
4. *Dusun Adat: Customs Regulating Inheritance amongst the Dusun Tribes in the Coastal Plains of Putatan and Papar*, Native Affairs Bulletin No. 4, Sandakan: Government Printing Office, 1939, 25 p. (Republished in Malay as *Adat Dusun: Adat Istiadat yang dipakai Turun Menurun di Masharakat Suku2 Dusun yang di Pantai Tanah Rata Papar dan Putatan*, Risalah Hal Ehwal Anak Negeri Bil. 4, Jesselton: Pejabat Chap Kerajaan, 1953).
5. *Dusun Adat: Some Customs of the Dusuns of Tambunan and Ranau, West Coast Residency*, North Borneo Native Affairs Bulletin No. 5, Sandakan: Government Printing Office, 1939, 13 p. (Republished as *Adat Dusun: Adat2 Dusun di Tambunan dan Ranau*, Buku Berkenaan dengan Hal Ehwal Anak Negeri, Bil. 5. Jesselton: Government Printing Office, 1962).
6. *Kwijau Adat: Customs Regulating Inheritance amongst the Kwijau Tribe of the Interior*, Native Affairs Bulletin No. 6, Sandakan: Government Printing Office, 1939, 12 p. (Republished in Malay as *Adat bagi Mengatorkan Hak Waris di-antara Suku Kwijau di Pendalaman*, Buku Berkenaan dengan Hal Ehwal Anak Negeri, Bil. 6, Jesselton: Government Printing Office, 1962).

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<sup>15</sup> A brief biographical note of Woolley is given in the *British North Borneo Herald*, 1 September 1932, on the occasion of his retirement.

<sup>16</sup> E.J.H. Berwick, 'Extracts from the Diary of Woolley, 8 October 1941–20 November 1946', *Sabah Society Journal* (SSJ), Vol. V, No. 3, December 1971.

Even though the six Native Affairs Bulletins were published in the 1930s, Woolley's venture in the codification of the native customs actually began in 1907. In that year, while district officer of Beaufort, a railway town in the middle of the Jesselton–Tenom/Melalap rail line, Woolley was approached by a group of Timogun Murut chiefs, who suggested that he should reduce the customs dealing with divorce, adultery and marriage to a common pattern, while still upholding their essential principles.<sup>17</sup> The rationale behind the suggestion stemmed mainly from the fact that the customs and laws of the Timoguns varied between different branches and localities. The year also coincided with the only serious attempt by the Chartered Company to codify native customs with specific focus on the natives of the interior.

Despite such a concern being expressed during the early stages of his career, little actually came out of the 1907 encounter, mainly because Woolley was heavily engaged in his work as a district officer and later in his appointment at the Land Office. In 1907, the government carried out a series of land alienation works that demanded Woolley's attention, and it was not until the late 1920s that he was able to devote more time to this matter. It was Woolley's friendship with Pangeran Osman bin OKK Pangeran Omar that eventually led to the first published codification of customs in the state, the Dusun Adat of Putatan District. It was compiled and written by Pangeran Osman; Woolley translated it into English and had it published.

### **Woolley and Pangeran Osman**

The Dusun Adat of Putatan District was compiled by Pangeran Osman, who was at that time the deputy assistant district officer (DADO) of Putatan District. According to the preface by Woolley, Pangeran Osman was compelled to compile a volume of Dusun customs as he 'had noticed that Native Court decisions or settlements by Kampong Headmen were beginning to vary, partly as the old local customs was forgotten, and partly owing to the influence which could be exerted by interested parties'.<sup>18</sup> In other words, the Pangeran's efforts were aimed at providing a form of codification of the customs practised by the Dusuns in his district. This is not surprising as some of the cases that were being brought to the attention of the native chiefs

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<sup>17</sup> K. G. Tregonning, *A History of Modern Sabah*, Singapore: University of Malaya Press, 1965, p. 116.

<sup>18</sup> 'Preface to Dusun Adat of Putatan', in OKK Pangeran Osman bin OKK Pangeran Omar (comp.), *Dusun Customs in Putatan District*, translated by GC Woolley, North Borneo Native Affairs Bulletin, Jesselton, 1932.(Reprinted as North Borneo Native Affairs Bulletin, No. 7, 1962), p. 1.

ended up with appeals against decisions meted out by the respective courts; dissatisfied parties were taking the cases to the district officer, failing which they would seek redress from the Resident. In some instances, appeals were finally heard by the Governor of North Borneo.<sup>19</sup> The varied interpretations and decisions meted out by different native chiefs while deciding cases and the possible meddling in cases for personal reasons must have been a daunting experience for the Pangeran, who by virtue of his administrative position was also the representative of the government. With standardised written customs the margin of error or variants would be minimised, and even attempts at disrupting justice (order) could be avoided.

Apart from being an attempt to codify and standardise the customs, the Pangeran's effort was also a form of documentation of the old customs of the Dusun people of his district, lest they be forgotten. While the Pangeran did not provide us with information about his informants, it is likely that he had garnered sufficient local knowledge of the people and their customs. At the time of compiling and writing the Dusun Adat of Putatan, Pangeran Osman was DADO for Putatan, primarily a Dusun area. Also, his father, OKK Pangeran Haji Omar, had earlier served as DADO for the same district.

Pangeran Osman was a member of a Brunei Malay family traditionally recognised as one of the native chiefs in Sipitang and the Padas Damit area. His father, Pangeran Omar was first appointed Head Native Chief of Sipitang in 1911 by the Chartered Company; he had already been the *de facto* chief for the area long before that. In 1912, he was made Head Chief of South Keppel District, which covered the two sub-districts of Putatan and Papar. In 1915, after the Chartered Company had introduced a series of reforms relating to the administration of natives, Pangeran Omar was appointed DADO of South Keppel District. It was the first Chartered Company appointment which gave executive authority to a native officer.

The reform in the native administration came about mainly as the Company's reaction to a series of discontents among the indigenous population towards its rule. These had resulted in a series of armed resistance against the company rule, culminating with the Murut rebellion at Rundum in 1915. The Company was appalled, and decided to introduce several measures aimed at addressing the problems, *viz.* the appointment of native officers to administer districts and sub-districts that were rarely visited by European officers and the setting up of a Native Chiefs Advisory Council in the same year.

As one of the preferred native chiefs trusted by the Chartered Company, Pangeran Omar was also appointed to the newly established

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<sup>19</sup> In most cases, the decisions of the Native Chiefs were upheld at all levels by the European administrators.

Advisory Council. He continued to serve in the capacity of DADO until his retirement on 2 September 1923. He died in 1925.

For most of his tenure as DADO of South Keppel, Pangeran Omar was based in Putatan. Hence began the strong family connections with the Dusuns of the district. As the Pangeran was a Brunei Malay, his presence as the de facto Head Native Chief in a predominantly Dusun area was not well received.<sup>20</sup> However, this did not prevent him from obtaining information about the Dusuns which proved to be useful to his son, Pangeran Osman. In fact, it is interesting to note that both Pangeran Omar and Pangeran Osman were also required to sit in the Native Courts in Putatan as well as to administer justice based on the Native customs. This probably did not go down well with the Dusuns of Putatan and Penampang as the two pangerans were not Dusuns.

Pangeran Osman was born in 1884 and was 37 years old when he was first appointed DADO of Labuk and Sugut in 1921.<sup>21</sup> In 1925, he was appointed DADO of the larger district of Kinabatangan before being sent back again to Labuk and Sugut in 1927. After ten years of service on the East Coast, Pangeran Osman was transferred to the West Coast, to the district of his youth, Putatan, which had been his father's last posting in 1923. During this tenure of office Pangeran Osman started compiling the Dusun Adat of Putatan. In 1932, just as the volume was being published, Pangeran Osman was transferred to the position of DADO of Penampang. The change was primarily a change in the designation of his office because he was also looking after Putatan; the two areas were joined. They were inhabited almost exclusively by Dusuns—the Dusuns that he refers to as Putatan Dusuns also include the Dusuns of Penampang. Pangeran Osman did not stay in Penampang for long as he was transferred to Tuaran in late 1932, also as DADO. While at Tuaran he began to learn the customs of the Dusun of Tuaran. With his knowledge of the Dusuns of Putatan, the Pangeran was able to compare between practise of *adat* in the two localities. The information that he collected was later used by Woolley in his compilation of the Adat Tuaran.<sup>22</sup>

Pangeran Osman remained in Tuaran until 1937, when he was transferred to Tenom. In that same year, Pangeran Osman's younger brother, Pangeran Ahmad Raffae was appointed Native Chief Grade II for Sipitang.<sup>23</sup>

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<sup>20</sup> Ian Black, *A Gambling Style of Government*, Kuala Lumpur: Oxford University Press, 1983, p. 213.

<sup>21</sup> I am grateful to Pangeran Mohamad Yakub bin Pangeran Omar Saifudin for providing information relating to his grandfather.

<sup>22</sup> See preface of *Tuaran Adat*, Jesselton: Government Printing Office, 1936.

<sup>23</sup> This was the same Pangeran Ahmad Raffae who later became the second Head of State (Tuan Yang Terutama Yang Dipertuan Negeri Sabah) from 1965 to 1973. In June 1936, Pangeran Ahmad Raffae was invited to take part in the Native Affairs Advisory Council

This was the first time that Sipitang was provided with a Native Chief after Pangeran Omar had been transferred from there in 1915. Thus the cycle was completed where the family was once again recognised as the leading family in Sipitang.

It is interesting to note that Pangeran Osman was not the first to codify local customs. His father, Pangeran Haji Omar, was instrumental in compiling a 'Code of Mohammedan Custom', written in 1912 in Malay. This earlier compilation was not printed by the Chartered Company. However, it was picked up by some native chiefs, who referred to it when making rulings in matters relating to customs. It remained in use even up to 1936. According to Native Chief OKK Saman of Beaufort, he prepared a draft of the code based on Pangeran Omar's 1921 draft which he always used.<sup>24</sup> The Mohammedan code was adopted by the Native Chief Advisory Council meeting of June 1936 and submitted to the government for approval and publication. However, the government decided not to print the code compiled by Pangeran Omar and OKK Saman. It was however, being sent out to the various chiefs for their information and guidance only. At the 1941 Native Chiefs conference, there were several complaints from Muslim Native Chiefs that the penalties laid down by OKK Saman were at variance with the customs of their particular district. The Native Chiefs took it that the Code was binding, as it came from the governor. As a result, all the chiefs were advised to modify the code in accordance with local tradition, and this was subsequently done.<sup>25</sup>

Woolley probably first became acquainted with the Pangeran's family through a meeting with Pangeran Haji Omar in 1907. According to Woolley, the old Pangeran was 'quite a nice old man'.<sup>26</sup> The meeting took place on the second day after Woolley was appointed District officer for Province Clarke, which covered the Pangeran's home base of Sipitang and its vicinity. Woolley was to spend almost two and half years at Province Clarke, leaving only in March 1910 when he was appointed Acting Commissioner of Lands. It is unclear if Woolley had a hand in promoting the interests of Pangeran Omar as shortly after Woolley left for his new appointment, the old Pangeran was appointed Head Native Chief for the entire Sipitang area in 1911. It is likely that Woolley also got to know the then younger Pangeran Osman at this time, starting a friendship that lasted for many years.

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Meeting. See 'Resident West Coast, C.R. Smith to Government Secretary', 29 June 1936, Secretariat File No. 73B.

<sup>24</sup> 'Minutes of Native Chiefs Advisory Council Meeting', 22 June 1936, Secretariat File No. 73B.

<sup>25</sup> Tregonning, *Modern Sabah*, p. 117.

<sup>26</sup> The Diary of Woolley, 26 September 1907 (hereinafter 'Diary of Woolley'). I am indebted to the late Mrs Janet Kennedy nee Combe, formerly of the State Secretariat, for providing me with a transcript of Woolley's diary.

Woolley's relationship with the two Pangerans was certainly close. Woolley was present at the older Pangeran's house during Hari Raya<sup>27</sup> in 1909; there he took some photographs of the Pangeran and his family. Later, Woolley mounted some of these photographs and presented them to Pangeran Omar.<sup>28</sup> When Woolley heard that Pangeran Osman was getting married in Sipitang in July 1910, he sent him a note of 'Best Wishes' and a gift of a cigarette case.<sup>29</sup> On Hari Raya 1910, Woolley sent a carriage clock to Pangeran Osman as a wedding present; the clock had been ordered from John Little's of Singapore.<sup>30</sup> In return, Pangeran Osman sent a wedding memento—a Brunei cigarette box with a gilt band and butterfly.<sup>31</sup> This was the only instance where Woolley mentioned having sent a wedding gift to a local.

Much of the friendship between Woolley and the two Pangerans was centred on Woolley's eagerness to collect rare and exquisite local art and craft items. In this regard, the old Pangeran was a happy partner who regularly supplied many locally produced items to Woolley. Contact between them remained strong even after Woolley was transferred to Jesselton in 1911 as commissioner of lands. It is evident that Woolley truly treasured his ties with both father and son. In March 1912 he ordered a fountain pen from Robinson's of Singapore for Pangeran Omar.<sup>32</sup> It was certainly based on this old friendship that Woolley was able to continue to work with Pangeran Osman on further codifying other native customs.

When Woolley published *Dusun Adat: Customs Regulating Inheritance amongst the Dusun Tribes in the Coastal Plains of Putatan and Papar*, he acknowledged the help of Pangeran Osman. After a long stint at Putatan, Pangeran Osman administered the Tuaran District in the same capacity from 1932 to 1936. While at Tuaran he began to pick up the customs practised by the Dusun Lotud of Tuaran. With his knowledge of the Dusuns of Putatan, the Pangeran was able to make comparisons between the *adat* of Putatan and the *adat* of Tuaran. The information that he collected benefited Woolley when the latter compiled the *Adat Tuaran*.<sup>33</sup> It may be said that Woolley's efforts to compile the customs of the Tuaran Dusuns was influenced by his translation of OKK Pangeran Osman's Putatan *Adat*. This is evident from Woolley's acknowledgement of Pangeran Osman's assistance in preparing 'much of the groundwork' for the volume on Tuaran customs.<sup>34</sup>

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<sup>27</sup> The first day of the month of Syawal that celebrates the ending of the fasting month of Ramadhan.

<sup>28</sup> Diary of Woolley, 10 February 1910.

<sup>29</sup> *Ibid.*, 18 July 1910 and 1 August 1910.

<sup>30</sup> *Ibid.*, 6 September 1910.

<sup>31</sup> *Ibid.*, 6 September 1910 and 11 October 1910.

<sup>32</sup> *Ibid.*, 29 March 1912.

<sup>33</sup> See preface of *Tuaran Adat*, Jesselton: Government Printing Office, 1937.

<sup>34</sup> *Ibid.*

## Woolley and His Other Friends

Apart from Pangeran Osman, Woolley also received help from many other friends. For the Adat Timogun, he obtained help from Inspector Dualis of the British North Borneo Armed Constabulary,<sup>35</sup> O.T. Langitan of Tenom, O. T. Agurun of Kampong Polong, O.T. Rasamun of Kampong Tuan, Agilon of Kampong Lagud.<sup>36</sup>

For his compilation of the Putatan-Papar volume, Woolley acknowledged the contribution of OKK Lajungah of Putatan (Penampang) as well as a group of government chiefs at Papar, including O.T. Melakim, O.T. Mat Jakir and O.T. Matandun.<sup>37</sup> It was clear that Woolley was trying to be as thorough as possible in compiling each of the Native Customs of different localities by consulting as many village headmen and Native Chiefs as possible. This clearly demonstrates Woolley's concern with the sensitivity point of variant interpretations of customs by different village heads at different localities.

Woolley also obtained help from several of his fellow officers in the administration. He mentioned the contributions of Arthur Nicholas Melville Garry, who was the assistant district officer (ADO) for Tuaran in 1918. Garry had joined the service of the Chartered Company in 1915 as a cadet, and retired from the service in 1936. His final position was as Government Secretary in 1936, just before his retirement. Garry was appointed as ADO Tuaran in November 1918 and left Tuaran in July 1919.<sup>38</sup> Even though Garry was at Tuaran for less than a year, his tertiary education (King's College, Cambridge) encouraged him to make observations on the Dusun people in his district. At the time Woolley published *Tuaran Adat*, Garry had just retired.<sup>39</sup> Some of the information was obtained from Garry through the official channels of the Chartered Company.

Another European colleague was Owen Rutter who was in the service of the North Borneo Company from 1910 to 1915. Rutter later left the service

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<sup>35</sup> Inspector Dualis later found fame as a leader of the Pensiangan Muruts guerrillas that harassed the Japanese Army during the latter's retreat from the Interior. See Maxwell Hall, *Kinabalu Guerrillas*, Kuching: Borneo Literature Bureau, 1962, pp. 167-70.

<sup>36</sup> G. C. Woolley, *The Timoguns: A Murut Tribe of the Interior*, Native Affairs Bulletin No. 1, Sandakan: Government Printing, 1936, p. 1. This was reissued in 2004 by Natural History Publications with an introduction by the present author.

<sup>37</sup> G. C. Woolley, comp., *Dusun Adat: Customs Regulating Inheritance amongst the Dusun Tribes in the Coastal Plains of Putatan and Papar*, Native Affairs Bulletin No. 4, Sandakan: Government Printing Office, October 1939.

<sup>38</sup> *North Borneo Civil List 1934*, Jesselton: Government Printing Office, 1934, p. 22.

<sup>39</sup> Garry returned to England, and in 1940 was elected a councillor for the town of Rye. See *British North Borneo Herald*, 1 August 1940.

to join the army rose to be a Major and returned to academia after World War I. A prolific writer, Rutter produced a string of books dealing with Borneo. Two of his works, *The Pagans of North Borneo* and *British North Borneo*,<sup>40</sup> became the standard reference of the territory for many years. While Rutter was a junior to Woolley by at least ten years, the two were close to each other. Woolley as Resident of the Interior was one of the principal information providers to Rutter for his *The Pagans of North Borneo*. Rutter was evidently grateful for Woolley's assistance:

[The Pagans of North Borneo] would have been far less comprehensive than it is had I not had the assistance of Mr. Woolley who, as Resident of the Interior, allowed me to plague him with inquiries to supplement or test my own information and observations.<sup>41</sup>

In the same way, when Woolley compiled the volume on the Timogun Muruts, he also acknowledged Rutter as one of his sources.

Just as in his other compilations of the native customs, Woolley compiled the various *adat* booklets with the hope that they would serve as a guide for those who were entrusted with the authority to administer the localities. This included the European officers, who would be ignorant of the local customs, and the local chiefs who were lacking in consistency in exercising their authority in matters pertaining to customs. Woolley, however, was unpretentious in claiming that despite the efforts, the codes did not claim to be a definitive reference. Woolley also stated that even local chiefs admitted that while exercising their customary authorities, many were inclined to be 'guided by local influence and more or less irrelevant considerations' rather than by strict procedures as in the case of the Western legal system.

### **Resistance and Vain Exercise**

The efforts to codify the *adat* did not, however, receive all-round support, either from the Chartered Company administrators or the native chiefs who were members of the Native Chiefs Advisory Council (NCAC). One question arises with regard to the fruits of Woolley's labour: were the compiled customs of the various peoples adequate, or even accepted, by all native

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<sup>40</sup> Owen Rutter, *The Pagans of North Borneo*, London: Hutchinson & Co., 1929; and *British North Borneo: An Account of Its History, Resources and Native Tribes*, London: Constable & Co., 1922. *The Pagans of North Borneo* was reprinted by Oxford University Press in 1985 with an introduction by Ian Black

<sup>41</sup> Rutter, *The Pagans of North Borneo*, p. 10.

chiefs and village heads as well as European officers administering the districts?

In 1937, Governor O. J. Jardine began to express concern about the increasing number of appeals against Native Court decisions which landed on his desk. Accordingly, he requested that a circular be issued to his administering officers with a view to minimizing the number of instances of European officers—District officers and Residents—upsetting the decisions of the Native Courts. When it was issued, the circular stated that ‘The verdict of a Native Court must be regarded as a verdict of experts on native custom and Mohammedan law (as understood locally), who are in a better position than any European officer can hope to be to give a decision which the public will consider just in regard to the family and other matters on which they are called to adjudicate.’<sup>42</sup> Therefore, he recommended that only under special circumstances—which included judgements that were harsh and unconscionable, opposed to natural justice, or maliciously arrived at—that the decision of a Native Court should be upset. However, Jardine’s circular did not state the reasons behind the large number of cases that ended up in appeals to higher authority, namely the inadequate nature of the manner in which the native customs were being interpreted. This was contained in an earlier draft of the circular by the Chief Justice, C. F. C. Macaskie:

Native custom in this country is so inchoate and diversified and Mahommedan law is so little understood and so impregnated with local custom that neither can be accepted as satisfactory medium for the interpretation of the law applicable to any given set of facts. ... It follows that a decision of a Native Court cannot be analyzed on strictly legal principles and it must be looked upon as the decision of a body of arbitrators which is better acquainted with local customs and circumstances and better able to give a decision which will be recognised as just than any European officer can hope to be.<sup>43</sup>

Macaskie’s earlier draft was altered by Governor Jardine, who felt that such an admission was not necessary and therefore suppressed it. In other words, the Government was fully aware of the shortcomings of the Native Courts, especially with regard to the inconsistencies in delivering decisions. Despite this, the government refused to take the necessary steps to address such shortcomings. Instead, it chose to steam-roll over the issue by reducing the scope of appeals against the decisions of a Native Court despite the efforts that had been made to codify some of the Native Customs, such as those of Woolley and others.

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<sup>42</sup> Circular No. 370 of 1937, 16 April 1937.

<sup>43</sup> ‘Draft Circular No. 370 of 1937’, in Secretariat File, No. 58.

The 1937 circular also belied the fact that the government refused to have the local customs codified though it acknowledged the diversity. Instead, it chose to rely on the judgements of the members of the Native Court, and to allow the ambiguous interpretations of the customs to remain open.

This problem of diversity was again raised two years later by Macaskie, who was then still the Chief Justice. Macaskie suggested that, 'when opportunity arises, an attempt might be made to reduce the diversity of native customs relating to matters of inheritance'.<sup>44</sup> His rationale was, 'As the country becomes opened up and there is more communication and consequently more inter-marriage between natives of different localities and as native tribes increase in prosperity, the need for uniformity of the laws governing the inheritance of property will grow if seeming injustice and discontent are to be avoided.'<sup>45</sup> While acknowledging that the Muslims had laws that were sufficient in dealing with inheritance, Macaskie called for the compilation of two separate codes for the Muruts and the Dusuns. However, like previous attempts, Macaskie also fell short of suggesting having the codes accepted as legal documents. Instead, they would remain as guides in cases of difficulty.

At the 1941 Native Chiefs Advisory Council meeting, the last held before World War II and under Chartered Company rule, the same question was asked by OKK Panglima Abdullah of Semporna. He made the observation that the codes of inheritance for Dusun tribes had to some extent already been done by Woolley and Pangeran Osman and thus, should be adopted for use. In reply OKK Mohd. Hassan of Inanam pointed out that the codes compiled by Woolley and Pangeran Osman were related to particular districts and that the customs of one area could not be imposed on another. OKK Lajungah of Penampang agreed that there were widespread differences in Dusun customs regarding inheritance throughout the state and said that codification would consequently be very difficult. OKK Lajungah's view was supported by OKK Pangeran Serudin of Papar, who pointed out that there were varying customs even in Dusun villages within the same district.<sup>46</sup>

Given such views expressed by the native chiefs, it is no wonder that all the customs compiled by Woolley and Pangeran Osman were not given consideration. Consequently the customs of the natives remained largely unwritten and not codified remaining as a source of reference rather than legal binding documents. Citing Brother Peter Phelan:

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<sup>44</sup> 'Macaskie to Government Secretary', 12 July 1939, CO966/1.

<sup>45</sup> Ibid.

<sup>46</sup> 'Minutes of the Native Chiefs Advisory Council Meeting', 2 November 1941, Secretariat File, No. 73B.

In 1980 an experienced and highly respected District Chief and Chairman of the District Native Court [Datuk Anthony Gibon of Tambunan] was interviewed concerning the administration of Native Law. He said that he did not have recourse to the Bulletin compiled by Woolley; he felt fully satisfied with his acquaintance of Native Law: 'I know it from childhood', he stated. Regarding his ability to make a moral judgement he stated with sincerity, 'I feel in my heart whether a thing is right or wrong'.<sup>47</sup>

## Conclusion

Despite the various efforts to codify the native customs in Sabah, only the efforts of Woolley and Pangeran Osman actually resulted in having their compiled customs printed as codes. However, just like the fate of the various native customs compiled earlier by the respective administrative officers, Woolley's published codes were never accepted as legal binding or widely received even by the community of native chiefs. Consequently the Native Customs and laws remain unwritten and varied from one place to another. Despite many calls there were no efforts towards the codification of Native Customs and Laws. The resistance came mainly from the Native Chiefs who were still regarded as the paramount authority of the Native Laws in their respective districts. The pleading of variant customs in different localities continued to be the main reason given for the rejection of any attempt towards the codification and standardization of the practice of Native Customs and Laws.

Even as the native community is experiencing modernization, the distinctions that existed in the practice of customs in various localities have become less apparent. In fact, in some cases, certain customs were already being abandoned and even forgotten. It was in such light that individuals like Woolley and Pangeran Osman had anticipated and thought that the best way for the native customs to be preserved was through their codification, or at least, their documentation. However it all depended on how the actual practitioner of these native customs, namely, the Native Chiefs and Village Headmen, perceived their roles. Just as during the days of Woolley and Pangeran Osman, these Native Chiefs and Village Headmen were uncomfortable with the idea, as they perceived the efforts of codification as a means for undermining their credibility and prestige in their respective

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<sup>47</sup> Peter Phelan, *The Traditional Legal System of Sabah*, Kota Kinabalu: Pusat Kajian Borneo, Yayasan Sabah, 2003, p. 11.

communities. Hence their defensive response hinges on the fact that the practice of customs varied according to locality.

The need to codify Native Customs was clearly recognised by many of the Chartered Company officials. Many of these officials found the absence of a form of definite documents as in the European legal system to be the main cause of decisions and interpretations by different native courts being challenged through appeals to higher authorities. Such challenges had brought about the various attempts at codification viz., in 1907-08, 1917-18 and 1936-37. Despite having collected customs as in the 1917-1918 efforts, all these attempts fell short of having these customs codified and made legally binding. Instead, they remained merely as guides to native chiefs and court officials. The lack of will to push through the codification of Native Customs clearly demonstrated the unwillingness of the Chartered Company to avoid complaints and tensions that could arise should the Native Chiefs find the codes incompatible to their understanding of the customs as in the case of the Mohammadan code introduced in 1936.

Thus, despite all his efforts, Woolley's six volumes of Native Customs as well as the volume by Pangeran Osman remain nothing more than guides to Native Chiefs and Village Headmen. Given the passing of time, some of the information obtained by Woolley and Osman is perhaps no longer applicable in today's context, hence rendering them merely as guides to what was decided during the days when they first appeared. Despite the apprehensive response to the compiled Native Customs, Woolley's compilations of the various customs are important documents in helping us to understand the social life of the various native tribes of Sabah at a time when the community was making progress towards modernization.