

# DAYAK DAYS

A letter from Sarawak: indigenous people and land rights – February 2018. Stuart Franklin

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They came in the night. Five cars, and a van. The convoy turned off one of Sarawak's arterial roads, then halted abruptly to untie a rope blockade. Dust diffused the headlights as they made for the stone-chip logging road leading to the palm oil estate where the vehicles' occupants worked. Suddenly, stopping again, about thirty thugs – the estate's security detail plus hired-in extras – began brandishing a shotgun and several samurai swords outside the Iban native settlement of Rumah Jimin, near Ulu Arip. A clash ensued as the Iban, now fully awake, went at them with machetes or *pangas*.

Baja Anak Dirang, who took part in the melee and still bears a scar on his wrist, claims ten of the gangsters, as he calls the aggressors, died. The police report of the night mentions just one dead. Either way, legal proceedings followed, initiated by the Iban. The high court ordered the rope to be taken down. A year and a half on, the land dispute continues, joining over 200 others log-jammed in Sarawak's byzantine judicial machine.

All share a common legal quandary: no-one in the judiciary seems able to define, precisely, what is meant by "native customary rights" to land, rights that Sarawak's majority population of Dayak tribes, that include the Iban, the largest ethnic group in Sarawak, continue to claim. As was held by the Chief Justice of Malaysia recently, customs are merely customs and unless codified, have no force in law. Amid the confusion, Sarawak's vast timber and palm oil conglomerates, have sought to profit. The company who claim rights to the disputed land near Ulu Arip is Shin Yang.

Shin Yang is one of Malaysia's largest group of companies with over a hundred subsidiaries. It expanded rapidly from a small Fujian Chinese enterprise in the 1970s, running timber downriver to Miri with the barges and tug-boats they'd built, into a vast Japanese-style *zaibatsu*, with interests spread across all large-profit domestic sectors: timber extraction, plywood, palm oil and acacia plantations, real estate, hotels, quarrying, transportation, road and port construction, shipping and ship-building – the latter operated by Syscorp, a Shin Yang subsidiary.

In the port town of Miri, site of their ornate walled-in plate glass head office, Shin Yang Group of Companies own two shopping malls, the town's bus service and several housing projects. Their success was calculated and effective. They joined former Sarawak Chief Minister (now Governor) Abdul Taib Mahmud's inner circle.

Shin Yang's international operations begin with their own fleet of over three hundred vessels, from utility and supply ships to support the oil and gas industry, to glue barges, to ocean going cargo ships, to chemical tankers for transporting crude palm oil from Sarawak Oil Palms (SOP) – another Shin Yang subsidiary. Their destination: China. In Qatar and UAE Shin Yang have been active in winning several large-scale construction projects including the second phase of Doha's international airport and World Cup Qatar 2022.

Sarawak's so-called "Big Six" logging companies: Samling, Shin Yang, Ta Ann, WTK, KTS and Rimbunan Hijau - all predominantly Chinese - control about 80% of Sarawak's timber concessions, holding licenses to log 3.7 million hectares of remaining rainforest. The "Big Six" also finance the election campaigns of the ruling coalition party, *Barisan Nasional* (National Front) in Sarawak.

Harrison Ngau, an attorney based in Sarawak, and one of the few seasoned lawyers specialising in land rights issues on behalf of indigenous people, admits, "when you are that big and being the money bag for the ruling political parties in every election the government is completely at your mercy. Ironically, the billions of ringgit [RMB] made from the extraction of our State timber resources and land all these years have been stashed away in overseas bank accounts or are invested in prime properties by our corrupt political leaders under the names of nominees."

The once proud country of Sarawak, an ex-British Crown colony, now relegated as a state within federal Malaysia, has bowed low to the juggernaut of development. Its former image, parodied in Redmond O'Hanlon's (1984) travelogue *Into the heart of Borneo* features a jungle explorer, adorned in "a globulating necklace of leeches," handing out picture postcards of the Queen on horseback, trooping the colour.

Discounting Australia, Borneo is the world's third largest island, after Greenland and Papua New Guinea. Its landmass is shared with the Malaysian states of Sabah and Sarawak, the Indonesian state of Kalimantan, and the kingdom of Brunei. Over the past twenty years, Sarawak has seen a marked shift both in urban migration, and in the growth of Chinese economic muscle and cultural dominance. Breakfast in a Kayan home near Sibu typifies the cultural turn.

It's 8am. All sit on the linoleum floor drinking Chinese tea and eating crackers while a large screen - incessantly on - lights up the room, with Chinese daytime television. A conjurer dressed in a lurid pink suit, with silk fedora to match, cavorts around a lemon yellow-painted studio whilst lifting a vase of flowers, quite obviously attached by a magnet to the table below. Chinese food and television are the new staples, and everything shuts in Sarawak for two days to celebrate Chinese New Year.

In the nineties most of the logging concessions went to Chinese or Chinese-Malay/Melanau firms, almost all with connections to the family or inner circle of Abdul Taib Mahmud, an indigenous Melanau, who many hold responsible for the destruction of 90% of Sarawak's primary lowland forest during his term in office, 1981-2014. In 1978 Sarawak was one of the planet's most important biodiversity hotspots, the same year *The Times* of London ran the headline, "Thousands of new species found by explorers in 'dark corner' of Sarawak."<sup>1</sup>

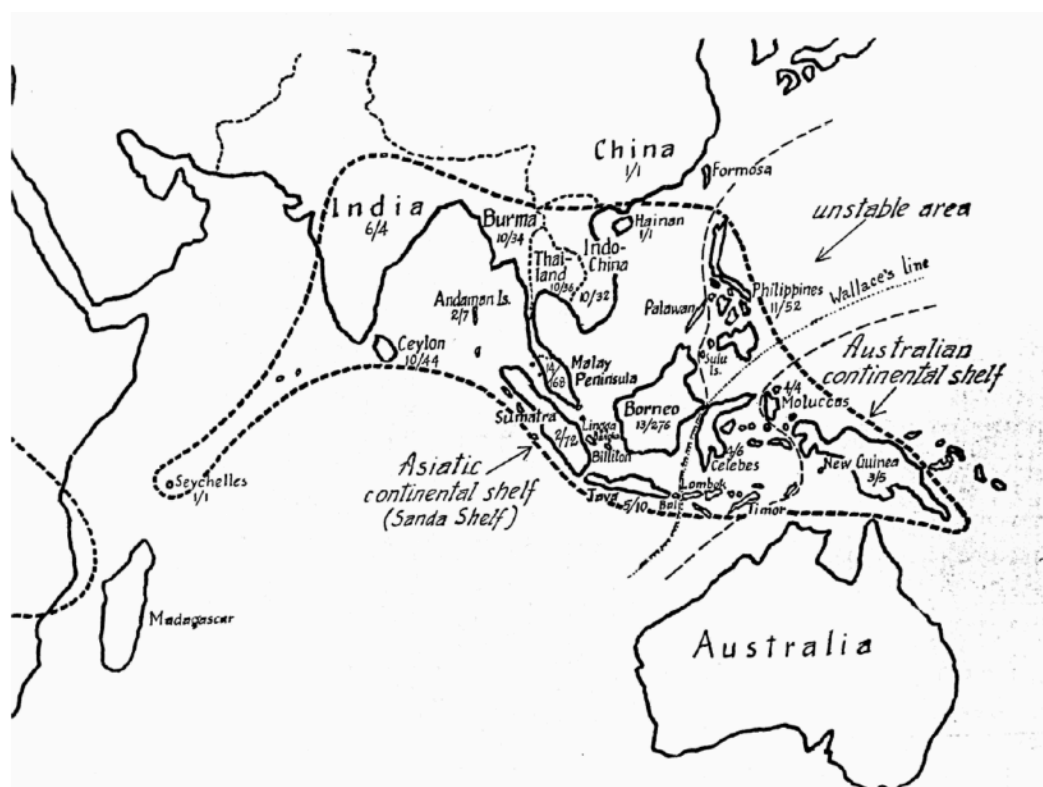


Fig 1. In 1943 the forest botanist C.F. Symington surveyed species diversity within the most important timber tree family in southeast Asia, the Dipterocarps. Borneo is, by a considerable margin, the most species-rich, with – back in 1943 – 276 species of Dipterocarps split between 13 genera.<sup>2</sup> In Britain, our entire range of native trees contains just 30 species.

It may well be argued that those British explorers and biologists, including former director of Survival International, Robin Hanbury-Tenison, who led the Royal Geographical Society expedition to Sarawak

<sup>1</sup>The Times, September 16<sup>th</sup>, 1978.

<sup>2</sup>See (Symington, 1974 (1943)) Note that when Symington conducted his survey little was known of diversity in Sumatra.

in 1977/8, inadvertently precipitated the resettlement of Sarawak's indigenous people, by basing conservation assumptions on a flawed biogeographical theory.<sup>3</sup>

Before being forced into the resettlement centre at Batu Bungan, the Penan had acted as porters for the explorers.<sup>4</sup> Yet as numbers increased it soon became a priority for the explorers to resettle them. As Hanbury-Tenison wrote in a 1980 memoir, "It seems that only a rapid resettlement and retraining programme ... would save the day".<sup>5</sup>

In 1996, Belalo, the headman of the Penan longhouse at Batu Bungan, told me, "at the end of the [Royal Geographic Society] expedition we were effectively forced out of the [Gunung Mulu National] Park into the settlement in order that we should live a more settled life and stop hunting wild boar and taking sago palm." The Penan were bitter about their exclusion, yet it could also be argued that without the creation of the national park, none of the primary rainforest would have survived to this day.

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Of the nine or ten disparate longhouse communities I visited in 2018, three have been in legal disputes over land with Shin Yang, who have, according to high court papers that I have seen, ridden roughshod over native community rights to land. In separate cases over the past six years Harrison Ngau has twice sued Shin Yang subsidiaries, Sarawak Oil Palm and Shin Yang Forestry on behalf of indigenous clients. One case was suspended and the other case he won. The Iban landowner was paid damages for trespassing. The six further disputes Ngau encountered were between the government and indigenous communities impacted by deforestation and dam construction (flooding, relocation), or cases against different companies.

Ngau notes that when it comes to land rights, the dice are loaded from the start. The legal costs, the adversarial legal system and the evidential presumption in state law that any land in dispute is considered to be Crown land until the indigenous communities can prove their customary rights, makes it extremely difficult to win cases. This gives overwhelming advantages to both the state and the logging companies, whose *modus operandi* has been to harvest timber with impunity, then convert the same logged land to oil palm and acacia plantations.

According to a report in the *Straits Times* (of Singapore) in 2016 Shin Yang was documented decimating primary rainforest at the rate of forty-two football fields a day in a proposed national park inside an area of high biodiversity, known as the Heart of Borneo. A typical recent case, published in the Japanese press early this year, is the Penan longhouse of Long Jaik, twenty miles from the Muram dam built in 2010 on land also claimed by the Penan.

The headman, Matu Tugang (78), has been fighting Shin Yang in the high court since 2009. The legal battle was initiated when blockades, beginning in 2005, failed to stop the company planting palm oil on land claimed by the Penan. Matu, the plaintiff in the case, lost. He claims that the headman from a nearby longhouse, Long Peran, was paid off and supported Shin Yang in court. According to Ngau, divide and rule is a common tactic used by the "Big Six" to settle land rights issues in their favour. Now Matu is planning a class action, with twenty-four longhouses in support.

The longhouse is the customary indigenous housing arrangement in Sarawak, politically led by a headman now appointed by the ruling politicians: there are also a few headwomen in Sarawak. The term refers both to a community and a long timber structure normally raised on stilts, subdivided by apartments, each occupied by one or more families. A single corrugated zinc roof covers the rows of accommodation or "doors" opening onto a hundred yard long communal balcony, eighteen or twenty foot wide, which forms the social hub of every longhouse, although the dimensions vary. As more young people raised in longhouses move away to the towns in search of schooling, jobs and the Internet, many today lie partially abandoned.

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<sup>3</sup> In the 1970s MacArthur & Wilson's (1967) theory of island biogeography was used to demonstrate that ecosystems could be conserved if treated as islands, in other words in national parks where no humans other than scientists were allowed to live or work. It later became clear that islands and land-based national parks have different characteristics, and in the case of Sarawak, that biodiversity in the lowland dipterocarp forest was so significant and extensive that preserving small islands of forest would simply lead to the elimination of the rest. That is largely what happened between 1978 and the present day.

<sup>4</sup> See (Kedit, 1982) p247.

<sup>5</sup> See (Hanbury-Tenison, 1980) p137. I'm unsure as to whether the late Robin Hanbury-Tenison recalls this in his new (2017) memoir: *Finding Eden*.

Whatever divisions this Long Jaik community keeps to itself, the impression is of a shared life and shared struggle. Matu's wife Kulan reflects on a loss of wellbeing since Shin Yang's intrusion, and voices her difficulty in accessing forest fruits and rattan – used for mat and basket-making. The forest, the forest they claim as theirs, has been logged over. On the dirt road outside the compound acres of newly terraced red earth lie exposed in preparation for another palm oil plantation.

Meanwhile, out on the decking, a child attends to an injured deer; Tugan, a very old man with pierced earlobes, hangs his washing under the roof; Layu feeds her youngest daughter while her sister Niyu distracts a nephew. Nearby, Pawi cools his grandson in a plastic washbasin. All are affected equally by the land rights struggle, but on this baking hot afternoon the Penan put their troubles aside. They rise up in unison to greet a travelling popsicle salesman, an Iban on a scooter.

Long Jaik's story has become an international issue because, reportedly, Shin Yang supplied timber to build the new 2020 Olympic stadium in Tokyo from the Penan's native customary land at Long Jaik. In September 2017 Matu wrote to the Japanese Prime Minister, Shinzō Abe, to complain: "we know this company very well because they have been operating on our lands without our consent and destroying our forests and the base of our livelihoods and culture for almost two decades."

Not all disputes with the Big Six end up badly. One Iban family I met in Selangau, Semawi Anak Renang (52) and his wife Leman Senang (53) took Rimbunan Hijau to court in 2011 and won. Not before Rimbunan Hijau reportedly sent four thugs to intimidate the family. Semawi pointed out the dent from a shotgun pellet in his rear bumper. They've had no more trouble since, and 85 hectares of palm oil is now theirs, harvested by hired Indonesian labour who chop heavy fruit clusters off the trees with a blade attached to a pole.

Palm oil is by far the most profitable cash crop in Borneo, and today – after logging primary rainforest – is the principal threat to Borneo's biodiversity. It's used as an emulsifier in virtually all butter spreads and ice cream. Its market value, at about 475 RMB per metric tonne, is more stable than rubber and provides year-round income, unlike pineapples or rambutan. It's easy to see why the Big Six conglomerates find this improbable orange fruit so attractive.

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Timber and palm oil are, sadly, not the only prized resources targeted by Borneo's Chinese businessmen. Rare and endangered species, such as the shy Sunda pangolin (*Manis javanica*), valued for its scales and meat, are hunted illegally in the forest, then shipped to China. I was unaware that pangolins feature high on the IUCN red list – as critically endangered, until I encountered two crates of them near the town of Asap in a longhouse where I was a dinner guest.

The host, Tiguan let's call him, who occupied only a part of the extensive zinc-roofed timber-frame house, wanted to show me the contents of two large ventilated plastic crates covered in a dark cloth parked in the front entrance. Using a kitchen knife to cut through the thin black cable ties that held the crate lid and the blue woven sacks shut, Tiguan slowly exposed the startled captives. I think he had no clue as to the criminality that his knife was unveiling. Inside the first sack three sickly pink scaly creatures with delicate long snouts began slowly to murmur and squirm.

Tiguan was holding one up for me to see. Suddenly, a shirtless middle-aged Chinese man, a co-occupant of the longhouse, lunged at me before I could get a picture. Someone had tipped him off. "No, no pictures ... they are illegal. I don't want to be on Facebook," he said, threatening to seize my camera. Others had gathered to stuff the pangolins back in their sack, one of about ten small sacks crammed into each crate. The creatures were curled round into tight rings, one on top of the other, unable to move.

It's a wonder they could breathe: never have I seen animals treated so cruelly. "The people here are poor," the Chinese man offered, now more agitated, "they need small business." I was clearly unwelcome. The following day I saw teenagers carrying another pangolin to the house, like those in the crates, but brownish. I can only assume the colour drains out of them on being squished up and crated, starved and dehydrated. It was only when I reached Miri, over a hundred miles away, with access to the Internet, that I realised just how destructive pangolin hunting is for the well-being of the species, and relayed my experience to someone with official contacts.

In the 1990s Sarawak's roads and wider rivers were packed with trucks and barges shipping timber to port. Today they are barely visible. The big tree forest has largely gone, as have expanses of peat wetland, the larger birds, mammals, fish and insects. Few insects appear on the windscreens of the rows of Toyota Hiluxes and Nissan Navaros that have replaced the logging trucks on the ever-widening Pan Borneo highway where Shin Yang has won construction contracts.

Indigenous protesters continue to blockade roads in the hope of winning back their land, pointing at land survey maps to show where the government or palm oil firms have allegedly infringed their rights: building a Halal meat processing hub (at Belawai), or refusing to pay compensation (at Batu Niah). In areas where the forest has completely gone I detected an air of resignation. Tuai Rumah Bulin is the headman of an Iban longhouse blockading a road used by a smaller Malay-Chinese palm oil firm, Seatex Batu Niah.

At the barricade twenty or so villagers, one of three round-the-clock shifts in place since July 2017, describe their frustrations over lack of compensation. I asked: "what's more important to you, the land or the money?" "We prefer money first," they replied. The land is useless to many of the thirty-three families involved, now ill-accustomed to palm oil farming with limited access to transport and infrastructure. Money will buy them a choice of futures.

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Conversely, love of land and not money persuaded John (47) and his wife Uday (48), both Kayan, to resist forced relocation after the Bakun dam was built on the Rajang river in 1998. As their longhouses slipped underwater after the dam raised the river up 300 metres, they kept moving upstream. Now they're in a longhouse, Long Kevoh, on a tributary of the Rajang about 40 miles, or three hours boat ride, from Bakun. They live quite happily off the land, the only major setback being declining stocks of wild bearded pig. With the forest logged, the fruit trees under which the pigs feast, are disappearing too. John, who wears a look of pain, walks with a slight limp.

Since September last year he's been out all day two or three times a week, dogs in tow, to hunt. The evening we arrived Lisak, a fellow villager, appeared outside the house with a freshly butchered pig in a wheelbarrow, the contents of which he promptly weighed and sold at the dock. Poisonous snakes and the black sun bear (*Helarctos malayanus*), who compete for food with the wild boar, are John's biggest fears out hiking in the jungle, some of which is still unlogged. When I asked the Penan the same question in 1996 they replied: "the wind".

Big branches from giant trees would fall unexpectedly. That's less of a risk today: the tall trees have gone. John never shoots at the bear. Injured, they're more dangerous. "Don't let a bear get above you," Luhut, the boat driver adds, "they can roll downhill very fast." Fish are plentiful in the rivers and streams here, but elsewhere that is not the case. They are trapped in handmade weirs, usually at night, where I watched John, rattan pack on his back, unsuccessfully comb the shallow stream rapids with a head-torch.

Deforestation has silted up many of Sarawak's river basins, turning river water the colour of Milo or milky coffee, and exacerbating flooding. I have visited several longhouses along the Melinau river, and elsewhere, where Penan and Iban families have had to wade waist-high through their homes until the water subsides.

Uday looks after the family small-holding, proudly showing off her tobacco crop and young banana leaves, flattened by stones, that she uses to make cigarette papers. A rattan backpack is filled with fresh green peppercorns. Cocoa pods fill another low basket beside a bowl of miniature squash. Papaya, rambutan, and banana trees feature in the garden and they grow rice using shifting cultivation to rotate the soil across from the dock. Uday is slight but spirited and like her husband, walks with a limp. She keeps house and cooks, except for the barbecue work.

They are self-sufficient save for salt, matches and diesel (for the small boat and generator). They also stock up on sugar, coffee, tea, Milo, garlic, red onions and a local food flavouring, called *agi na moto*. They shop when visiting their four children, now at school or working in Belaga, just below the Bakun dam, a day's boat and car ride away. After dinner the men sit around the table drinking coffee while Uday squats on the floor below, where the cats press for scraps, rolling banana leaves into cigarette papers to sell. In the morning she bunched and shredded tobacco leaves with a kitchen knife. That's when I noticed her withered hand.

John and Uday met in the early 1990s, at Christmas. John was driving trucks for Shin Yang all over the Belaga area, when they lived nearer to town. One day John and Uday were in the truck on a dry logging road on an incline amid a line of vehicles. Dust reduced visibility to a few yards. One car started overtaking ahead of a bend, forcing the line of cars and trucks to brake suddenly. John and Uday survived with broken ribs and glass through Uday's hand leaving permanent nerve damage. The three passengers in the car behind all died, crushed against the back of John's truck. That was the middle of 2016. John hasn't driven a vehicle since, and I think being away from society, so far upriver, helps them deal with the trauma and their injuries together.

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On the boat ride back to Bakun the rain came down, but when the sunlight broke through it lit up ghostly islands of blanched and dying trees: the twisted arms of vanishing species appealing to a leaden sky. The many who obeyed and relocated from the dam were offered rewards the native people claim never materialized. The Penan longhouse of Talun is just twenty minutes drive from the town of Asap.

Two hundred people live in overcrowded conditions – three to five families to one “door” or apartment. Since being relocated the community has grown, but the land available (three hectares per “door”) and accommodation has not. They are stuck, miserably smoking conical handmade cigarettes on the decking floor. Half the ticking dials inside the electricity meters posted outside each “door” are silent and still. The bills have not been paid, in some cases for ten years. The water, they claim, is dirty. Mujan (55) reflects on the better life she enjoyed as a child growing up along the Rajang river. “We’ve lost our livelihood,” she says.

As I photographed Mujan, the early twentieth century photographs by Edward Curtis came to mind. The Vanishing American Indians, their defeated faces betraying their ‘manifest destiny’, have found their sisters and brothers in Sarawak. There is nothing for the Penan in the resettlement centres: there never was. I spent time with them in 1996, after they were banished from Mulu National Park to the government-built Batu Bungan resettlement centre. There they sat grimly weaving tourist trinkets when they weren't sneaking back into the forest, their trail following the narrow, shuffling path of the porcupine, hoping to avoid the park rangers. At Talun there is no access to sago palm (used as a starch), tapioca, edible ferns or forest fruits: wild mango, durian, loganberry and tamarind, which Mujan once enjoyed. Rattan is almost impossible to find.

Long Bala, a Kayan longhouse nearby, have resorted to making the traditional bags with thin green plastic tape. It's useless after a year, or so the women there claim. Mujan hasn't resorted to plastic. Instead she and the women sitting around her: Livan, Layok and Julian – all of similar age – have been forced to labour on the palm oil estates as day labourers to make ends meet. There they work in pairs. Men cut down the fruit, the women gather it up. A pair will earn 30 RMB per metric tonne of palm oil – a day's work for 15 RMB. That's half what Indonesian contract labourers were paid, back in 1996, to build the resort hotel at Mulu National Park. A cup of coffee on my Air Asia flight out of Miri cost 6RMB. Once again there are echoes of the tales of displaced sharecroppers in the 1930s, picking peas in California's Imperial Valley, having lost everything they'd come to call their own.

Oddly, the local Sarawak media are not reporting any individual case stories, just general editorials on land rights history. As independent researchers pointed out in the nineties, Sarawak is notoriously self-conscious of its image in the media. Today, the Sarawak media is owned either by the government (TV) or the “Big Six” corporations. Borneo Post, the state's leading English newspaper, is owned by KTS. Further, most lawyers and journalists are afraid to stand up for indigenous land rights. In 2016 the branch secretary of the opposition party, National Justice Party (PKR), Bill Kayong, who was helping the Rumah Jambai longhouse over rights issues, was shot from a passing scooter on his way to work in Miri. The alleged ringleader, Lee Chi Kiang (the palm oil boss of Tung Huat Pelita), escaped prosecution reportedly due to insufficient evidence of his involvement in the murder.

Sitting outside one evening at the Rainforest Café in Miri, I asked Harrison Ngau why, with so much going against making a difference under the new case law on indigenous rights set by Malaysia's federal court, and the personal risks he and his fellow lawyers must face each day, he keeps fighting. “Our conscience and our faith. After all we are only defending what has always been rightfully ours. Despite all the obstacles, we keep optimistic that some day the ceiling will be broken.”

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